

THE INDIAN LAW REPORTS ALLAHABAD SERIES



सत्यमेव जयते

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ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.01.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Application U/S 528 BNSS. No. 32121 of 2025

Jitendra Kumar & Ors.

...Applicants

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for consideration

Legality of criminal case on false promise of marriage in a consented relationship.

Headnotes

False promise of marriage-Allegation of sexual intercourse on false promise of marriage-relationship between applicant no. 1 and victim was of love and affection since their graduation time-could not mature into marriage-consent-victim is a lawyer-plain reading of FIR- statement of victim -clearly shows that the accused applicant no. 1 and victim were in love relations-while both were student of Bachelor of Science-there was reciprocal promise of marriage between the two -assurance given by the accused shows his bona fides-not the case that the accused has hide his identity or was already engaged somewhere else. **Application allowed.** (E-9)

Case Law Cited

1. Mahesh Damu Khare Vs. State of Maharashtra and another reported in (2024) 11 SCC 398;
2. Pramod Suryabhan Pawar Vs. State of Maharashtra reported in (2019) 9 SCC 608;
3. Prashant Vs. State of NCT of Delhi reported in (2025) 5 SCC 764;
4. Ravish Singh Rana Vs. State of Uttarakhand reported in [(2025) SCC OnLine SC 1055 (paragraphs 14 & 15)]
5. Prashant Vs. State of NCT of Delhi reported in [(2025) 5 SCC 764 (paragraph no. 20)]

List of Acts

1. Bhartiya Nyaya Sanhita, 2023
2. Indian Penal Code

List of Keywords

Promise of marriage, love relations, deceitful means to sought consent, consent of the victim

Appearances of parties

Counsel for Applicant(s) : Tripurari Pal Counsel for Opposite Party(s) : G.A., Sanjay Mishra

(Delivered by Hon'ble Avnish Saxena, J.)

1. Heard, Shri Tripurari Pal, learned counsel for applicants, Shri Sanjay Mishra, learned counsel for opposite party no. 2 and Shri S.K. Rai, learned A.G.A. for the State. Perused the record.

2. The present application under Section 528 B.N.S.S. has been moved by three applicants accused. The main allegation of sexual intercourse on false promise of marriage is leveled against

applicant no. 1. The applicant no. 2 is brother of applicant no. 1 and applicant no. 3 is wife of applicant no. 2 and sister-in-law of applicant no. 1. The applicant nos. 2 and 3 have been charge sheeted for the offence of criminal intimidation. The relief sought is to quash the charge sheet dated 30.03.2025, cognizance taking order dated 22.05.2025 passed by learned Additional Chief Judicial Magistrate-1, Aligarh and the entire proceeding of Criminal Case No. 419 of 2025 (State Vs. Jitendra Kumar and others) arising out of Case Crime No. 55/2025, under Sections 69 and 351(2) of B.N.S., Police Station- Gandhi Park, District- Aligarh.

3. Learned counsel for applicants submits that the relationship between applicant no. 1 and victim was of love and affection since their graduation time, which could not mature into marriage, though the accused applicant no. 1 and victim being adult entered in sexual intercourse with consent. The accused applicant has not hide his identity to maintain relations with the victim. The accused applicant and victim were studying together and there was love affairs between the two. Further submits that the victim has no case of sexual intercourse on false promise of marriage, but the proposal and assurance was bona fide and the relations between two was not due to any deceitful act of accused applicant. The statement of victim recorded under Section 180 and 183 B.N.S.S. is inconsistent. The victim is a lawyer, who knew repercussion of her act and long duration of sexual intercourse between the two adults without playing of deceit is inferred as consensual relation. Further submits that the victim has demanded Rs. 10 lakhs from the applicant prior to lodging of the F.I.R. and in the event of not handing over the amount a false and frivolous F.I.R. at a belated stage is lodged. Learned counsel has relied on the case of ***Mahesh Damu Khare Vs. State of Maharashtra and another*** reported in (2024) 11 SCC 398; ***Pramod Suryabhan Pawar Vs. State of Maharashtra*** reported in (2019) 9 SCC 608; ***Prashant Vs. State of NCT of Delhi*** reported in (2025) 5 SCC 764.

4. Learned A.G.A. and learned counsel for opposite party no. 2 have submitted that the case in hand is of sexual intercourse on false promise of marriage, where the accused applicant no. 1 since the year 2021 had continuously entered into sexual intercourse on false promise of marriage. The victim in her statement under Sections 180 & 183 B.N.S.S. has made specific allegation against the accused applicant no. 1, which has been corroborated by other witnesses, who were residing in the same vicinity where the victim resides. Further submits that the false promise of marriage was given by the applicant no. 1 since the start of their affairs and in the garb of false promise of marriage he has pursued the victim to enter into sexual intercourse and lastly he has refused to enter into marriage. Further submits that the applicant no. 1 is in police and in the garb of his uniform he has continuously threatened the victim. The threatening has also been extended by applicant nos. 2 and 3. As such, the victim could not muster courage to lodge the F.I.R. Further submits that the cases cited by the accused applicant are of offence under Indian Penal Code, whereas, the new provision under Section 69 of B.N.S. is for the offence of sexual intercourse which is not rape, but held punishable. Hence, submits that the application is devoid of merit and is liable to be dismissed.

5. This Court has taken into consideration the rival submissions made by the parties and perused the record.

6. The point of concerned in the present case is whether the accused applicant no. 1 has entered into sexual intercourse with the victim on false promise of marriage by playing fraud on the

victim, which required to be tried or the prima facie material available on record goes to infer that no case is made out against the applicants and proceeding with the trial would tantamount to miscarriage of justice.

7. The F.I.R. dated 06.02.2025 has been lodged by opposite party no. 2 at Police Station-Gandhi Park, District Aligarh, which was registered at 2:00 p.m. in Case Crime No. 55/2025 for the incidents carried out between 01.09.2021 to 16.01.2025, for the offence of sexual intercourse on false promise of marriage, forceful abortion and criminal intimidation against the applicants with the allegations that the opposite party no. 2 is resident of Aligarh and was B.Sc. Student in the year 2015-16, where accused applicant no. 1 was also studying, they came in contact with each other, entered in love relation and reciprocate the promise of marriage. This relationship continuously persist. In the years 2019-20, the applicant no. 1 got a job in police department. In the year 2021, he came to meet the victim at Aligarh and gave an assurance of marriage. Then on false promise of marriage, he entered in sexual intercourse with the victim in the month of September 2021, for the first time. Whenever, the victim used to ask applicant no. 1 about the marriage, he avoided on one pretext or the other but consistently entered in sexual intercourse. In the month of July, 2024, she became pregnant. The victim asked the accused for marriage but he has asked her to wait till 2025 and forcefully gave some pills for abortion, against her will. On 26.11.2024 the applicant no. 1 came to her room, stayed there from 2:00 p.m. to 5:00 p.m. and had sexual intercourse. Subsequently, the victim got a message from the accused applicant no. 1 that applicant nos. 2 and 3 were to talk to her, as it was odd hours of night, she stated to talk to them in the morning but subsequently applicant no. 1 informed that they have refused the proposal of marriage. On 16.01.2025, the victim posted a message on the mobile phone of accused applicant no. 1 asking either to get marry or she may take recourse of law, on which applicant nos. 2 and 3 have threatened her of dire consequences and false implication, on her mobile on 16.01.2025 at 8:54 p.m.

8. From the bare perusal of contents of the FIR, following facts have been emerged:-

8.1 The accused applicant no. 1 and victim were college friend since 2015-16;

8.2 They entered in love relations since the college time;

8.3 There was promise of marriage between the two;

8.4 In the year 2019-20, the applicant no. 1 got a job in police department;

8.5 The applicant no. 1 has assured marriage with the victim in the year 2021;

8.6 The sexual intercourse between applicant no. 1 and victim, for the first time took place in the month of September, 2021. It is alleged in the FIR that the sexual intercourse was continued to false promise of marriage;

8.7 This sexual intercourse between the two, continued from the month of September, 2021 to 26.11.2024;

8.8 In the month of July, 2024 the victim became pregnant and she was forcefully administered the abortion pills. During the investigation, the Investigating Officer did not find any material to substantiate this fact and, therefore, the charge sheet is not submitted for offence under Section 89 BNS;

8.9 On 26.11.2024, the accused applicant no. 1 came to the room of the victim, stayed there from 2:00 p.m. to 5:00 p.m. and they had sexual intercourse;

8.10 On 26.11.2024, she got a message from applicant no. 1 that his brother and sister-in-law would like to talk to her, but she could not reciprocate, as it was odd hours of night and stated to talk to them in the next morning;

8.11 The victim could not receive the call and in the evening, she was intimidated by applicant no. 1 that the marriage is refused;

8.12 On 16.01.2025, the victim posted a message on the mobile phone of applicant no. 1 asking him either to marry or she may take legal recourse;

8.13 It is on 16.01.2025 at 8:54 p.m. that there was conversation between applicant nos. 2 & 3 with the victim, wherein they have threatened the victim of dire consequences and false implication of her family members in cases.

9. The victim in her statement under Sections 180 BNSS has stated that she is 28 years of age, studied LL.B. and is a lawyer, resident of District- Bulandshahar and residing at District- Aligarh. She has reiterated the allegations made in the FIR. In specific questions put to her about her abortion, she could not give either the name of the pills or the medical papers for her abortion.

10. In her statement under Section 183 BNSS, the victim has reiterated what she has stated in the FIR lodged by her and in her statement recorded under Section 180 BNSS, but for the first time, she has disclosed that on 31.01.2020, she has attended the marriage of sister of accused applicant no. 1 and on the next day, the accused applicant no. 1 has asked her, what she has disclosed with the family members which has created problem in his family, on which she has stated that if he is not comfortable to disclose about their relations in his family then she will not disclose the same. The another incident which is not disclosed either in the FIR or in her statement under Section 180 BNSS is about the video recording of her nude video while the accused applicant no. 1 was on video call with the victim and those photographs and videos were found deleted when she has checked her phone on 29.11.2024.

11. The above facts, as has been taken out from the plain reading of FIR and statement of victim recorded under Sections 180 & 183 BNSS is required to be weigh on the touchstone of the legal proposition.

12. Section 69 of Bhartiya Nyaya Sanhita, 2023 provides that “*Whoever, by deceitful means or by making promise to marry a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be*

punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."

13. The provision contained in Section 69 of B.N.S. is a new induction in penal law, wherein sexual intercourse with a woman, by deceitful means including false promise of marriage is not Rape, but is made punishable. Prior to the enactment the courts interpret the conduct of parties in view of the provisions of Section 375 I.P.C. (Rape) coupled with the provision of Section 90 I.P.C (Consent known to be given under fear or misconception). The explanation provided under Section 69 B.N.S. of "Deceitful means" "shall include the false promise of employment or promotion, inducement, or marrying after suppressing identity."

14. If, the old and new provision in Indian Penal Code and Bhartiya Nyaya Sanhita, 2023 is taken into consideration. In both the provisions the false promise of marriage is considered as deceitful means to sought consent of the victim. Hon'ble the Supreme Court in the case of Pramod Suryabhan Pawar (supra) has made a clear distinction pertaining to promise at the very inception is mala fide and the promise bona fide made but not fulfilled. The relevant paragraph no. 18 of the judgment is reiterated underneath:-

"18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a misconception of fact arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

15. The plain reading of FIR, statement of victim recorded under Sections 180 & 183 BNSS clearly shows that the accused applicant no. 1 and victim were in love relations from the year 2015-16 while both were student of Bachelor of Science. There was reciprocal promise of marriage between the two and even assurance given by the accused applicant no. 1 after getting a job that he will marry the victim shows his bona fides. Therefore, the plain reading of the above material clearly shows that the promise of marriage was bona fide.

16. It is also not the case of the victim that the accused has hide his identity or was already engaged somewhere else and the promise of marriage was false from the beginning.

17. Hon'ble the Supreme Court in catena of judgments made observations that the two able minded adults if maintain long term physical relations then a presumption would arise that they have voluntarily chosen their consensual relationship to enter into sexual intercourse and subsequent non fulfillment of promise of marriage would not attract any offence. This analogy is drawn from the dictum of Hon'ble the Supreme Court in **Ravish Singh Rana Vs. State of Uttarakhand** reported in **[(2025) SCC OnLine SC 1055 (paragraphs 14 & 15)]** and **Prashant Vs. State of NCT of Delhi** reported in **[(2025) 5 SCC 764 (paragraph no. 20)]**.

18. Hon'ble the Supreme Court in the case of ***Mahesh Damu Khare (supra)*** has dealt in paragraph no. 28 that the continued physical relations on false promise of marriage with no protest, which continued for years takes out the sting of criminal culpability. The relevant paragraph is reiterated underneath:-

“28. Moreover, even if it is assumed that a false promise of marriage was made to the complainant initially by the appellant, even though no such cogent evidence has been brought on record before us to that effect, the fact that the relationship continued for nine long years, would render the plea of the complainant that her consent for all these years was under misconception of fact that the Appellant would marry her implausible. Consequently, the criminal liability attached to such false promise would be diluted after such a long passage of time and in light of the fact that no protest was registered by the complainant during all those years. Such a prolonged continuation of physical relationship without demurral or remonstrance by the female partner, in effect takes out the sting of criminal culpability and neutralises it.”

19. Thus, at no stretch of imagination, considering the material on record, particularly the allegations made in the FIR, the statement made by the victim recorded under Sections 180 & 183 BNSS, there is any criminal act committed by accused applicant no. 1 which requires to be tried, as is discussed here-in-above. So far as the trial of accused applicant nos. 2 & 3 are concern, the same is not having any material available on record except the statement of the victim and allegations made in the FIR.

20. Hence, the application under Section 528 BNSS is **allowed**. Consequently, the charge sheet dated 30.03.2025, cognizance taking order dated 22.05.2025 passed by learned Additional Chief Judicial Magistrate-1, Aligarh and the entire proceeding of Criminal Case No. 419 of 2025 (State Vs. Jitendra Kumar and others) arising out of Case Crime No. 55/2025, under Sections 69 and 351(2) of B.N.S., Police Station- Gandhi Park, District- Aligarh, is **quashed**.

(2026) 1 ILRA 13
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.01.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Application U/S 528 BNSS. No. 36420 of 2025

Vijendra Kumar

...Applicant

Versus

State of U.P. & Ors.

...Opposite Parties

Issue for consideration

Mandatory compliance of Section 230 B.N.S.S.

Headnotes

Bhartiya Nyaya Sanhita, 2023-sec 230-framing of charge by the trial court- without the mandatory compliance of Section 230 B.N.S.S.-mandates that the copy of police report and other documents shall be provided to the accused-applicant - non-compliance of Section 230 B.N.S.S.-further proceedings of the case and framing of the charge in contravention to the legal provision -violation of the cardinal principle of free and fair trial-charge framed liable to be quashed-to give way to the accused for moving of discharge application-**Application allowed.** (E-9)

Case Law Cited

Nil

List of Acts

Bhartiya Nyaya Sanhita, 2023

List of Keywords

Copy of police report, Section 230 B.N.S.S

Appearances of parties

Counsel for Applicant(s) : Divyanshu Pathak, Hemant Shukla Counsel for Opposite Party(s) : G.A.

(Delivered by Hon'ble Avnish Saxena, J.)

1. Learned A.G.A. has filed the counter affidavit. Sri Shive Datta Yadav, learned counsel for the opposite party no.4 appears and files vakalatnama as well as the counter affidavit. The same are taken on record.

2. Sri Divyanshu Pathak, learned counsel for the accused-applicant appears and submits that he does not want to file rejoinder affidavit in reply to the counter affidavit filed by the State as well as the opposite party no.4. He submits that sole ground of moving the present application under Section 528 B.N.S.S. is the framing of charge by the trial court without the mandatory compliance of Section 230 B.N.S.S., which mandates that the copy of police report and other documents shall be provided to the accused-applicant and further submits that the order of taking cognizance dated 06.01.2025 passed by the Special Judge POCSO Act, Etawah in Special Case No.22 of 2025 (State of U.P. Vs. Vijendra Kumar), arising out of Case Crime No.111 of 2024, under Sections 137(2), 87, 352, 65(1) B.N.S. and Sections 3/4(2) of POCSO Act as well as Sections 3(1)Dha, 3(2)5 of S.C./S.T. Act, Police Station Usarahar District Etawah, has not made any mention in the order that the copies be provided to the accused-applicant. He further submits that Sections 261 and 262 of B.N.S.S. provides for an opportunity of accused to move the discharge application and provides a limitation for the same, whereas, the trial court without providing the documents and the copy of police report to the accused-applicant has fixed the date for framing of charge and therefore, has not complied the mandatory provisions of the Act. Hence, seeks interference of this Court.

3. Sri Shive Datta Yadav, learned counsel for the opposite party no.4 and learned A.G.A. for the State have stated that the trial court has provided the copies of police papers and documents, which has been received by the accused-applicant on the margin of the order shown at page no.95 of the application. Both of them have stated that the order dated 06.01.2025 shows that the court has taken cognizance in the presence of the accused on 06.01.2025 and sufficient time was provided to the accused to move the discharge application, but has not been moved by the accused, which led to the framing of charge on 04.04.2025. Further submits that the applicant has belatedly

moved the present application and therefore, the application is devoid of merits and liable to be dismissed.

4. This Court has taken into consideration the rival submissions made by the parties and perused the record.

5. Section 230 B.N.S.S. provides that the court concerned shall provide the copies of documents and police papers relied on by the prosecution not beyond 14 days from the date of production or appearance of the accused. The provision of Section 230 B.N.S.S. is reiterated underneath:-

"Section 230. Supply to accused of copy of police report and other documents. In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay, and in no case beyond fourteen days from the date of production or appearance of the accused, furnish to the accused and the victim (if represented by an advocate) free of cost, a copy of each of the following:?"

(i) the police report;

(ii) the first information report recorded under section 173;

(iii) the statements recorded under sub-section (3) of section 180 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (7) of section 193;

(iv) the confessions and statements, if any, recorded under section 183;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (6) of section 193;

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused;

Provided further that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused and the victim (if represented by an advocate) with a copy thereof, may furnish the copies through electronic means or direct that he will only be allowed to inspect it either personally or through an advocate in Court;

Provided also that supply of documents in electronic form shall be considered as duly furnished."

6. The charge sheet dated 13.12.2024 is submitted before the Special court of POCSO Act, on which, the trial court has taken cognizance by order dated 06.01.2025. The order taking cognizance is reiterated underneath:-

“आज विवेचक अपराध संख्या - 111/2024, थाना- उसराहार, इटावा की ओर से विवेचना के उपरान्त अभियुक्त विजेन्द्र कुमार के विरुद्ध धारा- 137(2), 87, 352, 65(1) B.N.S. & 3/4(2) Pocso Act & 3(1)घ, 3(2)5 SC/ST ACT के अपराध में आरोप पत्र प्रस्तुत किया गया है।

अभियुक्त विजेन्द्र कुमार जिला कारागार से उपस्थित आया। सुना एवं अभियुक्त के विरुद्ध प्रेषित आरोप पत्र एवं संलग्न केस डायरी का अवलोकन किया। वादी मुकदमा पीड़िता एवं अन्य गवाहों के धारा 180 बी. एन. एस. में दिये बयानों का अवलोकन किया।

अभियुक्त विजेन्द्र कुमार के विरुद्ध धारा 137(2), 87, 352, 65(1) B.N.S. & 3/4(2) Pocso Act & 3(1)घ, 3(2)5 SC/ST ACT के अपराध का संज्ञान लिये जाने के लिए पर्याप्त आधार है। अपराध का प्रसंज्ञान लिया जाता है।

विशेष वाद पंजीकृत हो।

पत्रावली वास्ते आरोप दिनांक- 20.01.2025 को प्रस्तुत हो।

अभियुक्त विजेन्द्र कुमार जिला कारागार से आहूत हो। “

7. The above order reveals that on the date of taking cognizance, the accused, who was in jail, was before the court. The endorsement on the margin of the order reveals that the warrant of the accused was changed on that date and it also carries the signatures of the accused. The order does not show the compliance of mandatory requirement of Section 230 B.N.S.S. as there is no compliance directed in the order, it cannot be inferred by the signatures of the accused at the margin that the copies of the documents and police papers would have been provided to the accused-applicant. The compliance of Section 230 B.N.S.S., 2023 is not a mere formality but an epitome of fair trial.

8. It is the argument of learned counsel of the accused-applicant that the trial court by order dated 06.01.2025 has fixed the date for framing of charge, whereas, Sections 261 and 262 B.N.S.S. specifically provide for moving an application for discharge. This argument of learned counsel is not convincing because a right is provided to the accused-applicant for moving an application for discharge, for which the time period is provided. The Court cannot anticipate whether the accused-applicant may move the application for discharge or not. As such, the fixing of a date for framing of charge is a just and proper order.

9. This Court found that the non-compliance of Section 230 B.N.S.S. has made further proceedings of the case and framing of the charge in contravention to the legal provision and violation of the cardinal principle of free and fair trial, which has an implication that the charge framed by the trial court on 04.04.2025 is liable to be quashed, to give way to the accused for moving of discharge application.

10. Thus, the applicant shall be provided with the copies of police papers and the documents in accordance with Section 230 B.N.S.S. within a week. The accused thereafter, shall be at liberty to move the discharge application in pursuance to the provision of Sections 261 and 262 B.N.S.S.

11. The application under Section 528 B.N.S.S. is accordingly **allowed**.

(2026) 1 ILRA 17
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 30.01.2026

BEFORE

THE HON'BLE SAMIT GOPAL, J.

Application U/S 528 BNSS. No. 46079 of 2025

Irfan Solanki

...Applicant

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for consideration

Quashing of proceedings at advanced stage of Trial

Headnotes

Uttar Pradesh Gangsters Act, 1986-sec. 3(1)-Application u/s 528 BNSS-to quash the proceeding u/s 3(1) of Act, 1986-Stage of trial -of cross-examination of P.W.-2 after completion of his examination-in-chief and also completion of recording of testimony of P.W.-1- facts of the case and the stage of trial not disputed - prima facie material available against the applicant- **Application dismissed.** (E-9)

Case Law Cited

List of Acts

1. Uttar Pradesh Gangsters Act, 1986
2. Code of Criminal Procedure
3. Bhartiya Nyaya Suraksha Sanhita, 2023

List of Keywords

Sanction, Rule 16(3) of Rules 2021, prima facie material, stage of trial.

Appearances of parties

Counsel for Applicant(s) : Mohit Singh, Vineet Vikram

Counsel for Opposite Party(s) : G.A.

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

1. Heard Sri Imran Ullah, learned Senior Advocate, assisted by Sri Mohit Singh and Sri Vineet Vikram, learned counsels for the applicant, Sri Manish Goel, learned Senior Advocate/Additional Advocate General assisted by Sri Rupak Chaubey, learned AGA-I for the State and perused the record.

2. This application under Section 528 B.N.S.S., 2023 has been filed by the applicant Irfan Solanki with the following prayers:-

“It is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to allow the present Criminal Misc. Application and to quash/set-aside the entire proceedings of S.T. No. 838 of 2023 (State vs. Irfan Solanki and others), Under Section 3(1) of the Uttar Pradesh Gangsters Act, 1986 pending in the Court of Special Judge MP/MLA/Additional Sessions Judge, Court No. 08, Kanpur Nagar arising out of Case Crime No.156/2022, Police Station- Jajmau, District Kanpur Nagar and also to quash the impugned charge sheet dated 27.06.2023 and the impugned cognizance/summoning order dated 21.07.2023 as well as the impugned order dated 30.08.2025 whereby discharge application of the applicant has been rejected and the impugned order dated 17.09.2025 whereby charges have been framed against the applicant Under Section 3(1) of the Uttar Pradesh Gangsters Act, 1986.

It is further prayed that this Hon’ble Court may kindly be pleased to stay the further proceedings of S.T. No. 838 of 2023 (State vs. Irfan Solanki and others), Under Section 3(1) of the Uttar Pradesh Gangsters Act, 1986 pending in the Court of Special Judge MP/MLA/Additional Sessions Judge, Court No. 08, Kanpur Nagar arising out of Case Crime No.156/2022, Police Station- Jajmau, District Kanpur Nagar, during the pendency of the present application before this Hon’ble Court and/or may pass such other and further orders which this Hon’ble Court may deem fit and proper in the facts & circumstances of the case, otherwise the applicant would suffer an irreparable loss and injury.”

3. This matter was heard on 12.01.2026 and during the course of arguments it was informed by learned counsel for the applicant that trial in the matter has started in which testimony of P.W.-1 has been recorded and further examination-in-chief of P.W.-2 has also been recorded and it is now at the stage of his cross-examination. The following order was passed by this Court on the said date:-

“1. Heard Sri Imran Ullah, learned Senior Advocate, assisted by Sri Mohit Singh and Sri Vineet Vikram, learned counsels for the applicant, Sri Manish Goel, learned Senior Advocate/Additional Advocate General assisted by Sri Roopak Chaubey, learned AGA-I for the State and perused the record.

2. During the course of arguments, it was informed by learned counsels for the applicant that the trial in the matter has started, in which the testimony of PW-1 has been recorded and further the examination-in-chief of PW-2 as also been recorded and is now at the stage of his cross-examination. The same is not disputed by learned counsel for the State.

3. Arguments concluded.

4. Judgement reserved.

4. The facts of the case are as under:-

(A) A First Information Report was lodged on 26.12.2022 as Case Crime No.156/2022, Police Station- Jajmau, District Kanpur Nagar, under Section 3(1) of The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 by Ashok Kumar Dubey, Incharge Inspector, Police Station- Jajmau, District Kanpur Nagar against 5 persons namely Irfan Solanki, Rizwan Solanki, Israil Aatewala, Mohd. Sharif, Shaukat Ali, alleging therein that on routine area round and inspection he came to know that gang-leader Irfan Solanki S/o Late Haji Mushtak Solanki, r/o 178D & 92D, Defence Colony, Police Station Jajmau, Kanpur Nagar, aged 43 years, member Rizwan Solanki, S/o Late Haji Mushtak Solanki, r/o 178D&180D, Defence Colony, Jajmau, Kanpur Nagar, aged 37 years, member Israil (Aatewala) S/o Ismail r/o 99/345, Kanghi Mohal, Police Station Bajaria Kanpur Nagar aged 46 years, member Mohd. Sharif S/o Late Shabbir Ahmed r/o 12/471 Gwaltoli, Police Station Gwaltoli, Kanpur Nagar aged 36 years, member Shaukat Ali S/o Late Hameed r/o 11/26 Shootarganj Police Station Gwaltoli, Kanpur Nagar aged 65 years have an active gang and together and independently are involved in breach of law and order and are involved for financial gain in offences under various Chapters of I.P.C. The said gang is an inter-district gang which is active and on 07.11.2022 with an intention to forcible occupying the plot of a victim Nazeer Fatima being plot no.181D, Defense Colony, Jajmau, Kanpur Nagar, collected together and involved in the activity of setting it ablaze and threatening her for life, for which Case Crime No. 127 of 2022, under Sections 436/506 I.P.C. in which later on Sections 147/327/427/386/504/120B I.P.C. were added, was registered in which charge sheet no. A-48/22, dated 09.12.2022 and charge sheet no. A-48A/22, dated 19.12.2022 have been filed. An active member of gang Rizwan Solanki is also involved in a case being Case Crime No. 519/17, under Sections 420/427 I.P.C. and The Prevention of Damage to Public Property Act, Police Station-Gangaghat, District Unnao, on the basis of which he has been identified as a Bhoomafiya. He was involved in forcibly occupying land of Gram Sabha and selling it off. Mohd. Sharif a member of gang, is involved in Case Crime No. 30/20, under Sections 406/420/504/506 I.P.C., Police Station Gwaltoli, in which by committing cheating and forgery and threatening for life he had gained in terms of money. The case is pending in the court concerned. Israil Aatewala another member of the gang is involved in Case Crime No.114/19, under Sections 147/452/506/384 I.P.C., Police Station Bajaria, District Kanpur Nagar, in which after investigation charge sheet has been filed against him. He is a history-sheeter of Police Station Bajaria, which are annexed along with the gang chart and they are involved in acts prejudicial to the law and order. They are involved in various criminal activities of arson, forcibly taking properties into possession, cheating and forgery and other criminal activities. Due to their criminal activities there is a fear in the public and commotion in the area. Their living freely is not in the interest of public. No one comes forward for lodging of reports and giving evidence due to their fear. Their acts make out a case under Section 3(1) of The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986.

(B) A gang chart dated 24.12.2022 was prepared by Assistant Commissioner of Police (Cantt.), Commissionerate, Kanpur Nagar and forwarded to the superior officers on which Additional Police Commissioner (East), Kanpur Nagar recommended and forwarded it on 24.12.2022. Commissioner of Police (East), Kanpur Nagar has also accorded his sanction and forwarded it vide order dated 24.12.2022 after which Commissioner of Police, Commissionerate, Kanpur Nagar approved it vide his order dated 25.12.2022. As per gang chart the applicant Irfan Solanki is shown to be involved in Case Crime No. 127 of 2022, under Sections 147, 436, 506, 327, 427, 386, 504, 120B I.P.C., Police Station Jajmau, District Kanpur Nagar in which charge

sheet is stated to have been forwarded. In so far as the members of the gang are concerned, Rizwan Solanki, Israil Aatewala and Mohd. Sharif are shown to be involved in two cases and Shaukat Ali is shown to be involved in one case.

(C) Investigation in the matter concluded and a charge sheet dated 27.6.2023 under Section 3(1) of The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, was filed against Irfan Solanki, Rizwan Solanki, Israil Aatewala, Mohd. Sharif and Shaukat Ali. The Additional Sessions Judge, Court No. 11, MP/MLA, Kanpur Nagar vide order dated 21.7.2023 took cognizance upon the same and summoned the accused.

(D) An application dated 12.12.2024 claiming discharge was filed by Irfan Solanki and Rizwan Solanki in the matter. The said application stood rejected vide order dated 30.08.2025. The Court of Special Judge MP/MLA/Additional Sessions Judge, Court No. 8, Kanpur Nagar vide order dated 17.09.2025 framed charge against the accused Irfan Solanki, Rizwan Solanki, Mohd. Israil Aatewala, Mohd. Sharif, Shaukat Ali, Mursalin Khan @Bholu and Ajjan@Ajaz for the offence under Section 3(1) of The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. The said charge was read over to the accused and explained to them who denied the same and claimed to be tried. The trial then started.

(E) It is common ground between learned counsels for the applicant(s) and learned counsels for the State that trial in the matter has started and testimony of P.W.-1 has been recorded, after which examination-in-chief of P.W.2 has concluded and the matter is being listed for his cross-examination.

(F) This application under Section 528 B.N.S.S. thus has been filed and is being pressed at this stage.

5. Learned counsel for the applicant submits as under:-

(A) The applicant has been falsely implicated in the present case.

(B) The proceedings against the applicant are totally abuse of process of court.

(C) The applicant is a former MLA representing Sisamau Constituency of Kanpur Nagar from Samajwadi Party having won elections in the year 2022.

(D) In the case being shown against the applicant in the gang chart being Case Crime No. 127 of 2022, Police Station Jajmau, District Kanpur Nagar, he was convicted by the trial court concerned vide judgement and order dated 03.06.2024 against which he preferred an appeal before the High Court being Criminal Appeal No. 6659 of 2024 in which he has been granted bail vide order dated 14.11.2024 but prayer for stay of conviction was refused by the High Court and then he has approached the Apex Court for the same through SLP (Crl.) No. 2168 of 2025, in which notice has been issued and the matter is pending, para 23 of the affidavit in support of this application has been placed before the Court to buttress the same.

(E) Only on account of political vengeance the District Administration on the instance of political rivals of the applicant have implicated him and his brother in a false case previously being Case Crime No. 127/22, Police Station Jajmau, District Kanpur Nagar and thereafter in a series of false cases in continuation and subsequently in the present case under the The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 also, para-25 of the affidavit in support of this application has been placed before the Court to buttress the same.

(F) The applicant although was previously involved in 8 criminal cases but his implication in all the cases are false. Disclosure and explanation therein is given in para-32 of the affidavit in support of this application wherein in 04 cases Final Report has been submitted in his favour, 03 cases have been withdrawn under Section 321 Cr.P.C. and in one case he is on bail. The said cases are prior to lodging of the present case, para-32 of the affidavit in support of this application has been placed before the Court to buttress the same.

(G) After the present case on account of political vengeance the District Administration has implicated him in 10 other criminal cases including the present case and Case Crime No. 127/2022 and in 08 cases he has been granted bail by the courts concerned, disclosure and explanation is given in para-33 of the affidavit in support of present application u/s 528 BNSS, 2023.

(H) Reliance has been placed heavily on the judgement of the Apex Court in the case of Vinod Bihari Lal vs. State of Uttar Pradesh and another: 2025 INSC 767 and it is submitted that there is a clear violation of Rules of The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021.

(I) The records do not show that there was any joint meeting between the Commissioner of Police and Additional Police Commissioner while according approval to the Gang Chart, there was total non-application of mind by the authority in approving it, the Commissioner of Police has not accorded sanction in accordance with Rule 16(3) of Rules 2021. There is lack of independent assessment by the competent authority in forwarding the Gang Chart and there is significant procedural lapse as approvals have been accorded on a pre-printed format of the Gang Chart.

(J) The present petition thus deserves to be allowed and the prayers as prayed for be granted.

6. Learned Additional Advocate General for the State of U.P. duly assisted by learned Additional Government Advocates vehemently opposed the petition, prayers and arguments of learned counsel for the applicant and submitted as under:-

(A) The present petition has been filed with multiple prayers in it and even it contains the prayer for quashing of the orders at a very belated stage inasmuch as at present trial is under progress in which evidence of witnesses is being recorded and thus challenging the summoning order and the order rejecting application for discharge cannot be considered at such a belated stage.

(B) The charge has been framed against the applicant and other accused and at that stage, they denied it and claimed to be tried, which is also impugned herein and now at this stage, challenging the summoning order and the order rejecting the application for discharge is again too belated.

(C) Satisfaction of the authorities concerned while approving the gang-chart is duly recorded in the gang-chart and it cannot be said that they acted in a mechanical manner while approving it.

(D) The Commissioner of Police while finally approving the gang-chart has specifically made a note of his satisfaction for its approval which itself is evident from the gang-chart. The same is hand-written in it and thus it cannot be said that approval is on a pre-formatted gang-chart.

(E) The judgement of the Apex Court in the case of Vinod Bihari Lal (Supra) cannot be followed as a precedent as the F.I.R. therein was lodged on 28.7.2018, the gang-chart was approved by the District Magistrate concerned on 28.07.2018 but the Rules as are considered in the said judgement are of the year 2001 and thus the same is not applicable in the present case.

(F) The trial is at an advanced stage and thus at this stage where the evidence of witnesses is being recorded, interference in a petition whereby challenge is to the summoning order, order of rejection of discharge application and framing of charge is not in the interest of justice as after framing of charge the accused can be acquitted but not discharged since testimony of the witnesses is being recorded. Reliance has been placed on the judgement of the Apex Court in the case of **Amit Kapoor v. Ramesh Chander and another: 2012 (9) SCC 460.**

(G) The present petition is thus devoid of any merit and deserves to be dismissed.

7. After having heard learned counsels for the parties and perusing the records, it is evident that this petition under Section 528 B.N.S.S., 2023 (corresponding to Section 482 Cr.P.C.) has been filed by the applicant- **Irfan Solanki** with the prayers to quash the proceedings of S.T. No. 838 of 2023 (State vs. Irfan Solanki and others), Under Section 3(1) of the Uttar Pradesh Gangsters Act, 1986, arising out of Case Crime No.156/2022, Police Station- Jajmau, District Kanpur Nagar, pending in the Court of Special Judge MP/MLA/Additional Sessions Judge, Court No. 08, Kanpur Nagar, quash the charge sheet dated 27.6.2023, quash the order taking cognizance/summoning dated 21.7.2023, quash the order dated 30.08.2025 rejecting the discharge application of the applicant and further to quash the order dated 17.9.2025 framing charge under Section 3(1) of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. At the very outset, the stage of trial at the present moment is not disputed by learned counsels for the parties being the stage of cross-examination of P.W.-2 after completion of his examination-in-chief and also completion of recording of testimony of P.W.-1. The prayers in the present application for quashing is many folds. The orders taking cognizance and summoning cannot be looked into at this stage for the purpose of quashing since after the same the application for discharge was filed by the applicant-accused which stood rejected by the trial court, subsequent to which charge has been framed against him and co-accused. In so far as the ground of violation of Rules 2021 are concerned, looking to the facts of the case and the gang-chart it transpires that the Commissioner of

Police concerned on 25.12.2022 gave his opinion independently in it while approving the same. It thus cannot be said that he merely signed on a pre-formatted gang chart while according approval. The applicant has been convicted in a case by the trial court concerned against which an appeal is pending before the High Court. This Court in the case of **Kunal Chawala vs. State of U.P. and another: 2023 SCC OnLine All 4606**, in para-14, 15, 16, 17, 18 and 19 has held that:-

“14. The Apex Court in the case of Ratilal Bhanji Mithani Vs. State of Maharashtra and others : (1979) 2 SCC 179 has held that after framing of charge there cannot be a discharge but only an acquittal can be done on a finding of not guilty turning on the merits of the case. It has been held as follows :-

“24. At the outset, let us have a look at the relevant provisions of the Code of Criminal Procedure, 1898, which admittedly governed the pending proceedings in this case. The procedure for trial of warrant cases by Magistrates is given in Chapter XXI of that Code. The present case was instituted on a criminal complaint. Section 252 provides that in such a case, the Magistrate shall proceed to hear the complainant (if any) and take all such evidence, as may be produced, in support of the prosecution. Sub-section (2) of that Section casts a duty on the Magistrate to ascertain the names of persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and to summon all such persons for evidence. Section 253 indicates when and in what circumstances an accused may be discharged: It says:

“253. (1) If, upon taking all the evidence referred to in Section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.”

Section 254 indicates when and in what circumstances a charge should be framed. It reads:

“254. If, when such evidence and examination have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.

Section 255 enjoins that the charge shall then be read over and explained to the accused, and he shall be asked whether he is guilty or has any defence to make. If the accused pleads guilty, the Magistrate shall record that plea, and may convict him thereon.

25. Section 256 provides that if the accused refuses to plead or does not plead, or claims to be tried, he shall be required to state at the next hearing whether he wishes to cross-examine any of the witnesses for the prosecution whose evidence has been taken, and if he says he so wants to

cross-examine, the witnesses named by him shall be recalled and he will be allowed to further cross-examine them. "The evidence of any remaining witnesses for the prosecution shall next be taken" and thereafter the accused shall be called upon to enter upon and produce his defence.

26. Section 257 is not material. Section 258(1) provides that if in any case in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal. Sub-section (2) requires, where in any case under this chapter the Magistrate does not proceed in accordance with the provisions of Section 349 or Section 562, he shall, if he finds the accused guilty, pass sentence on him in accordance with law.

27. From the scheme of the provisions noticed above it is clear that in a warrant case instituted otherwise than on a police report, "discharge" or "acquittal" of accused are distinct concepts applicable to different stages of the proceedings in Court. The legal effect and incidents of "discharge" and "acquittal" are also different. An order of discharge in a warrant case instituted on complaint, can be made only after the process has been issued and before the charge is framed. Section 253(1) shows that as a general rule there can be no order of discharge unless the evidence of all the prosecution witnesses has been taken and the Magistrate considers for reasons to be recorded, in the light of the evidence, that no case has been made out. Sub-section (2) which authorises the Magistrate to discharge the accused at any previous stage of the case if he considers the charge to be groundless, is an exception to that rule. A discharge without considering the evidence taken is illegal. If a prima facie case is made out the Magistrate must proceed under Section 254 and frame charge against the accused. Section 254 shows that a charge can be framed if after taking evidence or at any previous stage, the Magistrate, thinks that there is ground for presuming that the accused has committed an offence triable as a warrant case.

28. Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. After the framing of the charge if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Sections 254 to 258 to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Section 349 and 562 of the Code of 1898 (which correspond to Sections 325 and 360 of the Code of 1973).

29. Excepting where the prosecution must fail for want of a fundamental defect, such as want of sanction, an order of acquittal must be based upon a "finding of not guilty" turning on the merits of the case and the appreciation of evidence at the conclusion of the trial.

30. If after framing charges the Magistrate whimsically, without appraising the evidence and without permitting the prosecution to produce all its evidence, "discharges" the accused, such an acquittal, without trial, even if clothed as "discharge", will be illegal. This is precisely what has happened in the instant case. Here, the Magistrate, by his order dated December 12, 1962, framed charges against Mithani and two others. Subsequently, when on the disposal of the revision applications by Gokhale, J., the records were received back he arbitrarily deleted those charges and

discharged the accused, without examining the “remaining witnesses” of the prosecution which he had in the order of framing charges, said, “will be examined after the charge”.

(emphasis supplied)

15. The situation is the same in the present matter. After taking cognizance on the chargesheet, framing of charges, accused not pleading guilty and claiming to be tried, the trial starting and one witness has been examined whereas the statement of the other prosecution witnesses is being recorded, the applicant who is facing trial comes up challenging the cognizance/summoning order dated 28.02.2022 as well as entire proceedings of the trial at such a belated stage.

16. It has been held by the Apex Court in the cases of **R.P. Kapur Vs. State of Punjab : AIR 1960 SC 866; State of Haryana and Ors. Vs. Bhajan Lal and Others : 1992 Supp (1) SCC 335; State of Bihar Vs. P. P. Sharma : 1992 Supp (1) SCC 222; Trisuns Chemical Industry Vs. Rajesh Agarwal and Ors. : (1999) 8 SCC 686; M. Krishnan Vs. Vijay Singh & Anr. : (2001) 8 SCC 645; Zandu Pharmaceuticals Works Ltd. Vs. Mohammad Shariful Haque : (2005) 1 SCC 122; M. N. Ojha Vs. Alok Kumar Srivastava : (2009) 9 SCC 682; Joseph Salvaraj A. Vs. State of Gujarat and Ors. : (2011) 7 SCC 59; Arun Bhandari Vs. State of Uttar Pradesh and Ors. : (2013) 2 SCC 801; Md. Allauddin Khan Vs. State of Bihar : (2019) 6 SCC 107; Anand Kumar Mohatta and Anr. Vs. State (NCT of Delhi), Department of Home and Anr. : (2019) 11 SCC 706; Rajeev Kourav Vs. Balasaheb & others : (2020) 3 SCC 317; Nallapareddy Sridhar Reddy Vs. The State of Andhra Pradesh : (2020) 12 SCC 467**, that exercise of inherent power of the High Court under Section 482 of the Code of Criminal Procedure is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the complaint/FIR/charge-sheet in deciding whether the rarest of the rare case is made out to scuttle the prosecution.

17. Further in the case of **Priti Saraf & anr. Vs. State of NCT of Delhi & anr. : 2021 SCC Online SC 206** the Apex Court while considering the powers under Section 482 Cr.P.C. has held as follows:

"23. It being a settled principle of law that to exercise powers under Section 482 CrPC, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint/FIR/charge-sheet and the High Court at that stage was not under an obligation to go into the matter or examine its correctness. Whatever appears on the face of the complaint/FIR/charge-sheet shall be taken into consideration without any critical examination of the same. The offence ought to appear *ex facie* on the complaint/FIR/charge-sheet and other documentary evidence, if any, on record.

24. The question which is raised for consideration is that in what circumstances and categories of cases, a criminal proceeding may be quashed either in exercise of the extraordinary powers of the High Court under Article 226 of the Constitution, or in the exercise of the inherent powers of the High Court under Section 482 CrPC. This has often been hotly debated before this Court and various High Courts. Though in a series of decisions, this question has been answered on

several occasions by this Court, yet the same still comes up for consideration and is seriously debated.

25. In this backdrop, the scope and ambit of the inherent jurisdiction of the High Court under Section 482 CrPC has been examined in the judgment of this Court in **State of Haryana and Others Vs. Bhajan Lal and Others, (1992 Suppl (1) SCC 335)**. The relevant para is mentioned hereunder:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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

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

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

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

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

26. This Court has clarified the broad contours and parameters in laying down the guidelines which have to be kept in mind by the High Courts while exercising inherent powers under Section 482 CrPC. The aforesaid principles laid down by this Court are illustrative and not exhaustive. Nevertheless, it throws light on the circumstances and the situation which is to be kept in mind when the High Court exercises its inherent powers under Section 482 CrPC.

27. It has been further elucidated recently by this Court in *Arnab Manoranjan Goswami Vs. State of Maharashtra and Others*, 2020 SCC Online SC 964 where jurisdiction of the High Court under Article 226 of the Constitution of India and Section 482 CrPC has been analysed at great length.

28. It is thus settled that the exercise of inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinise the complaint/FIR/charge-sheet in deciding whether the case is the rarest of rare case, to scuttle the prosecution at its inception.”

8. In the case of **Ramveer Upadhyay Vs. State of U.P. : 2022 SCC Online SC 484** the Apex Court has held in paragraph nos. 27 and 38 that quashing of a criminal case by exercising jurisdiction under Section 482 Cr.P.C. should be done in exceptional cases only. Paragraphs 27 and 38 are quoted herein:-

"27. Even though, the inherent power of the High Court under Section 482 of the Cr.P.C., to interfere with criminal proceedings is wide, such power has to be exercised with circumspection, in exceptional cases. Jurisdiction under Section 482 of the Cr.P.C is not to be exercised for the asking.

38. Ends of justice would be better served if valuable time of the Court is spent on hearing appeals rather than entertaining petitions under Section 482 at an interlocutory stage which might ultimately result in miscarriage of justice as held in *Hamida v. Rashid @ Rasheed and Others*, (2008) 1 SCC 474.”

9. Further in the case of **Daxaben Vs. State of Gujarat : 2022 SCC Online SC 936** in para 49 the Apex Court has held as under:

"49. In exercise of power under section 482 of the Cr.P.C., 1973 the Court does not examine the correctness of the allegation in the complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.”

10. Further in so far as the ground relating to political vengeance is concerned, in the case of Ramveer vs. State of U.P.: 2022 SCC OnLine 484, the Apex Court has held in para- 39 that a criminal case cannot be quashed on the ground of political vengeance. Para- 39 reads as under:-

“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Atrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No.19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C.”

(emphasis supplied)

11. The Apex Court in the case of Pradeep Kumar Kesarwani Versus State of Uttar Pradesh and Another : 2025 SCC OnLine SC 1947 has laid a four-step test for High Courts to follow while considering petitions for quashing criminal proceedings under Section 482 of the Code of Criminal Procedure. It has been held as under:

“20. The following steps should ordinarily determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:”

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused. [(See:Rajiv Thapar v. Madan Lal Kapoor (Criminal Appeal No. 174 of 2013)]

12. The proposition of law, the facts of the case, the stage of trial which is not disputed by learned counsels for the parties, the prima facie material available against the applicant, the non-fulfillment of the conditions of the four-step test, does not call for this Court to consider it a fit case for interference and thus the present application under Section 528 B.N.S.S. **is dismissed.**

13. Pending application(s), if any, shall stand disposed of.

(2026) 1 ILRA 29
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 09.01.2026

BEFORE

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

Jail Appeal No. 80 of 2022

Rajendra

...Appellant

Versus

State of U.P.

...Respondent

Issue for Consideration

Matter pertains to whether the conviction of the appellant under S. 302 IPC recorded by the learned Additional District and Sessions Judge, Deoband, Saharanpur, is vitiated on account of:

- (i) alleged contradictions in the testimony of PW-1,
- (ii) absence of motive, and
- (iii) non-examination of independent witnesses.

Headnotes

Indian Penal Code, 1860 - S. 302 – Murder - Conviction - Appreciation of evidence - Sole eye-witness - Wife of deceased - Natural witness - Incident occurring inside dwelling house - Minor contradictions in testimony - Delay between examination-in-chief and cross-examination - Effect.

Held, minor discrepancies attributable to lapse of time and mental disposition - Such contradictions neither material nor going to root of prosecution case - Evidence of PW-1 reliable and trustworthy - Relationship of witness with deceased by itself not ground to discard testimony - Murder committed inside house - Inmates natural witnesses - non-examination of independent witnesses not fatal.

Motive - Accused desirous of selling ancestral land - Objection by deceased - Suspicion regarding illicit relations - Motive proved.

Medical evidence - Post-mortem showing multiple incised wounds on vital parts - Cause of death due to shock and haemorrhage - Medical evidence fully corroborating ocular testimony - Recovery - Weapon of assault (Balkati) recovered on pointing out of accused - Corroborative circumstance - Conviction and sentence of life imprisonment upheld - Appeal dismissed. (E-7)

Held: In the depositions of witnesses there may always be some normal discrepancies - Minor discrepancies are bound to occur by lapse of time - The contradiction in the statement of PW-1, Smt. Babita is very trivial in nature, which cannot negate or demolish the prosecution story - In view of the statements of both PW-1, Smt Babita and PW-2 Raj Kumar the motive to kill the deceased is very much clear - If murder is committed in a dwelling house, the inmates of the house are the natural witnesses and not the witnesses of the vicinity - The evidence of the prosecution witnesses find full corroboration by the postmortem examination report - We do not find any illegality or perversity in the impugned judgement Consequently, the appeal is dismissed. (Paras 23, 26, 30, 31, 36, 37)

Case Law Cited

Vinod Kumar Vs. State of Punjab, (2015) 3 SCC 220; Rajesh Yadav and another Vs. State of Uttar Pradesh, (2022) 12 SCC 200; State of Rajasthan Vs. Kalki, (1981) 2 SCC 752; State represented by Inspector of Police Vs. Saravanan and another, (2008) 17 SCC 587; State of U.P. Vs. M.K. Anthony, (1985) 1 SCC 505; Hari Obula Reddy and others Vs. State of Andhra Pradesh, (1981) 3 SCC 675; Arjun and others Vs. State of Rajasthan, 1994 Supp (1) SCR 616; Mano Dutt Vs. State of U.P., (2012)SC

List of Acts

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

List of Keywords

Balkati; Antemortem injuries; Minor contradictions; Interested witness; Motive; Recovery of weapon; Postmortem report; Dwelling house; Sole eye-witness

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal arising out of judgment dated 20.09.2019 and order dated 23.09.2019 passed by the Additional District and Sessions Judge, Deoband, Saharanpur, in Sessions Trial No. 603 of 2015, arising out of Case Crime No. 247 of 2015, under S. 302 IPC.

Appearances for Parties

Advs. for the Appellant:

Sri Pravin Kumar Mishra, *Amicus Curiae*

Advs. for the Respondents:

Sri S.K. Ojha, *Learned Additional Government Advocate*

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

1. The instant criminal appeal has been filed by appellant against a judgment dated 20.09.2019 and order dated 23.09.2019 passed by the Additional District and Sessions Judge, Deoband, Saharanpur in Sessions Trial No. 603 of 2015 arising out of Case Crime No. 247 of 2015, under Section 302 IPC whereby the learned Judge convicted and sentenced the appellant to life imprisonment and a fine of Rs. 10,000/-, in case of default in payment of fine, he was further directed to undergo additional imprisonment of one year.

Brief Facts of the case

2. The brief facts of the case as set up in the first information report is that a written report was filed by Smt. Babita, wife of Harpal Singh, resident of Rankhandi, Police Station Deoband, District Saharanpur that Rajendra Singh, son of late Subedar Singh (hereinafter referred to as "the accused-appellant") wanted to sell the ancestral property of his part, which was being opposed by her husband Harpal Singh (hereinafter referred to as "the deceased") for the future of his (accused) children due to which the accused-appellant harbour enmity with the deceased and used to abuse the deceased. He also extended threat to the deceased for dire consequences. On 28.04.2015, some dispute took place between the accused and the deceased in the evening and thereafter accused left the place. At about 09:30 or 10:00, the accused-appellant came back and sat in ambush in his earlier house and as soon as deceased reached there, the accused-appellant attacked him indiscriminately by Balkati over head and body. On hearing the noise, when the first informant came out of the house, she saw the accused assaulting her husband (deceased). On her shrieks, members of her family and co-villagers rushed to the spot. Seeing the witnesses, the accused fled away along with Balkati towards north. Her husband was taken to the Government Hospital, Deoband, where doctor referred him to District Saharanpur, where he succumbed to his injuries.

3. On the basis of the aforesaid report, a case was registered against the accused-appellant at Case Crime No.247 of 2015, under Section 302 IPC, which was entered in GD at 12:20 hours.

4. After the registration of the FIR, the law set into motion and investigation of the case was entrusted to PW-7, Braj Mohan Yadav, who rushed to the spot and recorded the statement of the informant-Smt. Babita, wife of the deceased, inspected the spot and also recorded the statements of witnesses Rampal and Mahipal. He also collected plain and bloodstained earth from the spot, sealed it and prepared memo thereof. On 03.5.2015, he recorded the statements of witnesses Raj Kumar, Kunwar Pal, Mukesh Kumar, Hariom Gulshan, Vijendra Singh, Chirag, Bittu, Monti, Smt. Baby and Smt. Anita. On 30.05.2015 he copied the postmortem report in the case diary. On 04.6.2015, he arrested the accused and recorded his statement. On 07.6.2015, he recorded the statements of witnesses Amit Tomar, Raj Kumar, Mange Ram, Constable Pradeep Kumar and Constable Rajendra Singh. He also prepared site plan for recovery of the weapon of assault. After culmination of investigation, the investigating officer submitted charge sheet against the appellant under Section 302 IPC, which he proved as Ext. Ka-11.

5. PW-7, Braj Mohan Yadav, the investigating officer of the case has also recovered the weapon of assault (Balkati) on the pointing out of the accused-appellant from the bushes of sugarcane field of Kumri, son of Phool Singh Thakur in the presence of Raj Kumar, PW-2 and Amit Tomar. The accused-appellant confessed to his crime and stated that from the Balkati he assaulted/cut the deceased in the night of 28.04.2015.

6. After submission of charge sheet, the learned Sessions Judge, Saharanpur framed the charges against the appellant under Section 302 IPC on 14.09.2015, which was read over and explained to the accused in Hindi. However, the charge was later on modified vide order dated 10.01.2017.

7. To bring home guilt of the appellant, the prosecution has examined as many as seven prosecution witnesses. PW-1, Babita is the first informant and wife of the deceased, PW-2, Raj

Kumar is the witness of inquest and brother of the deceased and the appellant, PW-3 is the witness of recovery of bloodstained and simple earth, PW-4 HCP 197 Mange Ram, PW-5, Dr. Hemant Rastogi, who conducted postmortem examination on the cadaver of the deceased, PW-6, Head Constable 43 Nita Sharma, who prepared the Chik FIR and PW-7, Braj Mohan Yadav, the investigating officer of the case, who submitted the charge sheet.

8. PW-1, Smt. Babita is the first informant and wife of the deceased. She reiterated the versions given in the FIR. She further stated that the accused-appellant had suspicion that the deceased has illicit relation with his wife.

9. PW-2, Raj Kumar Singh, son of Subedar Singh, in his examination-in-chief, which was recorded on 11.09.2018 deposed that he lives outside Deoband in connection with his job. On 28.04.2015, he got information on telephone that Rajendra (accused) has killed his elder brother Harpal (deceased) with Balkati. He further deposed that Harpal used to support accused's family. Both accused and appellant live in the same house in different rooms. Accused-Rajendra wanted to sell his land, which was objected to by the deceased because accused used to drink liquor after selling the land. Due to the aforesaid reasons accused killed the deceased. This witness also deposed that Inquest on the body of deceased Harpal was conducted in his presence. In his opinion, the cause of death of the deceased was due to the antemortem injuries sustained by the deceased by Balkati. He also put his signature on the inquest report. He also proved his signature on paper No. 9/1 and 9/2. In addition to him, Mukesh, Kanwar Pal, Hariom and Gulshan also signed on the inquest report.

10. PW-3, Chirag Kumar, son of Ved Pal in his examination-in-chief deposed that on 28.04.2015, he got information in the night that his uncle Rajendra has caused injuries to Harpal by Balkati and member of his family took the injured to the hospital at Saharanpur. On the way to hospital, he succumbed to the injuries. On 29.04.2015 police visited the village and collected plain and bloodstained earth and after preparing memos thereof, took his signature on the same, which he proved as paper No 8/1.

11. PW-4, HCP 197 Mange Ram, in his examination-in-chief, which was recorded on 19.03.2019, deposed that on 28.04.2015, he was posted at police station Deoband as HCP. On that date on the information received by police station Janakpuri, Saharanpur, he took the dead body of the deceased from mortuary and got the inquest conducted. After getting the dead body sealed, sent the same for postmortem examination by Constable Rajendra and Constable Pradeep.

12. PW-5, Dr. Hemant Rastogi, in his examination-in-chief, which was recorded on 26.06.2019 deposed that on 29.04.2015, he was posted as Anesthetist in SBD District Hospital, Saharanpur. On that date he conducted the autopsy on the cadaver of the deceased, who was brought by Constable Pradeep Kumar and Constable Rajendra Singh. Doctor found the following antemortem injuries on the cadaver of the deceased:

1. Incised wound 16 cm x 2 cm bone deep on left side head, just above left ear. Left parietal and temporal bone was fractured. Margin clean cut.

2. Incised wound 12 cm x 1 cm bone deep on right side back of head, 2.5 cm behind right ear. Right temporal and occipital bone fractured. Margin clear.

3. Incised wound 9 cm x 2 cm brain deep on back of head, injury No 3 communicate to injury No. 2 underneath occipital bone fractured. Margin clean cut.

4. Incised wound 10 cm x 2 cm bone deep on back of head, 8 cm above C-7 vertebra underneath occipital bone fractured. Margin clean cut.

5. Incised wound 6 cm x 1.5 cm bone deep on inter scapular region, just below base of neck, margin clean cut.

6. Incised wound 4 cm x 2 cm bone deep on outer aspect of right upper arm upper part, margin clean cut.

7. Incised wound 3 cm x 2 cm x through and through on right pinna.

13. In the opinion of the doctor, the cause of death of the deceased was shock and hemorrhage as a result of ante mortem injuries. Doctor further opined that between the time of death and conducting postmortem report, the duration was half to one day.

14. The evidences of PW-6, Head Constable 43 Nita Sharma, Chik writer of the FIR and PW-7, Inspector Braj Mohan, the investigating officer of the case has already been discussed above.

15. After the closure of the prosecution evidence, the statement of the accused-appellant was recorded under Section 313 Cr.P.C., who denied the charges leveled against him and claimed to be tried. He further stated that he is innocent and the first informant and the deceased kept accused's wife and children to their favour and that they also harbour enmity with him.

16. Learned Additional District and Sessions Judge, Deoband, Saharanpur after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellant as indicated herein above.

17. Hence, this appeal.

Submissions on behalf of appellant

18. Sri Pravin Kumar Mishra, learned Amicus Curiae appearing on behalf of the appellant, who has been appointed by the Co-ordinate Bench of this Court vide order dated 02.05.2023, vehemently submitted that there are several contradictions in the statement of P.W.-1. The trial court while examining the entire evidences, has committed gross error in not considering the contradictions in the statement of PW-1. It is also submitted that the prosecution has miserably failed to prove the motive for killing of the deceased by the appellant. It is also submitted that no other independent witness of the locality has been examined by the prosecution to prove the incident.

Submissions on behalf of State

19. On the other hand, Sri S.K. Ojha, learned Additional Government Advocate representing the State vehemently opposed the instant appeal and submitted that there is no contradiction in the statement of P.W.-1 who is the sole eye-witness of instant incident and, if any, minor contradiction has occurred in her statement, the same may be the result of long gap as she has been cross-examined after one and half year after recording of her examination-in-chief, which is not sufficient to negate the prosecution story.

20. Learned Additional Government Advocate further submitted that as per the postmortem report there are total seven injuries sustained by the deceased, out of which, six were on the vital part of the body and one on the hand and all the injuries sustained by the deceased were caused by sharp edged weapon, therefore, the postmortem injuries also support the prosecution case. Sri Ojha, learned AGA further submitted that weapon of assault (Balkati) was recovered on the pointing out of appellant. Sri Ojha, learned AGA for the State submitted that taking into consideration all the evidences on record, prosecution was successful in proving the case against the appellant beyond the hilt for the offence under Section 302 I.P.C., therefore, there is no illegality or error in the judgement of the trial court and this appeal being devoid of merit, deserves to be dismissed.

Analysis and conclusion

21. Heard Sri Pravin Kumar Mishra, learned Amicus Curiae appearing on behalf of the appellant, Sri S.K. Ojha, learned AGA appearing on behalf of the State and perused the evidences on record.

22. The first contention of learned counsel for the appellant is that there is contradiction in the statement of PW-1, Babita. Learned counsel for the appellant has pointed out that the trial court while examining the entire evidences, has committed gross error in not considering the contradictions in the statement of PW-1, who is stated to be the eyewitness of the occurrence. He has also pointed out that in her examination-in-chief, PW-1 has stated that on hearing her hue and cry, the other family members had also reached the spot and saw the incident, whereas in her cross-examination she has stated that when other family members of her family reached there, by that time, the accused fled away. Therefore, there is contradiction in her statement and it is high chance that he has not seen the occurrence.

23. In the depositions of witnesses there may always be some normal discrepancies. These discrepancies are due to lapse of time and mental disposition such as shock and horror at the time of the occurrence. Material discrepancies are those which are not normal and go to the root of the prosecution case and not expected of a normal person. Therefore, such a minor contradiction mentioned by the learned counsel for the appellant is of no help to the appellant inasmuch as the examination-in-chief of PW-1, Smt. Babita was recorded on 08.12.2016, whereas her cross-examination was done on 04.5.2018, i.e. after one and a half year after the recording of her examination-in-chief and, therefore, such a minor contradiction is bound to occur by lapse of time.

24. Hon'ble Supreme Court in **Vinod Kumar Vs. State of Punjab**, (2015) 3 SCC 220, has dealt with a situation where a witness after rendering testimony in line with the prosecution's version completely abandoned it, in view of the long adjournments given permitting an act of maneuvering. Hon'ble Supreme Court while expressing its anguish, observed as under:

“It is necessary, though painful, to note that PW-7 was examined-in-chief on 30.09.1999 and was cross-examined on 25.5.2001, almost after 1 year and 8 months. The delay in said cross-examination, as we have stated earlier had given enough time for prevarication due to many a reason. A fair trial is to be fair both to the defence and the prosecution as well as to the victim. An offence registered under the Prevention of Corruption Act is to be tried with all seriousness. We fail to appreciate how the learned trial Judge could exhibit such laxity in granting so much time for cross-examination in a case of this nature. It would have been absolutely appropriate on the part of the learned trial Judge to finish the cross-examination on the day the said witness was examined. As is evident, for no reason whatsoever it was deferred and the cross-examination took place after 20 months. The witness had all the time in the world to be gained over. We have already opined that he was declared hostile and reexamined.”

25. The aforesaid decision was further followed by Hon'ble Supreme Court in **Rajesh Yadav and another Vs. State of Uttar Pradesh** (2022) 12 SCC 200.

26. Further the contradiction in the statement of PW-1, Smt. Babita is very trivial in nature, which cannot negate or demolish the prosecution story. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the Court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witnesses. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses.

27. In **State of Rajasthan Vs. Kalki** (1981)2 SCC 752, High Court of Rajasthan acquitted the accused on the grounds that PW-1 was highly interested witness because she is the wife of the deceased and that there were discrepancies in her statement. Against the order of High Court, State of Rajasthan preferred a Criminal Appeal. Hon'ble Supreme Court set aside the order of the High Court and convicted the accused. The Court in paragraphs 5, 6 and 7 held as under:

“5. As mentioned above the High Court has declined to rely on the evidence of P.W.1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a

litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents.

6. The second ground on which the High Court refused to place reliance on the evidence of P.W. 1 was that there were "material discrepancies". As indicated above we have perused the evidence of P.W. 1. We have not found any "material discrepancies" in her evidence. The discrepancies referred to by the High Court are, in our opinion, minor, insignificant, natural and not 'material'. The discrepancies are with regard to as to which accused "pressed the deceased and at which part of the body to the ground and sat on which part of the body; with regard to whether the respondent Kalki gave the axe blow to the deceased while the latter was standing or lying on the ground, and whether the blow was given from the side of the head or from the side of the legs. In the depositions of witnesses there are always some normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person. As indicated above we have not found any material discrepancies in the evidence of the P. W. 1.

7. Learned counsel for the respondent submitted that the appeal involved only appreciation of evidence and this Court may not interfere with the findings of facts resulting from appreciation of evidence. It is true that in an appeal under Article 136 of the Constitution this Court normally does not interfere with findings of facts arrived at by the High Court. But when it appears that the findings of facts arrived at are bordering on perversity and result in miscarriage of justice, this Court will not decline to quash such findings to prevent the miscarriage of justice."

28. In **State represented by Inspector of Police Vs. Saravanam and another**, (2008)17 SCC 587, Hon'ble Supreme Court held that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons.

29. In **State of U.P. Vs. M.K. Anthony**, (1985)1 SCC 505, Hon'ble Supreme Court held as under:

"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of

belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the : root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned Counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible.”

30. So far as next contention of learned counsel for the appellant that there was no motive for the accused to have committed the murder of his brother (deceased) is concerned, it is to be mentioned that it is stated by PW-1, Smt. Babita that accused Rajendra wanted to sell the ancestral land, which was being opposed by the deceased. PW-1, Smt Babita in her evidence has also stated that accused-appellant had suspicion that deceased had illegal affairs with wife. PW-2, Raj Kumar Singh, son of Subedar Singh, who is the real brother of the accused and the deceased, in his evidence has stated that accused Rajendra wanted to sell his land, which was being opposed by the deceased as accused used to drink liquor after selling his land. Due to that reason, accused has killed the deceased. In view of the statements of both PW-1, Smt Babita and PW-2 Raj Kumar the motive to kill the deceased is very much clear.

31. The last contention of learned counsel for the appellant is that witnesses are related to deceased and no independent witness of the vicinity has been produced. It may be noted that the incident took place in the house of the deceased and the accused, which was only witnessed by the first informant, who is the wife of the deceased and has been examined as PW-1 in the case, therefore, the question of production of witness from the vicinity does not arise, whose deposition finds full support from the postmortem report. It is to be noted that murder are not committed with previous notice to witnesses soliciting their presence, if murder is committed in a dwelling house, the inmates of the house are the natural witnesses and not the witnesses of the vicinity.

32. In **Hari Obula Reddy and others Vs. State of Andhra Pradesh, (1981) 3 SCC 675**, a three Judge Bench of the Supreme court has observed thus:

“ It is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony, nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence.”

33. In **Arjun and others Vs. State of Rajasthan, 1994 Suppl (1) SCR 616**, Hon'ble Supreme Court held as under:

“We are not convinced by the aforesaid argument that either on account of animosity or on account of relationship, the witnesses did not divulge the truth but fabricated a false case against the appellants. It is needless to emphasis that enmity is a double edged sword which can cut both ways. However, the fact remains that whether the prosecution witnesses are close relatives of the deceased victim or on inimical terras with the deceased involved in the crime of murder, the witnesses are always interested to see that the real offenders of the crime are booked and they are not, in any case, expected to leave out the real culprits and rope in the innocent persons simply because of the enmity. It is, therefore, not a safe rule to reject their testimony merely on the ground that the complainant and the accused persons were on inimical terms. Similarly the evidence could not be rejected merely on the basis of relationship of the witnesses with the deceased.”

34. In **Mano Dutt Vs. State of U.P. (2012, Hon'ble Supreme Court** held as under:

“More often than not, in such cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured. Those alone are the people who take the risk of sustaining injuries by jumping into such a quarrel and trying to defuse the crisis. Besides, when the statement of witnesses, who are relatives, or are parties known to the affected party, is credible, reliable, trustworthy, admissible in accordance with the law and corroborated by other witnesses or documentary evidence of the prosecution, there would hardly be any reason for the Court to reject such evidence merely on the ground that the witness was family member or interested witness or person known to the affected party. There can be cases where it would be but inevitable to examine such witnesses, because, as the events occurred, they were the natural or the only eye witness available to give the complete version of the incident.”

35. Moreover, PW-1, Smt Babita was subjected to lengthy cross-examination, but nothing could be elicited to make her evidence unreliable.

36. Appellant has committed the gruesome murder of his brother. The presence of the first informant, who is the wife of the deceased at the place of occurrence was natural as the incident happened in the house of the deceased and the appellant. The evidence of the prosecution witnesses find full corroboration by the postmortem examination report. There is no reason for the false implication of the accused-appellant by the prosecution witnesses leaving the real culprits to go scot free.

37. In view of what has been indicated herein above, we do not find any illegality or perversity in the impugned judgement dated 20.09.2019 and order dated 23.09.2019 passed by the Additional District and Sessions Judge, Deoband, Saharanpur in ST No. 603 of 2015 arising out of Case Crime No 247 of 2015, under Section 302 IPC Consequently, the appeal is dismissed.

38. The appellant is on bail. His bail bond is cancelled and sureties are discharged. He is directed to surrender before the court concerned within four weeks to serve out the remaining sentence awarded by the Trial Court.

39. Office is directed to send a copy of this judgement along with record of this case to the court concerned/learned Sessions Judge, Saharanpur forthwith for immediate compliance and compliance report be submitted to this Court.

(2026) 1 ILRA 39
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 22.01.2026

BEFORE

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

Criminal Appeal No. 674 of 1984

Sagheer Ahmad

...Appellant

Versus

State of U.P.

...Respondent

Issue for Consideration

Matter pertains to conviction of the appellant under S.s 302 and 201 IPC based on circumstantial evidence and last seen theory, and whether the chain of circumstances was complete, in absence of direct evidence, motive, test identification parade and recovery.

Headnotes

Criminal Law - Indian Penal Code, 1860 - Ss. 302 and 201 - Murder and causing disappearance of evidence of offence - Conviction based on circumstantial evidence - Five golden principles - Onus on prosecution to prove that the chain is complete - Criminal Trial - Circumstantial Evidence - Last seen theory - Chain of circumstances required to be complete - Principles laid down in *Sharad Birdhichand Sarda v. State of Maharashtra* reiterated - Child Witness - Reliability - Evidence of child witness admissible if capable of understanding questions and giving rational answers - Corroboration by independent witnesses sufficient - No rule that evidence of child witness must always be rejected - Motive - Significance in Circumstantial Evidence - In absence of direct evidence, motive assumes importance - Loan dispute establishes motive - Absence of motive not fatal if chain otherwise complete - Test Identification Parade - When not required - When accused is known to witnesses, test identification parade not necessary - Non-recovery - Effect - Mere non-recovery not fatal when medical and circumstantial evidence establish guilt. (Para 13,14,15,16,27,29,31(vi)) (E-7)

Held: The prosecution has been able to prove the complete chain of circumstances leading only to the guilt of the appellant - The evidence of child witness P.W.5 stands corroborated by independent witnesses P.W.2, P.W.7 and P.W.8. - Medical evidence fully supports the prosecution case - The motive stands established - No illegality or infirmity found in the judgment of the trial court - Conviction and sentence upheld - appeal dismissed. (Paras 31, 32, 33, 34)

Case Law Cited

Sharad Birdhichand Sarda v. State of Maharashtra, **AIR 1984 SC 1622**; *Balwinder Singh v. State of Punjab*, **1995 Supp (4) SCC 259**; *Shatrughan v. State of Chhattisgarh*, **(2023) 20 SCC 63**; *Nandu Singh v. State of Madhya Pradesh (Now Chhattisgarh)*, **(2022) 19 SCC 301**; *Digambar Vaishnav & Anr. v. State of Chhattisgarh*, **(2019) 4 SCC 522**; *Alagupandi alias Alagupandian v. State of Tamil Nadu*, **(2012) 10 SCC 451**.

List of Acts

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

List of Keywords

Circumstantial evidence; Last seen; Child witness; Motive; Chain of circumstances; Asphyxia; Compression of neck; Test identification parade; Independent witness; Post mortem report

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal No. 674 of 1984 arising out of judgment and order dated 25.08.1984 passed in Sessions Trial No. 266 of 1981, by Ist Additional Sessions Judge, Sultanpur, convicting the appellant under S.s 302 and 201 IPC.

Appearances for Parties**Advs. for the Appellant:**

Sri Syed Ahmad Saud, Advocate

Sri Syed Mohammad Abid, Advocate

Advs. for the Respondents:

Sri Pawan Kumar Mishra, Learned A.G.A.

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

(1) Heard Sri Syed Ahmad Saud, Advocate alongwith Sri Syed Mohammad Abid, learned counsel for the appellant and Sri Pawan Kumar Mishra, learned AGA for the State.

(2) This Criminal Appeal under Section 374 of Criminal Procedure Code (hereinafter referred to as Cr.P.C.), has been filed against the judgment and order dated 25.08.1984 passed in Sessions Trial No.266/1981 (The State versus Sagheer Ahmad) by Ist Additional Sessions Judge, Sultanpur, by means of which the appellant has been convicted and sentenced with life imprisonment under Section 302 of Indian Penal Code(hereinafter referred as IPC) and to undergo 4 years rigorous imprisonment under Section 201 IPC. It has further been provided that the substantive sentence of imprisonment is sufficient and no fine need to be imposed.

(3) The prosecution case is that the the deceased Rehan @ Bablu aged about 10 years, son of Abdul Bashir, was residing with his mother Smt. Haseen Jahan. He used to come to her house and his children used to call him Mamu. Sagheer came to the house of Smt. Haseen Jahan at about 5:00 p.m. on 14.04.1981. The deceased Bablu was playing outside alongwith his brother Salman at that time. Bablu was wearing striped bush shirt and blue pant. Sagheer took Bablu on his cycle on the pretext of showing him exhibition. Bablu was seen in the company of the accused by Salim who works in a tailoring shop in the neighbourhood of Smt. Haseen Jahan and also by Jamil Ahmad at Charbagh Station, Lucknow in the evening. Bablu did not return in the night, therefore, after waiting throughout the night, Smt. Haseen Jahan asked Haji Mushtaq at about 5 a.m. on 15.04.1981 for lodging a missing report of Bablu at Police Station. Mushtaq Ahmad lodged a missing report of Bablu at about 11:30 a.m. on 15.04.1981.

(4) Sub-Inspector Shambhoo Nath of Police Station Chowk searched for the missing child and made enquiries. He came to know that the accused Sagheer was detained by the persons of Mohalla Chobdari. He made enquiries from the accused, who told Sub-Inspector about the whereabouts of the child. Thereafter the Sub-Inspector took him alongwith him and came to village Jagdishpur,

District Sultanpur on 16.04.1981 and made search for the missing child Bablu but he was not found. Thereafter, the Sub-Inspector went alongwith the accused Sagheer to Village Wazirganj, District Sultanpur, where he came to know that the dead body of a child was found near the canal and the police of Police Station Jagdishpur has prepared the inquest report of the dead body. The Sub-Inspector went to the Police Station Jagdishpur on 17.04.1981, where he showed photograph of the child Bablu, which was identified and he came to know that the dead body of Bablu was found in Khanti(ditch) near canal, information of which was given by Kandhai, Chowkidar of Village Namdarpur at Police Station Jagdishpur. The said information was noted in the general diary of Police Station Jagdishpur at Sl. No.30 on 15.04.1981. Thereafter, Sub-Inspector Rohan Lal proceeded to the spot and prepared inquest report and the site plan. The dead body was sent for post mortem examination, which held on 16.04.1981 at 12:45 p.m. The photograph of the deceased was also taken on 15.04.1981.

(5) Sub-Inspector Shambhoo Nath returned to Police Station Chowk and detained the accused in connection with the murder of Bablu and after receipt of the post mortem examination report of Bablu, a case under Section 302 and 201 IPC was registered on 25.04.1981. The Investigating Officer, after completing the investigation and on the basis of material and evidence collected during investigation, filed a charge sheet against the accused i.e. the appellant. Charge was framed by the learned Session Judge under Section 302 and 201 IPC. The accused pleaded not guilty to the charge and claimed to be tried.

(6) In order to prove its case, the prosecution examined Kandhai as P.W.1, Salim as P.W.2, Uma Charan Jaiswal as P.W.3, Ghulam Waris as P.W.4, Mohd. Salman as P.W.5, Smt. Haseen Jahan as P.W.6, Jamil Ahmad as P.W.7, Moti Lal as P.W.8, Dr. C.K. Gupta as P.W.9, Rohan Lal, Sub-Inspector as P.W.10, Banarasi Rai A.S.I. as P.W.11, Head Constable Sheo Sahai Pandey as P.W.12 and Sub-Inspector Shambhoo Nath as P.W.13. The prosecution also placed on record certain documentary evidence and proved the same, which have been exhibited.

(7) Dr. C.K. Gupta (P.W.9), who conducted the post mortem, opined that the cause of death was due to asphyxia, as a result of compression of neck and death could have occurred in the night of 14/15.4.1981. He proved post mortem report Ex. Ka 2.

(8) Learned counsel for the appellant argued three grounds i.e. absence of motive, lack of identification and lack of corroboration. He submitted that in absence of test identification, the evidence of P.W.6 could not have been relied. He also submitted that the other shop keepers have not been examined, so the case of prosecution was not corroborated. He further submitted that no disclosure and recovery has been made at the instance of the appellant. He further submitted that there are major contradictions in the evidence of P.W.3 and P.W.7. He further submitted that it is highly improbable that the accused would have carried the deceased from Lucknow to Sultanpur on cycle. Thus, he submitted that neither the prosecution story is believable, nor the prosecution proved it's case beyond reasonable doubt. He further submitted that it was a case of circumstantial evidence and the motive or the chain of circumstances leading to the guilt of the appellant only could not be proved by the prosecution. Therefore, the conviction of the appellant made by the learned trial Court is not sustainable in the eyes of law. Thus, the impugned judgment and order of conviction and sentence is liable to be set aside. The appeal is liable to be allowed and the appellant

is liable to be acquitted. Learned counsel for the appellant relied on **Shatrughan versus State of Chhatisgarh;(2023) 20 SCC 63, Nandu Singh versus State of Madhya Pradesh(Now Chhatisgarh);(2022) 19 SCC 301 and Balwinder Singh versus State of Punjab; 1995 Suppp (4) SCC 259.**

(9) Learned AGA vehemently opposed the submissions of learned counsel for the appellant. He submitted that the deceased was missing since 14.04.1981 and the missing report was lodged after search on 15.04.1981 at 11:30 a.m. He further submitted that the body of the deceased was recovered on 16.04.1981, in a village in Sultanpur. He further submitted that it is a case of circumstantial evidence, in which, the prosecution proved the chain of circumstances, which are complete and they lead to the guilt of the appellant only. The prosecution has proved it's case beyond reasonable doubt. The learned trial court, after considering the evidence and material on record, has rightly and in accordance with law convicted and sentenced the appellant by means of the impugned judgment and order by passing a reasoned and speaking order. The impugned judgment and order does not suffer from any illegality or infirmity, which may call for any interference by this Court. The appeal has been filed on misconceived and baseless grounds. The appeal is liable to be dismissed.

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

(11) The missing report of the deceased Rehan @ Bablu son of Abdul Waheed, aged about 10 years, who was residing with his mother Smt. Haseen Jahan and brothers, was lodged by Mustaq Ahmad at Police Station Chowk on 15.04.1981 at 11:30 a.m. During search, Rehan @ Bablu was found dead, therefore, a case under Section 302 and 201 IPC was registered on 22.04.1981 and after investigation charge sheet was filed against the appellant, cognizance was taken and the case was committed to session. The charge was framed by the trial court, which was denied by the appellant. Hence trial held and the appellant has been convicted and sentenced as disclosed above. Hence, this appeal has been filed.

(12) Smt. Haseen Jahan, mother of the deceased Rehan @ Bablu, who appeared as P.W.6, stated that her son Rehan @ Bablu was playing outside before 4 to 5 in the evening, while he was missed. He was wearing striped bu-shirt and blue pant at that time. Rehan @ Bablu was playing with her other son Salman. The accused is her cousin brother(fufi jaat bhai). He had come to her house on the said date and after the namaj of magrib, he went. Her son Salman came to house and went for sleeping. Rehan @ Bablu had not come. She thought, he must have been playing but Rehan @ Bablu did not come in the night, therefore, after waiting upto 4 to 5 in the morning, he asked to Haji Mustaq to lodge the F.I.R. She has also stated that Sagheer had come to her house on the next date, when the police came and made enquiries from him and took him with them. She also stated that the accused used to demand money from her but she declined to give, as she had no means to pay. Her husband was working in a factory in Arab at that time. On a query of the court, she stated that on the date of the incident, the accused had demanded money from her but she had declined, as she had no money. She had stated that she had not asked from Salman about Rehan @ Bablu, when he came back and he had also not told and he had slept.

(13) Salman, the brother of the deceased Rehan @ Bablu appeared as P.W.5. He was aged about 7 years at the time of his evidence on 06.12.1983, therefore, at the time of alleged incident, he must have been around 5 years of age. He properly replied the answers as recorded by learned trial court. Learned trial court has also recorded that he is capable of understanding the facts and given the rational answers of the questions put to him. He recognized photograph of his brother in the group photograph (Ex.1). He also stated that other name of the Bablu was Rehan. He stated that he also recognizes the accused Sagheer and stated that he is his Mamu in relation. He stated that many days ago, his Mamu Sagheer had took away his brother Bablu for showing exhibition. It was evening time and time of namaj of Magrib and since then his brother has not come home. He took away his brother from near the house and he was present there at that time. He has also stated that he had also asked for taking him also and wept for that but the accused Sagheer had given him coin(chawanni) and thereafter he had not gone. He has also stated that the accused took away Bablu by cycle and thereafter he has not returned. He does not know as to whether he is alive or dead. He also stated that the accused Sagheer made Bablu sit on the front rod of cycle. He had not told to his mother after returning home that his brother Bablu had been taken away by his Mamu Sagheer and he slept and when he woke up at night, his mother asked from him, then he told her that his Mamu Sagheer had taken away Bablu to show exhibition. Thus, the brother of the deceased, who was aged about 7 years at the time of evidence, has specifically stated that the deceased was taken away by the appellant in the evening and he took away him from cycle. The testimony of the child cannot be dis-believed because as observed by the learned trial court he is capable of understanding things and answering rational answers and it could not be controverted by any cogent evidence or material.

(14) The Hon'ble Supreme Court, in the case of **Digambar Vaishnav & Anr. Versus State of Chhattisgarh; 2019(4) SCC 522**, has held that the evidence of a child witness must be evaluated carefully as the child may be swayed by what others tell him and he is an easy prey to tutoring, therefore, the evidence of a child witness must find adequate corroboration before it can be relied upon. The relevant paragraph 22 and 23 extracted hereinbelow:-

22. This court has consistently held that evidence of a child witness must be evaluated carefully as the child may be swayed by what others tell him and he is an easy prey to tutoring. Therefore, the evidence of a child witness must find adequate corroboration before it can be relied upon. It is more a rule of practical wisdom than law.

23. In Alagupandi alias Alagupandian vs State of Tamil Nadu; (2012) 10 SCC 451, this Court has emphasized the need to accept the testimony of a child with caution after substantial corroboration before acting upon it. It was held that:

“36 It is a settled principle of law that a child witness can be a competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. The court in such circumstances can safely rely upon the statement of a child witness and it can form the basis for conviction as well. Further, the evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and that there exists

no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated by other evidence before a conviction can be allowed to stand but as a rule of prudence the court always finds it desirable to seek corroboration to such evidence from other reliable to seek evidence placed on record. Further, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable."

(15) The relationship of the appellant with the family of the deceased has not been denied by the appellant, although he has denied that he was familiar with the children. The accused has stated in his evidence under Section 313 CR.P.C. that he had advanced Rs.5,000/- to Smt. Haseen Jahan as loan, which was not returned to him, even after repeated demands, which shows that the appellant had visited the house of Smt. Haseen Jahan as claimed by the prosecution and motive.

(16) P.W.2 Salim, who was working in a tailor shop at a distance of 30 steps from the house of the deceased, has stated that on 14.04.1981 he saw accused taking away the deceased on his cycle, on which he was sitting on the front rod, towards Chowk side. This witness is not related to the family of the deceased and there is no evidence that he was having any enmity with the appellant. However, he knew the deceased, his brothers and their uncle. Thus he supports the evidence of child witness i.e. P.W.5, therefore, once the evidence of child witness is in conformity with the evidence of an independent witness, there remains no ground to discard his evidence, even non examination of other shopkeepers. When the appellant was known to them, there was no need of test identification parade.

(17) P.W.7 Jameel Ahmad, who also knew the deceased and his family and his uncle, as he resides in the same Mohalla Chobdari, where the house of the deceased was situated, had seen the appellant alongwith the deceased at Charbagh Railway Station, Lucknow at about 6:30 in the evening, while he was going from Nathha Hotel to Mawaiya market. He stated that he was sick at that time and on 14.4.1981, he had gone to collect his pay from his office, which is situated at Charbagh Railway Station, Lucknow. He categorically stated that he had seen the deceased Bablu alongwith the accused Sagheer at the Charbagh Railway Station. He had not enquired anything from Bablu and went away to Mawaiya Bazar where his loco shade is situated. He is also an independent witness and had no enmity with the accused. Perusal of the evidence of this witness indicates that he was not familiar with the family of the deceased and he had no particular affinity with the family. However, he knew them because they reside in his area and the appellant used to come to meet them, therefore, merely, because he has stated that he had not made any enquiry from Bablu at that time, his presence cannot be doubted because if he used to see the appellant going to house of the deceased and had no particular affinity with his family, it was obvious for him not to ask anything from him, therefore, it cannot be a ground to discard his evidence.

(18) The deceased was last seen by P.W.8 Moti Lal of Village Warisganj, Police Station Jagdishpur, District Sultanpur at about 11:00 or 11:30 p.m. in the night with the deceased Rehan @ Bablu on a cycle when he came to his shop. At that time he was taking food outside the door of his house. At that time, the accused Sagheer alongwith the deceased came from the side of Jagdishpur and asked the way of Village Kisni. He has also stated that two electric bulbs were burning at his house. He has also stated that he had asked the appellant not to go at that time to village Kisni as the way was not good but the appellant went away. An argument was that it is highly improbable

that the appellant would have gone by cycle to Warisganj P.S Jagdishpur but no question was put in cross-examination in this regard, therefore, now it can not be a ground to disbelieve the evidence of prosecution witness. Even otherwise earlier the people used to travel by bus or train with their cycle so that they may not face difficulty in transport at the place where they were going.

(19) P.W.7 and P.W.8 are independent witnesses. P.W.8 neither knew the deceased or the appellant from before nor could have any enmity with them. His statement is consistent. He has also stated that after about two days, the police came to Warisganj and the appellant was also with them. They were making enquiries, therefore, the people had collected. Seeing it, he himself went there and after seeing the appellant with them, told that the appellant had come and enquired from him as to where is village Kisni. Learned trial court has also recorded that perusal of the case diary shows that the accused had informed P.W.13 Shambhu Nath, the Investigating Officer that his friend Firoz lives in Village Kisni. Thus, the testimony of P.W.8 cannot be disbelieved.

(20) P.W.6 Smt. Haseen Jahan has stated in her evidence that the appellant Sagheer had come to her house on the next day of missing of his son Bablu. At that time, the police had also come and made enquiries from the appellant and police took him with them for search of her son. The Investigating Officer(Sub Inspector), who appeared as P.W.13 has stated that the missing report of the boy was lodged by Mustaq Ahmad at 11:30, which was recorded by Sri Bhagat Singh at Rapat No.18 at 11:30 on 15.04.1981, which is Ex. Ka 13. He was assigned investigation of the case. He had recorded the statements of Haseen Jahan, Suleman, Salim and Jameel Ahmad. Thereafter, he met to the appellant Sagheer, who was being detained by the people of the area(mohalla). He made enquiries from the appellant and as told by him, he took him to Jagdishpur, District Sultanpur. Before going with the appellant, he had procured the photograph (Ex.1) of Bablu @ Rehan from his mother. He went with the appellant to Raniganj Sultanpur and made enquiries. He searched the boy at the places told by him but he was not traceable, then he went with the appellant to Warisganj, where he came to know that a dead body of a boy has been found aside the canal, inquest of which has been done by the police of Jagdishpur, therefore, he went to the Police Station Jagdishpur on 17.04.1981 and made enquiries about the boy. He showed the photograph of the missing Bablu @ Rehan, who was recognized by the Investigating Officer there. Thereafter he recorded the statement of the Investigating Officer of the Police Station Jagdishpur and returned to the police station Chowk, Lucknow and lodged the case of murder.

(21) Kandhai; P.W.1, who was a farmer and watchman, resident of Bhademau, Police Station Jagdishpur, District Sultanpur has stated that on 15.04.1981 the information was given to him at his home at about 9:00 in the morning that a dead body is lying aside the canal in Khanti. He went there and found the dead body of a boy, who would have been about 12 years of age. He had seen the dead body but he could not found any injury on the dead body. However, the dead body was of a muslim boy. He gave the information of the dead body at the Police station Jagdishpur at about 2:00 to 2:30, as the police station was about 3 kms. and he had gone on foot. Thereafter, the Investigating Officer came on the spot and made the inquest and after sealing it sent for post mortem. The photograph of the dead body was taken in Sultanpur, when it was opened for post mortem. He had seen the dead body at the time of the post mortem while taking the photograph and he can recognize the boy. He also recognized the photograph of the boy in Ex. 1. The photographer Uma Charan Jaiswal appeared as P.W.3. He also proved the photograph of the dead body taken by

him. He also produced the negative of the photograph as Ex. 2. The dead body was found with a blue pant(Mat Ex. 4), which has been proved by the tailor Ghulam Waris, who appeared as P.W.4. He stated that the said pant was of Bablu @ Rehan, which was stitched by him, who had four brothers and he knew them. He works at the shop of uncle (chacha) of the deceased. The deceased also used to sit at the shop to learn the work. He had also gone to Jagdishpur to identify the pant.

(22) Rohan Lal Yadav, Sub Inspector, appeared as P.W.10, who was posted at Police Station Jagdishpur on 15.04.1981 as Second Officer. He stated that the information was received in his presence from the watchman that the dead body of a boy is lying in Khanti in the north of the footpath of canal, situated in North East of Village Naamdarpur. On the said information, he went on the spot and after seeing the dead body and making enquiry from the persons in the vicinity, prepared the inquest and sent it for post mortem with Constable Chhedi Singh and Rameshwar Prasad. He proved the inquest Ex.Ka 3. He further stated that thinking the matter to be doubtful, he had sealed the dead body for post mortem and prepared the photo laash as Ex. Ka 4, Challan Laash as Ex. Ka 5, letter for post mortem as Ex. Ka 8 and sample of seal as Ex. Ka 9 and letter to R.I. as Ex. Ka 7, which are in his handwriting and signed by him. Ex. Ka 7 is the letter to R.I. alongwith it. He further stated that when S.N.Dubey(Shambhu Nath Dubey), Police Station Chowk came to Police Station Jagdishpur on 17.04.1981 and enquired for recovery of child then he informed to him about the recovery of the dead body and inquest. He showed him the photograph of the deceased as Ex. 1, which was of the boy, whose dead body was recovered and the inquest was prepared. He further stated that on receipt of the result of the post mortem on 25.04.1981, case under Section 302/201 IPC vide Case Crime No.164 was lodged. He started the investigation on 26.04.1981 and after taking statements of watchman Kandhai Lal and the witness of the inquest and making enquiries from the persons, prepared the site plan Ex. Ka 10. Thereafter he was transferred. In the cross examination, he stated that the dead body was at distance of 5-6 feet from the road and there was some mud on the dead body and apparently there was no injury but the injury was appearing on the neck of the dead body. Thus, it is proved that the dead body of the deceased Bablu @ Rehan was found under the Police Station Jagdishpur in District Sultanpur and the independent witnesses as well as the Investigating Officer proved that it was the dead body of the deceased Bablu.

(23) Sheo Sahai Pandey, the Head Constable(P.W 12), who was posted as Head Moharrir on 15.04.1981 at Police Station Jagdishpur, proved that the information of recovery of the dead body was received from Kandhai Lal, watchman at 14:20, which is in consonance with the time of giving information at police station told by the watchman Kandai(P.W.1) in his evidence. It was written by him at Rapat No.20 of GD, which is on record as Ex. Ka 6 and after receipt of the report of post mortem on 25.04.1981 Case No.164 under Section 302/201 IPC was lodged at Rapat No.16 of GD, which is Ex. Ka 2 and he proved the same.

(24) P.W.11 Banarasi Rai A.S.I., Police Station Kudwar, District Sultanpur, who was posted as S.I. in Police Station Jagdishpur on 09.07.1981, stated that he after taking statements of certain witnesses on 18.07.1981 had filed the charge sheet, as prima facie offence was found to have been committed by the appellant.

(25) P.W.9 Dr. C.K.Gupta, who had conducted the post mortem of the deceased, proved the following injuries caused to the deceased Bablu:-

(i) Three small abrasions, each measuring 1 cm x 0.2 cm in an area of 3.5 cm x 3 cm over the left side neck upper part just below the left lower jaw:

(ii) Faint contusion 3 cm x 1.5 cm over the right side neck, upper part below the right lower jaw.

(26) He had examined the dead body at 12:45 on 16.4.1981. He stated that the age of the deceased was about 12 years and he had died about one and a half days ago. The rigor mortis had passed away from the upper part of the body and present in the lower part. The decomposition of the body had started. The height of the deceased was about 4 feet. Circumcision(khatna) of the boy was done. He proved the photograph of the deceased. In the internal examination of dead body thick blood was present in the neck. In the aforesaid injuries, the muscles of vein were congested. However, hyoid bone was fractured. Larynx and the vein of the tracheal were congested and there were rings on it. The full pant was on the body of the deceased, which was sealed. The doctor opined that the deceased had died on account of pressing of the neck of the deceased(strangulation). He proved the report Ex. Ka 2. He also stated that the injuries present on the neck of the body of the deceased could have come by pressing from hands. There was a contusion on the neck of the deceased, which may have been of thumb and the abrasions on the other side may have been of finger tips. He also stated that the neck could have been pressed by the finger tips. Thus, the doctor proved the injuries and also that the death could have been caused by pressing the neck. The prosecution case is supported by the evidence of doctor and post-mortem.

(27) In view of above, it is apparent that there is no direct evidence of the incident and it is a case of circumstantial evidence and 'last seen'. In the case of circumstantial evidence, the evidence and material on record has to be analyzed on the touch stone of 5 golden principles laid down by the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda versus State of Maharashtra; AIR 1984 SC 1622**, wherein while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in the prosecution cannot be cured by a false defence or plea. The said 5 golden principles are as under:-

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

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

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

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

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

(28) The Hon'ble Supreme Court, in the case of **Balwinder Singh versus State of Punjab** (supra), has held that in a case based on circumstantial evidence, it is now well settled that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. The relevant paragraph 4 is extracted hereinbelow:-

"In a case based on circumstantial evidence, it is now well settled that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence the Court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations,, howsoever strong they may be, to take the place of proof. It is in the context of the above settled principles, that we shall analyse the evidence led by the prosecution."

(29) The Hon'ble Supreme Court, in the case of **Shatrughan versus State of Chhattisgarh** (supra), has held that once there is no eye witness of the incident, the prosecution will have to establish a motive for the commission of the crime in-as-much as in a case of direct evidence, motive may not have a major role. If there is no motive set up or proved and there are direct eye witnesses, motive may lose its importance. Similar view has been taken by the Hon'ble Supreme Court in the case of **Nandu Singh versus State of Madhya Pradesh(now Chhattisgarh)(supra)**. The relevant paragraph 9 is extracted hereinbelow:

"In a case based on substantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of Prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused."

(30) In view of above, in a case of circumstantial evidence, the prosecution has to prove firstly that every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt and, secondly, all the circumstances must be consistent only with the guilt of the accused.

(31) Adverting to the facts of the present case and as discussed above, the prosecution has been able to prove the chain linking guilt of the appellant, which are as under:-

i). It has been proved that the appellant had come to the house of Smt. Haseen Jahan, i.e., mother of the deceased child on the date of the incident on 14.04.1981. It has been proved by Smt.

Haseen Jahan, who appeared as P.W.6. which has been supported by the evidence of P.W.2 Salim, who was working in a tailor shop at a distance of 30 steps from the house of the deceased.

ii). P.W. 2 Salim as well as P.W.5 Mohd. Salman, the brother of the deceased Rehan @ Bablu, who was playing with him, have not only proved that the appellant had come to the house of Smt. Haseen Jahan but also that he took away the deceased child with him, making him sit on the rod of the cycle.

iii). P.W. 7 Jameel Ahmad, who also reside in the same Mohalla Chobdari, in which the deceased child with his mother was residing, proved that he had seen the appellant with deceased at the Charbagh Railway Station on the same day.

iv). P.W.8 Moti Lal of Village Warisganj, Police Station Jagdishpur, District Sultanpur, has proved that he had seen the appellant with the deceased at about 11:00 or 11:30 p.m. in the same night and the appellant had asked from him the way of village Kisni.

v). P.W.1 Kandhai, who was a farmer and a watchman, resident of Bhademaui, Police Station Jagdishpur, District Sultanpur, has proved that on information of the dead body at about 9:00 in the morning of 15.04.1981, he went to the place and found dead body of the deceased lying aside the canal in Khanti and gave it's information at Police Station Jagdishpur at about 2.00-2.30 in the afternoon, which is supported by the evidence of Head Constable P.W.12. He recognized the deceased in the photograph EX.1 produced by the prosecution. The photographer Uma Charan Jaiswal, who appeared as P.W.4, proved that he had taken the photograph of the dead body.

vi). Dr. C.K. Gupta, who appeared as P.W.9, had conducted the post mortem. He proved the post mortem report and the injuries of the deceased. He also stated that blue pant was on the dead body, which was handed over by him to the police. He has opined that the cause of death was due to asphyxia, as result of compression of neck and death could have occurred in the night of 14/15.4.1981 and it could have been caused by pressing from finger tips, marks of which were appearing on neck, therefore no recovery was required. Even otherwise mere non recovery cannot be a ground to disbelieve the prosecution, if otherwise it is proved. The blue pant wore by the deceased has been proved by his mother as well as P.W.4 Ghulam Waris, the tailor who had stitched the same. He knew him also as he used to sit on shop to learn the work.

vii). Head Constable Sheo Sahai Pandey, who had appeared as P.W. 12 has proved that he had received the information of recovery of the dead body from Kandhai Lal, watchman at about 14:20, which was written by him at Rapat No.20 of GD(Ex. Ka 6) and after receipt of the report of post mortem on 25.04.1981, Case No.164 under Section 302/201 IPC at Rapat No.16 of GD (Ex. Ka 2).

(32) In view of above, this Court is of the view that the learned trial court considering the evidence and material on record and the testimony of the independent witnesses i.e. P.W. 2, P.W.7 and P.W.8 as well as the medical evidence, according to which, the death of the deceased could have taken place in the mid night of 14.4.1981 and 15.4.1981 held that the circumstances point out clearly that the accused Sagheer is responsible for the death of the deceased. It has further been

observed that the suggestion of the defence that he has been falsely implicated in the case because he continued to demand Rs.5,000/-, which the accused had advanced to the mother of the deceased, cannot be believed in view of the independent reliable and convincing testimony in this case. Learned trial court also found that the statement of the appellant that he had advanced Rs.5,000/- to Smt. Haseen Jahan as loan, which was not returned to him, even after demands shows that he had visited the house of Smt. Haseen Jahan, which is as per the prosecution case. It also shows the motive of committing the crime. None of the grounds taken by appellant are tenable.

(33) In view of above, this Court does not find any illegality or error in the findings recorded by the trial court, by means of which, the appellant has been convicted and sentenced by a reasonable and speaking order. Thus the judgment passed by the trial court is upheld and punishment confirmed. The appeal has been filed on misconceived and baseless grounds and it is liable to be dismissed.

(34) The appeal is, accordingly, **dismissed**.

(35) The appellant is on bail. He is directed to surrender within two weeks from today before the Chief Judicial Magistrate concerned, who shall send the appellant to jail to serve out the sentence. In case the appellant does not surrender within a period of two weeks from today, the Chief Judicial Magistrate concerned shall take appropriate steps for arrest of the appellant.

(36) Let a copy of this judgment alongwith the Trial Court's record be sent back forthwith and in any case within a period of one week from today for compliance.

(2026) 1 ILRA 50
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 30.01.2026

BEFORE

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

Criminal Appeal No. 1715 of 2011

Yashin

...Appellant
Versus

State of U.P.

...Respondent

Issue for Consideration

Matter pertains to conviction of the appellant under S. 302 I.P.C. based on circumstantial evidence, including extra-judicial confession, recovery of firearm, medical evidence, conduct of accused, and burden under S. 106 of the Indian Evidence Act, arising out of homicidal death of wife inside matrimonial home during night hours. (Paras 40 - 41)

Headnotes

Indian Penal Code, 1860 - S. 302 - Murder of wife - Circumstantial evidence - Chain of circumstances - Must be complete - Death in matrimonial home - Burden of proof - Deceased died a homicidal death as a result of ante-mortem firearm injuries caused from a close range - Criminal Appeal - S. 374(2) Cr.P.C. - Appeal against conviction under S. 302 I.P.C. - Life imprisonment - Validity - Extra-Judicial Confession - Evidentiary value - Can be relied upon if voluntary and corroborated - Conduct of Accused - Attempt to bury dead body - False explanation of death - Relevant under S. 8, Evidence Act - Recovery of Weapon - Disclosure by accused - Minor discrepancies not fatal - S. 106 Evidence Act - Burden on accused to explain facts within special knowledge - Failure to discharge - Motive - Marital discord over daughter's marriage - Significance in circumstantial cases. (E-7)

Held: The prosecution has proved beyond reasonable doubt that the deceased died a homicidal death due to ante-mortem firearm injuries, as established by P.W.-9 (Doctor) and post-mortem report - the death occurred inside the matrimonial home during night hours when the appellant was present, and the appellant failed to offer any plausible explanation, attracting S. 106 of the Indian Evidence Act - the conduct of the appellant in giving a false explanation of death, not informing police, and attempting to bury the body, is a relevant incriminating circumstance under S. 8 of the Evidence Act - though extra-judicial confession is a weak piece of evidence, the confession made before P.W.-6 was voluntary, credible, and corroborated by medical evidence, conduct, and recovery - discrepancies in recovery evidence are minor and do not affect the prosecution case when read with ballistic and medical evidence - existence of motive, though not decisive by itself, lends assurance to prosecution case in a circumstantial evidence matter - the chain of circumstances is complete and points only to the guilt of the appellant, excluding every hypothesis of innocence - conviction under S. 302 I.P.C. and sentence of life imprisonment with fine requires no interference - appeal partly allowed. (Paras 20,39 - 52)

Case Law Cited

Ramu Appa Mahapatra Vs. The State of Maharashtra, **2025 INSC 147** *Makhan Singh Vs. State of Punjab*, **AIR 1998 SC 1705** *Dinesh Kumar Yadav Vs. State of Haryana*, **AIR 2023 SC 2795** *Jose @ Pappachan Vs. The Sub-Inspector of Police & Another*, **2016 (3) JIC 636 (SC)** *Nagendra Sah Vs. The State of Bihar*, **(2021) 10 SCC 725** *Balvir Singh Vs. State of Uttarakhand*, **(2023) 16 SCC 575** *Ram Gopal VS. State of M.P.*, **(2023) 5 SCC Online 158** *S.D. Soni v. State of Gujarat*, **1992 Supp (1) SCC 567** *Union of India v. J.S. Brar*, **(1993) 1 SCC 176** *Tarseem Kumar v. Delhi Administration*, **1994 Supp. (3) SCC 367** *Shiva Karam Payaswami Tewari v. State of Maharashtra*, **(2009) 11 SCC 262** *Suresh Chandra Bahri v. State of Bihar*, **1995 Supp (1) SCC 80** *Subhash Aggarwal v. State of NCT of Delhi*, **2025 INSC 499**; *Paras Nath Sahu and Another Vs. State of U.P. reported as 2025:AHC-LKO:83391-DB*

List of Acts

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

List of Keywords

Homicidal death; Circumstantial evidence; Extra-judicial confession; Ante-mortem firearm injury; Conduct of accused; False explanation; Recovery of weapon; S. 106 Evidence Act; Motive; Chain of circumstances.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal against judgment and order dated 22.09.2011 passed by Additional Sessions Judge, Court No. 11, Gonda, in Sessions Trial No. 371 of 2009, arising out of Case Crime No. 154 of 2009, Police Station Katra Bazar, District Gonda.

Appearances for Parties

Advs. for the Appellant:

Mr. Kailash Nath Mishra

Advs. for the Respondents:

Ms. Meera Tripathi, Learned A.G.A.

(Delivered by Hon'ble Abdhesh Kumar Chaudhary, J.)

1. The present Criminal Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred as to "Cr.P.C.") has been filed by the appellant/ accused-**Yasin** against the judgment and order dated 22.09.2011 passed by the Additional Sessions Judge, Court No. 11, Gonda, in Sessions Trial No. 371 of 2009 (State Vs. Yasin and others) arising out of Crime Case No. 154 of 2009, wherein he has been convicted for commission of the offence under Section 302 I.P.C. and sentenced to undergo life imprisonment along with a fine of Rs.10,000/-. In case of default of payment of fine, the appellant has been directed to further undergo one-year simple imprisonment.

CASE OF THE PROSECUTION

2. The case of the prosecution in nutshell is that Appellant's wife Haseena Bano died in suspicious circumstances in the intervening night of 29th/30th April, 2009. The Village Chowkidar -Ramzan (P.W.-3), on receiving such information reached the house of the Appellant/his Wife, wherein he noticed certain injury marks on the body of the deceased-wife, suggesting that the death was unnatural. Hence, the said Village Chowkidar gave a written report of the incident to Station House Officer, Police Station- Katra Bazar, District- Gonda. The Police recorded the said information in the General Diary as G.D. No.14, dated 30.04.2009 at 10:30 AM and thereafter, proceeded to the place of incident.

3. Upon arriving, Police took possession of the body of deceased and conducted a "*Panchayatnama*" wherein all the members (*Panchs*) unanimously said that the death of deceased appeared to be unnatural and therefore, opined for ascertaining the real cause of death. Accordingly, the dead body of the deceased was sent to District Hospital, Gonda for post-mortem. Dr. R.C. Verma (P.W.-9) conducted post-mortem of deceased on 30.04.2009 and submitted a post-mortem report, which revealed the cause of death as "*Shock and Hemorrhage as a result of Ante-Mortem fire arm injuries*". The said post-mortem report also revealed various internal and external Anti-Mortem Injuries on the body of deceased.

4. Following the post-mortem report (Exhibit- Ka-4), police registered Case Crime No.154/2009 under Section 302 I.P.C. on 01.05.2009 and started investigation of the case. During the course of investigation, Investigating Officer collected the blood-stained soil and normal soil from the place of occurrence and seized the clothes worn by deceased at the time of incident and then sent the same to Forensic Science Laboratory, Lucknow for analysis. Furthermore, Investigating Officer recorded the statements of witnesses, namely Nanka @ Heena (P.W.-1), Smt. Ahmada (P.W.-2), Ramjan -Village Chowkidar (P.W.-3) and Munawar under Section 161 Cr.P.C. on 02.05.2009.

5. The statement of the Appellant was recorded under Section 161 Cr.P.C. on 03.05.2009 and statement of Shyam Dhar Pandey (P.W.-6), Krishna Dev Shukla (P.W.-4) on 01.06.2009.

6. Subsequently, on 07.06.2009 i.e. after more than a month, the Appellant was arrested and, on his disclosure, the police recovered a country made 12 Bore Katta, used by him for committing

offence of murder of deceased from the agriculture field of one Babu Khan. The Police took possession of the said Katta and sent the same to Forensic Science Laboratory, Lucknow and recorded the statement of witness of recovery namely Siddiq and Vikrama(P.W.-7) under Section 161 of the Code of Criminal Procedure, 1973.

7. Investigating Officer after completion of investigation found sufficient incriminating material against the Appellant/Accused and therefore filed a charge sheet against him for Trial under Section 302 I.P.C. The Learned Chief Judicial Magistrate, Gonda, took cognizance of the offence and vide order dated 12.11.2009 committed the case for trial before the Learned Sessions Court. Consequently, Session Trial No.371/2009 was registered.

PROCEEDINGS BEFORE THE TRIAL COURT

8. Learned Sessions Court vide order dated 14.12.2009 framed charge against the Appellant under Section 302 I.P.C. for committing offence of murder of his wife- Haseena Bano. However, the Appellant denied the charge and claimed for trial. Therefore, the case was taken up for Trial.

9. During Trial, Ms. Nanka @ Heena (P.W.-1) and Smt. Ahmada (P.W.-2), both daughters of the Appellant, stated in their deposition that the murder of the deceased-Haseena Bano had been committed by Mr. Babu, Mr. Munnawar and Mr. Shakir Ali, all resident of the same village, on account of a prior land dispute. In view of the said statement recorded during the Trial, the Prosecution moved an application under Section 319 Cr.P.C. for summoning and trying the aforesaid three persons. The Learned Trial Court allowed the said application and summoned them to face trial. Upon their appearance, Learned Trial Court vide order dated 30.03.2010, framed charge against the newly added accused under Section 302 I.P.C. for committing offence of murder of Deceased, to which they denied and claimed for Trial.

10. Prosecution examined following witnesses during the course of trial, for proving the charge against the Appellant:

Sl. No.	Name	P.W.	Role
1.	Nanka @ Heena	P.W.-1	Witness of Fact/ Daughter of Deceased (Eye Witness)
2.	Smt. Ahmada	P.W.-2	Witness of Fact/ Daughter of Deceased (Eye Witness)
3.	Ramzan	P.W.-3	Informant (Village Chowkidar)
4.	Krishna Dev Shukla	P.W.-4	Witness of Fact (Court marriage of daughter-PW1 with Salim)
5.	Lakshmi Narayan Shukla	P.W.-5	Witness of Fact
6.	Shyamdhar Pandey	P.W.-6	To prove extra judicial confession of the Appellant
7.	Vikram	P.W.-7	To prove the recovery of fire arm
8.	Keshari Prasad	P.W.-8	To prove the Inquest Report

Sl. No.	Name	P.W.	Role
9.	Dr. R.C. Verma	P.W.-9	Medical Officer to prove the conduct and report of Post-Mortem
10.	Constable Danbahadur Singh	P.W.-10	To prove the registration of Case Crime No.154/2009
11.	S.I. Shashikant Mishra	P.W.-11	Investigating Officer

11. Apart from the oral evidence led by the prosecution, various documents have also been exhibited and proved running from *Exhibit Ka-1 to Exhibit Ka-15 and Article Exhibit-1 to Exhibit-3*.

12. **P.W.-1**, Ms. Nanka alias Heena is the daughter of the appellant. P.W.-1 in her examination-in-chief deposed that on the date of incident, all the family members were sleeping on the rooftop of the house, whereas the deceased was sleeping in a room on the ground floor. At about 12:00 midnight, a blast like sound occurred, upon hearing which the P.W.-1 came downstairs through the staircase and switched on her torch. In the said light of torch, she saw Babu, Munnawar and Shakir Ali fleeing from the place of occurrence. Shortly after the incident, all the three aforesaid persons returned after changing their clothes and began digging a grave, uttering that deceased should be buried immediately, otherwise the matter would turn into a police case and you all will get implicated. P.W.-1 further deposed that the appellant had a land dispute with the aforesaid persons and that due to said dispute, they had inimical relationship with her family. She also deposed in her examination-in-chief that on an earlier occasion, the said persons had beaten and broken the hands of deceased and had also set the house on fire and a case in respect thereof was still pending. According to P.W.-1, it was on account of said enmity that Babu, Munnawar and Shakir Ali had killed her mother. The witness further stated that she, along with her father went to police station to lodge a report, however, the police did not register the same. She specifically stated that the Appellant had not committed the murder of the deceased.

During her cross-examination, P.W.-1 stated that she woke up after hearing explosion like sound and by the time she reached to the deceased- Haseena Bano, she had died. P.W.-1 admitted that she had not seen anyone causing the blast like sound. Although, P.W.-1 in her cross examination admitted that Investigating Officer had recorded her statement on the very next date of incident, however, denied the fact that she had not disclosed the name of Babu, Munnawar and Shakir Ali in her said statement made under Section 161 of Cr.P.C.

13. The Prosecution produced Ms. Ahmada as P.W.-2. She is the elder sister of P.W.-1 and the daughter of Appellant and the deceased. P.W.-2 in her testimony supported the version of P.W.-1 and stated that the deceased was murdered by neighbors Babu, Munnawar and Shakir Ali due to a land dispute. Furthermore, P.W.-2 in her testimony stated that she saw Babu, Munnawar and Shakir Ali, fleeing from the place of occurrence from a distance of 10 feet and there was nothing in their hands. P.W.-2, contrary to the testimony of P.W.-1, denied any incident of hearing any sound like bomb explosion etc. Although, P.W.-2 in her cross examination admitted that one Mr. Krishna Dev Shukla had mediated and counseled her parents over their dispute regarding Court marriage issue

of P.W.-1 (Heena), however, at the same time she denied that there was any dispute between her parents prior to the incident.

14. Prosecution examined Mr. Ramzan, the village chowkidar and informant of the case as **P.W.-3**. In his testimony, the said P.W. stated that upon hearing the death of deceased, he went to the Appellant's house, wherein the deceased was lying dead, covered by a white sheet. There was blood stained on the sheet. Being curious, P.W.-3 inquired about the cause of death from Appellant. The Appellant stated that the deceased was suffering from cholera and consistent vomiting. He also told that the deceased had fallen down from roof/terrace, which caused her death. According to the said witness, since the circumstances appeared suspicious, he stopped the Appellant and other people from digging the grave and informed the police about the incident. P.W.-3 has proved the original information being G.D. No.14 given by him on 30.04.2009 (**Exhibit- Ka 1**) to the police.

P.W.-3 in his cross examination testified that Appellant and his relatives were intending to sort out the matter by burying the dead body of the deceased. He further testified that although, deceased Haseena Bano and the accused persons Babu, Munnawar and Shakir Ali used to quarrel over a small piece of land belonging to Gram Samaj, however, Babu, Munnawar and Shakir Ali have not committed murder of the deceased due to the said land dispute. P.W.-3 further deposed in his cross examination that the Appellant after his arrest had admitted before the police the commission of the offence of murder, and P.W.-3 was present at the relevant time. He also stated that pursuant to the said confessional statement of the appellant, a firearm was recovered on the appellant's disclosure/identification.

15. The prosecution produced Mr. Krishna Dev Shukla, belonging to the village of appellant as **P.W.-4**. Mr. Shukla, in his testimony, stated that the appellant had confessed the commission of offence of murder before Mr. Shayamdhara Pandey (P.W.-6) on 31.05.2009. He further deposed that in the said extra-judicial confessional statement made before P.W.-6, the appellant admitted that he had killed his wife i.e. the deceased in a fit of anger following an altercation related to marriage of his daughter Heena. P.W.-4 also deposed that appellant and the deceased had strained relationship over the issue of marriage of their daughter Heena. He also deposed that the appellant was against the marriage of his daughter Heena (P.W.-1) with Mr. Salim, the son of Mr. Subarati, while the deceased was willing to marry Heena with Salim. P.W.-4, in his further deposition stated that on the request of the deceased Ms. Haseena Bano, he had counselled and attempted to mediate between the appellant and the deceased the day preceding the date of incident, relating to the marriage of their daughter Heena (P.W.-1).

16. Mr. Laxmi Narayan Shukla was examined as **P.W.-5**. In his testimony, this witness has stated that upon learning about the death of the deceased, he reached the appellant's house at about 7:30 AM. At that point of time, no one was aware as to who had committed the murder. He further deposed that the daughters of the appellant had not named or implicated any person in the commission of the said offence.

17. Mr. Shyamdhara Pandey, son of incumbent Village Pramukh was examined as **P.W.-6**. Mr. Pandey in his testimony, stated that upon learning about the death of the deceased, he visited the appellant's house and found the deceased lying dead. He further deposed that when he inquired

about the cause of death, the appellant informed him that the deceased had died after falling from the rooftop. However, noticing a firearm injury on the body of the deceased, P.W.-6, advised the appellant not to bury the body and to inform the police about the incident. Thereafter, P.W.-6 proceeded to attend his day-to-day duty. P.W.-6 further deposed that after about one month of the incident, appellant came to meet him and confessed that he had killed his wife by firing a bullet and requested to save him. Upon being asked about the reason for committing the murder, the appellant stated that his wife was intending to solemnize their daughter's marriage against his wishes, which led to an altercation, and that in a fit of anger he had committed murder. Since, the appellant had committed the offence, P.W.-6 denied to extend any help to him. P.W.-6 denied the suggestion that Babu, Munnawar and Shakir Ali had murdered the deceased due to any prior land dispute, or having more member in the vote-list.

18. Thereafter, Prosecution produced Mr. Vikram as **P.W.-7**. The said witness in his testimony, stated that the appellant was arrested by the police on 07.06.2009 and that pursuant to his disclosure statement and identification, a 12-bore Katta (Country made Pistol) was recovered after being dug out from a maze field belonging to one of the co-accused Babu. The said Katta was wrapped in a polythene and was recovered in his presence. P.W.-7 identified and proved the recovery of the aforesaid firearm and also identified his signature appended on the recovery memo, which was exhibited as **Exhibit Ka 2**.

19. Mr. Kesari Prasad was produced as **P.W.-8** by the prosecution. He testified that police came and took possession of the dead body of deceased and thereafter prepared a Panchayatnama in his presence. P.W.-8 identified his signature appended on the Panchayatnama (Inquest Report) which was exhibited as Exhibit Ka 3. He further testified that Appellant was present when the dead body was sealed and Panchayatnama was prepared by the police.

20. The prosecution examined Dr. R.C. Verma, Senior Consultant, District Hospital, Gonda, as **P.W.-9** in order to prove the post-mortem report. P.W.-9, in his testimony, stated that on 30.04.2009, Constable Sevalal and Home guard Gangesh Pandey brought the dead body of deceased Haseena Bano, for post-mortem. The dead body was duly sealed and that the seal was opened in his presence. The dead body was identified by the aforesaid police personnel. PW-9 further stated that the deceased was of normal physique and deposed that following ante-mortem injuries were found on her body:

i. Firearm wound measuring 3 x 2.5 cm deep, on the right side of the chest, 5 cm below the right mid-clavicular bone with blackening and tattooing.

ii. Firearm injury measuring 3 x 2.5 cm deep to the flesh on the right side of the upper lip, just below the right nostril. blackening and tattooing was present.

iii. Lacerated wound measuring 4 x 5 cm deep on the flesh was on the right side of the face, just below the angle of the mouth.

P.W.-9 deposed that so far as internal injury is concerned, the pleura was ruptured. Approximately, two liters of clotted blood was found in the chest cavity. There was 200gm

undigested pulp in the stomach. The uterus was empty. The time of death of deceased was within one day.

P.W.-9 opined that the deceased died due to ante-mortem shock and excessive bleeding. As regards the timing of death, the said PW deposed that the deceased might have died during the night of 29th/30th April, 2009. P.W.-9 stated that the post-mortem was conducted and report was prepared at 4:45 PM. A large bullet was recovered from the rear side of the deceased's chest. P.W.-9 identified the autopsy report and his signature appended thereon, which is exhibited as Exhibit Ka- 4.

During his cross examination conducted by advocate appearing for the Accused Babu, Munawaar and Shakir Ali, P.W.-9 testified that injury No.1 and 2 might occur if the firearm is fired from within three feet, i.e. from very close range. He further testified that both the said injuries might be caused by the same firearm. The said witness also deposed that the injury no.3 may occur due to falling on a hard object. Interestingly, no cross examination was done by the Appellant, although opportunity was given to him.

21. Constable Danbahadur Singh, a Moharir posted in Katra Bazar Police Station, was examined as P.W.-10 by the prosecution. **P.W.-10**, in his testimony, deposed that Crime Case No.154/09 under Section 302 I.P.C. was registered by him on 01.05.2009 pursuant to receipt of post-mortem report and that in accordance with the directions of S.H.O. He proved the original G.D. Entry and identified his signature appended thereon, which is exhibited as **Exhibit Ka 5**.

22. S.I. Shabsikant Sharma, the Investigating Officer of the case, appeared as **P.W.-11**. He deposed that he had investigated the matter. He identified his signatures appended on the various recovery memos and proved the same. He further testified that the site-map of the crime scene was prepared by him and identified his signature appended thereon. P.W.-11 exhibited and proved various documents running from Exhibit Ka 6 to Exhibit Ka 15 and Article Exhibit 1 to Article Exhibit 3. S.I. Shabsikant Sharma deposed that appellant or any of his family member did not report the incident to the police and that the incident was reported by Village Chowkidar - Mr. Ramzan (P.W.-3). He further deposed that when he reached at the spot, he found that the appellant had dug a grave for burying the deceased. He stated that the police took control of the dead body of deceased and prepared a Panchayatnama. Thereafter, the dead body of the deceased was sent to District Hospital, Gonda, for post mortem. Subsequently, statement of witnesses was recorded and that during the course of investigation, the appellant was arrested on 07.06.2009. Thereafter, pursuant to a disclosure statement made by the appellant and on his pointing a firearm (Country made pistol/Katta), used in commission of the crime, was recovered. Upon completion of investigation sufficient incriminating material was found against the appellant and therefore, charge sheet was filed against him.

During the cross examination, P.W.-11 testified that all the family members of appellant were present at the time of preparation of site-map of crime scene. He further testified that he had recorded the statement of Ms. Heena (P.W.-1) and Ms. Ahmada (P.W.-2), both the daughters of appellant, during the course of investigation, however, in their statement they had not named Babu, Munawar and Shakir Ali for committing the murder of deceased Haseena Bano.

23. After conclusion of the prosecution witness, the statement of Appellant and the other accused persons were recorded under Section 313 of the Cr.P.C. on 17.01.2011, wherein they denied the various circumstances put to them of being involved in the present incident and claimed that the allegation against them are false and motivated.

24. None of the accused persons, including the Appellant produced any defence witness in their favour.

25. Learned Trial Court after hearing the arguments of both sides and perusal of evidence adduced, returned a finding that the appellant/accused have committed the offence of murder under Section 302 I.P.C. and accordingly, convicted the appellant and directed him to undergo a sentenced of life imprisonment and a fine of Rs.10,000/- In case of default in payment of fine, the appellant have been directed to further undergo a simple imprisonment of one year. However, the Learned Trial Court acquitted the newly added accused persons Babu, Munnawar and Shakir Ali giving them benefit of doubt.

26. Being aggrieved, the appellant has preferred the present Appeal under Section 374(2) Cr.P.C. before this Court.

PROCEEDINGS BEFORE THIS COURT

27. During the pendency of the present Appeal, the Appellant is in jail since 22.09.2011 i.e for more than 14 years and four months without remission.

28. The first Bail Application of the Appellant was rejected for want of prosecution by a coordinate Bench of this Court vide order dated 26.11.2018 passed in C.M. Application No. 103783 of 2011.

29. The second Bail Application (C.M. Application No. 174728 of 2021) was dismissed on merits vide an order dated 03.03.2022. The third Bail Application also came to be rejected by a coordinate Bench of this Court vide an order dated 24.05.2022 passed in C.M. Application No. 08 of 2022. However, when the fourth Bail Application (C.M. Application No. 09 of 2023) came up for hearing on 31.10.2025, the learned Counsel for the Appellant elected to address his final arguments on merits, rather than for pressing his Bail Application and as such this Court heard both the counsel for the Appellant and the Counsel for the State and vide an order dated 31.10.2025 reserved the present Appeal for judgment, while dismissing the fourth Bail Application of the Appellant, being not pressed.

SUBMISSION ON BEHALF OF THE PARTIES

30. Heard rival submissions of Ms. Meera Tripathi, Ld. A.G.A. for State as well as Mr. Kailash Nath Mishra, Learned Counsel for the Appellant.

31. Mr. Kailash Nath Mishra, learned Counsel for the appellant submits that the impugned judgment dated 22.09.2011 is illegal, perverse and have been passed only on surmises and conjectures. He submits that there are major contradictions in the statement of prosecution witnesses. That neither anyone has seen the appellant committing the alleged offence nor there is

any reason or motive for committing such crime by the appellant. Mr. Mishra has further submitted that learned Trial Court has erroneously held that the deceased was willing to marry her daughter, Ms. Nanka @ Heena (P.W.-1), to Mr. Salim, son of Mr. Subarati, whereas the appellant was opposed to such marriage, although the fact remains that P.W.-1 had already solemnized a Court marriage, much earlier to the incident. Thus according to him, the opposition of the appellant which has been viewed as a strong motive by Trial Court behind committing murder of the deceased factually did not exist. The learned Counsel further submitted that the said finding of the Trial Court is belied by the testimony of Ms. Nanka @ Heena (P.W.-1) wherein she has categorically stated in her evidence that both of her parents were in favour of her marriage with Salim. Hence, learned Counsel for the appellant submitted that there existed no motive whatsoever on the part of appellant-Yasin to commit murder of his wife Haseena Bano.

32. Learned Counsel for the appellant submitted that in so far as extra judicial confession is concerned, the same is stated to have been made before Mr. Shyamdhara Pandey (P.W.-6). However, the said witness, in his evidence before the learned Trial Court, has failed to disclose either the date or the day on which such alleged extra judicial confession was made. Furthermore, Mr. Mishra, learned Counsel for the Appellant has tried to weave a story around the statement of P.W.-6, wherein he has stated that his mother is the Village Pradhan and that the family of accused Babu and Munnawar comprises about twenty members, whereas the appellant is alone. Thus, according to Mr. Mishra the testimony relating to alleged extra judicial confession made by the Appellant appears to have been motivated by vote bank politics. In these circumstances, it was argued by him that P.W.-6 cannot be regarded as an independent or neutral witness. It has been argued that, in any case, extra judicial confession is a very weak piece of evidence. He has submitted that wherever the Court intends to base a conviction on an extra judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence and has placed reliance in this regard on the judgment of *Ramu Appa Mahapatra Vs. The State of Maharashtra*, in Criminal Appeal No.608 of 2013 reported as **2025 INSC 147**; passed by the Hon'ble Supreme Court. The learned Counsel for appellant has further urged that there is nothing to show that Shyamdhara Pandey (P.W.-6) had any influence with police or had some status to protect the appellant from harassment of police as such there was no reason for appellant to confess his guilt before him and to request him to save him. The reliance in this regard has been placed on judgment passed by the Hon'ble Supreme Court in *Makhan Singh Vs. State of Punjab*, reported in **AIR 1998 SC 1705**.

33. Learned Counsel for appellant, while addressing the issue of recovery of weapon of assault, submitted that the said weapon was recovered from the agricultural field of accused Babu allegedly on the pointing out of appellant. Mr. Vikram (P.W.-7) was produced by prosecution as a witness to the said recovery. Mr. Vikram (P.W.-7) in his examination-in-chief stated that the appellant himself dug the ground and handed over the weapon of assault to police, whereas in his cross examination, he contradicted the said version by stating that the weapon was dug out by two police personnel and they handed over the weapon to the Investigating Officer. Further, P.W.-7 deposed that the weapon was recovered after a period of three to four months from the date of incident, whereas as per the prosecution case, the recovery is stated have to been made on 07.06.2009 i.e. after one month and seven days from the date of incident. The witness has also stated that appellant Yasin, another witness Siddique and the Investigating Officer did not append

their signature on the recovery memo of the alleged weapon in his presence. In view of the aforesaid infirmities, learned Counsel for the appellant submitted that the prosecution has failed to establish that the alleged recovery of the weapon of assault was affected on the pointing of appellant. Learned Counsel for appellant has further submitted that as per post mortem report a big bullet was found in the body of the deceased but no pellet is said to be recovered from the dead body of deceased. Further, according to the learned Counsel, the alleged recovered weapon is a 12 bore country made pistol as such the injury in the post mortem report is not corresponding to weapon allegedly recovered on the pointing out of appellant. Moreover, even in the ballistic report, the expert has opined that it is impossible to conclude that the recovered weapon (Katta) only, was used in the commission of offence.

34. Finally, learned Counsel for the appellant submitted that burden under Section 106 of the Indian Evidence Act cannot be shifted upon the appellant, particularly when there is evidence to the effect that several other family members and relatives were present at the time of occurrence and the appellant Yasin was sleeping with them on the roof while the deceased was sleeping inside the room. Learned Counsel for the appellant has further submitted that P.W.-1 and P.W.-2 in their testimony have stated that the appellant had gone to the police station to lodge a F.I.R. against the said Babu, Munnawar and Shakir Ali, however, the police did not lodge the F.I.R. Thus, it has been vehemently submitted by the learned Counsel for the Appellant that the learned Trial Court has wrongly come to the conclusion that appellant has not discharged his burden cast under Section 106 of the Indian Evidence Act. The learned Counsel for the appellant also submitted that the entire case of the prosecution against appellant is based on circumstantial evidence which is not so complete that on the basis of which it can be said that it is the appellant only and no one else would have committed the murder of deceased. The appellant has placed reliance on the principle of law laid down by the Hon'ble Supreme Court in *Dinesh Kumar Yadav Vs. State of Haryana*, reported in *AIR 2023 SC 2795*; *Jose @ Pappachan Vs. The Sub-Inspector of Police & Another*, reported in *2016 (3) JIC 636 (SC)*; and *Nagendra Sah Vs. The State of Bihar*, reported in *(2021) 10 SCC 725*.

35. Per contra, Ms. Meera Tripathi, learned A.G.A. appearing for the State, has submitted that the deceased Hasena Bano, wife of appellant Yasin, died in suspicious circumstances during the intervening night of 29/30.04.2009. The deceased had bodily injury. However, despite that the appellant and his family members attempted to bury the deceased without there being given any such information to the Police or taking the deceased to a Doctor. The incident was reported to the police station Katra Bazar, District Gonda, by Mr. Ramzan (P.W.-3), the village chowkidar. Learned A.G.A. has further submitted that the appellant did not participate in the inquest proceedings and also did not engage in any act indicating that, subsequent to the incident, the accused had taken the deceased to a hospital or had consulted any doctor with regard to her treatment.

36. Learned A.G.A. submitted that it is clear from the testimony of P.W.-3 (Informant- Mr. Ramzan) that firstly, the appellant attempted to project a false narrative by claiming that the deceased was suffering from cholera due to which she was vomiting continuously and that on account thereof, she fell down from the roof, resulting in her death. Secondly, when this version was disclosed in public, both the relatives of deceased as well as those of accused/appellant refused

to dig the grave for deceased, which clearly demonstrates that the version narrated by appellant had not been accepted by the gathering present at the spot. Thirdly, it came to the knowledge of the informant that on the date of incident, an altercation had taken place between the deceased and the appellant/ accused with regard to the marriage of the daughter, namely Heena, which clearly establishes the motive attributable to the deceased. Lastly, P.W.-3 has also duly affirmed the recovery of the country made pistol, thereby corroborating the recovery memo.

37. Learned A.G.A stressing on the point of motive submitted that Mr. Krishna Dev Shukla (P.W.-4) in his testimony has clearly stated that there was some altercation going on between the deceased and the appellant/accused, which was told to P.W.-4 by none other than deceased herself, when she had visited the house of said P.W.-4 on 29.04.2009 in the morning. She submitted that the testimony of P.W.-4 corroborates the motive of the appellant.

38. The learned A.G.A., in her concluding submissions, contended that the chain of circumstantial evidence stands fully complete in the present case. It was submitted that the deceased was shot dead inside the house when Appellant was present in the house; the deceased was never taken to any hospital for medical treatment; the accused created a false narrative by claiming that the deceased was suffering from cholera and had sustained injuries after falling from roof; the concerned authorities were never informed about her death. It was further submitted that the accused had clear motive for commission of offence inasmuch as an altercation had taken place between the deceased and the accused a day prior to the incident with regard to the marriage of their daughter. The recovery of the firearm at the instance of the accused was also duly proved, and the firearm injury sustained by the deceased clearly indicated that the shot was fired from a close range thereby corroborating the prosecution version. Moreover, when examined under Section 313 of Cr.P.C., the appellant/accused failed to furnish any reasonable or plausible explanation with regard to the incriminating circumstances appearing against him.

39. Ms. Meera Tripathi has further vehemently argued that in the aforesaid circumstances, the burden stood rightly shifted upon the accused under Section 106 of the Indian Evidence Act, 1872, which was never discharged. It was urged that the accused was present at the same place where the deceased died and therefore was obliged to explain the facts specially within his knowledge; however, no such explanation was spelt out by the accused. She further submitted that the prosecution has successfully proved its case beyond reasonable doubt and the accused has failed to discharge his burden casted upon him under Section 106 of the Indian Evidence Act. The counsel for the State has also relied on principles of law laid down by Hon ble Supreme Court in the case of **Balvir Singh Vs. State of Uttarakhand**, reported in (2023) 16 SCC 575; and **Ram Gopal VS. State of M.P.**, reported in (2023) 5 SCC Online 158.

ANALYSIS AND FINDINGS

40. We have given our thoughtful consideration to the rival submissions advanced by the learned Counsel for the parties and have carefully perused the entire evidence on record. It is an admitted position that there is no direct eyewitness to the occurrence and the case of the prosecution rests on circumstantial evidence. It is well settled that in a case based on circumstantial evidence, the prosecution must establish a complete chain of circumstances which unerringly points

towards the guilt of the accused and excludes every possible hypothesis consistent with his innocence. The law on the standard of proof required to prove a case by circumstantial evidence is no longer *res integra*.

41. The law remains that in a case of circumstantial evidence, the burden of proving lies on the prosecution and the prosecution has to discharge its duty by bringing on the record sufficient materials to show that the circumstances are incompatible with the innocence of the accused and lead to the irresistible conclusion regarding the guilt of the accused. The principles have been enumerated in the case of *S.D. Soni v. State of Gujarat*, reported in 1992 *Supp (1) SCC 567* and *Union of India v. J.S. Brar*, reported in (1993) 1 *SCC 176*. Further, in the case of *Tarseem Kumar v. Delhi Administration*, reported in 1994 *Supp. (3) SCC 367*; it has been held by their Lordships that when the prosecution case is based solely on the circumstantial evidence, the Court must be satisfied:

“(i) That the circumstance from which such conclusion of guilt is to be drawn has been fully established; and

(ii) All the facts so established are consistent only with the hypothesis of guilt of the accused and they do not exclude any other hypothesis, except the one sought to be proved; and

(iii) The circumstances on which reliance has been placed are conclusive in nature; and

(iv) The chain of evidence is such that there is no scope for any reasonable ground for a conclusion consistent with the innocence of the accused.”

It has also further been observed by their Lordships in this very Judgment that:

“7. Where the prosecution purports to prove the charge against the accused on the basis of direct evidence, oral or documentary then the evidence so produced, can be considered by the Court on the well-recognized principles including as to when the FIR of the occurrence was lodged, whether the accused was named therein and the version of the occurrence which is being disclosed in the case was disclosed in the FIR or not, the witnesses who have supported the case of prosecution are trustworthy or not. But in a case based on circumstantial evidence, when neither the accused is known nor the manner of occurrence is known to the persons connected with the victim, even the FIR in respect of such cases is lodged after a considerable delay in many cases, because an offence has been committed itself, is not known to anyone. The circumstances discovered by the I.O. during the course of investigation and proved by the prosecution during trial have to be cautiously examined for the purpose of recording a verdict of guilt or giving benefit of doubt to accused.

8. Normally, there is a motive behind every criminal act and that is why investigating agency as well as the court while examining the complicity of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. It has been repeatedly pointed out by this Court that where the case of the prosecution has been proved beyond all reasonable doubts on basis of the materials produced before the court, the motive loses its

importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question.

(emphasis supplied)

42. In the present case, it stands proved that the deceased Haseena Bano died a homicidal death as a result of ante-mortem firearm injuries. The medical evidence adduced through P.W.-9 (Dr. R.C. Sharma) fully corroborates the prosecution version and rules out any possibility of accidental or natural death. The injuries were caused from a close range and were sufficient in the ordinary course of nature to cause death.

43. It is also undisputed that the deceased died inside the matrimonial home during the intervening night of 29/30.04.2009, when the appellant-husband was present in the house. The conduct of the appellant, both prior to and after the incident, assumes significance in view of Section 8 of the Indian Evidence Act, 1872, which inter-alia states as herein under:

8. Motive, preparation and previous or subsequent conduct.

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

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

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

Apparently, the appellant neither informed the police about the death of his wife, nor took her to any hospital for medical treatment, and instead attempted to hurriedly bury the dead body as deposed by P.W.-3 (Informant) and P.W.-11 (Investigating Officer). Further, although P.W.-1 (Ms. Heena @ Nanka) and P.W.-2 (Ms. Ahmada), who are the daughters of the appellant, in their testimony have stated that the appellant had visited the Katra Bazar Police Station, Gonda, to lodge a report about the incident, however, the said testimony does not inspire any confidence for the reasons that P.W.-2 in her cross examination has candidly admitted that appellant had not any acrimonious relation with the police nor does it appear from the record and the statement of the

witnesses that the police was working under any extraneous pressure for not registering the report of the incident allegedly given by the appellant. Furthermore, from a close scrutiny of the testimonies of P.W.-3 (Mr. Ramzan), P.W.-4 (Krishna Dev Shukla), P.W.-5 (Lakshmi Narayan Shukla) and P.W.-6 (Shyamdhara Pandey) it is apparent that appellant spread a false narrative of death of deceased that the deceased died due to falling from the rooftop, whereas the post-mortem report conclusively states that the deceased had died because of anti-mortem fire arm injuries received by her. The appellant did not provide any explanation whatsoever as to why he made such false statement regarding the death of deceased and tried to cover up the fire arm injuries received by the deceased. These conducts of the appellant strongly go against him. Moreover, it has come in the deposition of P.W.-11 (Investigating Officer) that when he visited the house of the Appellant where the deceased was lying dead, the said P.W. found that the appellant had already dug a grave for burying the deceased.

44. Hence, it is safe to conclude that the appellant never intended nor actually reported the incident to the police and the same was reported only by P.W.-3 (Mr. Ramzan- Village Chowkidar) and apparently the story put forth by P.W.-1 and P.W.-2 seems to be a gimmick. Further, this Court finds rather strange that although P.W.-1 and P.W.-2 tried to mislead and named three other co-accused i.e. Babu, Munnawar and Shakir Ali, to be involved in the killing of the deceased, however, neither there is any corroborative evidence on record nor any circumstances, which would show that the said P.W. s or the Appellant, who were all present at the time of incident tried to catch hold these three persons or raised any alarm or that a scuffle broke between these people or that as to who was carrying the Gun amongst these three i.e. Babu, Munnawar and Shakir Ali and who shot the gun. There are myriad questions, which remains unanswered and points towards the cooked-up story of the daughters. Further, as goes an old adage, Men may lie, but circumstances do not appear to be squarely applicable to the present facts, wherein there is no explanation coming forth from the Appellant as to when the Appellant did not commit any crime and it was some-one else according to him and his daughter, then as to why the appellant did not inform the police in the first place and secondly, as to why the appellant had dug a grave for burial of the deceased as has been deposed by P.W.-3 and P.W.-11. All these facts not only cast a shadow on the made-up story of the P.W.-1 and P.W.-2, but are also relevant factors under Section 8 of the Indian Evidence Act, pointing towards the guilty mind of the Appellant.

45. Further, the extra-judicial confession made by the appellant before P.W.-6 finds corroboration from the surrounding circumstances, including the conduct of the appellant and the medical evidence. While it is true that extra-judicial confession is a weak piece of evidence, however time and again the Supreme Court has held that it can form the basis of conviction when it inspires confidence and is corroborated by other material on record. The Hon ble Supreme Court had an occasion to examine a similar contention raised by the Appellant in the case of Shiva Karam Payaswami Tewari v. State of Maharashtra, reported in (2009) 11 SCC 262. The Court repelling the contention of the Appellant in that case held as under:

“8. We shall first deal with the question regarding claim of extra-judicial confession. Though it is not necessary that the witness should speak the exact words but there cannot be vital and material difference. While dealing with a stand of extra-judicial confession, court has to satisfy [itself] that the same was voluntary and without any coercion and undue influence. Extra-judicial

confession can form the basis of conviction if persons before whom it is stated to be made appear to be unbiased and not even remotely inimical to the accused. Where there is material to show animosity, court has to proceed cautiously and find out whether confession just like any other evidence depends on veracity of witness to whom it is made. It is not invariable that the court should not accept such evidence if actual words as claimed to have been spoken are not reproduced and the substance is given. It will depend on circumstance of the case. If substance itself is sufficient to prove culpability and there is no ambiguity about import of the statement made by the accused, evidence can be acted upon even though substance and not actual words have been stated. Human mind is not a tape recorder which records what has been spoken word by word. The witness should be able to say as nearly as possible actual words spoken by the accused. That would rule out possibility of erroneous interpretation of any ambiguous statement. If word by word repetition of statement of the case is insisted upon, more often than not evidentiary value of extra-judicial confession has to be thrown out as unreliable and not useful. That cannot be a requirement in law. There can be some persons who have a good memory and may be able to repost exact words and there may be many who are possessed of normal memory and do so. It is for the court to judge credibility of the witness' capacity and thereafter to decide whether his or her evidence has to be accepted or not. If court believes witnesses before whom confession is made and is satisfied that confession was voluntary basing on such evidence, conviction can be founded. Such confession should be clear, specific and unambiguous ...”

(emphasis supplied)

46. In the present case, the testimony of P.W.-6 cannot be brushed aside merely on conjectures, as nothing substantial has been elicited to discredit his evidence. The learned Counsel for the appellant has taken a lame ground that the P.W.-6, in his cross examination, could not tell the day or the date of the extra judicial confession made by appellant and, hence, the testimony of the P.W.-6 regarding extra judicial confession of the appellant should not be relied upon. It is trite law that the primary purpose of cross examination is to test the witness's veracity and credibility, and not their ability to recall minor details or act as a tape-recorder by version of the events relating to the date, time or place. We cannot lose sight of the fact that P.W.-6 was examined on 14.07.2010 i.e. after more than a year and therefore, the witness cannot be expected to recall every minute details such as day, date, or time of extra judicial confession. Moreover, this Court finds that the Learned Trial Court has not convicted the Appellant solely based on extra-judicial confession but also on other compelling evidence found against the Appellant like the disclosure, recovery, conduct, invocation of Section 106 Indian evidence Act etc. Thus, we do not find any force in the submission of learned Counsel of the appellant. We also do not find any force in the submission of the learned Counsel of the appellant that the said extra judicial confession has been made to save accused Babu and Munnawar.

47. The learned Counsel for appellant has submitted that there is nothing to show that P.W.-6 (Shyamdhhar Pandey) had influence with police or had some status to protect the appellant from harassment of police as such there was no reason for appellant to confess his guilt before him and to request him to save him. Admittedly, mother of P.W.-6 was the incumbent village Pradhan, to which the appellant belonged. It has come in the testimony of P.W.-6 that he used to assist her mother in discharging her duties as village Pradhan and usually represented her before the people

and the authorities. It cannot be lost sight that village Pradhan in rural area exercises some kind of influence and control over village chowkidar. It has come in evidence of P.W.-6 that he had visited the appellant's place, before the police and having noticed the gunshot injury on the deceased had advised the Appellant to not hurriedly bury the deceased and instead inform the police, which he failed to oblige, as it was eventually P.W.-3 (Village Chowkidar) and not the appellant, who had lodged the present complaint with the police. Hence, it cannot be said that the P.W.-6 was not in position to afford protection to the appellant from possible police harassment and therefore, there was no occasion for appellant to confess his guilt before the P.W.-6. Most importantly, there is no evidence on record to show that the said P.W.-6 was in any manner inimical to the Appellant or that the statement made to him was manipulated or was under some coercion or force. There is also no argument nor there is any evidence to show on record that the extra-judicial confession was not voluntary and as such the submission advanced by learned Counsel for the appellant to the effect that P.W.-6 was not in a position to save the appellant and as such there was no occasion for him to make any extra-judicial confession before the P.W.-6 is found to be without merit.

48. The next issue raised by the learned Counsel for the Appellant is relating to the recovery of the firearm at the instance of the appellant. No doubt, certain discrepancies have been pointed out by the defence regarding the manner of recovery from the field of one of the co-accused, who has been acquitted, however, a plain reading of the testimony of the recovery witness P.W.-7 (Vikram) together with the testimony of the Investigating Officer- P.W.-11 proves that the crime weapon was recovered on the disclosure statement and pointing of the Appellant as has also been deposed by the P.W.-3 (Informant). The minor discrepancy relating to as to who dug the field for recovery of the weapon does not create any doubt on the testimony of P.W.-7, who has deposed that he was present on the place of recovery as a chance and not was called by the police to become a witness to the said recovery. In the totality of the deposition recorded of the said witness, this Court does not find any infirmity, which would go to the root of the matter or in any manner wreck the prosecution story. Further, this Court notices that recovery of weapon was not immediately after the incident but after more than one month and simultaneous to the arrest of the Appellant. The timing of the recovery of firearms, the date of arrest and the place (i.e. Babu s field, who is a co-accused and entangled in the present case by the statement of daughters of the Appellant), gives wings to the story put forth by the investigation to achieve the culpability of the Appellant. The ballistic report pertaining to the firearm, recovered pursuant to the statement made by the appellant, confirms that it had been used for firing. Therefore, the recovery, read in conjunction with ballistic report and the medical evidence indicating a close-range firearm injury and the conduct of appellant subsequent to the incident, clearly forms a coherent chain of circumstances, leading to the sole conclusion that the appellant and no one else has committed murder of his wife.

49. The learned Counsel for the Appellant has submitted that there is no motive for the Appellant to commit the murder of his wife as has been also deposed by P.W.-1 and P.W.-2 and as such the conviction cannot be upheld in a case based on circumstantial evidence. First and foremost, it must be understood that no doubt Motive is a very important link in the circumstances which could prove the guilt of the accused, however, it must also be understood in the same vein that even if there may be a very strong motive for the accused to commit a particular crime, it does not lead to a conviction by itself, if the eyewitnesses are not convincing or the chain of circumstances is not complete. The law holding the ground is that if the case is built solely upon

circumstantial evidence, absence of motive would be a factor that weighs in favour of the accused and just as a strong motive does not by itself result in a conviction, the absence of motive on that sole ground cannot result in an acquittal. The Hon'ble Supreme Court in ***Suresh Chandra Bahri v. State of Bihar***, reported in ***1995 Supp (1) SCC 80***; has held that in a case based on circumstantial evidence, proof of motive would merely "supply a link in the chain of circumstances, but all the same, absence of motive cannot be a ground to altogether reject the prosecution case. Para 21 of the said judgment reads as under:

"21. At the very outset we may mention that sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the court that the accused was guilty of the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime. In the present case before us the prosecution has adduced evidence that the appellant Suresh Bahri had strong motive to eliminate his wife and two children from his way which evidence has been accepted by both the courts below. We shall, therefore, have a look at the said evidence to see whether the two courts are justified or not in taking the view that the appellant Suresh Bahri had a strong motive to hatch a conspiracy with the assistance of the other two appellants, namely, Raj Pal Sharma and Gurbachan Singh to commit the murder of his wife and the two children."

(emphasis supplied)

50. Recently, the Hon'ble Supreme Court in the case of ***Subhash Aggarwal v. State of NCT of Delhi***, reported as ***2025 INSC 499***; after tracing the various judgment on the said aspect, concluded the concept of significance of motive in a case based on circumstantial evidence in the following words:

"24. Motive remains hidden in the inner recesses of the mind of the perpetrator, which cannot, oftener than ever, be ferreted out by the investigation agency. Though in a case of circumstantial evidence, the complete absence of motive would weigh in favour of the accused, it cannot be declared as a general proposition of universal application that, in the absence of motive, the entire inculpatory circumstances should be ignored and the accused acquitted."

(emphasis supplied)

51. As far as the present case is concerned, the Appellant has heavily relied on the deposition of his daughter's examined as P.W.-1 and P.W.-2 to submit that there is no motive on his part to kill his wife. Besides the fact that the deposition of the daughters appears to be not trust worthy, as has been observed herein above, this Court finds that their statement to be effectuated by basic children syndrome to save their father facing trial of murdering their mother and the children

having already come to terms of having lost their mother and not lose their father. The daughters (P.W.-1 and P.W.-2) have made a deliberate attempt to save their father, as is apparent from their testimony, wherein they have named their neighbours as accused of killing their mother, however, the same was disbelieved by the Learned Trial Court leading to their acquittal.

52. Admittedly, it has come in the evidence of the Investigating Officer (P.W.-11) that both the daughters have named the neighbors as an afterthought as no such allegations were made by them during the investigation and resultantly no charge-sheet had been filed against them and these people i.e. Babu, Munnawar and Shakir Ali came to be added as an accused by the Learned Trial Court under Section 319 Cr.P.C. Apparently, both P.W.-1 and P.W.-2 appears to be an interested witnesses and on the other hand the evidence of P.W.-4 and P.W.-6 clearly establishes that there was a strained relationship between the appellant and the deceased on account of the proposed marriage of their daughter Heena, and that an altercation had taken place shortly prior to the incident. The factum of said altercation is also envisaged from the statements of fact that it has come in evidence that except for the deceased, all the family members, including the daughters and the Appellant-father were sleeping on the terrace at the time of incident. Thus, it is concluded that there was a motive for the Appellant to do the heinous crime, but as aforesaid though motive by itself may not be decisive, its existence lends assurance to the prosecution case, particularly in a case founded on circumstantial evidence. Hence, it is proved in the present case that the link and the circumstances are so interconnected that they lead to the only hypothesis of culpability of the Appellant.

53. Further, it is established from the testimony of the witnesses that the deceased met with a homicidal death inside the house where the appellant was specifically present during the time immediately preceding the occurrence of incident. The basic foundational fact of guilt as discussed herein above, having been proved against the Appellant, it was legal, proper and reasonable to draw an inference regarding the existence of certain other facts which are within the special knowledge of the accused. Therefore, the learned Trial Court was right in shifting the burden under Section 106 of the Indian Evidence Act, on the appellant to explain the circumstances in which his wife sustained fatal injuries. This court finds that the appellant has failed to offer any plausible or satisfactory explanation, either during investigation or in his statement under Section 313 Cr.P.C. Mere denial is not sufficient to discharge the burden cast upon him by law and especially when he has been charged with the murder of his own wife. Apparently, the presence of the Appellant at the crime spot has been proved and there are adverse circumstances of creating a false narrative relating to the cause of death of the deceased-wife and his conduct of hurriedly trying to bury the dead body. The Appellant owes an explanation under law in the said compelling circumstances, which he has failed to offer.

54. Further, the theory sought to be projected by P.W.-1 and P.W.-2 implicating Babu, Munawar and Shakir Ali, which has been rightly disbelieved by the learned Trial Court, also is an added link in the chain of circumstantial evidence, which points towards the hypothesis of culpability of the Appellant. Thus, this Court has not a shred of doubt to hold that the evidence on record, clearly points towards an unbreakable connection between the appellant as perpetrator of crime and the offence of murder charged against him.

55. In view of the foregoing discussion, we are of the considered view that the prosecution has succeeded in establishing a complete and unbroken chain of circumstances which conclusively proves the guilt of the appellant beyond reasonable doubt. The findings recorded by the learned Trial Court do not suffer from any perversity or illegality warranting interference by this Court.

56. Accordingly, the conviction of the appellant under Section 302 I.P.C. is upheld and the appeal lacking any merits is liable to be dismissed, as far as it relates to Conviction. However, the learned Counsel has submitted that the Appellant is more than 75 years and has remained in jail for more than 14 years and 3 months and as such this court being a constitutional court may exercise some leniency in the sentence of life imprisonment awarded by the learned Trial Court. It has been also submitted that there is no criminal history of the Appellant.

57. This Court in the aforesaid aspect, recently had an opportunity to deal with such a situation, wherein the appellant in that case was convicted for the death of his wife, although for an offence under Section 304-B of the Indian Penal Code, in the case of ***Paras Nath Sahu and Another Vs. State of U.P.*** reported as ***2025:AHC-LKO:83391-DB***; The appellant in that case was awarded with life imprisonment by the learned Trial Court. This Court, while discussing the law on the scope and extent of Jurisdiction in granting a fixed term sentence instead of life imprisonment has been held as herein under:

“42. The Constitutional Bench of the Hon’ble Supreme Court, in the case of Union of India v. V. Sriharan, reported in (2016) 7 SCC 1; was dealing with on the issue, as to whether imprisonment for life in terms of Section 53 read with Section 45 of the I.P.C. means imprisonment for the rest of the life of the convict. The Constitutional Bench after referring to the various precedents, including Swamy Shraddananda (2) v. State of Karnataka, reported in (2008) 13 SCC 767; has answered the same in paragraph nos. 104 and 105 of the V. Sriharan (Supra), judgment which is quoted in verbatim herein below:

"104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed."

(emphasis added)

"105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified

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

(emphasis added)

43. Furthermore, the Hon'ble Supreme Court in the case of *Shiva Kumar v. State of Karnataka*, reported in (2023) 9 SCC 817; after considering both of the aforementioned judgments of *V. Sriharan (Supra)* and *Swamy Shraddananda (2) (Supra)*; in paragraph no. 14, has held that:

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

(emphasis supplied)

58. As far as the present case is concerned, considering the aforesaid proposition of law and the overall facts and circumstances, keeping in view the evidence brought on record, by virtue of which the appellant was convicted, we in our considered view need to weigh a balance between the culpability of the convict on the basis of evidence collected and brought on record on the one hand with the quantum of punishment being inflicted due to the said culpability. No doubt, the crime committed is one of the most heinous crimes and against the society at large, as such does not call for any interference, keeping in view that the said act of murder of one's own wife by the husband, not only is a murder of body of the wife but also amounts to murder of her trust, faith, soul and physiological mind. However, this Court needs to strike a chord of justice to not only subserve the society at large but also keep the various attending mitigating factors brought on record.

59. This Court finds that, it has come on record that the appellant is more than 75 years and has been in Jail for the past more than 14 years and 4 months. Further, the Appellant is not a habitual offender as there is no criminal history of the Appellant. Keeping in view the overall facts and circumstances of the present case, this Court balancing the need of the society to live in a peaceful, safe and congenial environment with chance of reformation and integrating the appellant back into the society is of the view that justice would be met, if the appellant is awarded a fixed term of imprisonment in the present facts and circumstances of the case. Thus, the maximum sentence of life awarded to the appellant- Yasin under Section 302 I.P.C. is reduced to a fixed period of 15 (Fifteen years) Rigorous Imprisonment, without any remission. However, the fine under Section 302 I.P.C is not being disturbed and the appeal is being dismissed, to that extent.

60. Consequently, the present Appeal of Yasin is partly allowed to the extent of sentence of imprisonment for life is being converted to a fixed period of 15 (fifteen) years Rigorous

Imprisonment, without any remission, but along with the fine as stipulated in the impugned judgment of conviction and sentence dated 22.09.2011 of the learned Trial Court.

61. Having said so, it is directed that the appellant- **Yasin** shall be released only after undergoing the sentence of punishment of 15 years, rigorous imprisonment, without any remission, as aforesaid, under the Sessions Trial No. 371 of 2009 (State Vs. Yasin and others) arising out of Crime Case No. 154 of 2009. The Jail Authorities are accordingly directed to calculate the period of custody and in calculating the said period the benefit of Section 427 and 428 Cr.P.C. shall be granted to the Appellant.

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

(2026) 1 ILRA 71
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.01.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE NALIN KUMAR SRIVASTAVA, J.

Criminal Appeal No. 3822 of 2022

Tejveer

...Appellant

Versus

State of U.P.

...Respondent

Issue for Consideration

Matter pertains to conviction of the appellants under S. 302 read with S. 34 IPC, where the Trial Court acquitted them of charges under S.s 304-B, 498-A IPC and S.s 3/4 of the Dowry Prohibition Act, 1961, and the prosecution case rests substantially on circumstantial evidence and testimony of hostile witnesses, particularly relating to an unnatural death within the matrimonial home.

Headnotes

Criminal Trial - Murder - S. 302 read with S. 34 IPC - Hostile Witnesses - Circumstantial Evidence - Complete chain of circumstances - Unnatural death of wife in matrimonial home - Burden on prosecution to establish circumstances beyond reasonable doubt - Subsequent shifting of evidential burden on accused - Failure of accused to explain incriminating circumstances - Conviction upheld (*Paras 17-19, 72, 79*)

Indian Evidence Act, 1872 - S. 154 - Evidentiary value of hostile witness - Evidence of hostile witness not to be rejected in toto - Court entitled to rely on those portions which inspire confidence - Conduct, contradictions, and admissions examined cumulatively. (*Paras 35-42*)

Indian Evidence Act, 1872 - S.s 101, 102, 106 - Distinction between burden of proof and evidential burden - S. 106 not attracted where an independent eyewitness was available - Nevertheless, failure of accused to rebut incriminating circumstances decisive. (*Paras 72-73, 79*)
Penal Law - S. 302/34 IPC - Common intention - Death by poisoning - Medical and forensic evidence corroborative - Organochloro insecticide found in viscera - Guilt established beyond reasonable doubt. (*Paras 4-6, 66, 79*) (E-7)

Held: The prosecution has successfully established its case beyond all reasonable doubt, both on the basis of evidence of witnesses, notwithstanding their hostility, and ignoring that evidence, by the circumstances alone - this is not a case where S. 106 of the Evidence Act could be invoked, yet upon establishment of incriminating circumstances, the burden shifted upon the appellants under S. 102 of the Evidence Act, which they failed to discharge - all these circumstances put together form a complete chain that exclude any other possibility, except that of the appellants' guilt", and no defence evidence or explanation was offered - the appeals fail and are dismissed, and the conviction and sentence under S. 302/34 IPC are affirmed. (Paras 72 - 80)

Case Law Cited

Jai Prakash Singh v. State of Bihar and another, (2012) 4 SCC 379; *K.P. Tamilmaran v. State by Deputy Superintendent of Police*, 2025 SCC OnLine SC 958 ; *Sat Paul v. Delhi Administration*, (1976) 1 SCC 727 ; *Jagir Singh v. State (Delhi)*, (1975) 3 SCC 562 ; *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116 ; *State of U.P. v. Vijay Prakash Sharma*, 2024 (12) ADJ 256 (DB) (LB) ; *State of Madhya Pradesh v. Balveer Singh*, (2025) 8 SCC 545.

List of Acts

Indian Penal Code (IPC), 1860; Code of Criminal Procedure (Cr.P.C.), 1973; Indian Evidence Act, 1872; Dowry Prohibition Act (DP Act), 1961

List of Keywords

hostile witness; unnatural death; matrimonial home; circumstantial evidence; complete chain of circumstances; evidential burden; S. 106 of the Evidence Act; forced to ingest poison; organocloro insecticide; beyond reasonable doubt; Compromise; Dying declaration (oral).

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal No. 3822 of 2022 and Criminal Appeal No. 5320 of 2021 arising out of judgment and order dated 25.10.2021 passed by Additional Sessions Judge, FTC-I, Bulandshahr in Sessions Trial No. 644 of 2019, *State v. Tejveer and others*, concerning Crime No.106 of 2019, P.S. Ramghat, District Bulandshahr.

Appearances for Parties

Advs. for the Appellant:

Mr. Santosh Kumar Rai
Mr. Hemant Sharma
Mr. Omvir Singh Rajpoot

Advs. for the Respondents:

Mr. Rahul Asthana, learned Additional Government Advocate

(Delivered by Hon'ble J.J. Munir, J.)

1. By this judgment, we propose to decide the present criminal appeal and the connected Criminal Appeal No.5320 of 2021, both of which arise out of a judgment and order of Ms. Deepika Tiwari, the then Additional Sessions Judge, FTC-I, Bulandshahr dated 25.10.2021 in Sessions Trial No.644 of 2019, *State v. Tejveer and others*. By the said judgment and order, the learned Trial Judge has convicted the appellants in both the appeals for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code (for short, 'IPC') and sentenced each of them to suffer imprisonment for life, besides ordering them to pay a fine of Rs.10,000/- each. In default of payment of fine, the appellant in default has been directed to undergo further rigorous imprisonment for a period of two years. At the same time, all the appellants have been acquitted of

the charges under Sections 304-B, 498-A IPC and Section 3/4 of the Dowry Prohibition Act, 1961 (for short, 'DP Act'). It is the conviction and sentence that each of the appellants challenge in the present appeal.

2. A First Information Report ('FIR' in short) was lodged by Chokhelal son of Kamal Singh, a resident of Chauganpur, Police Station Harduaganj, District Aligarh on 30.07.2019 at 5:45 p.m. with Police Station Ramghat, District Bulandshahr, saying that he had got married two of his daughters, Mamta and Chandrawati, to two brothers, Tejveer and Rakesh, both sons of Nanakram, a resident of Village Gangagarh, Police Station Ramghat, District Bulandshahr. He reported in his written first information that today, i.e. on 30.07.2019, his younger daughter, Chandrawati, called him over telephone to say that her sister, Mamta, had been given poison by Tejveer son of Nanakram, Rama daughter of Nanakram, Munni wife of Nanakram and Nanakram son of Kishori Lal, besides others, after conspiring amongst themselves, on account of demand of dowry and her sister not being able to bear a child. Chokhelal said that immediately upon receipt of this information, all family members reached Gangagarh by car, but by that time, the poison had overtaken the body. It is also said in the FIR that the informant's daughter, Mamta, told him that her mother-in-law, father-in-law, husband and sister-in-law (Nanad) had forcibly made her drink poison. The informant added that they were rushing Mamta for medical aid to the hospital, when on way at Atarauli, she died. The FIR requested necessary action in the matter and added that Mamta's dead body was with the informant in the vehicle parked in front of Police Station Ramghat.

3. On the basis of the said case, Crime No.106 of 2019, under Sections 498-A, 304-B IPC and Section 3/4 of the DP Act, P.S. Ramghat, District Bulandshahr, was registered against the three appellants, besides Rama daughter of Nanakram.

4. An inquest was done on 30.07.2019 jointly by Sub-Inspector Chandrapal Singh from Police Station Ramghat, District Bulandshahr and Manoj Kumar Singh, Sub-Divisional Magistrate, Dibai, District Bulandshahr, in the presence of panch witnesses. An autopsy for the deceased followed, which was carried out on 31.07.2019. The following ante-mortem injuries were noticed:

“(1) Puncture wound size 0.3x0.3cm on right side supra clavicular area present mid clavicular region.

(2) Puncture wound size 0.3x0.3cm on right side neck 3cm above from right medial and of clavicle bone.

(3) Cotton swab with Licoplast tape present on right Dorsal Part of hand just below right wrist joint.

(4) Cotton swab with Licoplast tape present on right lower limb just on calf muscle.

(5) Injury No.(1) and (2) on exploration subclavicular region was found punctured and internal jugular vein was found punctured respectively.”

5. The autopsy doctor remarked that no opinion can be given (as to cause of death) and the viscera were preserved for chemical and forensic examination. In the opinion of the doctor, the cause of death could not be ascertained and, therefore, viscera were preserved for chemical, toxicological and forensic analysis.

6. There is a report from the Forensic Science Laboratory, Ghaziabad dated 08.08.2019, which opines that the viscera received in five parts showed presence of Organochloro Insecticide.

7. The Circle Officer, Debai, Bulandshahr, who investigated the crime, submitted a charge-sheet against the three appellants, but exculpated Rama, the deceased's sister-in-law, finding it to be a case of false implication for her.

8. The learned Chief Judicial Magistrate, Bulandshahr took cognizance on 02.12.2019 and summoned the accused. They appeared before the Court, whereupon the learned Magistrate furnished them copies of the relevant prosecution papers under Section 207 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). Thereafter, the case was committed to the Court of Sessions for trial, also on 02.12.2019, by Mr. Sumit Premi, the then Chief Judicial Magistrate, Bulandshahr.

9. Four charges were framed by Ms. Shweta Verma, the learned Additional Sessions Judge, FTC-I, Bulandshahr vide order dated 06.01.2020. The appellants were charged under Section 498-A IPC on the first count, Section 304-B IPC on the second count and Sections 3 and 4 of the DP Act on the third and fourth counts, respectively. An alternate charge was framed under Section 302/34 IPC. The appellants pleaded not guilty and claimed trial. The appellants stood their trial before Ms. Deepika Tiwari, who heard all the evidence in this case. The trial commenced on 21.10.2020.

10. In order to prove their case, the prosecution have examined the following witnesses:

- (1) PW-1, Chokhelal, the informant and the father of the deceased;
- (2) PW-2, Chandrawati, another witness of fact and sister of the deceased;
- (3) PW-3, Omwati, mother of the deceased;
- (4) PW-4, Banti Singh, brother of the deceased;
- (5) PW-5, Dr. Ajay Kumar, conducted autopsy;
- (6) PW-6, Lady Constable Ritu, got registered the check FIR; and,

(7) CO Vikram Singh, Investigating Officer of the case, who drew up a site-plan and submitted the charge-sheet.

11. The prosecution have relied upon the following documentary evidence:

Sr. No.	Exhibit No.	Exhibited documents with brief particulars
1	Ex. Ka-1	Written report dated 30.07.2019 lodged with the Police Station Ramghat, District Bulandshahr and proved by PW-1, Chokhelal
2	Ex. Ka-2	Postmortem Report of the deceased, Mamta, dated 31.07.2019, proved by PW-5, Dr. Ajay Kumar
3	Ex. Ka-3	Check FIR dated 30.07.2019, proved by PW-6, Lady Constable Ritu
4	Ex. Ka-4	Carbon copy of the G.D. Entry No.30, Time 17.45, dated 30.07.2019 relating to Crime No.106 of 2019, proved by PW-6, Lady Constable Ritu
5	Ex. Ka-5	Site-plan of the place of incident dated 02.08.2019, proved by PW-7, CO Vikram Singh
6	Ex. Ka-6	Charge-sheet, proved by PW-7, CO Vikram Singh
7	Ex. Ka-7	Panchayatnama (inquest report) dated 30.07.2019
8	Ex. Ka-8	Challan Nash of the dead body
9	Ex. Ka-9	Photo corpse
10	Ex. Ka-10	Letter to CMO
11	Ex. Ka-11	Sample seal
12	Ex. Ka-12	FSL Report dated 26.09.2019

12. The learned Trial Judge, vide judgment and order dated 25.10.2021, convicted and sentenced the appellants, as specified earlier.

13. Aggrieved by the impugned judgment and order, Criminal Appeal No.3822 of 2022 has been preferred by the appellant, Tejveer, whereas Criminal Appeal No.5320 of 2021 by the appellants, Nanakram and Munni.

14. We have heard Criminal Appeal No.3822 of 2022 as the leading appeal as both the appeals arise out of a common judgment and order passed by the Trial Judge and relate to the same crime as well.

15. Heard Mr. Santosh Kumar Rai, Mr. Hemant Sharma and Mr. Omvir Singh Rajpoot, learned Counsel for the appellants in support of both the appeals and Mr. Rahul Asthana, learned Additional Government Advocate, appearing on behalf of the State.

16. Upon hearing learned Counsel for the parties, we find that there is no cavil that the Trial Court has acquitted the appellants of charges under Sections 304-B, 498-A IPC and Section 3/4 of the DP Act but convicted them on the alternate charge under Section 302/34 IPC and sentenced them, accordingly. It is this conviction and sentence, which the appellants assail before us.

17. The conviction being one for an offence punishable under Section 302/34 IPC, it is the prosecution, who have to establish the case beyond reasonable doubt.

18. This is a case, where apparently, all the four prosecution witnesses of fact have turned hostile and refused to support their version before the Police, at the time of registration of the crime, and in subsequent statements made before the Police, during investigation. There are two features of this case, which must be borne in mind; one commonplace, and, the other, not so common, if not rare. The oft-occurring feature or challenge that this case carries is the fact that the deceased died within the four corners of her matrimonial home, where the appellants were in control of all affairs. This is commonplace because in any Indian home, except in certain places in the country, it is the wife, who, upon marriage, leaves her home and settles down with her husband or/ and in-laws in their home. Therefore, if an unnatural death or a death by violence is the fate of the wife in her matrimonial home, after the prosecution have established the basic facts about the wife's death, which is unnatural or the result of a crime, burden falls upon the shoulders of the deceased's husband and his relatives, with whom she resided, to explain how the unnatural death happened.

19. The uncommon feature of this case is that in most such cases, a wife, who dies in her matrimonial home an unnatural death, has no witness to tell her story, for the obvious reason that her husband and in-laws, tied as they are together, with a thread of common interest, would not come forward to testify against their own kin and expose them to the consequences of being punished for a heinous offence; but not so here. Here, the uncommon feature, of which we have spoken of, is that in the confines of her matrimonial home, the deceased had a sister of full-blood as an eye-witness to everything that befell her. This happened because the two sisters were married to two brothers of full-blood. The testimony of this witness, who is undoubtedly an eye-witness, would have carried great weight, if she had treaded the path of idealism, spoken forthrightly and truthfully. But, it seems that she has not and fallen victim to the very mundane consideration of saving her in-laws, who are also in-laws to her sister. She is married in the same home and if convicted, the ones who would suffer the penalties of law, would be her husband's parents and next of kin. It is perhaps this consideration, which has made this uncommon eye-witness speak some falsehood and other half truths in her dock evidence. Of course, like other witnesses, she too has been got declared hostile by the prosecution and cross-examined. If indeed, the witnesses, including the deceased's sister, PW-2, Chandrawati, have spoken falsehood and half truths, we would shortly scrutinize in this judgment.

20. The genesis of the crime shows that the informant and PW-1, Chokhelal, the deceased's father, received information on 30.07.2019 over phone from his younger daughter, Chandrawati, to the effect that her sister, Mamta, had been poisoned by her husband Tejveer, sister-in-law Rama, mother-in-law Munni and father-in-law Nanakram on account of unmet demand for dowry and her failure to bear a child. The FIR, lodged after the deceased had expired, shows that upon receipt of the aforesaid information, the informant along with all the family members, drove to the deceased's matrimonial home in their car, only to find that the poison had spread in the whole of her body. It is also said in the FIR by the informant that his daughter Mamta (later on deceased) told him that her mother-in-law, father-in-law, husband and sister-in-law (nanad) had forced her to consume poison. Upon learning the said fact, the informant started off with his daughter to the hospital to seek medical aid, but unfortunately she expired, when they had reached Atrauli. It is after her death that the first informant reported the crime to the Police.

21. This stand of the informant and the deceased's other family members, who are the witnesses here, remained consistent during investigation.

22. PW-1, the deceased's father and the first informant, turned hostile in the dock and did not support the prosecution. About the incident, he has said in his examination-in-chief that on 30.07.2019, he received information from his younger daughter Chandrawati that Mamta had died. When he, along with other family members, reached the deceased's in-laws' home, Mamta was already dead. He dictated the FIR to Banti Singh, a boy from his village (when, in fact, Banti Singh is his son) and handed it over at Police Station Ramghat. The written information that he dictated is on record, which bore his signatures. He has proved it. He has further on said in his examination-in-chief that he had no knowledge of the fact that his daughter Mamta had been poisoned to death by her husband Tejveer, mother-in-law Munni and father-in-law Nanakram. It was at this stage that the witness was prayed to be declared hostile and upon grant of that prayer, he was cross-examined by the prosecution.

23. It is noteworthy that in the FIR, this witness has categorically said that he had received a phone call from his younger daughter Chandrawati, informing him that Mamta had been poisoned by her husband, mother-in-law and father-in-law, also specifying the issues that led them to commit the evil deed. He has next said in the FIR that when he along with the family reached Mamta's place, the poison had overtaken the body, but Mamta told him that her mother-in-law, father-in-law, husband and sister-in-law had forcibly made her drink poison. He immediately rushed his daughter to the hospital, but she passed away while they were still at Atrauli.

24. Now, the contents of this FIR, the witness has affirmed and proved in his examination-in-chief, but spoken contrariwise about the incident in his dock evidence. It is indeed unbelievable that if the witness has affirmed the contents of the FIR, where it is said that Mamta was alive, when he reached her and told him that she had been forced to consume poison by the appellants, how could this witness say in his dock evidence that when he reached Mamta's place, she was already dead and that he did not know if the appellants had poisoned her. He has not said anywhere that he lodged the FIR under some misconception of fact or out of some motivation, setting forth false facts there. An FIR has a special importance in any criminal trial. Though, it is not substantive evidence, it is the earliest account of the occurrence, and, therefore, regarded as most truthful, free from embellishment, afterthought, design or manipulation. It is for this reason that the weight given to an FIR is lost or much lessened, if it is shown not to be prompt under the circumstances and one lodged after an unexplained delay, with possible pre-meditation.

25. In this connection, reference may be made to the authority of the Supreme Court in **Jai Prakash Singh v. State of Bihar and another, (2012) 4 SCC 379**, where it has been held:

“12. The FIR in a criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of

coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question. (Vide *Thulia Kali v. State of T.N.* [(1972) 3 SCC 393 : 1972 SCC (Cri) 543 : AIR 1973 SC 501] , *State of Punjab v. Surja Ram* [1995 Supp (3) SCC 419 : 1995 SCC (Cri) 937 : AIR 1995 SC 2413] , *Girish Yadav v. State of M.P.* [(1996) 8 SCC 186 : 1996 SCC (Cri) 552] and *Takdir Samsuddin Sheikh v. State of Gujarat* [(2011) 10 SCC 158 : (2012) 1 SCC (Cri) 218 : AIR 2012 SC 37] .)”.

26. Apparently, this witness has spoken falsehood and concealed truth from the Court, which nevertheless peeps from behind all the armour of his false testimony. In his cross-examination, PW-1 has stated:

"घटना के समय मेरी बेटी चन्द्रवती पत्नी राकेश भी अपनी ससुराल ग्राम गंगागढ़ में थी। मुलजिमान गंगागढ़ में एक ही मकान में रहते हैं और वही एक ही खाते पीते हैं। मैं घटना की बावत बोलता गया था और तहरीर बन्दी लिखता गया। तहरीर बन्दी सिंह ने लिखने के बाद मुझे पढ़कर सुनायी थी फिर मैंने तहरीर पर अपने हस्ताक्षर किये थे। तहरीर में बंटी सिंह ने वही लिखा था जो मैंने बोला था।

यह कहना गलत है कि जब हम लोग सूचना पर अपनी बेटी ममता की ससुराल पहुंचे तो उस समय तक ममता जीवित हो। यह भी कहना गलत है कि ममता ने मुझे व मेरे अन्य परिवारी जन को मेरी छोटी बेटी चन्द्रवती की मौजूदगी में यह बताया हो कि "मुझे मेरी सास, ससुर, पति व ननद ने जबरन जहर पिला दिया है।" यह कहना भी कहना गलत है कि हम उपचार के लिये ममता को अलीगढ़ ले जा रहे थे तो रास्ते में अतरौली पर ममता ने दम तोड़ दिया हो और ममता की मृत्यु हो गयी हो।

यह कहना भी गलत है कि दिनांक 30.7.19 को मेरी पुत्री ममता को अतिरिक्त दहेज की मांग पूर्ण न होने के कारण मुलजिमान तेजवीर नानकराम, मुन्नी ने मिलकर एकराय मशवरा होकर ममता को जहर देकर मार दिया हो।

यह कहना भी गलत है कि मुलजिमान से मिलकर उन्हें बचाने के लिये आज मैं झूठी गवाही दे रहा हूं और सही बात को छिपा रहा हूं।

मैंने आज से पहले कहीं पर भी किसी को भी या किसी पुलिस अधिकारी को या किसी प्रशासनिक अधिकारी को यह नहीं बताया कि मेरी बेटी ममता की हत्या (जहर देकर) मुलजिमान तेजवीर, नानराम व मुन्नी देवी व रामा ने नहीं की। यह बात आज मैं पहली बार कह रहा हूं।

यह बात सही है कि अब हमारा इस मुकदमे के मुलजिमान तेजवीर आदि से फैसला हो गया है।

यह कहना सही है कि मुलजिमान से फैसला हो जाने के कारण मुलजिमान के पक्ष में गवाही दे रहा हूं।

यह बात सही है कि मृतका ममता के साथ घटना ससुराल में हुई थी और मृत्यु रास्ते में हुई थी।"

(emphasis by Court)

27. If we look to the cross-examination of this witness, his stand, in the early part of it, is affirmative of his examination-in-chief that Mamta was already dead when the informant and other members of his family reached there and that she did not die on way to Aligarh at Atrauli, while being conveyed there for treatment. He has also affirmed the fact, in the earlier part of his cross-examination, that Mamta never told him that her mother-in-law, father-in-law, husband and sister-in-law had forced her to consume poison. However, in the later part of his cross-examination, this

witness has clearly acknowledged the fact that it is correct to say that while the occurrence took place at the house of the deceased's in-laws, she died on way. In the early part of his cross-examination, this witness has affirmed the fact that the FIR was scribed spontaneously by Banti Singh on his dictation and that it bore his signatures. He has also acknowledged the fact that the written information carries only those facts, which he had dictated to Banti Singh. The FIR clearly says the fact that when the informant reached Mamta's place, she told him that her mother-in-law, father-in-law, husband and sister-in-law had made her forcibly drink poison and that they rushed her to hospital, but she died on way at Atrauli.

28. It is next to be noticed that this witness has clearly acknowledged in his cross-examination that he had earlier, at no point of time, told any police or administrative officer that the appellants had not poisoned the deceased. The clincher figures in the cross-examination, where this witness acknowledges that he had spoken in his dock evidence exculpatory, because he had compromised with the appellants.

29. It is not the law that a prosecution witness, who turns hostile, makes his evidence nugatory. Even if a prosecution witness goes hostile, or for that matter, a defence witness, he/ she retains his character as a prosecution or a defence witness. The character or orientation of a witness never changes. Therefore, the testimony of a prosecution witness, who turns hostile, is not to be rejected altogether or discounted from record. Rather, it can still be considered for such relevant portions of it, as supports the prosecution, or may be in some measure, the defence too. After all, the object of a trial, where the witnesses testify whether they remain faithful or turn hostile to the side by whom they are called, is to determine the truth of it all and render justice as accurately as can be.

30. All that the Court has to do, in a case where the witness has turned hostile, is to approach his evidence with a certain degree of caution in the sense that before acting upon it, corroboration must be sought from other evidence. This issue has been examined in profound detail by the Supreme Court in *K.P. Tamilmaran v. State by Deputy Superintendent of Police*, 2025 SCC OnLine SC 958, where it has been held:

“18. When a witness, produced on behalf of prosecution, deposes against the prosecution version and goes against his/her own previously recorded statements, the prosecution can request the Court to declare such a witness as hostile and seek permission from the Court to cross-examine its own witness. This is the procedure followed in a Trial, as we all know. In the present case, there are as many as fifty-one prosecution witnesses and it is also a fact that many of them have turned hostile by turning against their earlier statements made before the police under section 161 CrPC, and even before the Magistrate under section 164 CrPC, in some cases. This phenomenon is not new, in fact it is sadly a common occurrence in our criminal Courts today, much to the despair and frustration of the prosecution. This case, therefore, is no exception. Despite this, however, there are witnesses in the present case, especially PW-1, PW-2, PW-3, PW-15 and PW-49, whose evidence, in the form of their testimonies before the Court, is more than sufficient to convict the present appellants. A word here about the evidentiary value of a so-called hostile witness.

19. The Indian Evidence Act, 1872 (hereinafter 'Evidence Act') allows a party, with the leave of the Court, to cross-examine its own witness. Section 154 of the Evidence Act originally read as follows:

“154. *Question by party to his own witness* The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.”

20. The Calcutta High Court, in *Khijiruddin Sonar v. Emperor*, 1925 SCC OnLine Cal 259, while interpreting Section 154 of the Evidence Act, held that “When a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution under the provisions of Section 154 of the Evidence Act, the result of that course being permitted is to discredit that witness altogether and not merely to get rid of a part of his testimony”

21. But this judgment in *Khijiruddin* was overruled by a five-Judge bench of the Calcutta High Court in *Praphullakumar Sarkar v. Emperor*, 1931 SCC OnLine Cal 7. The High Court was answering a reference from a Division Bench regarding the specific question of whether the testimony of a witness, who was cross-examined by the party which produced him/her, should be discarded totally, partially, or not discarded at all. Chief Justice Rankin, speaking for three other Judges and himself, answered the reference in the following terms:

“24. In my opinion, the fact that a witness is dealt with under Section 154 of the Evidence Act, even when under that Section he is “cross-examined” to credit, in no way warrants a direction to the jury that they are bound in law to place no reliance on his evidence, or that the party who called and cross-examined him can take no advantage from any part of his evidence. There is, moreover, no rule of law that if a jury thinks that a witness has been discredited on one point they may not give credit to him on another. The rule of law is that it is for the jury to say.

Of the seven questions stated by the Division Bench I propose that we should answer four, viz.-

(3) whether the evidence of a witness treated as “hostile” must be rejected in whole or in part;

(4) whether it must be rejected so far as it is in favour of the party calling the witness;

(5) whether it must be rejected so far as it is in favour of the opposite party.

These three questions I would answer in the negative.

(6) Whether the whole of the evidence so far as it affects both parties favourably or unfavourably, must go to the jury for what it is worth.

25. To this question, I would be content to answer “yes”,....”

22. Justice Buckland, in the above case, in his concurring opinion holds that there is no law which states that the evidence of a witness, who has been cross-examined by its party, should be entirely rejected. In his opinion, it is for the jury (or the Judge) to form an opinion regarding the value of the testimony of such a witness.

23. All the same, later this Court in *Jagir Singh v. State (Delhi)*, (1975) 3 SCC 562 held to the contrary and approved the decision of the Calcutta High Court in *Khijiruddin*. This is what was said in *Jagir Singh* by Justice Bhagwati:

“7. Now, it is apparent from the judgment of the High Court that the conviction of the appellant rested entirely on the evidence of Pritam Singh (P.W. 10) and Sajjan Singh (P.W. 13). Swaran Singh (P.W. 11) was also examined on behalf of the prosecution but his evidence is of no help to the prosecution because he went back on the story of the prosecution and was permitted to be cross-examined on behalf of the prosecution. It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that course being adopted is to discredit that witness altogether and not merely to get rid of a part of his testimony. See *Khijiruddin v. Emperor*....”

24. However, it is to be noted that *Jagir Singh* does not refer to the five-Judge Bench decision of the Calcutta High Court in *Praphullakumar Sarkar*.

25. But then in a subsequent decision (of which Justice Bhagwati was also a part) i.e., *Sat Paul v. Delhi Administration*, (1976) 1 SCC 727, it was held differently. Justice Sarkaria, speaking for the Bench, clarified the earlier judgment in *Jagir Singh*, and held that what has been held in *Jagir Singh* would only be applicable where a witness through cross-examination by the party which calls it, is totally discredited. It is only in such a situation that the Court, as matter of prudence, discards his/her evidence in its entirety.

26. As a general rule, the testimony of a witness who has been cross-examined by the party which produced him/her will not stand totally discredited, and it is for the Court to consider what value should be attached to this testimony. After referring to a series of judgments on this point, the Court in *Sat Paul* held as follows:

“52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto.

53. It was in the context of such a case, where, as a result of the cross-examination by the Public, Prosecutor, the prosecution witness concerned stood discredited altogether, that this Court in *Jagir Singh v. State (Delhi Admn.)* with the aforesaid rule of caution “ which is not to be treated as a rule of law “ in mind, said that the evidence of such a witness is to be rejected en bloc.”

(Emphasis Provided)

27. An examination of the cases referred above shows that there can be no doubt about the fact that the evidence of a witness, who has been cross-examined by the side which produced him/her, cannot be totally discarded [Also see : *Neeraj Dutta v. State (NCT of Delhi)*, (2023) 4 SCC 731].

28. It may also be worthwhile to mention here that by the Criminal Law Amendment Act of 2005, sub-section 2 was added to section 154 of the Evidence Act. The amended section 154 of the Evidence Act now reads as under:

154. ***Question by party to his own witness.*** - (1) The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.

(Emphasis Provided)

29. By way of the above amendment, the position which had been reiterated by this Court has now come in the statute itself.

30. The word “hostile” or “hostile witness” has not been used anywhere in the Evidence Act. The logic behind this exclusion seems to be that the declaration of witness as “hostile witness” carries a specific significance under the English law, from where this term has been derived, where liberty is only granted to a side to cross-examine its own witness when such declaration of “hostility” is made. The position in India is different and here it is left to the discretion of the Court to allow a party to cross-examine its own witness, regardless of a declaration of “hostility”. This has been explained by this Court in *Sat Paul*:

“38. To steer clear of the controversy over the meaning of the terms “hostile” witness, “adverse” witness, “unfavourable” witness which had given rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared “adverse” or “hostile”. Whether it be the grant of permission under Section 142 to put leading questions, or the leave under Section 154 to ask questions which might be put in cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court (see the observations of Sir Lawrence Jenkins in *Baikuntha Nath v. Prasannamoyi*, [AIR 1922 PC 409 : 72 IC 286]). The discretion conferred by Section 154 on the court is unqualified and untrammelled and

is apart from any question of “hostility”. It is to be liberally exercised whenever the court from the witnesses demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in the order granting such permission, it is preferable to avoid the use of such expressions, such as 'declared hostile', 'declared unfavourable', the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English Courts.”

(Emphasis Provided)

31. The phrase “hostile witness” is commonly used in criminal jurisprudence and court proceedings. We too cannot escape the blame of using the term “hostile witness” in our judgment. We do it for pragmatic reasons. Some words like “hostile witness” in this case are now a part of our legal vocabulary. There is no point in inventing or substituting new words or phrases, at least in the present case, and we leave that for the future. But what is necessary, however, is to explain the meaning of the term as it is now to be understood. The phrase “hostile witness” has come to be used for a witness who gives a statement contrary to the story of the side for which he/she is a witness. All the same, because a witness has supported some, though not all, aspects of a case, it would not automatically mean that this witness has to be declared “hostile”. A party can cross-examine its own witness under Section 154 Evidence Act, even without getting a declaration of “hostility”. The only restriction to cross-examination under Section 154 Evidence Act is that the party, who seeks to cross-examine its own witness, must obtain the leave of the Court. Whether there is a declaration of “hostility” or not, one thing is clear that evidence of witness, who has been cross-examined under Section 154 Evidence Act by the party who called such witness, cannot be washed off entirely and it is for the Court to see what can be retrieved from such evidence.

32. This can be understood from another aspect. We shall now refer to the definition of the term “evidence” given under Section 3 of the Evidence Act. It reads as follows:

“Evidence” – “Evidence” means and includes-

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court; such document are called documentary evidence.”

(Emphasis Provided)

33. The statements made by a witness in Court, including in cross-examination, either conducted by the opposite party or by the party who produced the witness, would come under the definition of 'evidence' under Section 3 of the Evidence Act, since this evidence has come before the Court with its permission. Moreover, there is no specific bar under the Evidence Act which

mandates that such evidence has to be discarded. Thus, it would form part of the entire evidence which the Court can examine while arriving at its decision, and it is for the Court to determine what value has to be given to that piece of evidence or how such evidence has to be used in a given case.

34. Viewed from a different perspective, the rejection of the entire testimony of a prosecution witness, who has been cross-examined by the prosecution, would not only harm the case of the prosecution but perhaps also of the defence in a given case. This is because as the law stands today, the benefit of the testimony of such witness can be taken by both the prosecution and the defence, allowing them to use it to build their case [See : Paulmeli v. State of T.N., (2014) 13 SCC 90, Ramesh Harijan v. State of U.P., (2012) 5 SCC 777]. In any case, ultimately, it will be the cause of justice that will suffer if the testimony of such witness is totally discarded. It is, therefore, rightly left to the discretion of the Court to test the evidentiary value of such a testimony.

35. Here, we may also take note of Section 155 of the Evidence Act which allows a party, with permission of the Court, to impeach the credibility of its own witness as per the procedure laid down therein.

36. It is though trite and much overstated but the maxim “falsus in uno, falsus in omnibus”, is not applicable to our criminal justice system. It is for the Court to distinguish the wheat from the chaff while dealing with the depositions of a hostile witness. Courts can rely upon that part of the deposition of a hostile witness which is corroborated by other evidence on record. This Court in Bhajju v. State of Madhya Pradesh, (2012) 4 SCC 327 discussed the worth of the evidence of a hostile witness in the following words:

“36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence”

If part of the evidence of a hostile witness corroborates with other reliable evidence, then that part of the evidence is admissible. Once a prosecution witness has been declared hostile and then cross-examined by the prosecution, then it is for the Court to evaluate the veracity of the testimony. There can be several reasons for a witness to turn hostile and the court must also look into these factors while evaluating the evidence given by a hostile witness. It is an uncomfortable reality in our criminal Courts for a prosecution witness to turn hostile. But then the purpose of a Trial Court is to go to the truth of the matter. Whatever evidence is there before the Court must be examined, tested, corroborated (whenever necessary), before a verdict can be finally given.”

31. The facts that we have noticed in the testimony of this witness clearly show that Mamta was alive when PW-1 and the other family members reached her in-laws' place. These also show that Mamta had spoken about the appellants, forcing her to imbibe poison. This witness went back on this position in his dock evidence and said that Mamta was dead, when they reached her in-laws' place. His stand about the fact in his examination-in-chief is belied by a clear acknowledgment at the tail-end of his cross-examination, where he says that the occurrence had taken place at the

house of Mamta's in-laws, but she died on way. Later on, when this witness has said candidly that he was speaking in favour of the appellants, because he had compromised with them, makes the picture vivid that the whole of his exculpatory stance in the dock evidence is founded on the edifice of falsehood. The truth, however, has still been spoken by this witness by affirming the contents of the FIR and admitting that Mamta was alive when the witness and other members of her family reached her in-laws and that she died on way. The affirmation of the contents of the FIR, together with admission of the fact that Mamta was alive and died on way, clearly shows that according to this witness, Mamta had conveyed the fact about her being poisoned, when this witness reached her matrimonial home. If we were to take the evidence of this witness cursorily on its face value, ignoring the gory truth that clearly comes out, we would be permitting falsehood resorted to by this witness, in consequence of a compromise with the appellants, that is admittedly there on account of whatever be the motivation, to overshadow truth and permit a gruesome murderer to go unpunished.

32. The next that we consider is the testimony of PW-2, who is the star witness in this case. She is the deceased's sister and an inmate of the same house, where the crime was committed. She is an eye-witness.

33. The FIR recites the fact that this witness, who was undoubtedly present at the scene of crime, had seen the occurrence and communicated the fact to her father over telephone that Mamta was forced to consume poison by her husband, father-in-law, mother-in-law and sister-in-law. She has spoken exculpatory in her dock evidence, that is to say, in her examination-in-chief. It is to be noticed that during investigation, this witness stood by the prosecution case that it was the appellants, who forced the deceased to partake of poison, that resulted in her death, later. She went back on all the facts regarding the crime, that she witnessed, while testifying in Court. PW-2, apart from generally saying that her sister was never subjected to cruelty, physical or mental, in connection with demand for dowry, has specifically denied the fact that her sister was done to death by her in-laws by forcing her to consume poison. The brief and relevant part of the testimony of PW-2, recorded in her examination-in-chief on 21.10.2020, reads:

"घटना दिनांक 30.7.2019 की है। मेरी बहन की मृत्यु हो गयी थी। मेरी बहन को जबरन जहर खिलाकर तेजवीर नानकराम व मुन्नी देवी ने नहीं मारा।"

(emphasis by Court)

34. In her cross-examination, this witness has stated:

"मेरी ससुराल में खेती का कार्य होता है। खेती में लगाने के लिये कोई दवा घर पर नहीं लाते हैं। ममता के साथ हुई घटना की सूचना फोन पर अपने पिता जी को दी थी।"

मैंने अपने पिताजी को फोन पर बताया था कि ममता की तबीयत खराब है आप आ जाओ। मेरी सूचना पर मेरे पिताजी आदि परिवारीजन मेरे मायके से ससुराल गंगागढ़ आ गये थे और ममता को इलाज हेतु अलीगढ़ अस्पताल ले जा रहे थे कि रास्ते में अतरौली के पास ममता ने दम तोड़ दिया।

यह कहना गलत है कि मैंने ममता के साथ घटित घटना का सारा हाल अपने मायके वालों को बताया हो। यह कहना भी गलत है कि मेरी बहन ममता को उसके पति तेजवीर, ससुर नानकराम, सास मुन्नीदेवी ने अतिरिक्त दहेज की मांग पूरी न होने के कारण जबरन जहर पिलाया हो जिससे ममता की मृत्यु हो गयी।

मेरी बहन का दाह संस्कार मायके चौगानपुर में हुआ था। मैं अपनी ससुराल में अपने पति राकेश, ससुर नानकराम व सास श्रीमती मुन्नी के साथ रह रही हूँ और अपनी ससुराल से ही गवाही देने आयी है।

ससुर नानकराम व सास मुन्नी देवी के साथ आयी हूँ मेरे ससुर आज मुझे वकील साहब के चेम्बर पर ले गये थे। मुझे वकील साहब ने यह नहीं बताया कि क्या गवाही देनी है।

यह बात सही है कि इस मुकदमा के मुलजिमान से फैसला हो गया है। यह बात गलत है कि मुलजिमान से फैसला हो जाने के कारण मैं आज अपना बयान बदल रही हूँ।

घटना सुबह के करीब 9-10 बजे की है। जब तक मेरे मायके वाले आये उस समय मेरी ससुराल में मेरा कोई ससुराल वाला मौजूद नहीं था और मैंने ममता की तबीयत खराब होने की बावत सूचना ससुराल वालों की दी और न ही ममता का किसी डाक्टर से इलाज कराया।

मेरी बहन मृतका ममता शादी के बाद से ही बीमार रहती थी। पता नहीं उसे क्या बीमारी थी। ममता को छोटे मोटे डाक्टर को दिखाया था कि डाक्टर को दिखाया था नाम नहीं पता है। डाक्टर को अतरौली व जगवा दिखाया था। उसके इलाज का पर्चा न मेरे पास है और न साथ लायी हूँ।

आज से पहले किसी भी पुलिस अधिकारी प्रशासनिक अधिकारी या किसी भी व्यक्ति से लिखित में अथवा मौखिक रूप से यह नहीं बताया कि ममता की हत्या के मुकदमे मेरे ससुराल वाले निर्दोष है। आज प्रथम बार यह बात न्यायालय में बता रही हूँ।"

(emphasis by Court)

35. This witness has, no doubt, resiled from her stand and statements made to the Police under Section 161 Cr.P.C., but considering her testimony to understand if any part thereof supports the prosecution, or the truth of whatever happened, one has to bear in mind that PW-2, if she saw the occurrence, as reported over telephone to the first informant and narrated to the Police, presents a conflict of interest, best described by what is popularly called, 'caught between the devil and the deep blue sea'. On one hand, if she had seen the occurrence in the manner described to the first informant or the Police, she would have before her the higher and the noble cause of assisting justice, requiring her to speak inculpatory against her in-laws, and, on the other, being married to the other brother in the same family as her sister, the instinct and personal interest to save her in-laws from the harsh punishment of the law, that would affect her husband, and, may be, herself.

36. A careful look at the testimony of PW-2 shows that in her examination-in-chief, she has said that the incident is one dated 30.07.2019. Her sister died. Her sister was not forced to ingest poison and killed by Tejveer, Nanakram and Munni Devi. Now, this statement, figuring in the examination-in-chief, is an oddity in itself. It goes beyond saying that during the examination-in-chief, though evidence is led by the party producing the witness, in this case, the prosecution, there are no leading questions or suggestions put to a witness. It is but obvious that the learned Counsel on behalf of the State would never have asked PW-2, if the deceased was killed by her husband, father-in-law and mother-in-law by forcing her to ingest poison. That kind of a question or suggestion would never have been allowed by the Court. All that would have been asked of this

witness is how did the deceased die. She has not said a word about how Mamta died. Instead, she has come up with an exculpatory statement for her in-laws that they did not kill her sister by forcing her to consume poison. This kind of a stand in the examination-in-chief is suggestive of tutoring and pre-meditation.

37. In her cross-examination, the witness has acknowledged that she communicated the “occurrence” regarding Mamta over telephone to her father. What was communicated to the father, has been scripted in the FIR, that was written on his dictation and later registered. The contents of the FIR have been proved by PW-2. However, much contrary to what the first informant reported in the FIR, the witness has said that she told her father that Mamta was unwell and that he should come over to their place. She has also said in her cross-examination that on her information, her family came over to her place and they were taking Mamta to the Aligarh Hospital for treatment, but she died on way at Atrauli. She has further said in her cross-examination that it is correct to say that in this case, a compromise has been reached with the appellants. She has further said in her cross-examination that the 'occurrence' took place between 9-10 a.m., but curiously, does not say what the occurrence was. She goes on to say that by the time her parents arrived, no one from her in-laws was present there. She has further said that she had intimated her in-laws that Mamta was unwell, but they had not taken her to a doctor for treatment.

38. The witness has also said that Mamta would stay sick after marriage and she does not know what her ailment was. The deceased would consult sundry doctors, but she does not know their names. Doctors at Atrauli and Jargavan were consulted. The witness also said that she does not have any prescription relating to the deceased. Most importantly, this witness has said in her cross-examination that prior to her testimony being recorded in Court, she had never given an oral statement or informed in writing any administrative officer that her in-laws were innocent, so far as Mamta's murder case is concerned. She has categorically then said that it is for the first time that she is speaking exculpatory in Court.

39. If the evidence of this witness is read as a whole in the context of how the prosecution began and what their case was, the foremost, that is obvious from her testimony, is that she is deposing not to speak the truth, but to save her in-laws. It is for this reason that in her examination-in-chief, she has testified unprovoked and out of context to the effect that her sister was not forced to consume poison by Tejveer, Nanakram and Munni Devi. The fact that throughout her evidence, this witness has spoken the word 'occurrence' regarding whatever befell her sister, shows that she acknowledges the fact that some incident in the nature of a crime happened. If one were to take the testimony of PW-2 on the face value, where she has said that Mamta was sick and it is that fact which she conveyed to her father, there was no occasion to describe Mamta's “sickness” as an “occurrence”.

40. The word 'occurrence' is not a onetime slip. She has mentioned the word at least twice affirmatively and contextually, suggestive of reference to a crime. She has disclosed the fact that she has read up to Class-VIII and her testimony has been recorded in Hindi, as reproduced hereinabove. The word employed for occurrence in Hindi is 'Ghatna' and the most telltale description of whatever happened being, as already noticed, where she says 'ghatna subah ke 9-10 baje ki hai'. If Mamta had fallen sick in between 9-10 in the morning, no person speaking chaste

Hindi or vernacular, would describe it as 'ghatna' (occurrence). This description by the witness is telltale of truth, the substance of which is hidden and eclipsed by falsehood induced by self-interest, self-preservation, the future of the family, where the witness is married and the like; all pragmatic considerations of an ordinary person, not possessed of an extraordinary or saintly character.

41. This conclusion of ours is fortified by the fact that she has also said in her cross-examination that it is true that a compromise has been reached with the appellants. If Mamta had just been sick and died in consequence, there is a possibility, as learned Counsel for the appellants argued, that the case was lodged motivatedly by the deceased's father to extort money and the compromise spoken of has to be seen in that context. If this were so, the defence would have certainly put suitable questions to PW-1 about the context in which the allegations were made, in response to which, the invariable stand would be that the FIR was lodged under some misconception or misleading influence.

42. There is no earthly reason why the first informant would refer to a specific information from PW-2 about the deceased being forced to ingest poison by her in-laws and husband, and then report to the Police that he found his daughter dying by poison, whom he rushed to hospital, but could not succeed as she died on way. The fact that the FIR was lodged with allegations to the above effect; the fact that in the testimony of PW-2, whatever happened to the deceased, is mentioned as an occurrence without anything said about a sudden onset of sickness; the fact that so much part of the first information version is affirmed by this witness that Mamta was being rushed to hospital located at Aligarh by the first informant and not her in-laws, when she died on way at Atrauli; the fact that the testimony of PW-2 discloses that a compromise has been reached between parties; the fact that PW-2 has said in her testimony that the occurrence happened in the morning at about 9-10 o'clock and when her parents arrived, the in-laws were away; the fact that Mamta was not taken to the hospital by her husband or in-laws, if she was unwell, which this witness has clearly said; the fact that PW-2 is elusive about the kind or nature of the disease Mamta suffered from, which she has cited in her cross-examination in order to show the cause of death; and, the fact that PW-2 has clearly acknowledged that never in the past did she tell any administrative officer, either orally or in writing, that her in-laws were innocent, clearly bring on record facts that point unmistakably to the appellants' guilt.

43. The exculpatory part of the witness' testimony, though bold and affirmative, does not inspire confidence with the Court in the face of facts noticed above, which are damning, besides others to be noticed later in this judgment.

44. We may now consider the testimony of PW-3, who too has tried to exculpate. PW-3 is Mamta's mother. She never spoke exculpatory before the Police during investigation, but did so for the first time in her dock evidence. In her examination-in-chief, this witness has stated:

"दिनांक 30/7/2019 को मेरी बेटी ममता की मृत्यु हो गयी, जिसकी खबर हमें मेरी छोटी बेटी चन्द्रवती ने फोन पर दी थी। मुझे नहीं पता कि मेरी बेटी ममता को जहर देकर किसने मारा। मेरी बेटी के पति तेजवीर ससुर नानकराम सास श्रीमती मुन्नी देवी ने मेरी बेटी को जहर देकर नहीं मारा। यह लोग निर्दोष है।"

(emphasis by Court)

45. In her cross-examination, PW-3 has testified:

"घटना की खबर सुनकर मैं व मेरे परिवार वाले अपनी बेटियों की ससुराल गंगागढ़ गये थे। गंगागढ़ में जाकर हमने देखा कि मेरी बेटी ममता की तबीयत ज्यादा खराब थी। थोड़ा-2 बोल पा रही थी। हमारी अपनी छोटी बेटी चन्द्रवती से बातचीत हुई तो रोने धोने लगी। मेरी बेटी के ससुराल वाले घर पर मौजूद थे। हमें देखकर वहाँ से चले गये। फिर हम लोग बेटी ममता को इलाज के लिए अलीगढ़ अस्पताल ले जा रहे थे कि अतरौली के पास उसने दम तोड़ दिया।"

यह बात सही है कि इस घटना के बाबत मेरे पति ने मेरी बेटी ममता के पति सास ससुर व ननद के खिलाफ मुकदमा लिखाया था। यह बात सही है कि मुल्जिमान से हमारा समझौता हो गया हो। यह बात गलत है कि फैसला हो जाने के कारण मैं बयान बदल रही हूँ। मेरी बेटी बीमार नहीं रहती थी और ठीक ठाक थी। मेरी बेटी के साथ जो भी घटना घटी वह उसकी ससुराल में घटी थी। घटना के समय मैं मौजूद नहीं थी। इसलिये मैं नहीं बता सकती कि उसको जहर देकर किसने मारा था। यह भी नहीं बता सकती कि उसके पति सास ससुर व ननद ने जहर दिया था या अपने स्वयं खाया था। मुझे इस बात की जानकारी है कि मेरी बेटी का पति इस मुकदमा में काफी दिनों से जेल में है और मेरी बेटी के सास ससुर भी जेल गये थे लेकिन मैंने आज तक किसी पुलिस अधिकारी प्रशासनिक अधिकारी या किसी व्यक्ति को यह बात लिखित या मौखिक रूप से कभी किसी को नहीं बतायी कि मेरी बेटी के ससुराल वाले इस मुकदमे के मुल्जिमान कतई निर्दोष है। उन्होंने मेरी बेटी को जहर देकर नहीं मारा। आज मैं यह बात सर्वप्रथम कह रही हूँ। यह बात सही है कि इस मुकदमा के मुल्जिमान ने जब न्यायालय में जमानत प्रार्थना पत्र प्रस्तुत किये थे तो मेरे पति ने जमानत का अपने अधिवक्ता से विरोध करवाया था।

घटना के समय मेरी बेटी चन्द्रवती घटनास्थल पर मौजूद थी जिसने घटना अपनी आँखों से देखी थी तथा हमें सूचित किया था। यह कहना गलत है कि चन्द्रवती के भविष्य की खातिर हम लोगों ने उसके ससुराल वालों से इस मुकदमा में फैसला ना लिया हो और आज मैं मुल्जिमान को बचाने के लिए उनसे मिलकर कानूनी सलाह मशवरा से झूठी गवाही दे रही हूँ और सही बात को छिपा रही हूँ।"

(emphasis by Court)

46. Upon cross-examination by the defence, PW-3 stated:

"मेरी बेटी ममता अक्सर बीमार रहती थी। दवाई चलती रहती थी मेरी बेटी ममता का इलाज उसके ससुरालवालों द्वारा कराया जाता था। मेरी बेटी ममता गुस्सैल व चिड़चिड़े स्वभाव की थी जरा-2 सी बातों पर मरने को तैयार हो जाती थी। शादी से पहले भी कई बार उसने आत्महत्या का प्रयास किया था।"

47. The testimony of this witness is, by no means, mystifying, as suggested by the learned Counsel for the appellants, which creates doubt about the prosecution case. It reveals more than it hides. It is a crude attempt by PW-3 to defeat justice in the interest of her other daughter, who is married in the appellants' family to the other son. This appears to be the motive that has driven the deceased's family into compromising with the appellants, that is to say, compromise to say falsehood in Court and save the appellants from law's punishment.

48. We have carefully looked into the testimony of PW-3. Like PW-2, her examination-in-chief starts with a telltale banner that the witness is telling falsehood to save the appellants. This witness has said that she did not know who poisoned her daughter Mamta to death. She then says that Mamta was not poisoned by her husband Tejveer, father-in-law Nanakram and mother-in-law Munni Devi. These persons are innocent. Now, as in the case of PW-2, no one would have put a leading question to this witness or given her a suggestion of the kind, inviting her to say that the appellants were innocent. The tone and tenor of her examination-in-chief shows that she was motivated to speak falsehood in the appellants' favour and save them from punishment.

49. This witness has said in her cross-examination that upon receiving news of the occurrence from her daughter's in-laws' place, the family proceeded to Gangagarh. There, they saw that Mamta was very unwell. She could speak feebly. The deceased's in-laws were present, but upon seeing the parents and the deceased's family members, they went away. Thereupon, the witness says that they (Mamta's parents and family) were conveying her to the Aligarh hospital, when she died on way at Atrauli.

50. These facts show that some violence or crime happened, affecting Mamta, and it was not that she was just unwell as attempted to be shown by this prosecution witness. Else, there was no reason to describe whatever befell Mamta in the words, 'ghatna ki khabar sunkar mai va mere parivar vaale.....'. The testimony of PW-3 is recorded in Hindi, which she speaks. No Hindi speaking person would, by any stretch of imagination, describe a disease as an occurrence (ghatna). It is only a crime, that is described in these words. This part of the witness' testimony is very relevant to the prosecution, which we are bound to take note of.

51. The further telltale fact is that Mamta's in-laws turned face and left, though there, when they saw her parents and family arrive. This, by no means, is a natural reaction, if their daughter-in-law was unwell and her parents had come to seek her welfare. This reaction is telltale of a belligerent mind and a guilty conscience, full of hatred for the dying victim. If the deceased was ill, as the appellants urge, on account of which she died, there was no reason for the informant and his family, as PW-3 says, to rush her to a hospital at Aligarh for medical aid. If Mamta was sick, her in-laws would have taken her to hospital, or at least, accompanied Mamta's parents to Aligarh for the purpose of treatment. This was not so at all.

52. The further telltale fact in PW-3's testimony is that she acknowledges that the informant had compromised with the appellants. There is nothing said what the compromise was about and in what circumstances was it entered into. It also does not disclose what was the consideration for the compromise and what the informants were supposed to do in terms of the compromise between parties. Obviously, the compromise was to save the appellants from laws' punishment, the possible consideration for the informant being that their other daughter was still married and staying in the appellants' family. A conviction for the appellants, if this witness and the other family members of Mamta, who have testified exculpatory, spoke truth, would have spelt doom for the other daughter's marriage and ruined her matrimonial life. There could be some other consideration as well, which we do not wish to embark upon to inquire, but of this we are sure that the witness in ostensibly saying that the appellants were innocent and did not poison her daughter to death, is speaking falsehood. The facts that that she has otherwise said clearly indicate that it was the appellants, who committed the crime that she has described as an 'occurrence', leading the deceased's family to rush to her in-laws and endeavour to reach her to hospital.

53. A further look at this witness' evidence in her cross-examination shows that she repeatedly refers to whatever happened to her daughter as an occurrence (ghatna) and says that when the occurrence happened, she was not present there. She has gone to the extent of saying that she does not know who poisoned her to death. She has further on testified that she could not say if her daughter's husband, father-in-law, mother-in-law or sister-in-law gave her poison or she consumed it herself. It is then said by this witness that she knows that her daughter's husband is in jail in

connection with this case and her father-in-law and mother-in-law too went to jail. PW-3 then says in her cross-examination that she has never said it to a police or an administrative officer, either in writing or orally, that the appellants were utterly innocent, and that they had not poisoned her daughter. She also acknowledged that it was for the first time that she was speaking exculpatory in her dock evidence. The most telltale piece of testimony, that comes from this witness is to the effect that it was correct that the appellants, when they applied for bail, the witness's husband, that is to say, PW-1 got the bail plea opposed through his Counsel. This part of the evidence of PW-3 makes it vivid, as already said by us differently, that she is speaking exculpatory for formality's sake, motivated by the so-called compromise between parties. Else, the facts that she has testified to are not at all consistent with the appellants' innocence.

54. PW-3 has acknowledged in this part of her cross-examination the fact that her daughter was poisoned to death. She did not know whether her husband or in-laws poisoned her or she consumed it herself. This testimony makes it vivid that the feeble attempt by other witnesses, either to remain elusive about how Mamta died, or say that she died on account of some ailment, is palpably false. PW-3 clearly shows that she was aware that Mamta died on account of poisoning. She has endeavoured to salvage the situation for the appellants by saying that she did not know who poisoned Mamta, whether it was her husband or in-laws, or she consumed it herself.

55. It would also be apposite to notice the testimony of the fourth witness of fact, that is to say, PW-4 Banti Singh, the deceased's brother. In his examination-in-chief, PW-4 has testified to the following effect:

"मेरी बहन ममता की मृत्यु 30.7.2019 को जहर पीने से हो गयी। घटना की सूचना हमें मेरी छोटी बहन चन्द्रवती ने मेरे पिता को दी थी। मेरी बहन को उसके पति तेजवीर, सास मुन्नी देवी व ससुर नानकराम व ननद रामा ने जबरन जहर नहीं दिया। और न ही जहर देकर मेरी बहन को मारा।"

(emphasis by Court)

56. The witness was declared hostile and cross-examined by the prosecution. In his cross-examination, PW-4 has stated thus:

"घटना की खबर सुनकर हम सभी लोग अपनी बहनो की ससुराल ग्राम गंगागढ़ पहुँचे थे। घटना का सारा हाल चन्द्रवती ने हम लोगो को बता दिया था। फिर हम लोग ममता को इलाज के लिए अलीगढ़ ले जा रहे थे कि रास्ते में मेरी बहन ममता ने दम तोड़ दिया। रास्ते में भी हमारी ममता व चन्द्रवती से घटना की बाबत बातें होती गयी थी।

ममता की मृत्यु के बाद इस घटना की रिपोर्ट मेरे पिता चोखेलाल ने मुझसे बोल-2 कर लिखायी थी। जो मेरे पिता ने बोला था वही मैंने तहरीर में लिख दिया था। फिर मैंने तहरीर अपने पिता को पढ़कर सुनायी तब मेरे पिता के उस पर अपने हस्ताक्षर कर थाना रामघाट पर दी थी। वह असल तहरीर आज पत्रावली पर प्रदर्श क-1 के रूप में उपलब्ध है जो मेरे लेख में है।

यह बात सही है कि घटना के समय मेरी छोटी बहन चन्द्रवती मौजूद थी और उसने सारी घटना देखी थी। यह सही है कि मुल्जिमान से हमारा राजीनामा हो गया है लेकिन राजीनामा के कारण आज मैं झूठी गवाही देकर बयान दे रहा हूँ यह गलत है।

मुझे इस बात की जानकारी है कि इस मुकदमा में मेरे बहनोई तेजवीर जेल में है और मेरी बहन के सास ससुर भी जेल गये थे।

यह सही है कि मैंने आज तक कही भी किसी भी आला अधिकारी या व्यक्ति को यह नहीं बताया कि मेरी बहन के ससुरावाले इस मुकदमा में निर्दोष हैं। आज मैं सर्वप्रथम यह बात न्यायालय में कह रहा हूँ।"

(emphasis by Court)

57. This witness too has come out with that odd piece of testimony in his examination-in-chief, where, not led by a cross-examiner or under any kind of a suggestion, he has spoken impromptu that the husband, mother-in-law and father-in-law of his deceased sister did not forcibly make her ingest poison, nor did they kill her that way. As already said earlier in relation to the testimony of another witness, no one could have led PW-4 to speak exculpatory about the appellants in the manner he has done in his examination-in-chief. In the examination-in-chief, though evidence is led by the party producing the witness, the prosecution in this case, no leading questions are permissible to be put to one's own witness. The learned Counsel for the State, therefore, would never have asked PW-4 if the deceased was killed by her husband, father-in-law and mother-in-law by forcing her to consume poison. That kind of a question would never have been allowed by the Court. All that would have been asked of this witness by the prosecution is how did Mamta die. If it were a forthright case of a false prosecution, where the witness did not support, he would not speak inculpatory facts, but say whatever he knew of the circumstances attending his sister's death. There would never be in the examination-in-chief an odd assertion of the kind that her husband or the mother-in-law and the father-in-law did not kill her. This could have happened if PW-4 was tutored and motivated to speak in this fashion, which is apparently the case here.

58. In his cross-examination, PW-4 has endorsed the fact that Mamta was alive when her parents and brother etc. reached her in-laws' place. She was being conveyed to Aligarh, when she died on the way. This falsifies the informant's case that Mamta was already dead when her family reached her in-laws. This witness had particularly said that on way to the hospital, the family had communications with Mamta and Chandrawati about the occurrence. Now, in the next lap of his cross-examination, this witness has said that he scribed the FIR on the dictation of his father, where there are definitive allegations against the in-laws of forcing the deceased to consume poison. The witness has also testified to the fact that he read out the FIR that had been dictated to him and after hearing its contents, his father appended his signature and handed it over to Police Station Ramghat. This witness too looked into the contents of the FIR, Ex. Ka-1, and affirmed it to be the same document.

59. PW-4 has further on said that his younger sister, Chandrawati, was present when the occurrence took place and she saw it all happen before her eyes. It is further said by this witness that it is trite to say that the informant's side had compromised with the appellants, but he also said that it is not on this account that he was falsely testifying in their favour. The last part of this witness's cross-examination that sheds lights on the case is, where the witness says like others, that before the commencement of trial, he had never revealed the fact to any higher officer (a reference to the Police or administrative officers perhaps) that the appellants were innocent and had no involvement in his sister's case. This witness, PW-4, was also cross-examined by the defence, where he has spoken thus:

"मैं घटना के समय घटनास्थल पर मौजूद नहीं है। मैंने कोई घटना नहीं देखी है। सुनी हुई बातों के आधार पर ही मैं गवाही दे रहा हूँ। मेरी बहन अक्सर बीमार रहती थी। और बीमारी के कारण वह चिढ़ चिढ़े स्वभाव की हो गयी थी। काफी दवाई गोली खाती थी। बीमारी का इलाज मेरी बहन के ससुरालवालों द्वारा कराया जाता था। अधिक बीमार रहने के कारण वह डिप्रेशन में रहने लगी।

हमारी बहन के ससुरालीजन के घर पर खेती का कार्य होता है। घर पर कीटनाशक दवाई खेती में लगाने हेतु रखी रहती है। बीमारी से तंग आकर और बच्चा पैदा न होने के कारण मेरी बहन ने स्वयं घर पर रखी कीटनाशक दवायी पी और उसकी उससे मृत्यु हो गयी।"

60. This witness is admittedly not an inmate or a native of the house, where the deceased lived with her in-laws and her sister. Also, it is not in dispute that he did not see the occurrence that that led to Mamta's death, which had happened within the four-corners of her matrimonial home. The occurrence had been seen by the deceased's and this witness's sister, PW-2, also married in the same home to a brother of Mamta's husband. PW-4 is, therefore, a witness of whatever he saw upon reaching his sister's in-laws after receipt of the SOS call that PW-2 put through to her father, PW-1. Therefore, his testimony is relevant about the fact that the deceased was alive when her family, comprising her parents and brother reached her matrimonial home.

61. It is also relevant about anything that the deceased said about the cause and circumstances of her death, before she died on way to the hospital. After hearing all what the deceased shared with the family while at her in-laws' place or on way, as also whatever they heard from this witness' other sister, PW-1 dictated an FIR, which this witness scribed and has testified to the fact that he scribed it accurately. The contents of the FIR are inculpatory and speak about a precise case of Mamta's in-laws, forcing her to consume poison. This witness, therefore, further establishes the accuracy of the FIR version. PW-4, particularly, endorses the fact that the informant and his family had compromised with the appellants. The mere assertion that he was not telling falsehood in Court because of the compromise, cannot be accepted on his word.

62. The totality of circumstances have to be seen. The stance in the FIR, which this witness had scribed and also proved in Court, the statements to the Police, which includes this witness' statement and the changed stand in Court, are suggestive of some extraneous consideration, working in the mind of this witness to resile from the prosecution case. The fact that this witness acknowledged that he never told any higher officer about the fact that Mamta's in-laws were innocent, shows the dock evidence of this witness to be a pure afterthought and the result of some unholy bargain between the informant and the appellants. In the case of this witness also, one finds a pointed endorsement of the prosecution case, which the witness is trying to hide in his quest for some other goal, that clearly detracts from serving the cause of justice.

63. The following inculpatory facts emerge from this witness' testimony: the witness along with his parents rushed to Mamta's in-laws' place upon hearing from his younger sister, what he describes as an occurrence; secondly, the fact that Mamta was alive when this witness along with the first informant and his mother reached her in-laws' place; thirdly, the fact that Mamta spoke to this witness, the informant and other family members at her in-laws' place and also on way to hospital before she died, about the incident; fourthly, the fact that this witness' other sister, Chandrawati, also an inmate of the same house, spoke about the circumstances of the occurrence to this witness and other members of the family at her in-laws' place and on way, while taking Mamta to the hospital; fifthly, the fact that this witness affirmed the contents of the FIR, which he scribed

on his father's dictation; sixthly, the fact that the FIR carries robust allegations about the appellants' committing the offence in the manner described there; seventhly, the fact that the witness acknowledged that a compromise between the informant and the appellants had taken place; and, eighthly, the fact that this witness has stated that he never informed any higher officer that Mamta's in-laws were innocent, though he knew that her husband was in jail and the father-in-law and the mother-in-law had been to jail.

64. There is an added piece of evidence that this witness has attempted to offer, when cross-examined by the appellants. He has been apparently cross-examined to realize the full fruits of the compromise. In his cross-examination by the appellants, he has introduced the case about Mamta committing suicide by consuming some insecticide kept at home, on account of being frustrated with her ailment and the fact that she could not bear a child. Now, this is not a defence, which the appellants have offered in their testimony under Section 313 Cr.P.C. At no stage of proceedings, this case has been taken by the appellants. The cross-examination of PW-4 by the appellants while, on the one hand, cannot be regarded as their defence, but, on the other, it shows that the witness was deliberately endeavouring to save the appellants from the penalties of law on account of the compromise between parties. This fact further works to establish the appellants' complicity, rather than save them from the consequences of the offence.

65. It would be relevant here to take note of the testimony of the autopsy doctor, who has testified as PW-5, with necessary reference to the autopsy report, Ex. Ka-2, and the report from the Forensic Science Laboratory regarding their findings about the preserved viscera sent to them for analysis. PW-5, Dr. Ajay Kumar, who carried out the postmortem examination, has testified in his examination-in-chief as follows:

"विसरा संरक्षित करने हेतु अमाशय, छोटी आंत, यकृत, पित्ताशय गुर्दा प्लीहा के टुकड़े लेकर संग्रहित किया गया।

शव विच्छेदन के पश्चात शव विच्छेदन आख्या, वस्त्र, विसरा 6 जार सील मोहर कर शव को लाये सिपाही रिचा के सुपुर्द किया गया था। पोस्टमार्टम रिपोर्ट मेरे द्वारा मेरे लेख व हस्ताक्षर मे तैयार की गयी थी। जिस पर डा० अनुराग यादव के भी हस्ताक्षर अंकित है। शव विच्छेदन रिपोर्ट सं. 689/2019 प्रपत्र सं. 9A/1 ता 9A / 3 के रूप मे पत्रावली पर शामिल है। पोस्ट मार्टम रिपोर्ट पर प्रदर्श क 2 डाला गया।

मृतका की मृत्यु कीटनाशक दवाई के सेवन से होना सम्भावित है। इस सम्बन्ध मे पत्रावली पर विधि विज्ञान प्रयोगशाला गाजियाबाद उत्तर प्रदेश की रिपोर्ट उपलब्ध है। मृतका की मृत्यु दिनांक 30.7.2019 को होना सम्भव है।"

(emphasis by Court)

66. PW-5, in the relevant part of his cross-examination, has stated:

"P.M. के लिए आया शव सील बन्द था सील मैने देखी थी ठीक थी चोट नं. 1,2,3,4 मृतका के इलाज के दौरान इनजेक्शन वगैरा देने से आना सम्भव है। चोट नं. 3 व 4 जो टेप लगी मैने देखी है वह भी इलाज के दौरान आना सम्भव है। इन चोटो के अलावा शरीर पर अन्य कोई चोट नही थी। मृतका के शरीर पर जो चोटें थी वह डाक्टरी इलाज कराने के दौरान आती है।

जो मृत्यु का सम्भावित समय लिखा 3/4 दिन लिखा है उसमे से 12 से 18 घंटे का अन्तराल दोनो तरफ हो सकता है।"

67. A reading of the doctor's examination-in-chief shows that with reference to the report submitted by the Forensic Science Laboratory, he has opined that it is probable that the deceased died on account of consumption of the chemical insecticide reported by the FSL. It is also opined by the doctor in his examination-in-chief that it was possible for the deceased to have died on 30.07.2019. In his cross-examination, the doctor was not at all questioned if the deceased did not die of poisoning. Rather, it appears that various injuries that were found on her dead body, were subject matter of a searching cross-examination to elicit opinion if those could have been the cause of her death. The doctor's cross-examination shows that the injuries, that have been noticed on the deceased's body, were said to have been the possible outcome of medical treatment. Not much weight can be attributed to it, because the deceased did not apparently receive any medical attention while with her in-laws and died on way to a hospital at Aligarh, where she was being conveyed by her parents and family. It has to be noticed that neither in the autopsy report nor in his testimony in the dock, the doctor has attributed any of the ante-mortem injuries as the cause of Mamta's death. The cross-examination reveals that the doctor has indeed not been subjected to a more rigorous cross-examination to ascertain the cause, the nature and the effect of the ante-mortem injuries that he noticed on the deceased's body. At the same time, he was not much challenged about his opinion that the deceased died of poisoning from the insecticide, that was opined to be possible due to organochloro insecticide. The postmortem report, according to its apparent tenor, does not attribute Mamta's death to any of the ante-mortem injuries. In the absence of any facts elicited during the doctor's cross-examination by the appellants, there is little doubt that the cause of Mamta's death was poisoning due to the organochloro insecticide.

68. We may pause here to remark that there is no case, at any stage, by the appellants that Mamta consumed poison of her own, committing suicide. This is not their case in the statement under Section 313 Cr.P.C. Rather, their defence is that the deceased would stay ill and sought treatment from sundry doctors. She would stay perplexed about it. It was urged by the learned Counsel for the appellants that the defence clearly shows that the deceased committed suicide, because she was distressed by disease. We are afraid that, that is not the case at all. If the appellants had to take a case that the deceased committed suicide, they had to clearly state the fact and enumerate the circumstances, in which she died by suicide. In the absence of a case of suicide coming forth from the defence, a mere assertion in the background of a compromise between parties that the witness did not know if Mamta was poisoned by her husband and in-laws or consumed the poison herself, would not avail the appellants. The evidence of all the four witnesses of fact and the medico-legal evidence put together, distinctly carry inculpatory facts, which at least prove the prosecution case beyond doubt to the extent that the appellants would be obliged to discharge their evidential burden about the fact as to how Mamta died.

69. It hardly needs gainsaying that before evidential burden about the fact as to how Mamta died is discharged, the necessary explanation should have been furnished about it by the appellants, as already remarked, in their statements under Section 313 Cr.P.C. Relieving the appellants from the rigours of that requirement and to ensure a fair trial, that would lead to a just decision, the minimum, that can be said about the appellants' obligation, is to introduce some kind of evidence about the fact as to how Mamta died. Else, the inculpatory part of the testimony of PW-1 to PW-4 and the medico-legal evidence, comprising the postmortem report, Ex. Ka-2, the FSL Report,

bearing Ex. Ka-12, and the testimony of PW-5 for reasons hereinbefore given, would prove the prosecution case beyond reasonable doubt.

70. On the other hand, if the appellants had led some evidence about the circumstances leading to Mamta's death, consistent with their innocence, this Court would be bound to consider the evidence led by the prosecution together with the evidence led by the appellants in order to conclude, if indeed the prosecution have proved their case beyond reasonable doubt. Why this is so, shall be considered next.

71. While in a criminal prosecution, the burden of proof in the sense of establishing the entire case beyond reasonable doubt rests on the prosecution, once the prosecution adduces sufficient evidence to establish the case by that standard, if unrebutted, evidential burden shifts on the defence to adduce some evidence to dispel the prosecution. If evidential burden by way of leading some evidence to exculpate is not discharged, the Court may accept the evidence offered by the prosecution, where on the unrebutted view of it, the prosecution case is established beyond reasonable doubt. Onus probandi or the burden of proof envisaged under Section 102 of the Indian Evidence Act, 1872 is a burden much different from that under Section 101. Whereas Section 101 speaks of burden in the sense of an obligation upon the party to prove the case as a whole by whatever standard of proof applicable, depending upon the nature of proceedings, evidential burden is either the initial obligation or one shifted during trial by the other-side's evidence upon a party to lead evidence and put it in scales, which would then oblige the Court to judge on a consideration of all evidence if the party, bearing the burden of proof under Section 101, has discharged it and established their case or failed. If, however, the initial evidential burden or one shifted during trial is not discharged at all, there is no occasion for the Court to judge much, as the party in default of evidential burden would fail on account of their inability to produce some evidence.

72. This is not a case of failure to discharge burden to prove facts, specially within the appellants' knowledge envisaged under Section 106 of the Evidence Act. It is a case with a little difference. Section 106 would be attracted if there were no witness other than the appellants' family members to see the occurrence. Here, there was an eye untainted by familial bondage to see and speak the truth in PW-2, the deceased's sister. She has, however, been influenced by extraneous considerations of a compromise, but nevertheless testified to facts that are sufficiently inculpatory and put together with the evidence of other witnesses as also the medico-legal evidence, prove the prosecution beyond reasonable doubt, unless the appellants adduced evidence to render their guilt improbable. The appellants have not done so; not even offered an explanation about the inculpatory facts and evidence appearing against them.

73. The above conclusions of ours are fortified by the remarks of the Supreme Court in **State of Madhya Pradesh v. Balveer Singh, (2025) 8 SCC 545**, which, though a case in which Section 106 of the Evidence Act was attracted, analyzed principles on wider ground, including the one which applies here. In **Balveer Singh** (supra), it has been observed by the Supreme Court:

“88. To recapitulate the foregoing: What lies at the bottom of the various rules shifting the evidential burden or burden of introducing evidence in proof of one's case as opposed to the persuasive burden or burden of proof i.e. of proving all the issues remaining with the prosecution

and which never shift is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand and it is therefore for the accused to give evidence on them if he wishes to escape. Positive facts must always be proved by the prosecution. But the same rule cannot always apply to negative facts. It is not for the prosecution to anticipate and eliminate all possible defences or circumstances which may exonerate an accused. Again, when a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all the other possible intentions. If the accused had a different intention that is a fact especially within his knowledge and which he must prove (see Professor Glanville Williams-Proof of Guilt, Ch. 7, p. 127 and following) and the interesting discussion-Para 527 negative averments and Para 528 – “require affirmative counter-evidence” at p. 438 and foil, of Kenny's Outlines of Criminal Law, 17th Edn. 1958.

89. But Section 106 has no application to cases where the fact in question, having regard to its nature, is such as to be capable of being known not only to the accused but also to others, if they happened to be present when it took place. The intention underlying the act or conduct of any individual is seldom a matter which can be conclusively established; it is indeed only known to the person in whose mind the intention is conceived. Therefore, if the prosecution has established that the character and circumstance of an act suggest that it was done with a particular intention, then under Illustration (a) to this section, it may be assumed that he had that intention, unless he proves the contrary.

90. A manifest distinction exists between the burden of proof and the burden of going forward with the evidence. Generally, the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence, which if believed by the court, would convince them of the accused's guilt beyond a reasonable doubt, the accused, if in a position, should go forward with countervailing evidence, if he has such evidence. When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one. He is not required to do so even though a prima facie case has been established, for the court must still find that he is guilty beyond a reasonable doubt before it can convict. However, the accused's failure to present evidence on his behalf may be regarded by the court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might arise therefrom. Although not legally required to produce evidence on his own behalf, the accused may therefore as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution [see: Balvir Singh v. State of Uttarakhand [Balvir Singh v. State of Uttarakhand, (2023) 16 SCC 575] and Anees v. State (NCT of Delhi) [Anees v. State (NCT of Delhi), (2024) 15 SCC 48 : 2024 SCC OnLine SC 757 : 2024 INSC 368] .]

(emphasis by Court)

74. We would now proceed to examine if in the present case, we disregard the testimony of all the witnesses, including the eye-witness, who had attempted to speak exculpatory and been declared at least formally hostile and cross-examined by the prosecution, can we still consider the

case as one based on circumstantial evidence and evaluate the worth of the prosecution case accordingly.

75. In a Bench decision of this Court in **State of U.P. v. Vijay Prakash Sharma, 2024 (12) ADJ 256 (DB) (LB)**, it was remarked:

“28. Before we proceed further, it would be apposite to remind ourselves that this is a case where eye-witnesses, namely, P.W.1-Uday Swaroop Bhardwaj, who is informant of the case, his friend P.W.2-Rajeev Dixit and his watchman P.W.3-Bharat, did not support the prosecution version of murder of two persons, namely, Krishna Kumar Gupta and his son Kapil Gupta and all of them turned hostile. Prosecution seeks to bring home the charge levelled on the appellants by relying on certain circumstances. No doubt the conviction can be based on circumstantial evidence inspite of hostility of eye-witnesses, provided such circumstantial evidence stood the well-settled test reiterated by the Apex Court by a catena of pronouncements time and again for sustaining conviction of accused. In this connection, we may refer the case of *Paramjeet Singh @ Pamma v. State of Uttrakhand*, (2010) 10 SCC 439, wherein all the seven eye-witnesses have turned hostile, it was observed by the Apex Court that the case is to be decided keeping in mind that as all the eye-witnesses turned hostile, it remained a case of circumstantial evidence.”

76. Now, the law regarding circumstantial evidence is settled way beyond doubt and the standard is exacting. A case founded on circumstantial evidence is required to be established by the prosecution in the manner that the inculpatory circumstances should form so complete a chain as to exclude any other hypothesis, but one leading to the inference of guilt for the accused. Reference in this connection may be made to *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116.

77. We have already examined the evidence appearing in this case in one form or the other and it would be a fruitless exercise to go through it over and over again for all the details of it.

78. Keeping aside the testimony of the eye-witness, who saw the occurrence, to wit, PW-2, the following circumstances are well established on the basis of evidence on record: the fact that the deceased suffered some injury while in her matrimonial home; the fact that the occurrence relating to the injury was serious and alarming enough to make her younger sister, PW-2, put a phone call through to her father, PW-1, asking him to come over to the deceased's in-laws; the fact that when the deceased's father and other family members reached her in-laws, she was utterly sick and in such state of health, that PW-1 and other family members thought that they ought rush her to a hospital at Aligarh from her native village in District Bulandshahr; the fact that notwithstanding the precarious condition of her health, the deceased's in-laws did not take her to hospital or call medical aid; the fact that the deceased's in-laws, upon seeing her father and family arrive, left their house and went away; the fact that while being conveyed to the hospital at Aligarh from her in-laws' village in District Bulandshahr, the deceased passed away at Atrauli; the fact that immediately upon the deceased passing away, the first informant, PW-1, lodged an FIR with the Police, mentioning the deceased's words while alive to the effect that she had been forced to ingest poison by her husband, mother-in-law, father-in-law and sister-in-law; the fact that in the autopsy report, the doctor found the brain congested, besides the small intestine, the large intestine, the

liver, including the gallbladder and the spleen congested, but not being able to ascertain the cause of death, preserved the viscera for histopathological examination; the fact that in the report from the Forensic Science Laboratory, it was found upon an examination of the viscera that there was organochloro insecticide poison present; the fact that the deceased clearly died an unnatural death in consequence of some injury sustained in her matrimonial home, where the cause of death opined is poisoning; the fact that the appellants in their statements under Section 313 Cr.P.C. or at any other stage, including investigation or their cross-examination, have not come up with a plausible explanation about circumstances, consistent both with the deceased's death and their innocence or non-involvement; and, the fact that the deceased's last rites were performed at her matrimonial home and not her in-laws, which would inevitably have been the case, if her death was natural and free from blemish for the appellants.

79. All these circumstances put together are well established on record and not in doubt or the realm of infirmity of any kind about their existence. The circumstances considered together form a complete chain that exclude any other possibility, except that of the appellants' guilt, in our considered opinion. However, as remarked earlier, upon establishment of these circumstances, the prosecution definitively shifted burden upon the appellants to produce evidence under Section 102 of the Evidence Act, that could still demonstrate their innocence, consistent with these circumstances. If the appellants had produced some evidence to demonstrate their innocence, pitted against these circumstances appearing against them, we would have to consider the totality of the picture to draw our conclusions, if the prosecution have been successful in establishing their case beyond all reasonable doubt. Since no evidence or even a case in defence to these circumstances has been put forward by the appellants, the prosecution's burden must be held discharged and the case against the appellants proved beyond all reasonable doubt. The conclusion, therefore, is that both on the basis of evidence of witnesses, notwithstanding their hostility, and ignoring that evidence, by the circumstances alone, the prosecution have successfully established their case against the appellants beyond all reasonable doubt. The Trial Judge has more or less reached the same conclusion for her own reasons, which may be slightly different than ours. However, we must remark that we do not agree with the learned Trial Judge that this is a case, where Section 106 of the Evidence Act could be invoked at all. Therefore, we agree with the conclusions that the learned Trial Judge has reached as also broadly, her reasoning to reach those conclusions.

80. In the result, these appeals fail and are **dismissed**.

81. In Criminal Appeal No.5320 of 2021, Nanakram and Munni are on bail. They will surrender within **four weeks** of date before the learned Chief Judicial Magistrate, Bulandshahr in order to serve the sentences awarded to them. Their bail bonds shall stand cancelled and sureties discharged.

82. Let this order be communicated to the learned Trial Judge as well as the learned Chief Judicial Magistrate, Bulandshahr by the Registrar (Compliance).

83. Let the Trial Court record be sent down at once.

(2026) 1 ILRA 100
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 16.01.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE MANJIVE SHUKLA, J.

Custom Appeal No. 19 of 2025
 &
 Connected with other cases

Commissioner Of Customs (Preventive) Lucknow ...Appellant
Versus
Shri Sarad Chand Agrahari @ Sharad Chand Agrahari ...Respondent

Issue for consideration

Mandates of sec 138-B of the Customs Act, 1962

Headnotes

The Customs Act, 1962-Section 138-B - no specific requirement for allowing cross-examination- not mandate that in each and every case, cross-examination is required-incumbent upon the noticee to seek cross-examination of the witnesses-if such a request is made-it is mandatory for the authorities to provide such cross-examination-if such cross-examination is not possible- the adjudicating authority in his order has to specifically note down the reasons -such reasons could be as specified in Section 138-B -at no point was a request made for cross-examination -therefore there was no question of violation of the principles of natural justice-impugned order set aside-Tribunal to hear the matter de novo. **Appeal allowed.** (E-9)

Case Law Cited

1. Union of India v. Padam Narain Agarwal (2008) 231 E.L.T. 397 (S.C.)
2. Surjeet Singh Chhabra v. Union of India (1997) 89 E.L.T. 646 (S.C.)
3. KTMS Mohammed Vs UOI (AIR 1992 SC 1831)
4. Devi Dayal Vs. Union of India reported in 2002 (144) ELT 502 (Del.)
5. Kannungo & Co. Vs. Commissioner of Customs, Calcutta and others reported in 1983 (13) ELT 1486 (SC)
6. Lakshman Exports Limits Vs. Collector of Central Excise reported in 2002 (143) ELT 21 (SC);
7. Sushil Aggarwal Vs. Principal Commissioner of Customs reported in (2025) 30 Centax 482 (Del.);
8. Surjeet Singh Chhabra Vs. Union of India reported in 1997 (89) ELT 646 (SC);
9. Naresh J. Sukhwani Vs. Union of India reported in 1996 (83) ELT 258 (SC)
10. Jindal Drugs Pvt. Ltd. Vs. Union of India reported in 2016 (340) E.L.T. 67 (P&H),
11. Andaman Timber Industries Vs. Commissioner of C.Ex. Kolkata-II reported in 2017 (50) STR 93
12. SC and Commissioner of Central Excise, Meerut-I Vs. Parmarth Iron Pvt. Ltd reported in 2010 (260) E.L.T. 514 (All)
13. M/S. Nepa Agency Co. Pvt. Ltd & Anr vs Union Of India & Ors reported in (2015) SCC Online Cal 3597
14. A.S. Motors Private Limited v. Union of India and Others reported in (2013)) 10 SCC 114
15. Maharashtra State Board of Secondary and Higher Secondary Education v. K. S. Gandhi reported in (1991) 2 SCC 716
16. S. Motors Private Limited v. Union of India and Others reported in (2013)) 10 SCC 114

List of Acts

The Customs Act, 1962

List of Keywords

Section 138-B, principles of natural justice, cross-examination

Appearances of parties

Counsel for Appellant(s) : Dheeraj Srivastava

Counsel for Respondent(s) : Jameel Ahmad

(Delivered by Hon'ble Shekhar B. Saraf, J.)

1. Heard Shri Dheeraj Srivastava, learned counsel appearing for the appellants and Shri Jameel Ahmad, learned counsel appearing for the respondents.

2. The present custom appeals under Section 130 of the Customs Act, 1962 [hereinafter referred to as 'the Act, 1962'] arises out of a common order dated April 24, 2025 passed by the Customs, Excise & Service Appellate Tribunal, Allahabad, Regional Bench - Court No. 1. Since the issues involved in all these appeals are similar in nature and the decision in Custom Appeal No. 19 of 2025 would have a bearing upon all the appeals, we are deciding the specific questions of law in C.U.S.A. No. 19 of 2025.

3. In Custom Appeal No. 19 of 2025, the following substantial questions of law have been raised by the Revenue department:-

"(1.) Whether the CESTAT was justified in applying the provisions of Section 138B of the Customs Act to the 'adjudication proceedings', so as to hold that statements of co-accused cannot be relied upon and thus the proceedings are vitiated for not following the procedure specified under Section 138B of the Customs Act, 1962?

(2.) Whether the findings of the CESTAT that the statement recorded under Section 108 and retracted later on by the maker cannot be relied upon (without bringing any evidence as to threat, inducement or promise on record) contradicts the law laid down by the Hon'ble Supreme Court in *Union of India v. Padam Narain Agarwal (2008) 231 E.L.T. 397 (S.C.)*, *Surjeet Singh Chhabra v. Union of India (1997) 89 E.L.T. 646 (S.C.)* and *KTMS Mohammed Vs UOI (AIR 1992 SC 1831)* and thus violates the principle of judicial discipline?

(3.) Whether the CESTAT was justified in holding that the goods is not of foreign origin & not smuggled in absence of foreign markings, difference in purity of gold and the fact that seizure has taken place away from area specified under Section 6 of the Customs Act by believing on the uncorroborated and unsubstantiated claim/ story of the Respondent?

(4.) Whether the CESTAT was justified in setting aside (a) the absolute confiscation of gold bars under Section 111 (b), (1) and (m), and (b) the penalty of Rs 50,00,000/- under Section 112(b) and Section 114AA of the Customs Act imposed upon the Respondent by the adjudicating authority under the present facts and circumstances of the case?"

4. Upon perusal of the Tribunal order, the issue that arises before us is as to whether the finding of the Tribunal at Paragraph 22 of the said order is based on material evidence that was

available before the Tribunal. The Tribunal has held that the procedure prescribed under Section 138-B of the Act, 1962 was not followed, as the respondents were not granted an opportunity to cross-examine the witnesses that had been examined by the adjudicating authority. Learned counsel appearing on behalf of the Revenue department has categorically submitted and placed on record documents to indicate that at no point of time did the appellants sought cross-examination of the two persons who were found carrying gold. The Tribunal has come to a finding that Section 138-B mandatorily requires that cross-examination be provided to the noticees in the show cause notice and non-providing of such cross-examination would amount to vitiating the procedure under Section 138-B of the Act, 1962.

5. Learned counsel appearing on behalf of the appellants has relied on the CBIC Master Circular on Show Cause Notice, Adjudication and Recovery-reg., having Circular No. 1053/02/2017-CX dated March 10, 2017 and submits that specifically Paragraph 14.9 states that the adjudicating officer is bound to provide cross-examination, if the noticee makes a request for cross-examination of the person, whose statement is relied upon in the show cause notice. He further relies on a Delhi High Court judgment in *Devi Dayal Vs. Union of India reported in 2002 (144) ELT 502 (Del.)* wherein it has been held that when the noticee had not specifically asked for production of the persons for cross-examination, even though the materials were brought to his notice, the grievance relating to non-observance of principles of natural justice would not appeal to the Court. The Special Leave Petition against the said judgment that was taken up before the Hon'ble Supreme Court was also dismissed by the Hon'ble Supreme Court. He has further relied on several judgments as in the case of *Kannungo & Co. Vs. Commissioner of Customs, Calcutta and others* reported in *1983 (13) ELT 1486 (SC)*; *Lakshman Exports Limits Vs. Collector of Central Excise* reported in *2002 (143) ELT 21 (SC)*; *Sushil Aggarwal Vs. Principal Commissioner of Customs* reported in *(2025) 30 Centax 482 (Del.)*; *Surjeet Singh Chhabra Vs. Union of India* reported in *1997 (89) ELT 646 (SC)*; and *Naresh J. Sukhwani Vs. Union of India* reported in *1996 (83) ELT 258 (SC)* to indicate that there would be violation of the principles of natural justice only when the show cause noticee demands cross-examination and the same is not provided for by the adjudicating officer.

6. Learned counsel on behalf of the respondents / noticees has relied on the judgments of the Hon'ble Supreme Court and various High Courts as in the case of *Jindal Drugs Pvt. Ltd. Vs. Union of India* reported in *2016 (340) E.L.T. 67 (P&H)*, *Andaman Timber Industries Vs. Commissioner of C.Ex. Kolkata-II* reported in *2017 (50) STR 93 SC* and *Commissioner of Central Excise, Meerut-I Vs. Parmarth Iron Pvt. Ltd* reported in *2010 (260) E.L.T. 514 (All)* to support the order passed by the Tribunal wherein the Tribunal has held that the procedure required under Section 138-B of the Act, 1962 has not been followed thereby making the adjudication proceedings vitiated for not adhering to the principles of natural justice.

7. Before entering into the conclusion and analysis, we would like to bring on record Section 138-B of the Act, 1962, which reads as follows:-

"138B. Relevancy of statements under certain circumstances.-(1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or

proceeding under this Act shall be relevant, for the purpose of proving, any any prosecution for an offence under this Act, the truth of the facts which it contains,-

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]"

Conclusion & Analysis

8. Before entering into the merits, one must examine the exposition of law relating to the application of principles of natural justice by the Hon'ble Supreme Court and various High Courts. The High Court at Calcutta in *M/S. Nepa Agency Co. Pvt. Ltd & Anr vs Union Of India & Ors* reported in **(2015) SCC Online Cal 3597** decided on May 13, 2015, while dealing with a similar contention examined the principles of natural justice. The Court held that the denial of cross examination in customs adjudication did not, by itself, constitute a violation of natural justice. The relevant paragraphs of the judgment are quoted herein below:

"(12) On the point of natural justice, Mr. Sarf relied on a decision of the Hon'ble Supreme Court in the case of *M/s. Kanungo & Co.-vs.-Collector of Customs* reported in (1973) 2 SCC 438. Ld. Counsel relied on paragraph 12 of the judgement which is set out hereunder:-

12. We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show- cause notice issued on August 21, 1961, all the material on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our-opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force in the third contention of the appellant.

(13). Mr. Saraf also relied on a decision of the Hon'ble Supreme Court in the case of *A.S. Motors Pvt. Ltd.-vs.-Union of India* rendered in Civil Appeal No. 1517 of 2013 (arising out of SLP (C) No. 2490 of 2008). In the said case the Hon'ble Supreme Court observed that the principles of natural justice have undergone a sea change. Presently the principle of law is that some real

prejudice must have been caused to the complainant. Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of audi alteram partem, the distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The court applies the principles of natural justice having regard to the affected situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a strait-jacket formula."

9. The aforesaid position finds support in the decision of the Hon'ble Supreme Court in *A.S. Motors Private Limited v. Union of India and Others* reported in (2013) 10 SCC 114 as cited in *M/S. Nepa Agency Co. Pvt. Ltd.* (Supra) wherein the Hon'ble Supreme Court elucidated the latest position of law with regard to principles of natural justice. The relevant paragraphs of the judgment are quoted herein below:

"(8). Rules of natural justice, it is by now fairly well settled, are not rigid, immutable or embodied rules that may be capable of being put in straitjacket nor have the same been so evolved as to apply universally to all kind of domestic tribunals and enquiries. What the courts in essence look for in every case where violation of the principles of natural justice is alleged is whether the affected party was given reasonable opportunity to present its case and whether the administrative authority had acted fairly, impartially and reasonably. The doctrine of audi alteram partem is thus aimed at striking at arbitrariness and want of fair play. Judicial pronouncements on the subject have, therefore, recognised that the demands of natural justice may be different in different situations depending upon not only the facts and circumstances of each case but also on the powers and composition of the tribunal and the rules and regulations under which it functions. A court examining a complaint based on violation of rules of natural justice is entitled to see whether the aggrieved party had indeed suffered any prejudice on account of such violation. To that extent there has been a shift from the earlier thought that even a technical infringement of the rules is sufficient to vitiate the action. Judicial pronouncements on the subject are legion. We may refer to only some of the decisions on the subject which should in our opinion suffice."

10. Hon'ble the Supreme Court has, in earlier occasions as well, cautioned against "strait-jacket" application of principles of natural justice. In *Maharashtra State Board of Secondary and Higher Secondary Education v. K. S. Gandhi* reported in (1991) 2 SCC 716 the Court observed as follows:

"(22). ...The omnipresence and omniscience (sic) of the principle of natural justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a strait-jacket formula as an abstract proposition of law. It depends on the facts of the case, nature of the inquiry and the effect of the order/decision on the rights of the person and attendant circumstances. It is seen from the record and is not disputed, that all the students admitted the factum of fabrication and it was to his or her advantage and that the subject/subjects in which fabrication was committed belong to him or her. In view of these admissions the Enquiry Officer obviously did not find it expedient to reiterate all the admissions made. If the facts are disputed, necessarily the authority or the Enquiry Officer, on consideration of the material on record, should record reasons in support of the conclusion reached.

Since the facts are admitted, the need for their reiteration was obviated and so only conclusions have been stated in the reports. The omission to record reasons in the present case is neither illegal, nor is violative of the principles of natural justice. Whether the conclusions are proved or not is yet another question and would need detailed consideration."

11. Upon a perusal of Section 138-B of the Act, 1962, it is clear that there is no specific requirement for allowing cross-examination. Furthermore, the law established by the Hon'ble Supreme Court and various High Courts as discussed above is that in the event, any material is relied upon by the authorities, any witnesses are examined by the authorities, upon a request made by the show cause noticee, the said relied upon documents are to be provided to the noticee and the witnesses that have been examined and whose statements are being relied upon by the authorities shall be subject to cross-examination by the noticee. The law does not mandate that in each and every case, cross-examination is required to be provided. We are of the view that it is incumbent upon the noticee to seek cross-examination of the witnesses, and if such a request is made, it is mandatory for the authorities to provide such cross-examination. In the event, such cross-examination is not possible, the adjudicating authority in his order has to specifically note down the reasons as to why the witnesses could not be subjected to cross-examination. Such reasons could be as specified in Section 138-B such as death of the witness, the witness being incapable of giving evidence, the witness not being traceable, amongst others.

12. The judgements relied upon by respondents/noticees do not come to their assistance as in each of the cases it is categorically mentioned that it would be open to the assessee to seek permission to cross-examine the persons whose statements have been relied upon and only if upon such request being made and the same not being complied with, then there would be a violation of the principles of natural justice. Even in such cases, as indicated above at paragraph 11, if the witnesses are not available to be cross-examined, the adjudicating authority would mention the reason for not providing such cross-examination to the respondent/noticees.

13. In the present case, the appellants have categorically submitted that at no point was a request made for cross-examination of two witnesses, and therefore, there was no question of violation of the principles of natural justice. This particular fact has not been answered specifically by the Tribunal, and without answering the said question as to whether a request was made for cross-examination, the finding of the Tribunal that the principles of procedure established under Section 138-B of the Act, 1962 have been vitiated, in our view is against the principles established in law. It was incumbent upon the Tribunal to first come to a finding as to whether a request was made by the noticee. If the answer was in the affirmative, then only the Tribunal could have held that the procedure prescribed under Section 138-B of the Act, 1962 was not followed. However, if the answer to the above question were to be in the negative, we are of the view that the finding of the Tribunal that the procedure prescribed under Section 138-B of the Act, 1962 was not followed, would be incorrect.

14. Though, the appellants have herein brought on record certain documents to indicate that no request for cross-examination was made, we are of the view that since the Tribunal is the last fact finding body, this issue should be decided by the Tribunal upon calling for the records of the adjudicating authority and other relevant records.

15. In light of the same, we quash and set aside the order dated April 24, 2025 and direct the Tribunal to come to an appropriate finding with regard to the issues raised in the present judgment.

16. In light of the aforesaid, all the Custom Appeals are **allowed** and the Tribunal is directed to de novo hear the matter expeditiously, preferably within a period of three months from the date of receipt of certified copy of this judgment.

(2026) 1 ILRA 106
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 29.01.2026

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Application U/S 482. No. 692 of 2023

Ankur Asthana

**...Applicant
Versus**

State of U.P. & Anr.

...Opposite Parties

Issue for consideration

Matter pertains to maintainability of complaint u/s 138 /142 NI Act filed before the expiry of 15 days from the date of receipt of notice.

Headnotes

Negotiable Instruments Act, 1881-sec 138; 142(b)-Application u/s 482 Cr.P.C.-challenging summoning order-Complaint filed before the expiry of 15 days from the date of receipt of notice - notice issued under clause (c) of the proviso to Section 138 - not maintainable-the complainant cannot be permitted to present the very same complaint at any later stage-remedy is only to file a fresh complaint-if the same could not be filed within the time prescribed u/s 142(b)-his recourse is to seek the benefit of the proviso- satisfying the court of sufficient cause. **Application rejected.**(E-9)

Case Law Cited

Yogendra Pratap Singh v. Savitri Pandey, reported in AIR 2015 SC 157, 2014 AIR SCW 5751

List of Acts

Negotiable Instruments Act, 1881

List of Keywords

Summoning order; fresh complaint; delay in filing the complaint; Section 142 of the NI Act

Appearances of parties

Counsel for Applicant(s) : Anand Mani Tripathi, Anurag Tripathi Counsel for Opposite Party(s) : G.A., Anil Kumar Pandey, Ramakar Shukla

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

1. Since the common question of facts and law are involved in both the applications, therefore, with the consent of the parties, they are being heard and decided by a common judgement.

2. In **APPLICATION U/s 482 No. 692 of 2023**, the applicant has sought following main relief(s) :-

“to quash the orders dated 04.01.2023 and 17.08.2022 passed by learned Additional Civil Judge Junior Division C-No.26/ Additional Judicial Magistrate - Sultanpur, in the interest of justice and the Hon'ble Court further be pleased to restrain the lower Court 23 below from proceeding any further in pursuance of aforesaid Criminal Case No. 13 of 2022, Under Section 138 N.I. Act, Police Station-Kotwali Nagar, District-Sultanpur and also quash the entire proceeding of the above said case, in the interest of justice.”

3. In **APPLICATION U/s 482 No. 1829 of 2022**, the applicant has sought following main relief(s) :-

“to quash the order dated 09.02.2022 in Criminal Case No. 390/2022 "M/s Kashish Enterprises Vs. Ankur Asthana" Under Section-138 N.I. Act, Police Station- Kotwali Nagar, District Sultanpur passed by the learned Court below i.e. Additional Civil Judge (Lower Division) Avar Khand/Judicial Magistrate Room No. 31 District Sultanpur and further proceedings of the case passed in pursuance thereof.

It is further prayed that this Hon'ble Court may kindly be pleased to quash the entire proceeding of Criminal Complaint No. 390/2022 "M/s Kashish Enterprises Vs. Ankur Asthana" Under Section-138 N.I. Act, Police Station- Kotwali Nagar, District Sultanpur, in the interest of justice.”

4. Before proceeding, it would be apt to indicate that the applicant had challenged the order dated 09.02.2022 in **APPLICATION U/s 482 No. 1829 of 2022** whereby the complaint was directed to be registered and notice was issued to the applicant and during the pendency of the said application, the applicant has also filed second **APPLICATION U/s 482 No. 692 of 2023**.

5. Facts of the case, as stated by learned counsel for the applicant, are that the the opposite party no.2 preferred Criminal Complaint No. 390 of 2022 (M/s Kashish Enterprises Vs Ankur Asthana), under Section-138/142 of Negotiable Instruments Act, 1881 (in short 'NI Act'), dated 03.02.2022. From a perusal of the above noted complaint, it transpires that the cheque was dishonoured due to insufficient fund and the said information was given by the complainant to the applicant through registered post on 11.09.2020. In the aforesaid complaint, an order dated 06.10.2020 has been passed by the trial Court directing for appearance of the applicant against which the applicant has filed revision before the learned District and Session Judge, Sultanpur (in short revisional Court) and the said criminal revision was allowed vide order dated 18.11.2021. Against the order of revision dated 18.11.2021 passed by the revisional Court quashing the order dated 06.10.2020, the Opposite Party No. 2 had filed a petition under Section 482 Cr.P.C. before this Court registered as **APPLICATION U/S 482 No. 82 of 2022** and this Court passed an order dated 25.01.2022 modifying the order dated 18.11.2021 passed in Criminal Revision No. 11 of 2021 passed by Additional District and Session Judge Court No. 1 Sultanpur to the extent that the

petitioner (opposite party no.2 herein) was permitted to file a fresh petition before the learned trial Court within a period of one month and the same shall be decided strictly in accordance with law.

6. It is also stated that the opposite party no. 2 again filed the complaint on 09.02.2022 in which the learned trial Court issued notice to the applicant without considering the relevant provisions and requirement under law as well as mandatory provision of NI Act. The opposite party no. 2 filed complaint before learned trial Court without fulfilling the mandatory provisions of Section 138 of NI Act as the fresh notice and its service is required before filing complaint, but learned trial Court without considering the legal requirement issued summon vide order dated 09.02.2022 in a most illegal and arbitrary manner. The trial Court again proceeded into the matter during pendency of **APPLICATION U/s 482 No. 1829 of 2022** filed by the applicant before this Court without considering the relevant fact and circumstances of the case with respect to the time period providing under the Act with respect to new complaint and passed the impugned orders thereby condoning the delay in filing the application/complaint and summoned the applicant without considering the whole aspect of the matter in detail which are not sustainable in the eyes of law in any manner.

7. Shri Anand Mani Tripathi, learned Senior Advocate has specifically pointed out that in the present matter, fresh legal notice is to be given and unless the cause of action is mentioned, the complaint is not maintainable. He has submitted that entire procedure of giving notice and other provision in conformity with Section 138 of NI Act, period prescribed therein for procedure before filing of the complaint is to be followed. But the opposite party no.2 has not adopted such recourse, therefore, the entire complaint is liable to be set-side.

8. He has placed reliance on paragraph nos.36 to 40 of the judgment passed by Hon'ble Supreme Court in **Yogendra Pratap Singh v. Savitri Pandey**, reported in **AIR 2015 SC 157, 2014 AIR SCW 5751**.

9. On the other hand, Shri Ramakar Shukla, learned counsel for opposite party no.2 has invited attention of the Court towards the revisional court order dated 18.11.2021 in Criminal Revision No. 11 of 2021 by which Additional District and Session Judge, Court No.1, Sultanpur has observed that impugned order dated 06.10.2020 is illegal for the reason that complaint was filed and registered on 23.09.2020 and the Bank Report denotes the dishonor of the check is dated 03.09.2020 and it appears that the complaint was filed within fifteen days. Therefore, the impudent order was not sustainable. The revisional court treated that the complaint is premature and directed to file another complaint before the competent court. The revisional order was challenged by the opposite party no.2 by way of **APPLICATION U/S 482 No. 82 of 2022** and the Court modified the revisional order dated 18.11.2022 on 25.01.2022 with observation that the applicant (opposite party no.2 herein) is permitted to file a fresh petition before the learned trial Court within a period of one month and the same shall be decided strictly in accordance with law.

10. He has further submitted that in case, fresh complaint is to be filed then certainly this Court would have to consider period of at least forty-five days, which is the statutory period envisaged under proviso (b) and (c) of Section 138 of NI Act whereas in the present case, this Court has specifically said that the petitioner (opposite party no.2 herein) has to file complaint

within one month. The application for condonation of delay filed by opposite party no.2 was allowed and thereafter, the summon has been issued.

11. He has placed reliance on the judgment passed in **Yogendra Pratap Singh (Supra)** and has submitted in paragraph-42 of the judgment, Hon'ble Supreme Court has observed that fresh complaint may be filed within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act.

12. I have heard Sri A.M. Tripathi, learned Senior Advocate, assisted by Sri Anurag Tripathi, for the applicant as also Sri Ramakar Shukla, Advocate, for opposite party No. 2 and Sri Rao Narendra Singh, learned A.G.A. for the State and have perused the records.

13. Relevant paragraphs relied by learned counsel for the parties, for the sake of convenience, are extracted herein-below:-

“36. Can an offence under Section 138 of the NI Act be said to have been committed when the period provided in clause (c) of the proviso has not expired? Section 2(d) of the Code defines ‘complaint’. According to this definition, complaint means any allegation made orally or in writing to a Magistrate with a view to taking his action against a person who has committed an offence. Commission of an offence is a sine qua non for filing a complaint and for taking cognizance of such offence. A bare reading of the provision contained in clause (c) of the proviso makes it clear that no complaint can be filed for an offence under Section 138 of the NI Act unless the period of 15 days has elapsed. Any complaint filed before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint at all in the eye of the law. It is not the question of prematurity of the complaint where it is filed before the expiry of 15 days from the date on which notice has been served on him, it is no complaint at all under law. As a matter of fact, Section 142 of the NI Act, inter alia, creates a legal bar on the court from taking cognizance of an offence under Section 138 except upon a written complaint. Since a complaint filed under Section 138 of the NI Act before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint in the eye of the law, obviously, no cognizance of an offence can be taken on the basis of such complaint. Merely because at the time of taking cognizance by the court, the period of 15 days has expired from the date on which notice has been served on the drawer/accused, the court is not clothed with the jurisdiction to take cognizance of an offence under Section 138 on a complaint filed before the expiry of 15 days from the date of receipt of notice by the drawer of the cheque.

37. A complaint filed before the expiry of 15 days from the date on which notice has been served on drawer/accused cannot be said to disclose the cause of action in terms of clause (c) of the proviso to Section 138 and upon such complaint which does not disclose the cause of action the court is not competent to take cognizance. A conjoint reading of Section 138, which defines as to when and under what circumstances an offence can be said to have been committed, with Section 142(b) of the NI Act, that reiterates the position of the point of time when the cause of action has arisen, leaves no manner of doubt that no offence can be said to have been committed unless and until the period of 15 days, as prescribed under clause (c) of the proviso to Section 138, has, in fact, elapsed. Therefore, a court is barred in law from taking cognizance of such complaint. It is

not open to the court to take cognizance of such a complaint merely because on the date of consideration or taking cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer/accused has elapsed. We have no doubt that all the five essential features of Section 138 of the NI Act, as noted in the judgment of this Court in *Kusum Ingots & Alloys Ltd. [Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd., (2000) 2 SCC 745 : 2000 SCC (Cri) 546 : AIR 2000 SC 954]* and which we have approved, must be satisfied for a complaint to be filed under Section 138. If the period prescribed in clause (c) of the proviso to Section 138 has not expired, there is no commission of an offence nor accrual of cause of action for filing of complaint under Section 138 of the NI Act.

38. We, therefore, do not approve the view taken by this Court in *Narsingh Das Tapadia [Narsingh Das Tapadia v. Goverdhan Das Partani, (2000) 7 SCC 183 : 2000 SCC (Cri) 1326]* and so also the judgments of various High Courts following *Narsingh Das Tapadia [Narsingh Das Tapadia v. Goverdhan Das Partani, (2000) 7 SCC 183 : 2000 SCC (Cri) 1326]* that if the complaint under Section 138 is filed before the expiry of 15 days from the date on which notice has been served on the drawer/accused the same is premature and if on the date of taking cognizance a period of 15 days from the date of service of notice on the drawer/accused has expired, such complaint was legally maintainable and, hence, the same is overruled.

39. Rather, the view taken by this Court in *Sarav Investment & Financial Consultancy [Sarav Investment & Financial Consultancy (P) Ltd. v. Llyods Register of Shipping Indian Office Staff Provident Fund, (2007) 14 SCC 753 : (2009) 1 SCC (Cri) 935]* wherein this Court held that service of notice in terms of Section 138 proviso (b) of the NI Act was a part of the cause of action for lodging the complaint and communication to the accused about the fact of dishonouring of the cheque and calling upon to pay the amount within 15 days was imperative in character, commends itself to us. As noticed by us earlier, no complaint can be maintained against the drawer of the cheque before the expiry of 15 days from the date of receipt of notice because the drawer/accused cannot be said to have committed any offence until then. We approve the decision of this Court in *Sarav Investment & Financial Consultancy [Sarav Investment & Financial Consultancy (P) Ltd. v. Llyods Register of Shipping Indian Office Staff Provident Fund, (2007) 14 SCC 753 : (2009) 1 SCC (Cri) 935]* and also the judgments of the High Courts which have taken the view following this judgment that the complaint under Section 138 of the NI Act filed before the expiry of 15 days of service of notice could not be treated as a complaint in the eye of the law and criminal proceedings initiated on such complaint are liable to be quashed.

40. Our answer to Question (i) is, therefore, in the negative.

41. The other question is that if the answer to Question (i) is in the negative, can the complainant be permitted to present the complaint again notwithstanding the fact that the period of one month stipulated under Section 142(b) for the filing of such a complaint has expired.

42. Section 142 of the NI Act prescribes the mode and so also the time within which a complaint for an offence under Section 138 of the NI Act can be filed. A complaint made under Section 138 by the payee or the holder in due course of the cheque has to be in writing and needs to be made within one month from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. The period of one month under Section 142(b) begins from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. However, if the complainant satisfies the court that he had sufficient cause for not making a complaint within the prescribed period of one month, a complaint may be taken by the court after the prescribed period. Now, since our answer to Question (i) is in the negative, we observe that the payee or the holder in

due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to Question (i). As we have already held that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the court of sufficient cause. Question (ii) is answered accordingly.

14. After going through the record and judgment of Hon'ble Supreme Court, paragraph-41 wherein it is provided that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act.

15. Hon'ble Supreme Court has further observed that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the court of sufficient cause.

16. In the present case also, this Court in **Application U/s 482 No. 82 of 2022** has already given direction to the opposite party no.2 to file a fresh petition within a period of one month. The argument that fresh legal notice is required is misconceived.

17. Both the application(s) are **rejected**. No order as to costs.

(2026) 1 ILRA 111
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 28.01.2026

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Application U/S 482. No. 22948 of 2019

Lalit Pundir & Ors.

...Applicants

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Matter pertains to quashing of criminal proceedings under S.s 406, 504 and 506 I.P.C. arising out of an agreement to sell and alleged non-execution of sale deed, invoking inherent jurisdiction under S. 482 Cr.P.C.

Headnotes

Criminal Procedure Code, 1973 - S. 482 - Quashing of proceedings - Abuse of process of law - Civil dispute given colour of criminal offence.

Indian Penal Code, 1860 - S.s 406, 405 - Criminal breach of trust - Ingredients - Entrustment of property essential - Advance payment under agreement to sale does not amount to entrustment. Indian Penal Code, 1860 - S. 504 - Intentional insult - Absence of material particulars - Offence not made out.

Indian Penal Code, 1860 - S.s 503, 506 - Criminal intimidation - Vague allegations - No intent to cause alarm or compel action - Proceedings unsustainable.

Civil vs. Criminal Liability - Breach of contract - Mere failure to honor an agreement to sale is a civil wrong - Conversion of civil liability into criminal litigation is an abuse of process of law - Criminal prosecution impermissible.

Held: The agreement to sale does not confer any title to the property being transferred in favour of applicants - It is also admitted case of informant-opposite party no.2 that neither the property in question was entrusted upon the accused persons or the accused persons were given any dominion over property - A simple transaction with regard to payment of advance for purchase of property has been termed as a criminal offence - If any person, who has taken advance amount arising out of any agreement to sale and subsequently, fails to execute the sale deed, the remedy lies under the civil jurisdiction - Mere failure to honour the agreement to sale by the applicants would not constitute an offence under S. 406 I.P.C. - No description of any insult has been given by the informant in the first information report or in his statement recorded under S. 161 Cr.P.C. - The allegations of criminal intimidation are wholly vague in nature and are not supported by other witnesses - A simple case of breach of contract of agreement to sale, which is having civil liability has been converted into a criminal litigation, which is an abuse of process of law - Accordingly, the entire proceedings of the aforesaid case is hereby quashed -application allowed. (Paras 10,13,15,18,19,20)

Case Law Cited

Radheyshyam and others Vs. State of Rajasthan and another, **2024 SCC Online SC 2311**

List of Acts

Indian Penal Code (I.P.C.), 1860; Code of Criminal Procedure (Cr.P.C.), 1973

List of Keywords

agreement to sale; advance amount; criminal breach of trust; entrustment; dominion over property; civil liability; abuse of process of law; criminal intimidation; intentional insult; Specific performance

Case Arising From

ORIGINAL JURISDICTION: Application under S. 482 Cr.P.C. seeking quashing of proceedings of Case Crime No.1717 of 2017, State vs. Lalit Pundir, under S.s 406, 504, 506 I.P.C., Police Station Quarsi, District Aligarh.

Appearances for Parties

Advs. for the Appellant:

Sanjay Mishra

Advs. for the Respondents:

G.A.

(Delivered by Hon'ble Vikram D. Chauhan, J.)

1. The present application under Section 482 Cr.P.C. is preferred by applicants to quash entire proceedings of Case Crime No.1717 of 2017, State Vs. Lalit Pundir, under Sections 406, 504, 506 I.P.C., Police Station Quarsi, District Aligarh pending in court of Chief Judicial Magistrate, Aligarh pursuant to charge sheet dated 23.8.2018 as well as cognizance order dated 13.12.2018.

2. The opposite party no.2-Yogendra Singh is informant, who has lodged first information report on 15.10.017 at Police Station-Quarsi, District-Aligarh, under Sections 406, 504 & 506 I.P.C. against applicants. As per allegations in first information report, it is alleged by informant that informant entered into an agreement for sale of plot with applicant no.1-Lalit Pundir for a sum of Rs.15,00,000/-, out of which, on 1.8.2012 from the account of elder brother of informant, namely, Oshveer Singh a sum of Rs.3,10,000/- was paid to applicant no.1 by cheque and a further amount of Rs.6,90,000/- was paid by cash.

3. It is also agreed that remaining amount would be paid at time of execution of sale deed. Cash was given in front of Devendra Kumar and Luv Kush in the year 2013. Applicant no.2-Rajesh went to Jaipur and, thereafter, informant asked applicant no.1 and applicant no.3 to execute the sale deed. However, aforesaid persons were delaying execution of sale deed on ground that when applicant no.2 would come from Jaipur they will execute the sale deed. On 23.7.2013 a sum of Rs.49,000/- was paid by cheque by applicants to informant. In January, 2014, when informant asked applicants for execution of sale deed, applicants have stated that same would be executed within 4-6 months. On 31.7.2017, they promise to execute the sale deed. On aforesaid date, when informant went to the house of applicants, the applicants have stated to come to Registry office and when informant reached Registry office and waited for applicants till 7.00 pm, informant went to house of applicants and asked as to why sale deed was not executed, applicants started abusing and threatened that if informant come to house of applicants they would physically assault informant. The applicants are neither returning the amount nor executing the sale deed.

4. In pursuance to aforesaid first informant report, statement of informant was recorded by Investigating Officer, who has supported prosecution story. The Investigating Officer has also recorded statement of witness Devendra Kumar, who has stated that deal was agreed upon for a sum of Rs.15,00,000/-, out of which, Rs.3,10,000/- was given by cheque and Rs.6,90,000/- was given in cash and at the time of execution of sale deed Rs.5,00,000/- is required to be paid. The sale deed was not executed by applicants. The Investigating Officer has further recorded the statement of witness Luv Kush, who has also supported prosecution case. The Investigating Officer thereafter, submitted charge sheet on 23.8.2018 under Sections 406, 504 & 506 I.P.C. against applicants. In pursuance to aforesaid charge sheet, cognizance order has been issued on 13.10.2018 under Sections 406, 504 & 506 I.P.C.

5. This Court on 24.6.2019 issued notice to opposite party no.2-informant and by office report dated 27.9.2023 it is reported that notice has been served on opposite party no.2. On 2.1.2024, no one appears on behalf of opposite party no.2. By order dated 12.11.2025, on account of non-appearance of opposite party no.2, this case was proceeded ex-parte against the opposite party no.2.

6. The prosecution case is to the effect that a sale transaction of a plot was agreed upon between the parties for a sum of Rs.15,00,000/-. Out of which, Rs.3,10,000/- was paid by cheque

and Rs.6,90,000/- was paid by cash by informant to applicants. The amount of Rs.5,00,000/- being remaining sale consideration was to be paid at the time of execution of sale deed. It is allegation of informant that sale deed has not been executed by applicants despite the request made by informant.

7. The applicant have been summoned under Sections 406, 504, 506 I.P.C.

8. Section 406 Indian Penal Code provides punishment for offence of breach of trust. The offence for breach of trust has been envisaged under Section 405 I.P.C., which is quoted hereunder:

“405. Criminal breach of trust.-Whoever, being in any manner entrusted with property, or with any dominion over property, or dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person to do, commits “criminal breach of trust”.”

9. Insofar as offence for criminal breach of trust is concerned, ingredients are to the effect that the accused should be entrusted with property or with dominion over property, who dishonestly misappropriates or converts to his own use the property in question or misappropriates or converts in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract.

10. In the present case, it is the case of informant-opposite party no.2 that only an agreement to sale of property was agreed upon between applicants and opposite party no.2 and some amount was extended in advance. The agreement to sale does not confer any title to the property being transferred in favour of applicants. It is also admitted case of informant-opposite party no.2 that neither the property in question was entrusted upon the accused persons or the accused persons were given any dominion over property. It is also not the allegation of informant that aforesaid property was dishonestly misappropriated or converted for his own use. A simple transaction with regard to payment of advance for purchase of property has been termed as a criminal offence. If any person, who has taken advance amount arising out of any agreement to sale and subsequently, fails to execute the sale deed, the remedy lies under the civil jurisdiction.

11. It is to be noted that it is not the the allegation of informant-opposite party no.2 that applicants had mislead at the initial stage of agreement to sale in any manner.

12. The Supreme Court in the case of **Radheyshyam and others Vs. State of Rajasthan and another, 2024 SCC Online SC 2311** has held that mere non-performance of agreement to sale itself does not amount to criminal breach of trust. Relevant paragraph are extracted hereunder:-

“6. As already indicated above, a perusal of the complaint which has been registered as the FIR does not spell out any element or ingredient of cheating or breach of trust. Mere non-performance of an Agreement to Sell by itself does not amount to cheating and breach of trust. Respondent no.2 has adequate remedy of filing a Civil Suit for relief of specific performance of a

contract which he has already availed and the suit is still pending. The FIR only appears to be an arm-twisting mechanism to pressurize the appellants to execute the Sale Deed or to extract money. Every civil wrong cannot be converted into a criminal wrong. As we find in the present case, respondent no.2 is trying to abuse the criminal machinery for ulterior motives. It is not his case that the appellants duped him to pay the advance amount and entered into an Agreement to Sell. The High Court fell in error in recording a finding that the ingredients of offences under sections 420 and 406 of I.P.C. are present in the instant case.”

11. For an offence punishable under Section 406 IPC, the following ingredients must exist:

- i. The accused was entrusted with property, or entrusted with dominion over property;*
- ii. The accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and*
- iii. Such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.*

12. In the present case, the appellants were not entrusted with any property by respondent no.2-complainant. The only delivery made was of part payment towards an Agreement to Sell between the parties. The amount paid towards consideration cannot be said to have been entrusted with the appellants by respondent no.2. Additionally, merely because the appellants are refusing to register the sale, it does not amount to misappropriation of the advance payment. Since there was no entrustment of property, the offence of misappropriation of such property and thereby criminal breach of trust cannot be said to be made out.”

13. In view of the aforesaid reasoning mere failure to honour the agreement to sale by the applicants would not constitute an offence under Section 406 I.P.C.

14. The applicants have also been summoned under Section 504 I.P.C. The aforesaid provision of law provides for intentional insult with intent to provoke breach of peace. The aforesaid offence provides that whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment, which may extend to two years or with fine, or with both.

15. In the present case, no description of any insult has been given by the informant in the first information report or in his statement recorded under Section 161 Cr.P.C. Even otherwise, no material particulars have been provided by the informant as to the facts and circumstances which would give provocation to the informant to break public peace or to commit any offence. Once such allegations are not the foundation of the first information report or the statement of the informant recorded under Section 161 Cr.P.C., then the offence under Section 504 I.P.C. would not be made out against the applicants.

16. The applicants have also been summoned under Section 506 I.P.C. Section 506 I.P.C. provides for punishment for criminal intimidation. The offence of intimidation is provided under Section 503 I.P.C., which is quoted hereunder:-

“503. Criminal intimidation.-Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.”

17. As per the prosecution case, the allegation pertains to non-execution of the sale deed in pursuance to the agreement to sale and the payment of advance amount. The allegation in the first information report is that the applicants have abused and have threatened with life. The allegations are wholly vague in nature and neither the nature of the abusive language used by the applicants have been stated by the informant in the first information report nor in his statement recorded under Section 161 Cr.P.C.

18. It is also to be noted that although there is allegation with regard to threatening for life. However, there is no allegation to the effect that the aforesaid threatening was to cause the informant to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do. The allegations of criminal intimidation are wholly vague in nature and are not supported by other witnesses.

19. In the present case, a simple case of breach of contract of agreement to sale, which is having civil liability has been converted into a criminal litigation, which is an abuse of process of law. The informant has the civil remedy for enforcement of the contract of agreement to sale or for breach of contract. At this stage, permitting the criminal prosecution of the applicants would be an abuse of process of law.

20. Accordingly, the entire proceedings of the aforesaid case is hereby quashed. The present application is allowed.

(2026) 1 ILRA 116
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 28.01.2026

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Application U/S 482. No. 37780 of 2019

Raj Bihari Singh @ Raj Bihari & Ors. ...Applicants
State of U.P. & Anr. ...Opposite Parties

Issue for consideration

Matter pertains to legality of chargesheet and cognizance order u/s 306, 504 and 506 IPC.

Headnotes

Indian Penal Code- Sections 306, 504, 506- applicants have been summoned u/s 306 of the IPC- no any direct instigation by accused person- alleged act of applicants would not come under instigation as per Section 107 of IPC- no direct nexus between the statement of applicants (before the Authorities concerned) and commission of suicide by father of informant-mere participating in enquiry in respect of issuance of caste certificate of informant -cannot be designated as instigation for commission of suicide - suicide note do not state any details or material particulars of any instigation by applicants -no offence u/s 306 of IPC is made out against applicants. **Application allowed.** (E-9)

Case Law Cited

Nil

List of Acts

1. Indian Penal Code
2. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

List of Keywords

Intentional insult; provocation; criminal intent; direct nexus between the instigation and the offence committed; passive activity.

Appearances of parties

Counsel for Applicant(s) : Damini Hajela, Govind Saran Hajela Counsel for Opposite Party(s) : Anjani Kumar Raghuvanshi, G.A., Sher Singh

(Delivered by Hon'ble Vikram D. Chauhan, J.)

1. Heard Sri Govind Saran Hajela, learned counsel for the applicants, Sri Sher Singh, learned counsel for the Opposite party no. 2 and learned A.G.A. for the State.

2. The present application under Section 482 of Code of Criminal Procedure, 1973 is preferred by applicants for quashing charge-sheet as well as order dated 6.8.2019 taking cognizance under Sections 306, 504, 506 of Indian Penal Code and under Sections 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 pending before Special Judge, (SC/ST) Act, Police Station Rohania, District Varanasi in Special Session Trial No. 228 of 2019 (Sarkar Vs. Raj Bihari Singh and others). The above-mentioned criminal case arises out of First Information Report dated 13.3.2019 in Case Crime No. 148 of 2019 at Police Station Rohania, District Varanasi.

3. At the initial filing of present application before this Court applicants have also made a prayer for quashing of offence under Section 3(1)(v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. However, subsequently the above-mentioned order dated 6.8.2019 was corrected by order dated 21.10.2019 (copy of the aforesaid order is filed along with the counter affidavit of the informant before this Court). In view of the above-mentioned correction order dated 21.10.2019, the prayer for quashing the offence under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is hereby substituted the prayer for offence under Section 3(2)(v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 in place of Section 3(1)(v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. The applicants have also filed supplementary affidavit dated 16.10.2019 stating that due to clerical mistake name of applicant no. 1 namely Raj Bihari Singh @ Raj Bihari has been wrongly typed in place of Raj Bihari Singh.

5. Initially, First Information Report dated 13.3.2019 was lodged by Ratan Lal Gond against applicants and two other persons, namely, Manik Chand and Vinod Bharti Lekhpal under Sections 306, 504 and 506 of Indian Penal Code and under Section 3(2)(v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. As per allegations in above-mentioned First Information Report, it is alleged by informant that informant is resident of Village Bandepur, Police Station Rohaniya, District Varanasi. The informant is having land dispute with Manik Chand who is resident of same village. Some persons are trying to get the caste of informant being Scheduled Tribe cancelled in which the Area Lekhpal Vinod Bharti in conspiracy with Village Pradhan Raj Bihari (Applicant no. 1), Mohd Naeem (Applicant no. 3), Shiv Adhar Singh (Applicant no. 2), Lal Mohammad (Applicant no. 4) in order to get the Scheduled Tribes status of informant being declared as forged has got submitted report that informant belongs to Badbhuja caste. As a result of same, father of informant was shocked and accused persons use to abuse father of informant while on road. On account of informant being declared as Badbhuja caste, father of informant was shocked and as a result of the same on 12.3.2019 in the night committed suicide by hanging at the house of informant.

6. In pursuance to the above-mentioned First Information Report, the Investigating Officer recorded statement of informant who has supported the First Information Report allegations and has further stated that the caste certificate of informant was prepared in the year 2012 and the second application for preparation of the caste certificate of the informant was given in December 2018 and the applicants have given application against the caste certificate of informant. The witness has further stated that the deceased had informed him that the applicants used to threaten father of informant to relieve the disputed land.

7. The Investigating Officer has also recorded statement of Santraj Gond who has also supported the allegations made in the First Information Report. During investigation, Investigating Officer also recovered suicide note of deceased where the deceased had given detailed account of the land dispute as well as also stated that applicants are creating hindrance in the livelihood of informant and his family members and as such the deceased had committed suicide.

8. The post-mortem of deceased was held on 13.3.2019 at 2:08 p.m. and the doctor conducting the post-mortem opined that the deceased died due to Asphyxia as a result of hanging.

9. On 22.12.2018 Lekhpal had submitted a report before the Authorities concerned with regard to the caste of informant as Bhadbhuja. In the aforesaid enquiry report, applicants have given statement about the caste of informant and his family members. In pursuance to aforesaid investigation, the Investigating Officer has submitted charge-sheet against applicants and one Vinod Kumar Lekhpal under Sections 306, 504 and 506 of the Indian Penal Code and under Section 3(2)(v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The court concerned thereafter has taken cognizance and issued summons by order dated 6.8.2019 as corrected by order dated 21.10.2019 in the above-mentioned sections.

10. Learned counsel for the applicants submits that allegation against the applicants is to the effect that applicants had made a complaint with regard to caste certificate of Opposite party no. 2, as a result of the same, the father of Opposite party no.2 has committed suicide. Mere filing of a complaint challenging the caste certificate by itself not occasion to abetment to suicide. There is no immediate cause for committing suicide at the behest of applicants. The applicants have been falsely implicated in the present case.

11. Learned counsel for the applicants further submits that caste certificate, which was issued in the year 2012, was re-examined by the competent authority in the year 2018. However, there was no order for cancellation of the caste certificate. Even on the fact of the record, the offence is not made out against the applicants.

12. Sri Sher Singh, learned counsel for Opposite party no.2 submits that applicants were harassing Opposite party no.2, who belongs to Scheduled Tribes category and the complainant was appointed in a government job on the strength of the caste certificate, which was subsequently, challenged by the applicants, as a result of the same, the father of Opposite party no.2 committed suicide and a suicide note was left by his father. A perusal of the suicide note of the father of Opposite party no.2 would give an indication that father of Opposite party no.2 has committed suicide on account of the conduct of applicants. The question of validity of suicide note cannot be examined in an application filed under Section 482 Cr.P.C.

13. The applicants have been summoned under Section 306 of the Indian Penal Code. Section 306 of Indian Penal Code provides punishment for abetment of suicide. Suicide taking place, which is not an offence as the person is beyond the reach of the law. However attempt to commit suicide is made punishable under Section 309 of Indian Penal Code. Similarly, Abetment of suicide is also made punishable under Section 306 of Indian Penal Code. Abetment of suicide is confined to persons who aid and abet the commission of suicide by another person.

14. Section 107 of Indian Penal Code provides with respect to Abetment of a thing. Section 107 of Indian Penal Code is quoted hereinunder:-

*“107. **Abetment of a thing.** A person abets the doing of a thing, who-*

First. Instigates any person to do that thing; or

Secondly -Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1 - A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2 -Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

15. The law of abetment evolves around the principle that it is not only the person who has committed the crime is answerable to law but any person who instigates, conspires, or intentionally aid another to commit an offence is also answerable under law. Instigation envisages where a person actively provokes, urges, encourage or incite another to commit an offence through words, conduct, or willful misrepresentation. The same requires a criminal intent to stimulate the criminal act. There must be a direct nexus between the instigation and the offence committed. Mere passive activity of the accused/instigate without reference to the offence committed by another person may not come within the purview of abetment. Whether the abetment is caused is to be derived from the facts and circumstances of each case.

16. In the present case allegation as per the prosecution against the accused persons is to the effect that applicants have given statement with regard to caste of informant and his family members. The aforesaid statement has been given in an enquiry being conducted by the Authorities concerned on an application for issuing caste certificate to informant. Prosecution case rests on the fact that applicants have given statement that the informant does not belong to a particular caste which was claimed by applicants in their application before the Authorities concerned. It is not in dispute between the parties that in the present case no conspiracy was made between the accused person for commission of suicide of the deceased. It is also not the prosecution case that applicants have intentionally aids the commission of suicide.

17. The prosecution case hinges upon the fact that applicants have given statement in the enquiry before the authorities concerned that the informant does not belong to a particular caste which is claimed by the informant and on the aforesaid basis father of informant has committed suicide and leaving suicide note that the applicants are not permitting the informant and his family members to live and as such the father of informant has committed suicide.

18. It is to be seen that the statement alleged to be given by the applicants was on the basis of an enquiry being conducted by the authorities concerned on an application given by informant for issuance of caste certificate. It is further alleged that applicants have opposed the application of informant for issuance of caste certificate as a Scheduled Tribes. The statement was recorded by co-accused (Lekhpal) and was submitted before the District Administration who is the authority to issue the caste certificate. It is not case of the prosecution that there was any direct instigation by accused person/applicants with regard to commission of suicide by deceased. It is further to be noted that caste certificate is required to be issued by District Authorities after an enquiry and the final decision rests with authority concerned. The applicants has given statement with regard to the caste of informant and his family members in the enquiry proceedings. The aforesaid alleged act of applicants would not come under instigation as per Section 107 of Indian Penal Code. There is no direct nexus between the statement of applicants (before the Authorities concerned) and commission of suicide by father of informant. Mere participating in enquiry in respect of issuance of caste certificate of informant cannot be designated as instigation for commission of suicide by father of informant. Even the suicide note recovered by police in respect of deceased do not state any details or material particulars of any instigation by applicants to deceased. In view of facts and circumstances stated hereinabove, no offence under Section 306 of Indian Penal Code is made out against applicants.

19. The applicants further have been summoned under Sections 504 and 506 of the Indian Penal Code. The offence under Section 504 of Indian Penal Code prescribes that whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. The offence under Section 504 of Indian Penal Code envisages that there should be intentional insult and thereby giving provocation to any person intending or knowing that such provocation will cause him to break public peace or to commit any offence. In the present case, there are no material circumstances and particulars to show that there was any intentional insult which would give provocation to complainant to cause any break of public peace or to commit any offence as such the material ingredient of offence under Section 504 of Indian Penal Code is not made out from the prosecution case.

20. Further, Section 506 of Indian Penal Code provides punishment for offence of criminal intimidation. The offence of criminal intimidation has been described under Section 503 of Indian Penal Code and the same is quoted herein below :-

“503. Criminal intimidation - Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation - A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.”

21. An act of criminal intimidation would arise when a person threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. No material circumstances and particulars provided in the First Information Report or in the statement of the informant under Section 161 of Code of Criminal Procedure, 1973 to indicate any threatening being offered by applicants to informant. In view of the facts and circumstances and reasons stated hereinabove, no offence under Sections 504 and 506 of the Indian Penal Code is made out against the applicants.

22. The applicants have also been summoned under Section 3(2)(v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The aforesaid provision is quoted hereinbelow :-

“3. Punishments for offences of atrocities. __ (1)

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such

person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine.

23. The above-mentioned provision declares commission of any offence under Indian Penal Code against a member of Scheduled Caste or Schedule Tribe category to be an offence under the provisions of SC/ST Act. It is further to be seen that no offence under the Indian Penal Code is found against the applicants in view of the facts, circumstances and reasoning stated hereinabove. The allegations of prosecution that applicants have given statement in the enquiry as to whether the informant is a member of Scheduled Tribe and thereby stating that informant belongs to another caste other than that claimed by the informant in the application before the authorities concerned by itself cannot constitute an offence under law. It is the duty of every citizen to assist the authorities in discharge of their statutory duties and therefore the applicants cannot be said to have committed any wrong which is punishable under law.

24. In view of facts, circumstances and reasoning stated hereinabove no offence under Sections 306, 504, 506 of Indian Penal Code and under Section 3(2)(v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out against the applicants. The above-mentioned criminal proceedings as well as summoning order dated 6.8.2019 as corrected by order dated 21.10.2019 passed by Special Judge (SC/ST) Act, Varanasi in Special Session Trial No. 228 of 2019 (Sarkar Vs. Raj Bihari Singh and others) (arising out of Case Crime No. 148 of 2019) pending before Special Judge (SC/ST) Act, Varanasi are hereby quashed in respect of applicants, namely, Raj Bihari Singh @ Raj Bihari, Shiv Adhar Singh, Mohd. Naeem and Lal Mohammad.

25. As a result thereof, the present application filed under Section 482 of Code of Criminal Procedure, 1973 is **allowed**.

(2026) 1 ILRA 122
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.01.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Application U/S 528. No. 36258 of 2025

Amarjit Pal & Anr.

...Applicants

Versus

State of U.P. & Anr.

...Respondents

Issue for consideration

Whether the allegation levelled is prima facie sufficient to proceed with the trial?
 Whether the allegation levelled is prima facie sufficient to proceed with the trial?

Headnotes

False promise of marriage-Application u/s 528-quashing-accused/applicant no.1 was entering into sexual intercourse with victim -on false promise of marriage- since last four years- FIR is lodged when the accused/applicant no.1 has refused to marry-after invitation card of wedding distributed- victim is minor-sexual intercourse is admitted- false promise of marriage is one of the deceitful mean-**Application dismissed.** (E-9)

Case Law Cited

Pramod Suryabhan Pawar Vs. State of Maharashtra, (2019) 9 SCC 608

List of Acts

1. Bhartiya Nyaya Sanhita, 2023
2. POCSO Act
3. Bhartiya Nyaya Suraksha Sanhita, 2023
4. Indian Penal Code

List of Keywords

false promise of marriage; victim; minor; deceitful mean

Appearances of parties

Counsel for Applicant(s) : Anurag Rai, Vinay Kumar Jaiswal Counsel for Opposite Party(s) : Ankita Pandey, G.A.

(Delivered by Hon'ble Avnish Saxena, J.)

1. Heard, Sri Vinay Kumar Jaiswal, learned counsel for the applicants, Ms. Seema Shukla, learned AGA-Ist for the State and Ms. Ankita Pandey, learned counsel for the opposite party no.2. Perused the record.

2. The application under Section 528 B.N.S.S. has been moved by the accused/applicants, son and his mother, respectively for quashing the charge sheet, summoning order and the entire proceedings of Sessions Case No. 1241 of 2025 (State Vs. Amarjit Pal and another) arising out of Case Crime No. 38 of 2025 for the offence under Sections 69, 352, 351(3) BNS and Sections 3, 4 of Protection of Children from Sexual Offences Act, P.S. Barwapatti, District Kushinagar, on the ground argued by learned counsel for the applicants that the allegation of rape is on applicant no.1 on false promise of marriage. The victim has incorrectly shown her age as below 18 years, although she is nearly 20 years of age; the mother of victim has initially moved an application under Section 175(3) BNSS, which was converted to complaint, but subsequently that complaint was withdrawn and the revision petition was dismissed as infructuous, that carries the same prosecution case as is alleged in the FIR. Further submits that the victim was a consenting party and there was a denial of internal medical examination by the victim and lastly non-compliance of the procedure provided under Section 233 BNSS.

3. Learned counsel for the opposite party no.2 and learned AGA for the State have stated that the victim was minor, who has continuously been raped by the applicant no.1 on false promise of marriage. There was a compromise between the parties that the applicant no.1 and the victim will get married for which the marriage invitation cards were printed specifying the date of marriage as 23.05.2025, but the accused/applicant no.1 has refused. Further submits that the victim was minor as such her consent for sexual intercourse, which is admitted by the applicant no.1 fall within the category of rape. Further submits that initially the complaint was made at the police station which

was not registered. As such, the opposite party no.2 has moved an application under Section 175(3) BNSS and simultaneously sent the complaint to the higher police authorities. When the higher police authorities have directed the police station concerned, the FIR was registered. In the meantime, the application under Section 175(3) BNSS was converted to a complaint, which was challenged in revision and after registration of FIR, the complaint was withdrawn, which was filed by the mother of victim and the revision became infructuous and therefore dismissed as infructuous. Further submits that the complaint was withdrawn at pre-cognizance stage, as such the provision of Section 233 BNSS will not be applicable. Further submits that it is an admitted case of applicant that the applicant no.1 has entered into sexual intercourse with the victim, which was allegedly consented, whereas the consent with the minor is no consent in the eye of law, as such submits that the application is devoid of merits and deserves to be rejected.

4. This Court has taken into consideration, the rival submission made by the parties.

5. The prosecution case evolved from the bare perusal of first information report dated 26.05.2025 registered at 19:40 hours lodged by the brother of victim against the applicants, which reveals that the date of birth of victim is 01.01.2008 and since last four years, the accused/applicant no.1 was entering into sexual intercourse with victim on false promise of marriage, when the accused/applicant has refused to marry the victim, she has intimated the plight to her family members. The family members of the accused/applicant and the victim met and there was compromise that the marriage of the two will be solemnized on 23.05.2025 but Bidai Ceremony will be performed only when the victim became 18 years of age. The invitation cards were distributed and the present FIR is lodged when the accused/applicant no.1 has refused to marry. The allegation against the mother of accused/applicant no.1 is of criminal intimidation.

6. The victim in her statement under Section 183 BNSS has made specific mention that she is high school pass and born on 01.01.2008 and since last 4 years, the accused/applicant is entering into sexual intercourse with her on promise of marriage. Though, she in her statement under Section 180 BNSS, has stated that she is consenting to the sexual intercourse. She also refused to get her internal medical examination. The High School Certificate of the victim, which has been issued by the Madhyamik Shiksha Parishad, U.P. reveals that her date of birth is 01.01.2008.

7. The accused/applicants have made a clear and explicit admission in paragraph 18 of the affidavit accompanying the application under section 528 BNSS that the accused/applicant no.1 used to visit the house of victim as he is relative to the sister-in-law (bhabhi) of the victim and there was love affair between the two since last four years and there was physical relations on the consent of the victim. The relevant paragraph-18 of the affidavit is reiterated underneath :-

18. That the story set up by the first informant against the applicants is not correct whereas reality is that the victim and applicant no. 1 is major girl and boy and the applicant no. 1 was regular visitor at the house of the victim due to relationship of her sister in law (Bhabhi) and where they met to each other for time to time and in between they fell in love affection and since four year, they were talking to each other on phone and thereafter, they were met and made their physical relationship with each other by their free and sweat will but when the informant as well as other family members were came know about their relationship then the informant made pressure

upon the applicants to perform the marriage of the applicant no. 1 with his sister/victim but the applicants refused for the same then this false story has been created and lodged the false FIR against the applicants maliciously to harass as well as to create the pressure upon them to perform the marriage with the victim.

This admission of the accused/applicant no.1 has been answered by the opposite party no.2 in the way that the accused/applicant no.1 has entered into sexual intercourse with the victim knowing that the victim was minor and there was a false promise of marriage since the inception. It is because of this false promise that the accused/applicant no.1 have refused to enter into marriage on the date fixed i.e. 23.05.2025.

8. On these prima facie facts, the point of concern in the present application is whether the allegation levelled is prima facie sufficient to proceed with the trial or the trial would tantamount to cause miscarriage of justice.

9. After the investigation, the Investigating Officer has submitted charge sheet for offence under Section 69 BNS (sexual intercourse on false promise of marriage) invoking the provisions of POCSO Act against applicant no. 1 and criminal insult and intimidation against both the accused applicants.

10. On the face of record, the victim is minor as is shown from her matriculation certificate annexed along with the counter affidavit filed by opposite party no.2. The argument of learned counsel is that the age of the victim is nearly 20 years and the date of birth shown in the matriculation certificate is only certificate age. The argument of learned counsel has no basis as the matriculation certificate is to be given primacy.

11. Section 69 of Bhartiya Nyaya Sanhita, 2023 provides that Whoever, by deceitful means or by making promise to marry a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

12. The provision contained in Section 69 of BNS is a new induction in penal law, wherein sexual intercourse with a woman, by deceitful means including false promise of marriage is not Rape, but is made punishable. Prior to the enactment the courts interpret the conduct of parties in view of the provisions of Section 375 I.P.C. (Rape) coupled with the provision of Section 90 I.P.C (Consent known to be given under fear or misconception). The explanation provided under Section 69 BNS of Deceitful means shall include the false promise of employment or promotion, inducement, or marrying after suppressing identity.

13. Though the charge sheet is not submitted under the offence of rape, but it would be expedient in the interest of justice that the provision of rape under Section 63 BNS is required to be dealt with, which clearly provides for sexual intercourse, by way of implication provided under subsections (a) to (d) under seven circumstances is considered as Rape. It is explicitly provided under subsection (vi) that if the penetration is with or without her consent when she is under 18

years of age. In the present case, the sexual intercourse is admitted by the applicant no.1 and the age of victim is under 18 years, as is prima facie explicit from her matriculation certificate.

14. Even otherwise Section 69 BNS provides for sexual intercourse by employing deceitful means and false promise of marriage as one of the deceitful means. In the case of *Pramod Suryabhan Pawar Vs. State of Maharashtra, (2019) 9 SCC 608*, Hon'ble the Supreme Court has drawn a clear distinction between false promise of marriage, which is given on understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled. It is former which outrightly attracts penal provision.

15. So far as moving of an application under Section 175(3) BNSS by the mother of victim is concerned. The court of Special Judge, POCSO Act, Kushinagar while disposing of the application by order dated 01.04.2025 has converted it to a complaint and fixed 23.04.2025 for recording of statement under Section 223 BNSS. The FIR was registered on 26.05.2025 and on 29.05.2025, the mother of victim has not pressed the complaint, which was accordingly dismissed on the same day. It is the order dated 01.04.2025, whereby the court refused to register the FIR, which was challenged in revision before this Court registered as Criminal Revision No. 2685 of 2025. The coordinate Bench of this Court by order dated 02.07.2025 has dismissed the revision being infructuous. This shows that neither the special court nor the High Court have taken into consideration the allegations made to summon the accused and therefore, the stage was pre-cognizance stage. As such, Section 233 BNSS will not put any dent on the prosecution case because the provision is about consolidation of the two cases with the aim to avoid conflicting outcome of the two. Hence, the application moved under Section 528 BNSS is devoid of merit and liable to be dismissed.

16. The Application under Section 528 BNSS is hereby **dismissed**.

(2026) 1 ILRA 126
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 12.01.2026

BEFORE

THE HON'BLE VIVEK KUMAR SINGH, J.

Application U/S 528. No. 49947 of 2025

Smt. Neelam & Anr.

...Applicants

Versus

State of U.P. & Ors.

...Opposite Parties

Issue for consideration

Matter pertains to impugned order rejecting application to recall victim for further cross examination.

Headnotes

Bhartiya Nyaya Suraksha Sanhita, 2023-sec. 348-Application - to recall the victim/PW2/opposite party no.3 for further cross examination- Section 33(5) - duty is cast upon the Special Court - to ensure that the

child who has suffered a traumatic experience of sexual assault is not called time and again to testify about the same incident- witnesses who has already been examined and cross-examined-cannot be recalled and re-examined to deny the evidence already given - no opportunity at a later stage can be given to him- to completely efface the evidence already given by him under oath- preferred either to delay the trial or to win-over the victim-who has already been examined and cross-examined at length-filed after six years-not a Bonafide application-impugned order rightly rejected-**Application rejected.**(E-9)

Case Law Cited

1. Mohd. Khalid Versus State of West Bengal, (2002) 7 SCC 334; Hanuman Prasad (Supra)
2. Natasha Singh vs. CBI, (2013) 5 SCC 741:(2013) 4 SCC (Cri) 828:2013 SCC OnLine SC 444;
3. Rajaram Prasad Yadav vs. State of Bihar and another, AIR 2013 SC 3081;
4. State (NCT of Delhi) v. Shiv Kumar Yadav, (2016) 2 SCC 402;
5. State of Haryana vs. Ram Mehar and others, (2016) 8 SCC 762;
6. Swapan Kumar Chatterjee vs. Central Bureau of Investigation, (2019) 14 SCC 328;
7. Varsha Garg vs. State of Madhya Pradesh and Others, 2022 SCC OnLine SC 986
8. Application under Section 482 Cr.P.C. No. 274 of 2022 (Ram Nayak Singh vs. State of U.P. & Another)
9. Ratanlal vs. Prahlad Jat, (2017) 9 SCC 340
10. Mishrilal and others vs.State of M. P. and others (2005) 10 SCC 701
11. Yakub Ismailbhai Patel vs.State of Gujarat-AIR 2004 SC 4209
12. Nisar Khan alias Guddu and others vs. State of Uttaranchal (2006) 9 SCC 386
13. Madhab Chandra Pradhan and Others vs. State of Odisha, reported in MANU/SC/1494/2024

List of Acts

1. POCSO Act
2. Bhartiya Nyaya Suraksha Sanhita, 2023
3. Indian Penal Code

List of Keywords

sexual assault; child; recalled and re-examined.

Appearances of parties

Counsel for Applicant(s) : Ajeet Kumar Srivastava, Arvind Kumar Srivastava, Neelam Srivastava, Satyendra Kumar Srivastava
Counsel for Opposite Party(s) : G.A.

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

1. Heard Shri Arvind Kumar Srivastava, the learned counsel for the applicants, Shri Akhilesh Kumar Mishra, the learned counsel appearing for respondent no.2 and Shri Mohd. Afzal, the learned counsel for the State and perused the record.

2. The present application has been filed by the applicants challenging the order dated 16.10.2025, passed by the Additional Sessions Judge/Special Judge (POCSO) Act, Sant Kabir Nagar in S.S.T. No.0071 of 2018 (State of U.P. vs. Neelam), on an application preferred by the accused applicants under Section 348 of BNSS praying herein to recall the victim/PW-2/opposite party no.3 for further cross examination.

3. The brief facts of the case are to the effect that a first information report was lodged by the informant/opposite party no.2 on 21.12.2017 in respect of incident dated 15.12.20217, bearing Case crime no.1888 of 2017, under Section 363, 366, 120B IPC and Section 7/8 POCSO Act, Police Station Bakhira, District Sant Kabir Nagar. The Investigating Officer after due investigation

submitted chargesheet in this case on 27.01.2018, under Section 363, 366, 120B IPC and Section 16/17 POCSO Act and once the statement of the victim was recorded under Sections 161 and 164 Cr.P.C. the trial court took cognizance of offence and during the course of trial charges were framed. The accused pleaded not guilty and claimed to be tried.

4. The first informant was examined in the trial court as PW-1. Thereafter the victim was examined as PW-2 on 26.04.2019 but due to paucity of time her cross-examination was continued for 10.05.2019 and she was cross-examined at length. Thereafter the applicant Neelam moved an application under Section 348 BNSS and objection was filed by the learned ADGC on 04.10.2025. Both parties were heard by the learned trial court and passed the impugned order dated 16.10.2025 whereby the application filed by the applicant Neelam was dismissed.

5. In the aforesaid background of the case, the present application under section 528 BNSS has been moved by the applicants-accused.

6. The learned counsel for the applicants submits that one more opportunity be granted to the applicants for cross-examination of the victim and the learned Trial Court had committed gross illegality in rejecting the application vide order dated 16.10.2025. The order impugned is against the principle settled by the Hon'ble Apex Court. As such interference by this Court is required in this matter.

7. The learned AGA as well as the learned counsel appearing for the opposite party no.2 have vehemently opposed the application and submitted that the application under section 348 BNSS was moved with the sole intention to delay the trial which is impermissible and in the circumstances of the case, the application has rightly been rejected by the learned trial court. The application for recalling of the witness has been moved after about six years and the delay has not been properly explained by the applicants. The victim was examined on 10.05.2019 and the application was moved in the year 2025. All the witness of facts have been examined in the trial court and as per Section 33(5) of POCSO Act, 2012, the child witness would not be called repeatedly to testify in the court.

8. I have considered the submissions advanced by the learned counsel for the parties and perused the records as well as impugned order dated 16.10.2025 passed by the learned Trial Court in the aforesaid case.

9. The principle related to recall of the witnesses under section 311 of Cr.P.C. (corresponding Section-348 BNSS) has been settled by Hon'ble Apex Court in the case (s) of **Mohd. Khalid Versus State of West Bengal, (2002) 7 SCC 334; Hanuman Prasad (Supra), Natasha Singh vs. CBI, (2013) 5 SCC 741:(2013) 4 SCC (Cri) 828:2013 SCC OnLine SC 444; Rajaram Prasad Yadav vs. State of Bihar and another, AIR 2013 SC 3081; State (NCT of Delhi) v. Shiv Kumar Yadav, (2016) 2 SCC 402; State of Haryana vs. Ram Mehar and others, (2016) 8 SCC 762; Swapan Kumar Chatterjee vs. Central Bureau of Investigation, (2019) 14 SCC 328; Varsha Garg vs. State of Madhya Pradesh and Others, 2022 SCC OnLine SC 986** and also by this Court in **Application under Section 482 Cr.P.C. No. 274 of 2022 (Ram Nayak Singh vs. State of U.P. & Another).**

10. It is well settled by catena of decisions by the Hon'ble Apex Court that the power under Section 311 Cr.P.C. or Section 348 BNSS as the case may be, must be exercised with care, caution and circumspection and only for strong and valid reasons. The recall of a witness already examined should not be a matter of course and the discretion, given to the court in this regard has to be exercised judicially to prevent failure of justice. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society.

11. The Court is fully conscious of the position that after all the trial is basically for the prisoners/accused and the Court should afford an opportunity to them in the fairest manner possible. At the same time, the Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right. Recalling of witnesses has to be applied on the basis of judicially established and accepted principles.

12. The above observations cannot be read as laying down any inflexible rule to routinely permit a recall on the ground that earlier correct facts could not be brought on record. While advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience.

13. The jurisdiction under Section 528 BNSS is extraordinary and it can be used only in such cases where there is gross injustice or clear abuse of process of law. It can not be used to help such a person who is not cooperating in fair trial. Such power cannot be invoked to harass the witness who has already been examined or for causing delay in the trial.

14. In the case of **Mohd. Khalid vs. State of West Bengal reported in (2002) 7 SCC 334**, the Hon'ble Apex Court observed as under:-

"9. We make it abundantly clear that if a witness is present in Court he must be examined on that day. The Court must know that most of the witnesses could attend the Court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the Court is generally a poor solace for the financial loss incurred by him. It is a said plight in the Trial Courts that witnesses who are called through summons or other processes stand at a doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by every one provided the presiding officer concerned has a commitment towards duty. No sadistic pleasure, in seeing how other persons summoned by him as witnesses are standard on account of the dimension of his judicial powers, can be a persuading factor for granting such adjournments lavishly, that too in a casual manner."

15. The relevant paragraphs of the judgment passed in the case of **State (NCT of Delhi) vs. Shiv Kumar Yadav reported in (2016) 2 SCC 402** are extracted hereunder:-

"10. It can hardly be gainsaid that fair trial is a part of guarantee under Article 21 of the Constitution of India. Its content has primarily to be determined from the statutory provisions for

conduct of trial, though in some matters where statutory provisions may be silent, the court may evolve a principle of law to meet a situation which has not been provided for. It is also true that principle of fair trial has to be kept in mind for interpreting the statutory provisions.

11. It is further well settled that fairness of trial has to be seen not only from the point of view of the accused, but also from the point of view of the victim and the society. In the name of fair trial, the system cannot be held to ransom. The accused is entitled to be represented by a counsel of his choice, to be provided all relevant documents, to cross-examine the prosecution witnesses and to lead evidence in his defence. The object of provision for recall is to reserve the power with the court to prevent any injustice in the conduct of the trial at any stage. The power available with the court to prevent injustice has to be exercised only if the court, for valid reasons, feels that injustice is caused to a party. Such a finding, with reasons, must be specifically recorded by the court before the power is exercised. It is not possible to lay down precise situations when such power can be exercised. The legislature in its wisdom has left the power undefined. Thus, the scope of the power has to be considered from case to case. The guidance for the purpose is available in several decisions relied upon by the parties. It will be sufficient to refer to only some of the decisions for the principles laid down which are relevant for this case.

14. In **Hoffman Andreas case [Hoffman Andreas v. Inspector of Customs, (2000) 10 SCC 430 : 2001 SCC (Cri) 1488]**, the counsel who was conducting the case was ill and died during the progress of the trial. The new counsel sought recall on the ground that the witnesses could not be cross-examined on account of the illness of the counsel. This prayer was allowed in peculiar circumstances with the observation that normally a closed trial could not be reopened but illness and death of the counsel was in the facts and circumstances considered to be a valid ground for recall of witnesses. It was observed: (SCC p. 432, para 6)

"6. Normally, at this late stage, we would be disinclined to open up a closed trial once again. But we are persuaded to consider it in this case on account of the unfortunate development that took place during trial i.e. the passing away of the defence counsel midway of the trial. The counsel who was engaged for defending the appellant had cross-examined the witnesses but he could not complete the trial because of his death. When the new counsel took up the matter he would certainly be under the disadvantage that he could not ascertain from the erstwhile counsel as to the scheme of the defence strategy which the predeceased advocate had in mind or as to why he had not put further questions on certain aspects. In such circumstances, if the new counsel thought to have the material witnesses further examined the Court could adopt latitude and a liberal view in the interest of justice, particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible."

15. The above observations cannot be read as laying down any inflexible rule to routinely permit a recall on the ground that cross-examination was not proper for reasons attributable to a counsel. While advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when a counsel is appointed by choice of a litigant. Taken to its logical end, the principle that a retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system. The witnesses cannot be expected to face the hardship of appearing in court repeatedly, particularly in sensitive cases such as the present one. It can result in undue hardship

for the victims, especially so, of heinous crimes, if they are required to repeatedly appear in court to face cross-examination.

16. *The interest of justice may suffer if the counsel conducting the trial is physically or mentally unfit on account of any disability. The interest of the society is paramount and instead of trials being conducted again on account of unfitness of the counsel, reform may appear to be necessary so that such a situation does not arise. Perhaps time has come to review the Advocates Act and the relevant rules to examine the continued fitness of an advocate to conduct a criminal trial on account of advanced age or other mental or physical infirmity, to avoid grievance that an Advocate who conducted trial was unfit or incompetent. This is an aspect which needs to be looked into by the authorities concerned including the Law Commission and the Bar Council of India.*

27. *It is difficult to approve the view taken by the High Court. Undoubtedly, fair trial is the objective and it is the duty of the court to ensure such fairness. Width of power under Section 311 CrPC is beyond any doubt. Not a single specific reason has been assigned by the High Court as to how in the present case recall of as many as 13 witnesses was necessary as directed in the impugned order. No fault has been found with the reasoning of the order of the trial court. The High Court rejected on merits the only two reasons pressed before it that the trial was hurried and the counsel was not competent. In the face of rejecting these grounds, without considering the hardship to the witnesses, undue delay in the trial, and without any other cogent reason, allowing recall merely on the observation that it is only the accused who will suffer by the delay as he was in custody could, in the circumstances, be hardly accepted as valid or serving the ends of justice. It is not only matter of delay but also of harassment for the witnesses to be recalled which could not be justified on the ground that the accused was in custody and that he would only suffer by prolonging of the proceedings. Certainly recall could be permitted if essential for the just decision but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary for ensuring fair trial□ is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including uncalled for hardship to the witnesses and uncalled for delay in the trial. Having regard to these considerations, we do not find any ground to justify the recall of witnesses already examined.*

28. *It will also be pertinent to mention that power of judicial superintendence under Article 227 of the Constitution and under Section 482 CrPC has to be exercised sparingly when there is patent error or gross injustice in the view taken by a subordinate court [Jasbir Singh v. State of Punjab, (2006) 8 SCC 294 : (2006) 3 SCC (Cri) 470, paras 10 to 14] . A finding to this effect has to be supported by reasons. In the present case, the High Court has allowed the prayer of the accused, even while finding no error in the view taken by the trial court, merely by saying that exercise of power was required for granting fair and proper opportunity to the accused. No reasons have been recorded in support of this observation. On the contrary, the view taken by the trial court rejecting the stand of the accused has been affirmed. Thus, the conclusion appears to be inconsistent with the reasons in the impugned order.*

29. *We may now sum up our reasons for disapproving the view of the High Court in the present case:*

(i) *The trial court and the High Court held that the accused had appointed counsel of his choice. He was facing trial in other cases also. The earlier counsel were given due opportunity and had duly conducted cross-examination. They were under no handicap;*

(ii) *No finding could be recorded that the counsel appointed by the accused were incompetent particularly at the back of such counsel;*

(iii) *Expeditious trial in a heinous offence as is alleged in the present case is in the interests of justice;*

(iv) *The trial court as well as the High Court rejected the reasons for recall of the witnesses;*

(v) *The Court has to keep in mind not only the need for giving fair opportunity to the accused but also the need for ensuring that the victim of the crime is not unduly harassed;*

(vi) *Mere fact that the accused was in custody and that he will suffer by the delay could be no consideration for allowing recall of witnesses, particularly at the fag end of the trial;*

(vii) *Mere change of counsel cannot be ground to recall the witnesses;*

(viii) *There is no basis for holding that any prejudice will be caused to the accused unless the witnesses are recalled;*

(ix) *The High Court has not rejected the reasons given by the trial court nor given any justification for permitting recall of the witnesses except for making general observations that recall was necessary for ensuring fair trial. This observation is contrary to the reasoning of the High Court in dealing with the grounds for recall i.e. denial of fair opportunity on account of incompetence of earlier counsel or on account of expeditious proceedings;*

(x) *There is neither any patent error in the approach adopted by the trial court rejecting the prayer for recall nor any clear injustice if such prayer is not granted."*

16. In the case of **Swapan Kumar Chatterjee (Supra)**, a note of caution was sounded and the same can be deduced from paragraphs 11 and 12 of the report, which are as under:-

"11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision."

17. The power to summon material witnesses under Section 348 BNSS. which falls under Chapter XXVI containing the general provisions as to inquiries and trials has been held to confer a very wide power on the courts for summoning witnesses and accordingly the discretion conferred is to be exercised judiciously as wider the power the greater is the necessity for the application of judicial mind.

18. The power conferred has been held to be discretionary and is to enable the court to determine the truth after discovering all relevant facts and obtaining proper proof thereof to arrive at a just decision in the case. The power conferred under Section 348 BNSS is to be invoked by the court to meet the ends of justice, for strong and valid reasons and it is to be exercised with great caution and circumspection. The determinative factor in this regard would be whether the summoning or recalling of the witness is in fact, essential to the just decision of the case keeping in view that fair trial - which entails the interests of the accused, the victim and of the society - is the main object of the criminal procedure and the court is to ensure that such fairness is not hampered or threatened in any manner.

19. In **State (NCT of Delhi) vs. Shiv Kumar Yadav: (2016) 2 SCC 402**, it has been held that: -

"Certainly, recall could be permitted if essential for the just decision, but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary "for ensuring fair trial" is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including un-called for hardship to the witnesses and un-called for delay in the trial. Having regard to these considerations, there is no ground to justify the recall of witnesses already examined."

20. In **Ratanlal vs. Prahlad Jat, (2017) 9 SCC 340**, it was held that: -

"17. In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order."

21. In the case of **Mishrilal and others vs.State of M. P. and others (2005) 10 SCC 701** while dealing with the case having more or less similar facts the Hon'ble Apex Court observed as under:-

"In our opinion, the procedure adopted by the Sessions Judge was not strictly in accordance with law. Once the witness was examined in-chief and cross- examined fully, such

witness should not have been recalled and re-examined to deny the evidence he had already given before the court, even though that witness had given an inconsistent statement before any other court or forum subsequently. A witness could be confronted only with a previous statement made by him. At the time of examination of PW 2 Mokam Singh on 6.2.1991, there was no such previous statement and the defence counsel did not confront him with any statement alleged to have been made previously. This witness must have given some other version before the Juvenile Court for extraneous reasons and he should not have been given a further opportunity at a later stage to completely efface the evidence already given by him under oath. The courts have to follow the procedures strictly and cannot allow a witness to escape the legal action for giving false evidence before the court on mere explanation that he had given it under the pressure of the police or some other reason. Whenever the witness speaks falsehood in the court, and it is proved satisfactorily, the court should take a serious action against such witnesses."

22. In the case of **Yakub Ismailbhai Patel vs.State of Gujarat-AIR 2004 SC 4209**, in para 40 and 41 the Hon'ble Supreme Court observed as under :-

"40. Significantly this witness, later on filed an affidavit wherein he had sworn to the fact that whatever he had deposed before Court as PW-1 was not true and it was so done at the instance of Police.

41. The averments in the affidavits are rightly rejected by the High Court and also the Sessions Court. Once the witness is examined as a prosecution witness, he cannot be allowed to perjure himself by resiling from testimony given in Court on oath. It is pertinent to note that during the intervening period between giving of evidence as PW-1 and filing of affidavit in Court later he was in jail in a narcotic case and that the accused persons were also fellow inmates there"

23. In the case of **Nisar Khan alias Guddu and others vs. State of Uttaranchal (2006) 9 SCC 386** where an application was filed on behalf of the accused under Section 311 of the Cr.P.C. and witness was recalled. With regard to this fact the Honble Apex Court observed as under:

"We are of the view that no reasonable person properly instructed in law would allow an application filed by the accused to recall the eyewitnesses after a lapse of more than one year that too after the witnesses were examined, cross-examined and discharged."

24. It is important to state here that POCSO Act is a special legislation, which was enacted to protect children from sexual offences and for safeguarding interests and ensuring the well-being of the child at every stage of trial of offences under the Act. Section 33 of the POCSO Act provides for the procedure and powers of the Special Court and reads as under:

"33. Procedure and powers of Special Court. - (1) A Special Court may take cognizance of any offence, without the Accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the Accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial..."

25. A bare perusal of Section 33(5) of the Act indicates that a duty is cast upon the Special Court to ensure that a child is not repeatedly called to give his/her testimony before the court. The legislative intent behind this provision is clear. It is to ensure that the child who has suffered a traumatic experience of sexual assault is not called time and again to testify about the same incident.

26. The Hon'ble Supreme Court in a recent judgment in the case of **Madhab Chandra Pradhan and Others vs. State of Odisha**, reported in **MANU/SC/1494/2024** has held that a child witness, who has already been examined and cross-examined at length, cannot be recalled to testify again in the Court. Such an application cannot be allowed mechanically, especially in trial of offences under the POCSO Act. The facts of the present case are similar to the facts of the case of **Madhab Chandra Pradhan (supra)** case. Therefore, the application moved under Section 348 BNSS can not be allowed in view of the aforesaid judgment.

27. From perusal of the above case laws, it is apparent that a witnesses who has already been examined and cross-examined, cannot be recalled and re-examined to deny the evidence he has already given before the trial court and no opportunity at a later stage can be given to him to completely efface the evidence already given by him under oath.

28. Upon consideration of the aforesaid facts and also the settled law on the issue this Court does not find any illegality in the order impugned dated 16.10.2025. It is for the reason that in view of this Court the application under Section 348 BNSS was preferred by the applicants either to delay the trial or to win-over the victim, who has already been examined and cross-examined at length. The application under Section 348 BNSS was not a bonafide application and the same was filed after six years from the date of cross-examination of the victim. Therefore, the recall application was rightly rejected by the learned Trial Court vide order dated 16.10.2025. The learned Trial Court did not commit any illegality or irregularity in rejecting the application of the applicant.

29. The application under Section 528 BNSS lacks merit and is accordingly rejected.

30. No order as to cost.

(2026) 1 ILRA 136
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 22-01-2026

THE HON'BLE PRAVEEN KUMAR GIRI, J.

Mahendra Singh & Ors. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Bhartiya Nyaya Suraksha Sanhita, 2023- Section 223- Summoning order- provision of Section 223 first proviso of BNSS has been violated-opportunity of hearing has not been provided to the accused- BNSS has come into force on 1 July 2024-if the alleged offence took place prior to the date of its enforcement-procedure that is more beneficial to the accused must be adopted-impugned order set aside-matter remitted. **Application disposed.** (E-9)

Deepu and Ors. v State of U.P. and Ors., (2024) 8 ILRA 903 (Crl. Misc. Writ Petition No.12287 of 2024)

Bhartiya Nyaya Suraksha Sanhita, 2023

Opportunity of hearing;section 223 first proviso of BNSS.

Counsel for Applicant(s) : Hukum Singh, Puneet Bhadauria Counsel for Opposite Party(s) : G.A.

(Delivered by Hon'ble Praveen Kumar Giri, J.)

1. Heard Sri Puneet Bhadauria along with Hukum Singh, learned counsel for the applicants, Sri Ajay Dubey, learned counsel for opposite party No.2 and Sri Pankaj Kumar Tripathi, learned A.G.A. for the State.

2. Earlier, in the present application, this Court has passed an order dated 05.01.2026, paragraph Nos. 1 to 11 of the same are delineated below for ready reference:

"1. Learned counsel for the applicants submits that he has filed the instant application under Section 528 BNSS with the relief which has been mentioned in the prayer clause of the application.

2. The relief which has been mentioned in the application is delineated below:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to set aside the Summoning order dated 20.08.2025 whereby, the Applicant Nos. 1, 2, 5, 6 and 7 have summoned under Section 190, 191(2), 115(2), 352, 351(2), 121(1) and 132 B.N.S. and 3(1) (Da), 3(1)(dha) and 3(2)(Va) of S.C/ST, Act and the Applicant Nos. 3 and 4 have been summoned under Sections 190, 191(2), 115(2), 352, 351(2), 121(1) and 132 and 74 of B.N.S. and 3(1) (Da), 3(1)(dha) and 3(2)(Va) of S.C/ST, Act passed by Additional District and Sessions Judge, Court No. 2/ Special Judge, SC/ST, Act, Agra as well as entire proceeding of Complaint Case No. 133/2024 (Smt. Suman Vs. Mahendra Singh and others) pending in the court of Additional District and Sessions Judge, Court No. 2/ Special Judge, SC/ST, Act, Agra and or pass such other or further order which may this Hon'ble may deem fit and proper in the facts and circumstances of the case, else the applicants shall suffer irreparable loss and injury. □

3. Learned counsel for the applicants, Shri Puneet Bhadauria, submits that for the same cause of action a First Information Report (F.I.R.) was lodged on 06.07.2024 against the applicants as Case Crime No. 114 of 2024 (State vs. Durgesh and others) under Sections 223, 191(2), 115(2), 352, 351(2) BNS, and investigation is still going on in the matter and no police report has been submitted yet before the Court of Magistrate.

4. Learned counsel for the applicants further submits that for the same cause of action, another person of the same family filed Complaint Case No. 133 of 2024 (Smt. Suman vs. Mahendra Singh and others) on 17.08.2024.

5. Learned counsel for the applicants also submits that the learned Court of Special Judge, SC/ST Act, Agra recorded the statement of complainant Smt. Suman on 18.09.2024 under Section 223 BNSS and thereafter on 23.11.2024, the learned Special Judge, SC/ST Act, Agra recorded the statement of complainant witness No. 1 Shivendra Singh and on 08.01.2025 complainant witness No.2 Suman under Section 225 BNSS.

*6. Learned counsel for the applicants relying upon the entire order-sheet of Complaint Case No. 133 of 2024 contends that the complaint was filed on 17.08.2024 by **Smt. Suman** and her statement was recorded on 18.09.2024 and, therefore, the statement of complainant witness No. 1, **Shivendra Singh** was recorded on 23.11.2024 and on 08.01.2025, the statement of complainant witness No. 2, namely **Suman**, was recorded and thereafter on 07.08.2025, the matter was fixed for summoning of the accused-applicants on 20.08.2025 but in the paragraph No.3 of the summoning order, the Special Judge recorded statements of complainant witness No.1 **Shivendra Singh** and complainant witness No.2 **Dharmendra Singh**.*

7. Learned counsel for the applicants further submits that on 20.08.2025, the learned Special Judge summoned the accused-applicants, Mahendra Singh, Durgesh Singh, Suraj, Malikhan Singh and Sonu under Sections 190, 191(2), 115(2), 352, 351(2), 121(1), 132 BNS and 3(1)(da), 3(1)(dha), 3(2)(va) of the SC/ST Act and accused-applicants, Bhola and Charan Singh under Sections 190, 191(2), 115(2), 352, 351(2), 121(1), 132, 74 BNS and 3(1)(da), 3(1)(dha), 3(2)(va) of the SC/ST Act.

*8. Learned counsel for the applicants contends that **Section 223, first proviso of BNSS** categorically mentions that no Court shall take cognizance without providing opportunity of hearing to the proposed accused persons and in the present case, the learned Special Judge has*

taken cognizance as well as summoned the accused applicants without providing any opportunity of hearing to the accused/applicants against the provisions of law. The provisions of Section 223 BNSS are delineated below:

“223. Examination of Complainant

(1) A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that no cognizance of an offence under this section shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses□

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:

(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless

(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and

(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.

9. Learned counsel for the applicants further submits that this Court, in paragraph No. 16 of the judgment of **Prempal and 3 others vs. State of U.P. and Another; 2025:AHC:212689**, has categorically held that before taking cognizance and summoning the accused persons under the Bharatiya Nagarik Suraksha Sanhita in a complaint case, the accused must be provided opportunity of hearing as per the law provided under Section 223(1), first proviso of BNSS. The paragraph No.16 is quoted below:

16. With effect from July 1, 2024, the Judicial Magistrate is required to afford the accused an opportunity of hearing prior to the issuance of summons in a complaint case, in compliance with the First Proviso to Section 223(1) of the BNSS.

10. Learned counsel for the applicants also submits that taking cognizance and summoning the accused persons without providing opportunity of hearing violates the fundamental rights of the accused/applicants provided under Article 21 of the Constitution of India, which provides that no person shall be deprived of his life or personal liberty except according to procedure established by law.

11. Learned counsel for the applicants further states that the learned Special Judge has not only abused the process of BNSS but has also violated Article 21 of the Constitution of India by not following the due procedure before summoning the accused-applicants.

(emphasis supplied)

3. Learned counsel for opposite party No.2, Sri Ajay Dubey, fairly submits that the provision of Section 223 first proviso of BNSS has been violated, as opportunity of hearing has not been provided to the accused. However, he further submits that the summoning order dated 20.08.2025

may be set aside at this stage and the matter may be remitted to the concerned Court of S.C./S.T. Act, Agra for passing a fresh order after providing an opportunity of hearing to the proposed accused persons.

4. Learned A.G.A., Sri Pankaj Kumar Tripathi, has also adopted the arguments advanced by learned counsel for opposite party No.2.

5. Learned Special Judge, S.C./S.T. Act, Agra has taken cognizance as well as summoned the accused-applicants without providing opportunity of hearing as provided under Section 223 First Proviso of the BNSS as held by a Division Bench of this Court in paragraph 16(iii) of the judgment of **Deepu and Ors. v State of U.P. and Ors., (2024) 8 ILRA 903 (Crl. Misc. Writ Petition No.12287 of 2024)** that the cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS. Although the BNSS has come into force on 1 July 2024 and if the alleged offence took place prior to the date of its enforcement, it is a settled principle of law that the procedure, that is more beneficial to the accused must be adopted. In case of **Deepu** (Supra), the Division bench of this Court in paragraph no.16 (iii) held that on or after 01.07.2024, the procedure mentioned under the Bhartiya Nagarik Suraksha Sanhita, 2023 shall be applicable on offences committed under the Indian Penal Code or other Special Act. The paragraph No. 16 is delineated below:

“16. On the basis of above analysis, this Court is also summarising the law regarding effect of repealing the IPC and Cr.P.C. by BNS and BNSS respectively and same is being mentioned as below:

(i) If an FIR is registered on or after 1.7.2024 for the offence committed prior to 1.7.2024, then FIR would be registered under the provisions of IPC but the investigation will continue as per BNSS.

(ii) In the pending investigation on 01.07.2024 (on the date of commencement of New Criminal Laws), investigation will continue as per the Cr.P.C. till the cognizance is taken on the police report and if any direction is made for further investigation by the competent Court then same will continue as per the Cr.P.C.;

(iii) The cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS and all the subsequent proceeding including enquiry, trial or appeal would be conducted as per the procedure of BNSS.

(iv) Section 531(2)(a) of BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or application is commenced after 01.07.2024, the same will be proceeded as per the procedure of BNSS

(v) The pending trial on 01.07.2024, if concluded on or after 01.07.2024 then appeal or revision against the judgement passed in such a trial will be as per the BNSS. However, if any application is filed in appeal, which was pending on 01.07.2024 then the procedure of Cr.P.C. will apply.

(vi) If the criminal proceeding or chargesheet is challenged before the High Court on or after 01.07.2024, where the investigation was conducted as per Cr.P.C. then same will be filed u/s 528 of BNSS not u/s 482 Cr.P.C.

(emphasis supplied)

7. Accordingly, the application is **disposed of** with the aforesaid directions.

9. This Court makes it clear that if any remark is made against the presiding officer, the same shall not affect the service as well as career of the concerned presiding officer in future.

THE HON'BLE SANDEEP JAIN, J.

M/s Sai Dham Apartments & Anr. ...Appellants
Versus
Ravi Kumar Mehrotra & Ors. ...Respondents

Matter pertains to whether the trial court was justified in refusing to grant temporary injunction to the plaintiffs in a suit for permanent injunction under O. 39 R. 1 CPC based on an unstamped and unregistered Memorandum of Understanding (MOU), and whether such order suffered from perversity, arbitrariness, or legal infirmity warranting interference in appellate jurisdiction under O. 43 R. 1(r) CPC.

Code of Civil Procedure, 1908 - O. 7 R. 14, O. 13 R. 1, O. 39 R. 1 and 2, O. 43 R. 1(r), s.151 - Specific Relief Act, 1963 - s. 41 (h) - Arbitration and Conciliation Act 1996 - ss. 8, 11 - Registration Act, 1908 - s. 17 - Enforceability of MOU - Ad-interim Injunction - The dispute emanates from an alleged Memorandum of Understanding (MOU) executed between the plaintiffs - Appellants and the defendant landowners in respect of certain immovable property, whereby the plaintiffs claimed to have been authorised to undertake construction of a multi-storeyed complex with a stipulated sharing arrangement of the saleable area - The plaintiffs asserted that pursuant to the MOU they had invested substantial sums towards obtaining statutory permissions, marketing, and project development, and that the landowners, in breach of the agreed terms, entered into a separate builder agreement with a third party, thereby threatening to defeat the plaintiffs' contractual and commercial interests - The defendants, however, denied the execution and enforceability of MOU, contending that it was unstamped and unregistered, conferred no right, title, or interest in the property, and at best created a limited

license without transfer of possession - The plaintiffs instituted a suit before the trial court seeking permanent injunction simpliciter to restrain interference with the alleged rights under the MOU, without seeking specific performance or declaration, and moved an application for temporary injunction, which was rejected by the trial court, giving rise to the instant first appeal before the High Court. (E-11)

Held: It is apparent that, the trial court has not erred in concluding that the alleged MOU has not been executed by all the landowners, as such, no relief can be claimed on its basis against those landowners who have not executed it - The trial court has not erred in concluding that since the MOU was unstamped and unregistered, it was inadmissible in evidence and further, it does not confer any right, title and interest in the disputed land in the plaintiffs, on the basis of which no enforceable legal right accrues to them and relief of injunction cannot be granted to them against the true owners - The trial court has rightly concluded that the plaintiffs have not claimed the specific performance of the alleged MOU, whereas in reality, they are enforcing it in the garb of the suit for the relief of permanent injunction - The question of return of money by landowners is a disputed question of fact which can only be decided after evidence but prima-facie the trial court was of the opinion, that keeping in view the admission of the plaintiffs in their rejoinder affidavit, the land owners have returned substantial money to the plaintiffs - The trial court recorded a perverse prima facie finding of lack of jurisdiction in view of arbitration clause in the alleged MOU, however, it did not reject the plaint, and thus the said finding does not materially affect the outcome - The record further discloses that five issues were framed on 08.01.2021 based on the pleadings, none pertaining to non-maintainability of the suit on the ground of being barred by provisions of Arbitration and Conciliation Act 1996, thereby indicating that the observation regarding the statutory bar was merely incidental and neither pleaded nor pressed by the defendant landowners - Accordingly, no perversity in impugned order, thus, dismissed with costs. [Paras 69 to 74, 76]

Case Law Cited

Uday Pratap v. Digamber Singh **2013 SCC OnLine All 8292**; *K.Kasturi and others v.C. Mohan and others* **2007(1) Law Weekly 560 (Madras)**; *Rolta Infrastructure and Technology Services Pvt. Ltd. v. Department of Information Technology and Electronics, Government of West Bengal* **2024 SCC OnLine Cal 105**; *M/s Ashoka Builders & Promoters and another v. M/s Edward Keventer (Successors) P.Ltd. and others* **1993 (26)DRJ 489**; *Sardar Balbir Singh v. Atma Ram Srivastava* **1976 SCC OnLine All 374 (Full Bench)**; *Anathula Sudhakar v.P.Buchi Reddy (Dead) by LRs.& ors.* **(2008) 4 SCC 594**; *Vinod Kumar and others v. Sudha Land Ventures and Homes Pvt. Ltd.* **2015(8)ADJ 387(DB)**; *Subash Chand Garg and others v. Messers HKS Developers Pvt. Ltd. and others*, **Civil Revision no. 111 of 2015 decided on 5.6.2020**; *Subash Chand Garg and others v. Messers HKS Developers Pvt. Ltd. and others*, **FAFO no.290 of 2015 decided on 21.12.2016**; *Kapil Kumar Sharma v. Lalit Kumar Sharma and another* **(2013)14 SCC 612**; *The interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899*, **IN RE (2024) 6 SCC 1 (By 7 Judges)**; *Yellapu Uma Maheshwari and another v. Buddha Jagadheeswararao and others* **(2015) 16 SCC 787**; *Sita Ram Bhama vs Ramvatar Bhama* **(2018) 15 SCC 130**; *Salim Baig v. Sayyad Nawid* **2025 SCC OnLine Bom 2819**; *Ameer Minhaj v. Dierdre Elizabeth(Wright) Issar and others* **(2018) 7 SCC 639 (By 3 Judges)**; *Vinod Kumar and others v. Sudha Land Ventures and Homes Pvt.Ltd.* **2015 SCC OnLine All 8778**; *ITI Ltd. v. Siemens Public Communications Network Ltd.* **(2002) 5 SCC 510**; *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.* **(2011)5 SCC 532**; *Gitarani Maity v. Krishna Chakraborty and Ors.* **2025 SCC OnLine Cal 2462**; *Padhiyar Prahladji Chenaji (Deceased) Thr. LRS. v. Maniben Jagmalbhai (Deceased) Thr. LRS. And others* **(2022) 12 SCC 128 - referred to**

Wander Ltd. and another v. Antox India Pvt. Ltd. **1990 Supp SCC 727**; *Ramakant Ambalal Choksi v. Harish Ambalal Choksi and others* **2024 INSC 913 - followed**

List of Acts

Code of Civil Procedure, 1908; Registration Act, 1908; Specific Relief Act, 1963; *Arbitration and Conciliation Act, 1996*

List of Keywords

First Appeal; Registered partnership firm; Disputed property; Discretionary relief; Temporary injunction; Promotional activities; Memorandum of Understanding; Permanent injunction; Injunction simplicitor; Specific performance; Declaration of title; Residential complex; Residential flats/houses; s. 41(h) of Specific Relief Act; Unstamped instrument; Unregistered document; Inadmissible in evidence; Impounding of agreement; Collateral purpose; Relinquishment of rights; Compulsorily registrable document; License; Right, title and interest; Possession of disputed land; Bar of jurisdiction; Arbitration clause; Arbitration agreement; Arbitration and Conciliation Act, 1996; Status quo; Dismissed on merits; Interim order vacated; Affirmation of trial court's order.

Case Arising From

APPELLATE JURISDICTION: First Appeal From Order No. - 928 of 2020

From the Judgment and Order dated 13.3.2020 passed by the Court of Civil Judge (Senior Division), Allahabad in O.S. No. 342 of 2019.

Appearances for Parties

Advs. for the Appellant:

Anjali Goklani, Manish Goyal (Senior Adv.), Nikhil Mishra

Adv. for the Respondent:

A.K. Upadhyay, Mukesh Kumar Singh, Sunil Kumar Misra

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

1. The instant first appeal has been filed by the plaintiff under Order 43 Rule 1(r) of the CPC against the impugned order dated 13.3.2020 passed by the Court of Civil Judge(Senior Division), Allahabad in O.S. No. 342 of 2019 Messers Sai Dham Apartments and another Vs. Ravi Kumar Mehrotra and others, whereby plaintiffs interim injunction application no. 6-C under Order 39 Rule 1 and 2 CPC has been rejected.

Plaint Case

2. Factual matrix is that the plaintiff appellant filed O.S. No. 342 of 2019 in the lower court with the averments that the plaintiff no.1 Messers Sai Dham Apartments is a registered partnership firm and Rajesh Kumar Gupta is its Chief Executive Officer. Plaintiff no. 2 Messers Paras Presidency is also a registered partnership firm of which Sanjiv Jain is a partner.

3. It was further averred that freehold plot numbers YY/1,YY/2,YY/3 and YY/4, the details of which were mentioned in the plaint, the combined area of which was described as letters ABCD in the plaint map, hereinafter called the disputed land, was owned by Puran Chand Mehrotra, defendant no.1 Ravi Kumar Mehrotra and defendant no.2 Smt. Rashmi Mehrotra along with the house existing thereon. It was further averred that the above owners of the land, used to run Volkswagen car showroom on it and a workshop was also situated on this land. Puran Chand Mehrotra, was the father of Ravi Kumar Mehrotra and father-in-law of Smt. Rashmi Mehrotra, who died on 15.3.2017. It was averred that at present the defendant no.1 & 2 are the owners of the disputed property.

4. It was further averred by the plaintiffs that the above land owners were interested to raise a multi-storey residential complex over their aforesaid plot measuring 3251.29 m, the details of which have been mentioned at the foot of the plaint and which was earmarked by letters ABCD in the plaint map. It was further averred that the plaintiff no.1 firm is a builder and the above land owners negotiated with it through its Chief Executive Officer/Partner Rajesh Kumar Gupta to raise multi storeyed residential complex over the said land, who gave a proposal on behalf of plaintiff no.1, to construct the multi-storeyed residential complex on the said land of the aforesaid owners investing the money of the plaintiff no.1. It was further averred by the plaintiffs that the land owners agreed and accepted the proposal of the plaintiff no.1.

5. It was further averred that the above land owners namely late Puran Chand Mehrotra, Ravi Kumar Mehrotra and Smt. Rashmi Mehrotra entered into a memorandum of understanding (MOU) on 30.3.2014 with plaintiff No.2, which is a firm promoted by plaintiff no.1 , to raise multi storeyed residential complex over the disputed land and on behalf of all the land owners, the MOU was signed by Ravi Kumar Mehrotra. The MOU included the heirs, executors and assignees of the land owners and the plaintiffs.

6. It was further averred that before executing the said MOU, the land owners had received ₹ 2 crores from the plaintiffs, the details of which were provided in the plaint. The proposed residential flats/houses were to be constructed by the plaintiffs as per plan sanctioned by Allahabad Development Authority(ADA), Allahabad now Prayagraj Development Authority(PDA). It was further averred that the plaintiff no.2 paid ₹ 68,58,370/-to the ADA for sanction and approval of the map which was also acknowledged by the ADA. It was further averred that till the date of filing of the suit, the plaintiffs have invested approximately ₹ 3.53 crores in furtherance of constructing multi storeyed complex on the disputed land, the payment details of which were mentioned in the plaint. It was further averred that the map was to be proved and sanctioned in the name of the above land owners, hence the demand notice dated 15.10.2015 by ADA, was sent to land owners which was given to plaintiff no.1, upon which the plaintiff no.2 paid the amount to ADA from its bank account. It was further averred that the plaintiff no.2 paid ₹ 3,77,869/- to the Nagar Nigam for NOC on 7.4.2017 and Rs. 1,62,569/- to Jalkal Vibhag for NOC on 31.10.2015. The plaintiffs obtained NOC dated 18.12.2015 from S.P. traffic, fire department and electricity department, in part performance of the above mentioned MOU.

7. It was further averred that the land owners, after the aforesaid payment to the ADA for approval of the map, also gave the physical possession to the plaintiffs, which was acknowledged by defendant no.1 by giving an affidavit, which was in part performance of the said MOU. It was further averred that for raising multi storeyed residential complex on the disputed land, the plaintiffs established the office on the red portion which was specified by letter EFGH in the plaint map, which was earlier used as workshop of Volkswagen car agency.

8. It was further averred that the plaintiffs gave the work order to Mahtab Ahmad, contractor for demolition on the disputed land, which was completed in the month of March 2019 and the disputed land was being used for promotional activities by the plaintiffs. It was further averred that for project publicity, the plaintiffs got printed the brochure and have also given advertisement in

newspapers and have also booked the flats and have received advance payment from the prospective purchasers of the flats on 31.10.2015 and 23.11.2015.

9. It was further averred that the defendant no. 3 have got no concern with the disputed land, who filed his own map for revision of the original map already sanctioned on 5.10.2015, due to which the map submitted by the plaintiffs could not be finally sanctioned and approved. The plaintiffs filed objection dated 28.6.2019 against the revision of the map. It was averred that the construction of proposed multi storeyed residential complex on the disputed land could not be started because the defendant no.3 submitted his own map for revision and objection of the plaintiffs was pending for disposal. It was averred that defendant no.3 was a powerful and influential person, who was threatening to interfere in the promotional activities of the plaintiffs on the disputed land, who has also threatened to dismantle the office of the plaintiffs existing on the place shown by letter EFGH and IJAB in the plaint map, who has threatened to remove the flex board signage of the plaintiffs existing on the place shown by the letters UV, who was also threatening to get printed his own brochure for the publicity, hence the plaintiffs were compelled to file the suit. The plaintiffs prayed for the following reliefs :-

By means of permanent injunction the defendant no.3, his agents, servants and associates be restrained from doing any sort of promotional activities on the suit land, be restrained from interfering in promotional activities of the plaintiffs over the suit land, be restrained from demolishing the office of the plaintiffs and defendant no.1 & 2, be restrained from doing any sort of negotiation with the defendant no.3, regarding raising of multi storeyed residential complex over the suit land, and be restrained from entering into an MOU or builder agreement or any sort of agreement with any other third party with regard to construction of residential complex on the suit land.

Written Statement of Defendants

10. The defendants in their Written Statement have admitted that they are the owner of the disputed land on which a showroom and service centre of Volkswagen was situated, which was not operational. It was averred that after the death of Puran Chand Mehrotra, defendant no.1 and 2 along with daughter Rashmi Kapoor are his heirs.

11. It was averred that the defendants were interested in getting the multi storeyed residential complex constructed on the disputed land. It was further averred that the alleged MOU dated 30.3.2014 was a forged and fabricated document, on the basis of which the instant suit was not legally maintainable. It was averred that the alleged map was sanctioned in the name of defendants regarding which no advantage could be taken by the plaintiffs. It was further averred that the defendants have returned an amount of Rs.1.31 crores to the plaintiffs. It was further averred that the defendants have returned the amount deposited by the plaintiffs with the ADA. The defendants accepted that a payment of Rs.3,77,869/- was made by plaintiff no. 2 to Nagar Nigam and Rs.1,62,569/- to Jalkal Vibhag but the above amounts were refunded to the plaintiffs, by them, as per the agreed terms and conditions. The possession of the plaintiffs on the disputed land was denied by the defendants. It was averred that the defendants were in possession of the disputed property. It was further averred that no construction whatsoever is existing on the disputed land. It

was averred that the plaintiffs have malafidely launched a fraudulent scheme for extorting money in the garb of selling alleged flats constructed on the disputed land, for which the defendants are not bound.

12. The defendants averred that the plaintiffs in order to usurp the disputed land entered into a builder agreement but the MOU dated 30.3.2014 was not prepared accordingly, hence the defendants have returned the advance money given by the plaintiffs. It was averred that defendant no.1 has returned an amount of Rs. one crore, as well as, the amount deposited by the plaintiffs with PDA, and inspite of this, for blackmailing and harassing the defendants, the plaintiffs have filed the suit on the basis of an alleged MOU, which was not legally maintainable. The plaintiffs are not in possession of the disputed property, as such, the suit was barred under Section 34, 38 and 41 of the Specific Relief Act. The disputed property was valued at about ₹ 20 crores as such, the plaintiffs have insufficiently valued the suit and consequently, inadequate amount of court fees has been paid. With these submissions, it was prayed that the suit filed by the plaintiffs was liable to be dismissed.

Ad-interim injunction application

13. During the pendency of the suit the plaintiffs filed an ad interim injunction application no. 6-C under Order 39 Rule 1 read with Section 151 CPC for restraining the defendant no.3 and his agents, servants and associates from doing any sort of promotional activities on the suit land, for restraining him from interfering in promotional activities of the plaintiffs over the suit land and also for restraining him from demolishing the office of the plaintiffs and for restraining the defendant no.1 and 2 from doing any sort of negotiation with the defendant no. 3 regarding raising of multi storeyed residential complex on the disputed land and from also restraining them from entering into an MOU or builder agreement or any sort of agreement with any other third party with regard to construction of residential complex on the disputed land, till the pendency of the suit, which was supported by affidavit 7-C of Rajesh Kumar Gupta, which reiterated all the grounds taken earlier in the plaint.

14. The defendants opposed the ad-interim injunction application of the plaintiffs by filing objection (paper no.14-C) supported by affidavit (paper no.15-C) of defendant no.1 Ravi Kumar Mehrotra, in which all the averments of the written statement were reiterated. It was further averred that after cancellation of the deal with the plaintiffs, for raising constructions on the disputed land, as per the sanctioned building plan, NOC was obtained from the concerned departments, in the name of defendants, not plaintiffs. It was further averred that the defendants have never acknowledged that the possession of the disputed land has been handed to the plaintiffs. It was further averred that no alleged construction was existing on the disputed land, the disputed land was lying vacant. It was further averred that neither the prima-facie case nor balance of convenience was in favour of the plaintiffs and if, plaintiffs ad-interim injunction application was not rejected, the defendants shall suffer irreparable loss.

15. The plaintiffs in the rejoinder affidavit have accepted that in the month of March 2019, with the consent of the land owners, through contractor Mehtab Ahmed, the Volkswagen showroom, service centre and workshop standing on the disputed land have been demolished. It has

also been accepted by the plaintiffs that Rashmi Kapoor is the daughter of late Puran Chand Mehrotra, but it was averred that till Puran Chand Mehrotra was alive, there was no share of Rashmi Kapoor in the disputed land. It was averred that the plaintiffs have in all spent an amount of ₹ 3.53 crores on the disputed land, which has not been returned by the landowners. It was further averred that a personal loan of Rs. 1,97,30,000/- for purchasing the land was taken by defendant no.1 and 2 and their son Rohan from Rajesh Kumar Gupta and an amount of ₹ 1.46 crores has been returned by the above defendants, towards repayment of that loan. It was further averred that defendant no. 1 and 2 have received an amount of Rs. 2.60 crores from defendant no.3 on 12.6.2019, who were trying to make the MOU infructuous, and if they succeed in doing so, then the purpose of filing the instant suit shall be frustrated.

Reasoning of Trial Court

16. The trial court by impugned order has concluded that the alleged MOU was executed between the plaintiffs, defendant no.1,2 and Puran Chand Mehrotra but it has only been signed on behalf of plaintiff by Rajesh Kumar Gupta and defendant no.1 Ravi Kumar Mehrotra. It was further concluded that at the time of the alleged execution of MOU, Puran Chand Mehrotra was alive but inspite of being the owner, he has not signed the MOU. Besides this, defendant no.2 Rashmi Mehrotra has also not signed it. It was further concluded that the plaintiffs have sought injunction on the basis of alleged MOU against all the owners of the disputed land, but the alleged MOU does not bear the signature of all the land owners, as such, it cannot be enforced against those land owner, who have not signed it. It was further concluded that since the MOU was not signed by all the land owners, hence there was no consent on the part of all the land owners regarding the alleged MOU, as such, the MOU cannot be enforced against all the owners.

17. The trial court further concluded that even if, it is assumed that an MOU was indeed executed between the parties on 30.3.2014, even then the MOU contains an arbitration clause in para no.30, according to which, in case of dispute between the parties, the dispute will be resolved by an arbitrator, who will be appointed with consent of the parties, and the provisions of Arbitration and Conciliation Act, 1996 will be applicable on such proceedings. The trial court concluded that prima-facie in view of the above arbitration agreement, the trial court had no jurisdiction to decide the dispute.

18. The trial court further concluded that as per para-33 of the MOU, it was the bounden duty of the builder to get the MOU registered but it has not been registered, which amounts to violation of the terms and conditions of the MOU. It was further concluded that the alleged MOU was not duly stamped as per the provisions of the Stamp Act and in view of this, prima-facie there was no force in MOU.

19. The trial court further concluded that the plaintiffs have accepted that defendant no. 1 and 2 are the real owners of the disputed land, against whom, injunction cannot be granted. The trial court further concluded that as per para 8 of the MOU, the alleged possession of the plaintiffs was of a licensee only for construction purposes, which created no right or interest in the favour of builder, which merely granted permission to the plaintiffs for undertaking construction in the

disputed land, which cannot be treated as the settled possession of the plaintiffs and due to this reason, the plaintiffs were also prima-facie not in possession of the disputed land.

20. The trial court further concluded that the plaintiffs have sought the relief of restraining defendant no.1 and 2 from entering into any agreement with third-party which in reality amounts to enforcement of alleged MOU but they have not sought any relief for its specific performance, whereas, prima-facie the plaintiffs are neither the owner nor in possession of the disputed land and the alleged MOU does not create any binding and legally enforceable agreement between the parties.

21. It was further concluded by the trial court that the plaintiffs in the rejoinder affidavit have accepted that they have received back the money from the defendants but it was submitted by the plaintiffs that it related to return of the personal loan taken from Rajesh Kumar Gupta, by defendant no.1, for purchasing the land. On the basis of the above admission of the plaintiffs, the trial court concluded that prima-facie the money has been returned by the defendants to the plaintiffs. The trial court concluded that whether the returned money was personal loan, it will be decided after evidence of the parties. The trial court also concluded that since the defendants were not paid any amount from the bank account of the plaintiff firms, as such there was no requirement for the defendants to return the amount to the plaintiff firms bank account.

22. In view of the above reasons assigned by the trial court, the plaintiffs ad interim injunction application no.6-C was dismissed, aggrieved against which, the plaintiffs have filed the instant appeal under Order 43 Rule 1(r) CPC.

Submissions of learned counsel for plaintiff-appellant

23. Learned senior counsel Shri Manish Goyal for the plaintiff-appellants submitted that an MOU was executed between the parties, according to which residential flats for housing purposes was to be constructed by the plaintiffs on the disputed land of the defendant no.1 and 2 and as per the terms and conditions of the MOU, the plaintiffs had also paid an amount of about Rs.2 crores to the defendant no.1 and 2 and in part performance of the MOU, the plaintiffs are also in possession of the disputed land but still, the trial court has held otherwise. It was further submitted that the MOU does not create any right in the disputed land because the ownership of the disputed land remains with the defendants, hence the MOU was not required to be registered in accordance with the provisions of the Registration Act, but the trial court has held otherwise. It was further submitted that since the parties had acted in terms of the MOU, there was no reason to doubt its execution and existence, but the trial court has held otherwise. It was further submitted that if the defendants managed to create third-party rights in the disputed land and enter into any builder agreement with third-party, to raise construction on the disputed land, then it will seriously prejudice the plaintiffs because they have invested a lot of money on the marketing of the proposed flats which are to be constructed on the disputed land, which has not been refunded by the land owners. It was further submitted that the trial court has misappreciated the above facts and has wrongly rejected the plaintiffs ad interim injunction application. In support of his submissions learned Counsel has relied upon the following case law :-

- (1) *Uday Pratap vs. Digamber Singh* 2013 SCC OnLine All 8292.
- (2) *K. Kasturi and others vs. C. Mohan and others* 2007(1) Law Weekly 560 (Madras).
- (3) *Rolta Infrastructure and Technology Services Pvt. Ltd. vs. Department of Information Technology and Electronics, Government of West Bengal* 2024 SCC OnLine Cal 105.
- (4) *The interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899*, IN RE (2024) 6 SCC 1 (by 7 Judges).
- (5) *M/s Ashoka Builders & Promoters and another vs. M/s Edward Keventer (Successors) P.Ltd. and others* 1993 (26) DRJ 489.
- (6) *Sardar Balbir Singh vs. Atma Ram Srivastava* 1976 SCC OnLine All 374 (Full Bench).

Submissions of learned counsel for defendant respondents

24. Per contra, learned counsel for the defendant-respondents submitted that the impugned order of the trial court is perfectly legal and justified. It was submitted that the alleged MOU was not signed by all the owners of the disputed property, which was also not produced in original before the trial court, which was the basis of the suit filed by the plaintiffs, which allegedly created rights in favour of the plaintiffs but it was not duly stamped and registered in accordance with the provisions of the Stamp Act and Registration Act, as such, the trial court has not erred in not relying upon it for granting any relief to the plaintiffs. It was further submitted that the defendant no.1 and 2 are the real owners of the disputed land against whom the relief of injunction cannot be granted. It was further submitted that the plaintiffs have neither sought any relief for the specific performance of the MOU nor sought any declaration regarding its legal enforceability on the land owners and have only claimed the relief of simplicitor permanent injunction, as such, the suit was not legally maintainable in the absence of any relief of specific performance and declaration. It was further submitted that the plaintiffs are also not in possession of the disputed land as such, neither any prima-facie case nor any balance of convenience lies in their favour hence, the trial court has not erred in rejecting the plaintiffs ad interim injunction application, which requires no interference from this Court in exercise of its appellate jurisdiction. Learned counsel in support of his submission has relied upon the following case law :-

- (1) *Anathula Sudhakar vs. P. Buchi Reddy (Dead)* by LRs. & ors. (2008) 4 SCC 594.
- (2) *Vinod Kumar and others vs. Sudha Land Ventures and Homes Pvt. Ltd.* 2015(8) ADJ 387 (DB).
- (3) Civil Revision no. 111 of 2015 *Subash Chand Garg and others vs. Messers HKS Developers Pvt. Ltd. and others* decided on 5.6.2020 by Single Judge Bench of this Court.
- (4) FAFO no.290 of 2015 *Subash Chand Garg and others vs. Messers HKS Developers Pvt. Ltd. and others* decided on 21.12.2016 by Division Bench of this Court.

25. I have heard the learned counsel of both the sides, perused the impugned order, the record of the lower court and the case law submitted by them.

Conclusion of this Court

Execution of MOU between the parties

26. The plaintiffs contended that regarding the disputed land an MOU was executed between the land owners and the plaintiffs on 30.3.2014, a copy of which has been filed by the plaintiffs in the original suit, which has been denied by the defendants in their written statement. It was further submitted by the defendants that at the time of the execution of the alleged MOU on 30.3.2014, the ownership of disputed land vested in Puran Chand Mehrotra, Ravi Kumar Mehrotra and Smt. Rashmi Mehrotra but from the perusal of the MOU submitted by the plaintiffs before the court, it was apparent that it was only signed by defendant no.1 Ravi Kumar Mehrotra, as such it was not binding and cannot be enforced against all the land owners.

27. It is apparent that the plaintiffs have alleged in the plaint that the ownership of the disputed land vested in Puran Chand Mehrotra, Ravi Kumar Mehrotra and Smt. Rashmi Mehrotra, which is also apparent from the photo copy of sale deeds of disputed property filed by the plaintiffs in the original suit, but it is hard to understand why the MOU was not signed by Puran Chand Mehrotra and Smt. Rashmi Mehrotra. It is further apparent that no power-of-attorney has been executed by the other owners in favour of the defendant no.1 Ravi Kumar Mehrotra, authorising him to execute an MOU on their behalf. It is also apparent that Puran Chand Mehrotra has died intestate on 15.3.2017, leaving behind defendant no.1 Ravi Kumar Mehrotra (son) and Rashmi Kapoor(daughter), as legal heirs. It is apparent that in the absence of any Will, Rashmi Kapoor has also inherited 1/2 share of the deceased in the disputed property, but no MOU has been executed between Rashmi Kapoor and the plaintiffs, regarding the disputed property. In view of the above facts, it is hard to understand how regarding the disputed land, which belongs to defendant no.1,2 and Rashmi Kapoor, an MOU, which has not been signed by defendant no.2, Puran Chand Mehrotra and Rashmi Kapoor, can be legally enforced.

Non-filing of original MOU

28. It is further apparent that the plaintiffs have not filed the original MOU in the trial court, which is the basis of the suit. Learned counsel for the plaintiff appellants submitted that the original MOU can be filed at any time before the framing of issues by the trial court, and even subsequently, with the leave of the court, in accordance with Order 7 Rule 14 read with Order 13 Rule 1 CPC, relying upon the case law of *Uday Pratap Singh* (supra).

29. The Apex Court in the case of *Kapil Kumar Sharma Vs. Lalit Kumar Sharma and another (2013)14 SCC 612*, has held that leave can be granted to file documents under Order 7 Rule 14 CPC when cross examination of the witness had not yet commenced.

30. It is true that the Apex Court in the above referred case of *Kapil Kumar Sharma* (supra) and this Court in the case of *Uday Pratap Singh* (supra) has held that Order 7 Rule 14 read with Order 13 Rule 1 of CPC are procedural in nature and consequently, it was held that it is not a mandatory provision. In view of this, the plaintiff can file the original document at the time of framing of the issues and if he fails to do so, the same would not be taken in evidence without the leave of the court. In view of this, non-filing of the original MOU is not fatal to the plaintiffs case.

Whether MOU creates any rights in favour of plaintiffs

31. Learned Senior Counsel for the plaintiff appellants submitted that the MOU does not create any vested right in favour of the plaintiffs in the disputed land because the ownership remains with the land owners, which has not been transferred. It was further submitted that in the light of the judgment of the Constitution Bench of the Apex Court in the case of *The interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, IN RE (2024) 6 SCC 1 (By 7 Judges)* this issue was not relevant, as such the trial court has erred in concluding that the MOU could not be considered to be legally enforceable document because it was neither stamped nor registered.

32. The Constitution bench of the Apex Court in the case of *The interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899* (supra) was considering the situation where an arbitration agreement was in existence between the parties and for enforcing that agreement, for either referring the matter by the Court to an arbitrator under Section 8 of the Arbitration and Conciliation Act 1996 or for appointing an arbitrator by the Court under Section 11 of the Act of 1996, whether at that stage an objection can be taken by the contesting party, before the court, that the arbitration agreement cannot be acted upon because it was unstamped and unregistered.

33. It was held by the Apex Court that Sections 33 and 35 of the Stamp Act cannot be allowed to operate in proceedings under Section 11(or Section 8, as the case may be), in view of the non-obstante clause in Section 5 of the Act of 1996. It was further held that it is for the Arbitral Tribunal and not the Court which may test whether the requirements of a valid contract and a valid arbitration agreement are met. If the Tribunal finds that these conditions are not met, it will decline to hear the dispute any further. If it finds that a valid arbitration agreement exists, it may assess whether the underlying agreement is a valid contract.

34. It was further held by the Apex Court that by enacting Section 16 of the Arbitration Act, the Parliament has permitted an agreement to arbitrate to be preliminarily enforced even if it is only an agreement. After parties have been referred to arbitration under Section 8 of the Arbitration Act or after the appointment of arbitrators under Section 11 of the Act, the Arbitral Tribunal will have jurisdiction to determine all questions and issues in dispute between the parties. It was further held that once the Arbitral Tribunal has been appointed, it will act in accordance with law and proceed to impound the agreement under Section 33 of the Stamp Act if it sees fit to do so. It has the authority to receive evidence by consent of the parties, in terms of Section 35. It was further held that the procedure under Section 35 may be followed thereafter. It was further held that the impounding of an agreement which contains an arbitration clause at the stage of the appointment of an arbitrator under Section 11(or Section 8 as the case may be) of the Arbitration Act will delay the commencement of arbitration.

35. It was further held by the Apex Court that non-stamping or insufficient stamping of an instrument does not render it invalid or non-existent. It was further held that the Referral Court at Section 11 stage, should not examine or impound an unstamped or insufficiently stamped instrument, but rather leave it for the determination of the Arbitral Tribunal. It was further held that when a party produces an arbitration agreement or a certified copy, the Referral Court only has to examine whether an arbitration agreement exists in terms of Section 7 of the Arbitration Act. It was

further held that the Referral Court under Section 11 is not required to examine whether a certified copy of the agreement/instrument/contract discloses the fact of payment of stamp duty on the original.

36. The Constitution Bench of the Apex Court finally concluded as under: -

(i) **Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act.** Such agreements are not rendered void or void ab initio or unenforceable;

(ii) Non-stamping or inadequate stamping is a curable defect;

(iii) An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The Court concerned must examine whether the arbitration agreement prima-facie exists;

(iv) Any objections in relation to the stamping of the agreement fall within the ambit of the Arbitral Tribunal; and

(v) The decision in **N.N.Global** (2023) 7 SCC 1 and **SMS Tea Estates** (2011) 14 SCC 66 are overruled. Paragraph 22 and 29 of **Garware Wall Ropes** (2019) 9 SCC 209 are overruled to that extent.

37. It is apparent that the Constitution Bench of the Apex Court was only concerned whether at the stage of exercising jurisdiction by the Court under Section 8 or 11 of the Arbitration and Conciliation Act 1996, the Court can examine whether the arbitration agreement was unstamped and as such, was inadmissible in evidence and whether the Court was justified in considering that objection at that stage. It is apparent from the above decision that the Court cannot examine that issue while exercising jurisdiction under Section 8 or 11 of the Act of 1996, and this issue can be raised before the Arbitral Tribunal, which may decide it in accordance with law. It is further apparent that the Apex Court has held such agreement to be inadmissible in evidence, but not void ab initio and after payment of proper stamp duty, it becomes a legally enforceable agreement.

38. It is apparent that in the instant case the matter does not relate to exercise of jurisdiction by the Court under Section 8 or 11 of the Arbitration and Conciliation Act 1996, but the issue is of enforcement of unstamped and unregistered MOU by the plaintiffs, which contains an arbitration clause, the execution of which has been denied by the land owners/defendants. It is further apparent that neither party has invoked the arbitration clause in the MOU, for referring the dispute/matter to the arbitrator, as such, the Constitution Bench judgment relied on by the learned senior counsel for the appellants, does not help the plaintiff-appellants.

39. It is well-settled that the character of a document is not to be determined on the basis of its nomenclature and it is to be interpreted on the basis of its recitals. In view of this, for ascertaining the true character of the MOU, it will be apposite to mention the relevant clauses of the alleged MOU. Clause 9, 12, 13, 14, 19, 30 and 33 of the MOU read as under: -

(9) That on completion of the project i.e. completion of entire construction of multi storeyed complex, the 58% of land owner and saleable area along with the prorata land of the multi storeyed complex on each floors shall be solely owned and possessed by the owners and the

remaining 42% saleable area along with the prorata land of the multi storeyed complex on each floors shall be owned by the builder. The constructed and saleable area on each floor shall be shared in 58% and 42% ratio on all the floors between the landowner and the builder. The land owners and the builder shall have roof rights in the aforesaid proportion of 58% and 42% respectively but the commercial sanctioned shall be exclusively of the land owners only and if any charges levied by ADA shall be borne by the landowners only.

(12) That the entire 58% saleable area owned by the owners as mentioned herein before shall absolutely vest in the owners and the owners alone shall be entitled to either retain or execute sale MOUs of the same at their own discretion by their own signatures without any interference of the builder or its successors or assignees or nominees.

(13) That the entire 42% saleable area owned by the builder as mentioned herein before shall absolutely vest in the builder and the builder shall alone entitled to either retain or sell the same at their own discretion by the signature of its CEO or by its authorised officer without any interference by the owners or their heirs, legal representatives, executors or assignees or nominees. But the builders are permitted to book independent residential dwelling units and accept advance only for their share after signing of this MOU.

(14) That the owners and the builder shall also own respectively in proportion of 58% and 42% saleable area on all the floors. The owners and the builder shall be entitled to either retain or sell their respective shares at their own discretion.

(19) That the entire project shall be completed as far as possible within a period of two years from the date of release of sanctioned plan for construction of multi storeyed complex by ADA, Allahabad or 2 years from the date of handing over vacant physical possession by the land owners to the builder whichever is later. However any period, during which the builder shall not be entitled/or unable to raise construction under unforeseen circumstances like restrain order by court etc. shall not be taken in account for calculating the aforesaid period of two years. It is further agreed that in case the builder fails to complete the project for any reason within the aforesaid period of two years, then the builder shall be liable to pay to the landowners damages at the rate of Rs. 25,000/- per month for the period of delay. That similarly, if the owners fail to handover vacant possession of the plot within the agreed period of one month from the date of sanction of map or 30th November 2014 whichever is later, then in that case the owners shall pay an interest at the rate of 1.5 % per month on the refundable deposit amount i.e. ₹ 5 crores to the builder as damages up to the date of the possession.

(30) That in case of any dispute arising between the parties hereto pertaining to the terms and conditions of this MOU the same shall be referred to sole arbitrator to be appointed jointly with mutual consent and the decision of the arbitrator shall be final and binding on the parties hereto. The provision of Arbitration Act, 1996 shall be fully applicable to such Arbitration proceedings.

(33) That the expenses of this MOU including payment of Stamp duty and Registration fees etc. shall be borne by the builder only.

40. The Apex Court in the case of ***Yellapu Uma Maheshwari and another vs. Buddha Jagadheeswararao and others*** (2015) 16 SCC 787, while analysing Section 17 and 49 of the Registration Act, 1908, has held that a document which has the effect of creating and taking away the rights in respect of an immovable property, is compulsorily registrable and if not registered, is

not admissible in evidence, however, it can be relied upon for collateral purpose, subject to payment of stamp duty, penalty, proof and relevancy.

41. The Apex Court in the case of ***Sita Ram Bhamu vs Ramvatar Bhamu (2018) 15 SCC 130***, held as under:-

*10. The only question which needs to be considered in the present case is as to whether document dated 9-9-1994 could have been accepted by the trial court in evidence or the trial court has rightly held the said document inadmissible. The plaintiff claimed the document dated 9-9-1994 as memorandum of family settlement. The plaintiff's case is that earlier partition took place in the lifetime of the father of the parties on 25-10-1992 which was recorded as memorandum of family settlement on 9-9-1994. There are more than one reasons due to which we are of the view that the document dated 9-9-1994 was not mere memorandum of family settlement, rather a family settlement itself. Firstly, on 25-10-1992, the father of the parties was himself owner of both, the residence and shop being self-acquired properties of Devi Dutt Verma. The High Court has rightly held that the said document cannot be said to be a will, so that the father could have made the will in favour of his two sons, the plaintiff and the defendant. Neither the plaintiff nor the defendant had any share in the property on the day when it is said to have been partitioned by Devi Dutt Verma. Devi Dutt Verma died on 10-9-1993. After his death, the plaintiff, the defendant and their mother as well as sisters become the legal heirs under the Hindu Succession Act, 1956 inheriting the property being a Class I heir. The document dated 9-9-1994 divided the entire property between the plaintiff and the defendant which document is also claimed to be signed by their mother as well as the sisters. **In any view of the matter, there is relinquishment of the rights of other heirs of the properties, hence, the courts below are right in their conclusion that there being relinquishment, the document dated 9-9-1994 was compulsorily registrable under Section 17 of the Registration Act.***

* * *

12. We are, thus, in full agreement with the view taken by the trial court as well as the High Court that the document dated 9-9-1994 was compulsorily registrable. The document also being not stamped could not have been accepted in evidence and the order of the trial court allowing the application under Order 13 Rule 3 CPC and the reasons given by the trial court in allowing the application of the defendant holding the document as inadmissible cannot be faulted.

13. There is only one aspect of the matter which needs consideration i.e. whether the document dated 9-9-1994, which was inadmissible in evidence, could have been used for any collateral purpose. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. Further, an unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. A two-Judge Bench judgment of this Court in Yellapu Uma Maheswari v. Buddha Jagadheeswararao (2015) 16 SCC 787 is appropriate. In the above case also, admissibility of documents, Ext. B-21 dated 5-6-1975 a deed of memorandum and Ext. B-22 dated 4-6-1975 being an agreement between one late Mahalakshamma, Respondent 1-plaintiff and Appellant 1-defendant came for consideration. Objection was taken regarding admissibility which was upheld both by the High Court [Yellapu Uma Maheswari v. Buddha Jagadheeswara Rao, 2013 SCC OnLine AP 766] and trial court. Matter was taken up by this Court. In the above case, this Court held that the

nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents. This Court after considering both the documents, B-21 and B-22 held that they require registration. In para 15, the following was held: (SCC p. 794)

“15. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exts. B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registrable document and if the same is not registered, it becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exts. B-21 and B-22 are the documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act and hence are compulsorily registrable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exts. B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition.

14. After holding the said documents as inadmissible, this Court in Yellapu Uma Maheswari case further proceeded to consider the question as to whether the documents B-21 and B-22 can be used for any collateral purpose. In the above context, the Court accepted the submission of the appellant that the documents can be looked into for collateral purpose provided the appellant-defendant to pay the stamp duty together with penalty and get the document impounded. In paras 16 and 17, the following has been laid down: (SCC p. 794)

“16. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of the Andhra Pradesh High Court in Chinnappareddigari Peda Mutyala Reddy v. Chinnappareddigari Venkata Reddy [Chinnappareddigari Peda Mutyala Reddy v. Chinnappareddigari Venkata Reddy, 1967 SCC OnLine AP 4 : AIR 1969 AP 242] has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellant-defendant want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the trial court is at liberty to mark Exts. B-21 and B-22 for collateral purpose subject to proof and relevance.

17. Accordingly, the civil appeal is partly allowed holding that Exts. B-21 and B-22 are admissible in evidence for collateral purpose subject to payment of stamp duty, penalty, proof and relevancy.

15. Following the law laid down by this Court in the above case, we are of the opinion that the document dated 9-9-1994 may be admissible in evidence for collateral purpose provided the appellant gets the document impounded and to pay the stamp duty together with penalty as has been directed in the above case.

42. Similarly, The High Court of Bombay in the case of **Salim Baig vs Sayyad Nawid 2025 SCC OnLine Bom 2819**, held as under:-

17. *The Hon'ble Supreme Court of India in case of Avinash Kumar Chauhan v. Vijay Krishna Mishra, AIR 2009 SCW 979, observed that where possession of property has been transferred under any instrument, in absence of payment of stamp duty, such instrument cannot be admitted even for collateral purpose or to corroborate oral evidence. There is total and absolute bar as to admission of unstamped instrument, unless there is compliance with requirements of provisos to Section 35.*

18. *In this background, if unstamped instrument is admitted even for collateral purpose, it would amount to receiving such document in evidence for a purpose which is prohibited under Section 35 of Stamp Act. The bar against admissibility of instrument which is chargeable with stamp duty and is not stamped is of course absolute whatever be the nature of purpose, be it for main or collateral purpose, unless requirements of proviso (A) to Section 35 are complied with.*

19. *The similar issue was considered by High Court of Karnataka in case of Smt. Dyavamma Alias Sanna Mukkamma v. Smt. Balamma, ILR 2010 Kar 3280, that instruments which are not duly stamped are not only inadmissible in evidence, but the Court cannot act upon it, or consider the same for any relief like temporary injunction till such time both duty and penalty are paid. In case of Yellapu Uma Maheswari v. Buddha Jagadheeswararao, (2015) 16 SCC 787, the Hon'ble Supreme Court observed that if party wanted to rely upon document for collateral purpose, it was upon for him to pay stamp duty together with penalty and get document impounded.*

43. The Apex Court in the case of **Ameer Minhaj vs.Dierdre Elizabeth (Wright) Issar and others (2018) 7 SCC 639(By 3 Judges)**, while analysing Section 17(1-A) of the Registration Act, 1908, held as under: -

9. *In other words, the core issue to be answered in the present appeal is whether the suit agreement dated 9-7-2003, on the basis of which relief of specific performance has been claimed, could be received as evidence as it is not a registered document. Section 17(1-A) of the 1908 Act came into force with effect from 24-9-2001. Whereas, the suit agreement was executed subsequently on 9-7-2003. Section 17(1-A) of the 1908 Act reads thus:*

17. Documents of which registration is compulsory. (1) *The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act 16 of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871) or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely*

* * *

(1-A) *The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53-A.*

10. *On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section 53-A of*

the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53-A of the 1882 Act. The issue, in our opinion, is no more res integra. In S. Kaladevi v. V.R. Somasundaram [S. Kaladevi v. V.R. Somasundaram, (2010) 5 SCC 401 : (2010) 2 SCC (Civ) 424] this Court has restated the legal position that when an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act.

11. Section 49 of the 1908 Act reads thus:

49. Effect of non-registration of documents required to be registered. No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.

12. In the reported decision, this Court has adverted to the principles delineated in K.B. Saha & Sons (P) Ltd. v. Development Consultant Ltd. [K.B. Saha & Sons (P) Ltd. v. Development Consultant Ltd., (2008) 8 SCC 564] and has added one more principle thereto that a document is required to be registered, but if unregistered, can still be admitted as evidence of a contract in a suit for specific performance. In view of this exposition, the conclusion recorded by the High Court in the impugned judgment [Dierdre Elizabeth (Wright) Issar v. Ameer Minhaj, 2016 SCC OnLine Mad 31541] that the sale agreement dated 9-7-2003 is inadmissible in evidence, will have to be understood to mean that the document though exhibited, will bear an endorsement that it is admissible only as evidence of the agreement to sell under the proviso to Section 49 of the 1908 Act and shall not have any effect for the purposes of Section 53-A of the 1882 Act. In that, it is received as evidence of a contract in a suit for specific performance and nothing more. The genuineness, validity and binding nature of the document or the fact that it is hit by the provisions of the 1882 Act or the 1899 Act, as the case may be, will have to be adjudicated at the appropriate stage as noted by the trial court after the parties adduce oral and documentary evidence.

44. It is apparent from the above terms and conditions of the alleged MOU, that in the disputed land and the proposed superstructure to be constructed on it, the land owners have agreed to create 42% ownership of the plaintiffs, meaning thereby that the land owners have relinquished their 42% ownership in the disputed land. It is apparent that the alleged MOU is creating ownership rights in favour of the plaintiffs and extinguishing ownership rights of the land owners in the disputed land, as such, the alleged MOU should be duly stamped as per the provisions of Stamp Act, and should also be registered as per Section 17 of the Registration Act, in order to become a legally enforceable agreement so as to vest, any right, title and interest in the plaintiffs in the

disputed land. It is further apparent that the plaintiffs are claiming rights in the disputed land only on the basis of the alleged MOU but due to non payment of proper stamp duty and non-registration, it is not a legally enforceable document. Even the Constitution Bench of the Apex Court in the case of ***The interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899*** (supra) has held such agreement to be inadmissible in evidence. It is apparent that if the MOU is inadmissible in evidence then how any relief can be granted to the plaintiffs on the basis of this MOU, when the defect of non-payment of stamp duty and non-registration has not been cured by the plaintiffs.

45. It is further apparent that even the clause 33 of the MOU mandates that the Stamp duty and Registration fees of the MOU is to be borne by the builder, which itself shows that it was in the contemplation of the parties, that the MOU requires payment of stamp duty and it also requires registration, so as to become a legally enforceable document.

46. In view of the above facts and the legal position, the alleged MOU does not create any legally enforceable right in favour of the plaintiffs, insofar as the disputed land is concerned.

Relief of specific performance of MOU or declaration regarding its enforceability not claimed by the plaintiffs. In such situation, whether the suit is barred by Section 41(h) of the Specific Relief Act

47. The Apex Court in the case of ***Anathula Sudhakar versus P. Buchi Reddy (Dead) by Lrs. and others (2008)4 SCC 594***, while discussing the general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and /or possession with injunction as a consequential relief, held as under:-

13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

14. *We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.*

15. *In a suit for permanent injunction to restrain the defendant from interfering with the plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and the defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally.*

16. *But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs.*

48. *It is apparent that the case of the plaintiffs is based on the alleged MOU, the execution of which, has not been admitted by the landowner/defendants, which is also not duly stamped and unregistered, which does not confer any right, title and interest in the disputed land on the plaintiffs. The plaintiffs have also not sought the relief of specific performance of MOU. It is well settled that in order to claim any right, title and interest in the disputed land, the plaintiffs have to seek declaration of their rights on the basis of the alleged MOU, and only thereafter, the relief of*

permanent injunction can be granted to them. Unless and until, a declaration is not made regarding the legality and enforceability of the MOU on the landowners, the relief of permanent injunction cannot be granted to them against the defendant no.1 and 2, who are the real owners of the disputed land, whose ownership of the disputed land is unequivocally admitted to the plaintiffs.

49. It is also well-settled that when remedy of a suit for specific performance is available to the plaintiff, he cannot file a suit for injunction simplicitor nor he can claim temporary injunction in pending suit for injunction simplicitor in view of Section 41(h) of the Specific Relief Act.

50. A Division Bench of this Court in the case of ***Vinod Kumar and others vs. Sudha Land Ventures and Homes Pvt.Ltd.*** 2015 SCC OnLine All 8778 has also considered the issue whether on the basis of unregistered agreement to sell, temporary interim injunction can be granted to the plaintiff under Order 39 Rule 1 CPC. The relevant paragraphs of the above judgment read as under:-

14. In the case of K.B. Saha and Sons Pvt. Ltd. v. Development Consultant Ltd., [2008 (72) ALR 638 (SC).] the Hon'ble Apex Court noticed following facts as stated by Mulla in his Indian Registration Act, 7th Edition, at page 189.

The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu and Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court of Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it.

15. The Apex Court culled out the following principles:

1. A document required to be registered is not admissible into evidence under section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immoveable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

16. The word, collateral transaction has been interpreted as transaction in itself not required to be effected by a registered document, i.e., a transaction creating any right, title or interest in immoveable property of the value of Rs. 100/- and onwards.

17. Learned Counsel for the respondent contends that even if the two sale-deeds were not registered, but they should certainly be looked into for collateral purpose and a bare perusal of two sale-deeds reveals that on 21.2.2014 and 22.2.2014, the respondent/plaintiff was put on possession of plots in suit and in view of above, learned Counsel tried to justify the impugned order.

18. *This proposition is correct that if a document is invariably registrable and has not been registered, it will be admissible in evidence only for collateral purposes but collateral purpose has a limited scope and meaning. It cannot be used for the purpose of saying that the deed created or declared or assigned or limited or extinguish the right to immovable property. If the document is unregistered then it could not be used for showing that it created, declared, assigned or extinguish a right to immovable property. The term collateral purpose could not permit the party to establish any of these acts from the deed.*

19. *In our opinion, the contention that it could be used for collateral purpose for delivery of possession does not support the case of the plaintiff-respondent at all because by way of State Amendment in Order XXXIX, Rule 2, Sub Rule (2) proviso (a), C.P.C., a bar has been created w.e.f. 1.2.1977.*

20. *In Rule 2, in sub-rule (2), the following proviso has been added by State Amendment: Provided that no such injunction shall be granted*

(a) where no perpetual injunction could be granted in view of the provisions of section 38 and section 41 of the Specific Relief Act, 1963.

21. *A bare perusal of Order XXXIX, Rule 2, Sub Rule (2) proviso (a), C.P.C., reveals that temporary injunction shall not be granted where no perpetual injunction could be granted in view of provisions of sections 38 and 41 of Specific Relief Act, 1963.*

22. *Section 38 of Specific Relief Act deals with provisions when temporary injunctions can be granted and section 41 deals with provisions when injunction can be refused.*

23. *Provisions of section 41 of Specific Relief Act is as under:*

41. *Injunction when refused.-An injunction cannot be granted*

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any Legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court;

(j) when the plaintiff has no personal interest in the matter.

24. *A perusal of provisions of section 41(h) of Specific Relief Act reveals that when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust, then there is no ground to grant injunction.*

51. It is apparent from the plaint averments that there is a real apprehension on the part of the plaintiffs that the land owners will not comply with the terms and conditions of the alleged MOU and instead, they have entered into a builder agreement with defendant no. 3 to construct flats on the disputed land, and if, the defendants succeed in doing so, then the plaintiffs would be put to serious irreparable loss which cannot be compensated in any manner whatsoever because they have invested a lot of money in obtaining the requisite permissions from the concerned authorities, on advertisements for marketing of the proposed flats, etc. It is apparent that the plaintiffs have not sought the relief of specific performance of MOU, which they ought to have claimed in the suit, as such, in view of the settled legal position, since an equally efficacious remedy is available to the plaintiffs in the form of suit of specific performance of MOU, no injunction simplicitor can be granted in their favour, since the suit claiming only the relief of permanent injunction is barred by Section 41(h) of the Specific Relief Act.

Possession of the disputed land

52. Although the plaintiffs claim that as per the terms and conditions of the MOU, the possession of the disputed land was handed to them, for undertaking construction on it, but the defendants have denied this.

53. Clause 8 of the MOU reads as under: -

"8. That the owners shall hand over the said land in vacant possession to the builder only for the purpose of construction of multi storeyed building in terms of this MOU and as per map sanctioned by ADA, Allahabad within one month from the sanction of the map or latest by 15th of November, whichever is later. It is specifically understood between the parties to this MOU that such handing over of the site by the landowners to the builder is merely a license to commence the construction activity and does not in any manner whatsoever, confer any right title or interest of any sort in favour of the builder."

54. It is apparent from the above clause that at the most license has been granted to the plaintiffs to commence the construction activity on the disputed land, which does not lend credence to the averment of the plaintiffs that possession of the disputed land has been handed to them by the landowners.

Whether due to arbitration clause in the MOU, the jurisdiction of the civil court was barred

55. As discussed hereinbefore there is an arbitration clause in para-30 of the alleged MOU, which mandated that in case of dispute between the terms and conditions of the MOU, the same were required to be referred to a sole arbitrator, which was to be appointed with the mutual consent of the parties, and the provisions of Arbitration and Conciliation Act, 1996 were made applicable to such arbitration proceedings.

56. The trial court in the impugned order has held that in view of the above arbitration clause, the jurisdiction of the court was barred, but it has not rejected the plaint. The question arises that whether the above conclusion of the trial court is legally sustainable?

57. The Apex Court in the case of **ITI Ltd. vs. Siemens Public Communications Network Ltd. (2002)5 SCC 510**, while analysing whether there is express prohibition against the application of the Civil Procedure Code to a proceeding arising out of the Arbitration and Conciliation Act 1996, held as under:-

9. *But Mr Parasaran contended that the said order is based on an earlier reported judgment of this Court in the case of Shyam Sunder Agarwal & Co. v. Union of India [(1996) 2 SCC 132] . According to Mr Parasaran, the Court in the case of Nirma Ltd. [(2002) 5 SCC 520] has erroneously founded its conclusion on the said judgment in Shyam Sunder Agarwal case. Learned counsel argued that the case of Shyam Sunder Agarwal arose under the Arbitration Act, 1940, which Act had made the provisions of the Code specifically applicable to the proceedings arising under the said Act in the civil court whereas in the present Act such provision making the Code applicable is not found. Therefore, there is a substantial difference in law between the cases of Shyam Sunder Agarwal and Nirma Ltd. Therefore, the order of this Court in Nirma Ltd. is not a good law, hence, requires reconsideration.*

10. *We do not agree with this submission of the learned counsel. It is true in the present Act application of the Code is not specifically provided for but what is to be noted is: is there an express prohibition against the application of the Code to a proceeding arising out of the Act before a civil court? We find no such specific exclusion of the Code in the present Act. When there is no express exclusion, we cannot by inference hold that the Code is not applicable.*

11. *It has been held by this Court in more than one case that the jurisdiction of the civil court to which a right to decide a lis between the parties has been conferred can only be taken by a statute in specific terms and such exclusion of right cannot be easily inferred because there is always a strong presumption that the civil courts have the jurisdiction to decide all questions of civil nature, therefore, if at all there has to be an inference the same should be in favour of the jurisdiction of the court rather than the exclusion of such jurisdiction and there being no such exclusion of the Code in specific terms except to the extent stated in Section 37(2), we cannot draw an inference that merely because the Act has not provided CPC to be applicable, by inference it should be held that the Code is inapplicable. This general principle apart, this issue is now settled by the judgment of a three-Judge Bench of this Court in the case of Bhatia International v. Bulk Trading S.A. [(2002) 4 SCC 105] wherein while dealing with a similar argument arising out of the present Act, this Court held: (SCC p. 116, para 15)*

While examining a particular provision of a statute to find out whether the jurisdiction of a court is ousted or not, the principle of universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the court arrives at the same when such a conclusion is the only conclusion.

12. *In the said view of the matter, we are in respectful agreement with the view expressed by this Court in the case of Nirma Ltd. and reject the argument of Mr Parasaran on this question.*

58. The Apex Court in the case of **Booz Allen & Hamilton Inc. vs. SBI Home Finance Ltd. (2011)5 SCC 532**, while analysing when a dispute can be referred to an arbitrator held as under :-

18. *In SBP & Co. v. Patel Engg. Ltd. [(2005) 8 SCC 618] this Court held thus: (SCC p. 649, para 19)*

“19. When the defendant to an action before a judicial authority raises the plea that there is an arbitration agreement and the subject-matter of the claim is covered by the agreement and the plaintiff or the person who has approached the judicial authority for relief, disputes the same, the judicial authority, in the absence of any restriction in the Act, has necessarily to decide whether, in fact, there is in existence a valid arbitration agreement and whether the dispute that is sought to be raised before it, is covered by the arbitration clause. It is difficult to contemplate that the judicial authority has also to act mechanically or has merely to see the original arbitration agreement produced before it, and mechanically refer the parties to an arbitration.

19. Where a suit is filed by one of the parties to an arbitration agreement against the other parties to the arbitration agreement, and if the defendants file an application under Section 8 stating that the parties should be referred to arbitration, the court (judicial authority) will have to decide:

- (i) whether there is an arbitration agreement among the parties;*
- (ii) whether all the parties to the suit are parties to the arbitration agreement;*
- (iii) whether the disputes which are the subject-matter of the suit fall within the scope of arbitration agreement;*
- (iv) whether the defendant had applied under Section 8 of the Act before submitting his first statement on the substance of the dispute; and*
- (v) whether the reliefs sought in the suit are those that can be adjudicated and granted in an arbitration.*

59. The High Court of Bombay in the case of *Gitarani Maity vs Krishna Chakraborty and Ors.* 2025 SCC OnLine Cal 2462, held as under:-

12. A bare perusal of the said Section 8 clearly shows that a judicial authority can only refer the matter to arbitration in view of the existence of an arbitration agreement/clause if the party seeking such reference applies for such reference not later than the date of submitting his first written statement on the substance of the dispute. The first statement on the substance of the dispute in case of a civil suit is, without doubt, the written statement filed by the defendant.

21. Section 8 of the 1996 Act contemplates a reference to arbitration of a dispute regarding which there is an arbitration clause and does not operate as a bar to the civil court's jurisdiction as such. Even if a reference is made to the arbitrator, the civil court does not lose the subject jurisdiction.

22. It is only by operation of Section 8 of the 1996 Act that the civil court has to refer the matter to arbitration.

23. Moreover, the provision of Section 8 of the 1996 Act contemplates a bar, if at all, which can be waived by the parties. A bar which can be waived by parties is not an absolute bar on the jurisdiction of the civil court coming within the connotation of express or implied bar as contemplated in Section 9 of the Code of Civil Procedure.

24. In the event no application for reference to arbitration under Section 8 of the 1996 Act is made by either party, the civil court may very well entertain the suit and proceed with the adjudication of the same on merits in accordance with law.

25. Hence, we do not find that the existence of an arbitration clause in the concerned agreement between the parties operates per se as a bar to the jurisdiction of the civil court. Thus,

the objection taken in paragraph no. 12 of the written statement in the present case, regarding the civil court not having jurisdiction even to entertain the suit and seeking dismissal of the suit on such ground, cannot be at par with an application seeking reference to arbitration under Section 8 of the 1996 Act. The two operate at different levels.

26. Hence, we cannot, under any stretch of imagination, equate such an objection taken in the written statement as to jurisdiction, seeking dismissal of the suit, with an application to refer the matter to arbitration.

60. In the instant case, it is apparent that the defendant landowners have in their written statement altogether denied the execution of alleged MOU, which contains the arbitration clause. It is further apparent that they have not moved any application under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the matter to an arbitrator, meaning thereby, that they have waived their right to invoke the arbitration clause and have submitted themselves to the jurisdiction of the Court. It is apparent that ouster of jurisdiction of Civil Court is contingent upon moving application under Section 8 of the Arbitration and Conciliation Act, 1996. Until such formal invocation under Section 8, merely because the underlying MOU contains an arbitration clause, neither the plaint can be rejected nor the parties be referred for arbitration. It is further pertinent to mention here that inspite of invocation of the arbitration clause, the Court has to examine whether the dispute falls within the scope of arbitration agreement? If not, then inspite of the arbitration clause, the matter cannot be referred to arbitrator.

61. It is not disputed by the parties that no such application under Section 8 of the Act of 1996 was moved by the defendant landowners before the trial court, as such, merely on the basis that the alleged MOU contained an arbitration clause, the trial court could not have concluded that prima-facie it has no jurisdiction to decide the suit. It is apparent that the suit was not barred by any law. This finding of the trial court is perverse, but it does not affect the final outcome.

Relief of ad interim injunction

62. The Apex Court in the case of ***Padhiyar Prahladi Chenaji (Deceased) Thr. LRS. vs. Maniben Jagmalbhai (Deceased) Thr. LRS. And others (2022) 12 SCC 128***, held as under:-

18. Even otherwise on merits also, the courts below have erred in passing the decree of permanent injunction restraining Defendant 1 from disturbing the alleged possession of the plaintiff. Assuming for the sake of argument that the plaintiff is found to be in possession, in that case also, once the plaintiff has lost so far as the relief of declaration and title is concerned and Defendant 1 is held to be the true and absolute owner of the property in question, pursuant to the execution of the sale deed dated 17-6-1975 in his favour, the true owner cannot be restrained by way of an injunction against him. In a given case, the plaintiff may succeed in getting the injunction even by filing a simple suit for permanent injunction in a case where there is a cloud on the title. However, once the dispute with respect to title is settled and it is held against the plaintiff, in that case, the suit by the plaintiff for permanent injunction shall not be maintainable against the true owner. In such a situation, it will not be open for the plaintiff to contend that though he/she has lost the case so far as the title dispute is concerned, the defendant the true owner still be restrained from disturbing his/her possession and his/her possession be protected.

63. It is apparent that neither the plaintiffs have any right, title or interest in the disputed land nor they are in possession, as such, no injunction can be granted to them against the true owners (defendant no.1 and 2) of the disputed land. It is also apparent that there is an arbitration clause in the MOU, but the landowner/defendants do not want to invoke it, so as to enable the court to refer the parties to settle their disputes through arbitration. It is also apparent that the plaintiffs could have also, before filing the instant suit, availed the remedy of arbitration for settling the disputes, but they have also not availed this remedy.

64. It is further apparent that on the basis of the alleged MOU, which is neither duly stamped nor registered, which is inadmissible in evidence, the plaintiffs cannot get any relief from the court, so long as the defect is not cured. It is also evident that the MOU contains penal clause which mandates that on default of landowners to handover the vacant possession of the disputed land within the stipulated time period, they are liable for payment of interest at the rate of 1.5% per month on the refundable deposit of ₹ 5 crores. It is well-settled that relief of injunction is discretionary. It is a disputed fact whether the amount returned by the landowners was towards the repayment of personal loan taken by them or whether it was the money, which was taken earlier in pursuance of the alleged MOU from the plaintiffs.

65. It is further apparent that the plaintiffs can also claim monetary compensation/damages for alleged breach of contract on the part of the land owners in not complying with the terms and conditions of the alleged MOU, which is also apparent from the above-mentioned penal clauses incorporated in it. It is well settled that if a party can be adequately compensated in terms of money, then he is not entitled to get the discretionary relief of injunction.

When the Appellate Court can interfere in these matters

66. The Apex Court in the case of ***Wander Ltd. and another vs. Antox India Pvt. Ltd.*** 1990 ***Supp SCC 727***, while discussing the scope of interference by the appellate courts while hearing appeals against injunction orders passed by the trial court, held as under:-

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph [(1960) 3 SCR 713: AIR 1960 SC 1156] : (SCR 721)

“... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v. Jhanaton* [1942 AC 130] ...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.

67. The Apex Court in the case of ***Ramakant Ambalal Choksi vs. Harish Ambalal Choksi and others* 2024 INSC 913**, has analysed the principles regarding grant of injunction and interference by the appellate court in the discretion exercised by the trial court. The relevant paragraphs read as under: -

26. The principles of law explained by this Court in *Wander* [*Wander Ltd. v. Antox India (P) Ltd.*, 1990 Supp SCC 727] have been reiterated in a number of subsequent decisions of this Court. However, over a period of time the test laid down by this Court as regards the scope of interference has been made more stringent. The emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit.

27. In *Neon Laboratories Ltd. v. Medical Technologies Ltd.* [*Neon Laboratories Ltd. v. Medical Technologies Ltd.*, (2016) 2 SCC 672: (2016) 2 SCC (Civ) 190] , this Court held that the appellate court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. In other words, the Court took the view that to interfere against an order granting or declining to grant a temporary injunction, perversity has to be demonstrated in the finding of the trial court.

28. In *Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan* [*Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan*, (2013) 9 SCC 221 : (2013) 4 SCC (Civ) 285] , this Court emphasised on the principles laid down in *Wander* and observed that while the view taken by the appellate court may be an equally possible view, the mere possibility of taking such a view must not form the basis for setting aside the decision arrived at by the trial court in exercise of its discretion under Order 39CPC. The basis for substituting the view of the trial court should be mala fides, capriciousness, arbitrariness or perversity in the order of the trial court. The relevant observations are extracted below: (SCC p. 230, para 20)

“20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the appellate court could not have interfered with the exercise of discretion by the learned trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The appellate court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the appellate court was wrong in its conclusions what is sought to be emphasised is that as long as the view of the trial court was a possible view the appellate court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in *Wander Ltd. v. Antox India (P) Ltd.* “

29. *This Court in Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd. [Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd., (2023) 1 SCC 634 : (2023) 1 SCC (Civ) 301]* observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial Judge and examining the correctness or otherwise thereof within the limited area available. It further observed that if the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.

30. *This Court in Monsanto Technology LLC v. Nuziveedu Seeds Ltd. [Monsanto Technology LLC v. Nuziveedu Seeds Ltd., (2019) 3 SCC 381: (2019) 2 SCC (Civ) 158]*, observed that the appellate court should not usurp the jurisdiction of the Single Judge to decide as to whether the tests of *prima facie* case, balance of convenience and irreparable injury are made out in the case or not.

31. *The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well-settled principles governing the scope of jurisdiction of the appellate court under Order 43CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in Wander case.*

32. *In Anand Prasad Agarwalla v. Tarkeshwar Prasad [Anand Prasad Agarwalla v. Tarkeshwar Prasad, (2001) 5 SCC 568]*, it was held by this Court that it would not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction.

33. *The burden is on the plaintiff, by evidence aliunde by affidavit or otherwise, to prove that there is 'a prima facie case' in his favour which needs adjudication at the trial. The existence of the prima facie right and infringement of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the court would result in irreparable injury to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely, one that cannot be adequately compensated by way of damages. The third condition also is that the balance of convenience must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. (See Dalpat Kumar v. Prahlad Singh [Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719].)*

34. Any order made in conscious violation of pleading and law is a perverse order. In *Moffett v. Gough* [*Moffett v. Gough*, (1878) 1 LR Ir 331], the Court observed that a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In *Godfrey v. Godfrey* [*Godfrey v. Godfrey*, 106 NW 814: 127 Wis 47 (1906)], the Court defined perverse as turned the wrong way; not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

35. The expression perverse has been defined by various dictionaries in the following manner:

(a) *Oxford Advanced Learner's Dictionary of Current English*, 6th Edn.

Perverse Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

(b) *Longman Dictionary of Contemporary English International Edn.*

Perverse Deliberately departing from what is normal and reasonable.

(c) *The New Oxford Dictionary of English 1998 Edn.*

Perverse Law (of a verdict) against the weight of evidence or the direction of the Judge on a point of law.

(d) *New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.)*

Perverse Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

(e) *Stroud's Judicial Dictionary of Words & Phrases*, 4th Edn.

Perverse A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

36. The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity. (See *Damodar Lal v. Sohan Devi* [*Damodar Lal v. Sohan Devi*, (2016) 3 SCC 78: (2016) 2 SCC (Civ) 36].)

37. Seen in light of the aforesaid settled position of law, we are of the clear view that in the facts of the present case, the High Court overstepped its appellate jurisdiction under Order 43CPC and substituted its own view for the one taken by the trial court without giving any categorical finding as to why the order of the trial court could be said to suffer from any perversity, capriciousness, arbitrariness, mala fides or having been passed in ignorance of the settled principles governing the grant of injunction under Order 39CPC.

68. It is apparent from the above law laid down by the Apex Court in *Wander Ltd* (supra) and *Ramakant Ambalal Choksi* (supra) that the Appellate Court while hearing appeals against the order of the trial court granting or refusing injunction can only interfere where the impugned order is malafide, capricious, arbitrary or perverse. If the view taken by the trial court was a possible view, the Appellate Court was not supposed to substitute its view. It is further apparent that if as per the reasonable man, the conclusion reached by the trial court on facts was possible, there is no perversity. If not, the finding is perverse. It was further held by the Apex Court that inadequacy of evidence or a different reading of evidence is not perversity.

69. From the analysis made hereinbefore, it is apparent that, the trial court has not erred in concluding that the alleged MOU has not been executed by all the landowners, as such, no relief can be claimed on its basis against those landowners who have not executed it.

70. It is further apparent that the trial court has not erred in concluding that since the MOU was unstamped and unregistered, it was inadmissible in evidence and further, it does not confer any right, title and interest in the disputed land in the plaintiffs, on the basis of which no enforceable legal right accrues to them.

71. It is further apparent that the trial court has rightly concluded that neither the title nor the possession of the disputed land vests in the plaintiffs, as such, the relief of injunction cannot be granted to them against the true owners.

72. It is further apparent that the trial court has rightly concluded that the plaintiffs have not claimed the specific performance of the alleged MOU, whereas in reality, they are enforcing it in the garb of the suit for the relief of permanent injunction.

73. It is further apparent that the trial court has correctly concluded that the question of return of money by landowners is a disputed question of fact which can only be decided after evidence but prima-facie the trial court was of the opinion, that keeping in view the admission of the plaintiffs in their rejoinder affidavit, the land owners have returned substantial money to the plaintiffs.

74. It is true that the trial court has recorded a perverse finding that prima-facie it has no jurisdiction to hear and decide the suit, keeping in view the arbitration clause in the alleged MOU, but the trial court in pursuance of the above finding has not rejected the plaint, as such, the above perverse finding does not materially affect the outcome. It would have been different, if the trial court after recording the above finding regarding lack of jurisdiction, had rejected the plaint. From the perusal of the record of the trial court, it is further apparent that it has framed five issues on 8.1.2021 on the basis of pleadings of the parties, which does not contain any issue regarding the non- maintainability of the suit, on the ground of being barred by the provisions of the Arbitration and Conciliation Act 1996. This fact amply proves that the trial court has only made a passing reference that the suit was prima-facie barred by the provisions of Act of 1996, which was neither pleaded nor pressed by the defendant landowners.

75. For the aforesaid reasons, this Court is of the opinion that there is no perversity in the impugned order of the trial court. The view taken by the trial court is a possible view, which is in accordance with the evidence on record and prevailing law, which cannot in any manner whatsoever be termed capricious, arbitrary or malafide, as such, keeping in view the parameters of interference laid down by the Apex Court in *Wander Ltd* (supra) and *Ramakant Ambalal Choksi* (supra), this Court while exercising its appellate jurisdiction cannot interfere in the impugned order and substitute its own view. The trial court has rightly concluded that the plaintiffs have failed to prove the prima-facie case and the balance of convenience is also not in their favour. It is apparent that for alleged breach of contract the plaintiffs can file suit for damages against the landowners in which they can be adequately compensated with money, as such, if the discretionary relief of injunction is not granted to them, they shall also not suffer any irreparable injury.

76. **Accordingly, the instant appeal has got no merit and is hereby dismissed with costs.** Consequently, the impugned order dated 13.3.2020 of the trial court in O.S.no. 342 of 2019 is affirmed.

77. A Division Bench of his Court vide order dated 26.6.2020 passed in this appeal had directed the parties to maintain status quo with respect to the disputed property. Since the appeal has been dismissed on merits, hence, **the interim order dated 26.6.2020 also stands vacated.**

78. The trial court is directed to decide the instant suit preferably within a period of six months from the date a certified copy of this order is produced before it, without affording unnecessary adjournment to either of the party, on merits, in accordance with law.

79. The observations made by this Court in the instant order are only for the purpose of deciding this appeal and the trial court will not be influenced and bound by it, and is at liberty to form its own opinion, on the basis of pleadings and evidence adduced by the parties during trial, in accordance with law.

80. Office is directed to send back the original trial court record, forthwith.

(2026) 1 ILRA 170
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 20.01.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Writ C No. 89 of 2026

Janki Prasad & Ors.

...Petitioners

Versus

Distt. Registrar/Addl. Distt. Magistrate (Finance & Revenue) Ambedkar Nagar & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether, in a case where the vendors did not admit execution of the sale deed before the Sub-Registrar and had categorically denied receipt of the sale consideration, the appellate authority exercising jurisdiction under Sections 72/73 of the Registration Act, 1908 could direct registration of the sale deed; and whether mere payment of Rs. 2,00,000/- as advance amount and the alleged handing over of cheques/cash, without proof of payment of the sale consideration at the time of the alleged execution of the sale deed, could justify compulsory registration thereof.

HEADNOTE

Registration Act, 1908 – Sections 35(3)(a), 72, 73, 74, 77 – Refusal to register sale deed – Vendors not admitting execution – Denial of receipt of sale consideration – Effect of signatures/thumb impressions on blank papers – Scope of enquiry by Registrar – Distinction between inadequacy of consideration and non-payment of consideration – Order of Registrar directing registration held unsustainable – Impugned appellate order quashed. (E-5)

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HELD:

Petitioners, who were the vendors, challenged the impugned order passed by the District Registrar/Additional District Magistrate (Finance and Revenue), whereby the order of the Sub-Registrar refusing registration of the sale deed dated 28.01.2022 was set aside and the matter was remanded for registration of the document. The dispute arose out of a registered agreement to sell dated 02.10.2021 in respect of land valued at Rs. 84,47,000/- as per the Collector's circle rate, agreed to be sold for Rs. 28,00,000/-, against which only Rs. 2,00,000/- was paid as advance. Petitioners pleaded that they had not executed any sale deed and had not received any sale consideration, asserting that their signatures and thumb impressions were obtained on blank papers.

Court held that admission of signatures made or thumb impressions put on blank papers without knowledge or understanding of its contents would not amount to admission of execution of the document, in view of the law laid down by the Supreme Court in *Veena Singh (Dead) through LR v. District Registrar/Additional Collector (F/R)*. Appellate authority committed an error in holding that the petitioners, who were the vendors, had executed the sale deed. Court further held that the Registrar had drawn an undue inference from the non-refund of Rs. 2,00,000/- by the vendors, when nobody had demanded its refund, and that the mere payment of Rs. 2,00,000/- as advance amount to the vendors would not justify registration of a sale deed in respect of a property agreed to be sold for Rs. 28,00,000/-, which was worth Rs. 84,47,000/- as per the market rate. It was also held that handing over cheques is not payment of sale consideration, as the amount continues to remain in the bank account of the person and he does not part with it. The vendors denied having received any consideration and the purchaser could not prove payment of Rs. 10,00,000/- in cash on various undisclosed dates. The purchaser also could not establish payment of any amount as consideration at the time of the alleged execution of the sale deed. The requirement of Section 74(B) of the Registration Act was not fulfilled in the present case, as payment of sale consideration is an essential ingredient for the completion of a transaction of sale.

Court rejected the submission that inadequacy of consideration or part payment would not vitiate the sale, holding that inadequacy of consideration and payment of a minuscule amount as advance and non-payment of any consideration at the time of execution of sale deeds are two distinct and different things. The Registrar exceeded the limits of his summary jurisdiction under Sections 72 to 74 of the Registration Act and misapplied the law. The writ petition was accordingly allowed and the impugned order passed by the District Registrar was quashed. (Paras 13–16)

CASE LAW CITED

Veena Singh (Dead) through LRs v. District Registrar/Additional Collector (F/R), (2022) 7 SCC 1;
Kaushik Premkumar Mishra and another v. Kanji Ravaria @ Kanji and another, 2024 SCC OnLine SC 1756

List of Acts

Constitution of India, 1950;
Registration Act, 1908

List of Keyword

Execution of sale deed; Admission of execution; Signatures/thumb impressions on blank papers; Receipt of sale consideration; Refusal to register; Registration under Sections 72/73 of Registration Act; Scope of enquiry under Section 74; Distinction between inadequacy of consideration and non-payment of consideration; Quashing of order of District Registrar.

CASE ARISING FROM

Order dated 10.10.2025 passed by the District Registrar/Additional District Magistrate (F&R), in Case No. 896 of 2022 under Sections 72/73 of the Registration Act, 1908.

Appearances for Parties

Advs For Petitioner: Santosh Kumar, Virendra Singh
Advs For Respondents: C.S.C., Om Prakash Nag

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Santosh Kumar, the learned counsel for the petitioners, Sri S.K. Khare, the learned Standing Counsel appearing on behalf of the State and Sri Yogesh Singh, the learned counsel for the opposite party no.3, who has filed a short counter affidavit, which is taken on record.

2. By means of the instant petition filed under Article 226 of the Constitution of India the petitioners have challenged the validity of a judgment and order dated 10.10.2025, passed by the District Registrar/Additional District Magistrate, Finance and Revenue, Ambedkar Nagar in Case No.896 of 2022, under Section 72/73 of Registration Act, 1908.

3. Briefly stated, the facts of the case are that a registered agreement was executed by the petitioner nos.1 to 4 and Shambhunath, the predecessor of the petitioner nos.5 to 7 on 02.10.2021 to transfer the land bearing Gata No.2080, measuring 0.7600 hectare and Gata No.2148 measuring 0.6610 hectare situated at Village Atangi, Pargana and Tehsil Akbarpur, District Ambedkar Nagar, to the opposite party no. 3. The agreement states that the market rate of the property in question as per the rates fixed by the Collector, was Rs.84,47,000/-, but the sellers had agreed to sell the property for a consideration of Rs.28,00,000/-. Rs.2,00,000/- were paid by the opposite party no.3 to the sellers as advance and the balance Rs.26,00,000/- will be paid within a period of one year and a sale deed will be got executed.

4. On 26.05.2022, the opposite party no.3 - purchaser presented a sale deed dated 28.01.2022 purportedly executed by the aforesaid vendors in her favour in respect of the aforesaid property, for registration before the Sub- Registrar. The Sub-registrar refused to register the sale deed by means of an order dated 28.05.2022 stating that in view of the endorsement made on behalf of the seller at serial no. 8 of the minute book on 28.05.2022, the request for registration of the sale deed is rejected.

5. The opposite party no.3 filed an appeal under Section 72/73 of the Registration Act challenging the order dated 28.05.2022, passed by the Sub Registrar, inter alia stating that the vendors had executed the sale deed dated 28.01.2022 out of their own freewill, after receipt of the sale consideration. Thereafter, they avoided its registration on the pretext that the sale consideration had not been received in their bank account. Even after receipt of the sale consideration, they kept on avoiding registration of the sale deed and, therefore, the opposite party no.3 had presented the deed for registration under Section 36 of Registration Act. On 23.05.2022 the opposite party no.3 had given an application to the District Registrar stating that no orders were being passed by the Sub Registrar, whereupon the District Registrar issued a direction to the Sub Registrar. Thereafter the District Registrar declined to register the sale deed on the ground that the vendors had not appeared to admit the execution of the sale deed by 28.05.2022.

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6. The vendors filed a written statement before the Registrar stating that the husband of the opposite party no.3 had paid Rs.2,00,000/- as advance and had obtained signatures/thumb impressions of the vendors on some blank papers; that the vendors had not executed any sale deed in their knowledge and that they had not received any sale consideration. It was also stated in the written statement that one of the vendors is a very low educate person and other four are illiterate villagers. Two of the vendors are persons of advanced age and are unable to even walk on their own. The vendors further stated in their written statement that the sale deed dated 28.01.2022 was prepared deceitfully, they had no knowledge of this document and they had executed a sale deed in favour of Ram Shakal Yadav (petitioner no.10) and another sale in respect of Mayaram S/o Babu Lal and Rajendra Kumar S/o Sita Ram (petitioner nos.8 and 9) on 20.03.2023. As the vendors have already executed two sale deeds in favour of the petitioner nos.8, 9 and 10 on 20.03.2023, there is no occasion for registration of another sale deed in respect of the same property.

7. The appeal has been allowed by means of the impugned judgment and order dated 10.10.2025. The appellate authority held that the vendors themselves have pleaded execution sale deeds in favour of other persons, which shows that they wanted to sell the property. It is admitted in the written statement that the husband of the opposite party no.3 had paid Rs.2,00,000/- as advance amount to the vendors and had obtained their signature/thumb impressions on some blank paper. The Registrar raised a question as to why did the vendors not refund the amount of Rs.2,00,000/- taken from the husband of the opposite party no.3. The appellate authority also stated that in the replication, the appellant has pleaded that she had handed over four cheques of Rs.4,00,000/- each to all the vendors, but they did not withdraw the amount. Rs.10,00,000/- had been paid as per the requirement of the vendors for various reasons. The Registrar blamed the vendors for not returning the cheques to the opposite party no.3. He further held that the vendors ought to have sought cancellation of the agreement for the sale of the property, which they have failed to do. The Registrar has stated that the appellant- opposite party no.3 herself has caused a delay in the disposal of the appeal and submission of documentary evidences, due to which reason a delay has occasioned in the disposal of the appeal. The Registrar allowed the appeal, set aside the order dated 28.05.2022 refusing to register the sale-deed and remanded the matter to the Sub-Registrar for registering the sale-deed after ensuring that the vendors have received the entire sale consideration and the purchaser has paid the stamp duty and registration fee.

8. The appellate authority has relied upon a judgment of Hon'ble Supreme Court in the case of **Kaushik Premkumar Mishra and another Vs. Kanji Ravaria @ Kanji and another**: 2024 SCC OnLine SC 1756. The facts of the case of **Kaushik Premkumar Mishra** (Supra) have been summarized by the Hon'ble Supreme Court in paragraph no.28 of the judgment, which is as follows: -

“28. At the outset, it may be relevant to refer to the certified/xerox copy of the sale deed dated 2.12.1985, presented for registration on 5.12.1985, copies of which were filed by both the sides under the direction of this Court. We have carefully perused the sale deed. The following facts may be noticeable from the said perusal:

(i). The stamp paper had been purchased on 29.11.1985.

(ii). The document was prepared and executed on 02.12.1985

(iii). *The document was presented before the Sub-Registrar on 5.12.1985. The total value of the stamp paper used was Rs 1,600/-.*

(iv). *The document was presented by respondent no. 2, the vendor.*

(v). *The document bears the signature of Anees Ismail Khoja, respondent no. 2, the witnesses and also contains the respective endorsement by the Sub-Registrar.*

(vi). *The document was impounded for non-payment of proper stamp duty. However, on 14.6.2011 the deficiency in stamp duty of Rs. 2200/- along with penalty of Rs. 500/- and other statutory payments of Rs. 700/- having been paid, it was finally registered in Book No. 1 from pages 141-147.*

(vii). *The document bears the signatures of not only the vendor, the attesting witnesses and also the necessary endorsement by the Sub-Registrar. This makes it abundantly clear that the sale deed was executed on 02.12.1985 and presented before the Sub-Registrar on 5.12.1985. Later on, it was registered on 14.06.2011."*

9. In the aforesaid factual background, the Hon'ble Supreme Court proceeded to hold as follows: -

"29. The Trial Court and the High Court had proceeded on the premise that the defendant No. 1 the vendor (respondent no. 2 herein) had denied the execution of the sale deed and had also denied that he had not received any consideration. This premise taken by both the Courts i.e. Trial Court and the High Court are contrary to the pleadings on record and the evidence led during the Trial. There is clear misreading of the evidence. In his written statement in paragraph 7 defendant no. 1 (vendor) has stated that he does not recollect having executed the sale deed. He has not specifically denied anywhere in the written statement that he had not executed the sale deed or that the signatures on the sale deed were not his signatures. Thus, the very premise on the basis of which the Trial Court and the High Court proceeded are perverse being contrary to the material on record. Both the said courts also failed to take into consideration that defendant no. 1 the vendor (respondent no. 2 herein) neither entered the witness box in support of his pleadings and to prove them, nor did lead any evidence, either oral or documentary, in support of his pleadings. There was no justification to treat a vague statement in the written statement of not recollecting about execution of sale deed, to be taken as a denial of the execution. The defendant no. 1 the vendor was deliberately and mischievously avoiding to make specific statement either denying his signatures on the sale deed or his presentation before the Sub-Registrar or had not received any sale consideration. The Trial Court and the High Court fell into the trap of clever drafting and a vague statement of defendant no. 1.

30. The Trial Court and the High Court also committed a manifest error in recording that the defendant no. 1- vendor (respondent no. 2 herein) had denied having received any sale consideration with respect to the sale deed dated 02.12.1985. In the written statement filed by the defendant no. 1, there is no such statement made. In case he had made such a statement then he would be admitting the execution but without consideration. Both the Courts again misread the deposition of appellant no. 1 (PW-1) wherein he said that he does not have any proof of payment of the consideration to hold that no sale consideration was paid. A registered document carries with it presumption of correctness unless proved otherwise as per Section 114 of the Evidence Act read with Section 17 of the Act, 1908. In the present case there is no such evidence."

10. The Hon'ble Supreme Court further held that the appeal deserves to be allowed on several other grounds, which are as follows: -

“33.1. It is not disputed by respondent No. 2 that on 02.12.1985, he had executed another sale deed with respect to the remaining portion of survey No. 13/1 in favour of the collaterals of the appellants, namely, Param Umakant Mishra and Sohardha Mishra. This sale deed in favour of the collateral was presented for registration on the same date as the sale deed of the appellant i.e. 05.12.1985 and was thereafter duly registered. The respondent No. 2 has never challenged the said sale deed in favour of the collaterals. It is thus apparent that the family members and collaterals of the appellants purchased the entire survey No. 13/1 measuring 3.40 Hectares from respondent No. 2 in equal shares by two separate documents which were executed on the same date and presented for registration on the same day. Despite the fact that specific query was put to learned senior counsel for respondent no. 2 with regard to the above aspect, no answer was given. In the plaint specific averment was made with regard to the sale deed in favour of the collaterals. There is no specific denial in the written statement filed by respondent No. 2 about the sale deed in favour of collaterals. General denial has been made by placing strict proof of liability on the plaintiff.

33.2. The respondent No. 2 apparently wants to take advantage of certain minor aberrations and minor technicalities and is also taking up self-conflicting pleas.

33.3. The sale deed is sought to be ignored and rejected on account of a minor cutting/over writing with regard to the word 'cash' (Roch) by 'cheque'. The fact remains that respondent No. 2 did not enter the witness box to depose that he has not received any sale consideration either by way of cash or by way of cheque and further to state that he had not executed the sale deed and the signatures and thumb impression on the sale deed are not his. He also did not come forward to say that the signatures and thumb impression available in the Sub-Registrar's office in the register taken at the time for registration also did not bear his signatures.

33.4. Another aspect submitted on behalf of respondent was that the appellant No. 1 in his deposition has said that he had no proof of the payment of the sale consideration, to assert that the appellant No. 1 admitted that he had not paid any sale consideration is not correct. Appellant No. 1 was being examined sometime after 2013, i.e. after a gap of 28 years from the date of the sale deed. He could not be expected to remember such facts distinctly and as such he made a fair statement that he did not have any document that could prove the passing of the sale consideration. This would not, by itself, be interpreted to hold that appellant admitted of not paying any sale consideration.

33.5. The question of payment of sale consideration would arise only and only if the vendor makes a specific statement in his pleadings as also in his deposition in support of the pleading that he did not receive any sale consideration either by way of cheque or by cash. There is no such pleading and as the vendor did not enter the witness box, even if there was any such pleading, there is no statement to prove such pleading. Thus, the above argument being based on minor discrepancy in the statement of the appellant, no benefit can be derived by the respondents. The argument is accordingly rejected.”

11. There are further grounds of allowing the appeal, mentioned up to paragraph no. 33.13, but the same are not relevant for the purpose of the present case.”The Courts decide the questions involved in each case, which arise from the facts of the particular case. Every judgment has to be read as a whole, and the ratio laid down in the judgment has to be understood in light of the points

decided on the basis of the facts of the case. The case of’ **Kaushik Premkumar Mishra** (Supra) has been decided in view of the peculiar facts of the case where the vendor had not denied the receipt of the sale consideration and he had himself presented the sale deed for registration, which had been registered by the Registrar, but was later impounded because of deficiency in stamp duly paid by the purchaser. In the present case, the vendor has not presented the sale deed for registration and he has categorically denied receipt of the same consideration. Therefore, the facts of the present case are materially different from the case of **Kaushik Premkumar Mishra** (Supra) and the judgment in that case will not apply to the present case.

12. The learned counsel for the petitioners has relied upon a judgment of the Hon'ble Supreme Court in the case of **Veena Singh (Dead) through LR Vs. The District Registrar/Additional Collector (F/R):** (2022) 7 SCC 1, in which the Hon’ble Supreme Court held as follows: -

“73. The “execution” of a document does not stand admitted merely because a person admits to having signed the document. Such an interpretation accounts for circumstances where an individual signs a blank paper and it is later converted into a different document, or when an individual is made to sign a document without fully understanding its contents. Adopting a contrary interpretation would unfairly put the burden upon the person denying execution to challenge the registration before a civil court or a writ court, since registration will have to be allowed once the signature has been admitted.

* * *

76. The Registration Act exists so that information about documents can be put into the public domain, where it can be accessed by anyone in order to prevent forgeries and fraud, and so that individuals can be aware of the status of properties. If the interpretation conflating signing with execution is adopted, it would ensure that the Sub-Registrars/Registrars will continuously end up registering documents whose validity will inevitably be then disputed in a civil suit or a writ petition. While the suit or writ proceedings continue, the document would remain on the public records as a registered instrument, which has the potential to cause more disruption. Hence, such an interpretation should not be adopted by this Court.

* * *

82. The process which is conducted by the Registrar for the purpose of an enquiry under Section 74 cannot be equated to the powers of the civil court, though certain powers which are entrusted to a civil court are vested with the Registrar by the provisions of Section 75(4). A quasi-judicial function is entrusted to the Registrar for the purpose of conducting an enquiry under Section 74. Where the Registrar refuses to register a document under Sections 72 or 76, no appeal lies against such an order. Section 77, however, provides that when the Registrar refuses to order the document to be registered, any person claiming under such document or its representative, assign or agents may institute a suit before the civil court within the stipulated time for a decree directing that the document shall be registered. It is thus clear that the Registrar, when he conducts an enquiry under Section 74, does not stand constituted as a civil court. The enquiry before the Registrar is summary in nature. The decision of the Registrar in ordering document to be registered, or for that matter in refusing to register a document, is not conclusive and is amenable to judicial review.

83. Therefore, in a situation where an individual admits their signature on a document but denies its execution, the Sub-Registrar is bound to refuse registration in accordance with

Sections 35(3)(a) of the Registration Act. Subsequently, if an application is filed under Section 73, the Registrar is entrusted with the power of conducting an enquiry of a quasi-judicial nature under Section 74. If the Registrar passes an order refusing registration under Section 76, the party presenting the document for registration has the remedy of filing a civil suit under Section 77 of the Registration Act, where a competent civil court will be able to adjudicate upon the question of fact conclusively."

(Emphasis added)

13. In the present case, a registered agreement to sell the property was executed on 02.10.2021 to transfer the land worth Rs.84,47,000/- as per the market rate fixed by the Collector, for a consideration of Rs.28,00,000/-. Rs.2,00,000/- were paid by the opposite party no.3 to the sellers as advance and the balance Rs.26,00,000/- was to be paid within a period of one year. The purchaser presented a sale deed dated 28.01.2022 was presented for registration on 26.05.2022. The sellers did not admit execution of the sale deed before the Sub-Registrar. In the appeal filed under Section 72/73 of the Registration Act, the purchaser stating that the vendors had executed the sale deed dated 28.01.2022 after receiving the full sale consideration, but they were avoiding its registration on the pretext that the sale consideration had not been received in their bank account. In their written statement, the vendors stated that the husband of the opposite party no.3 had paid Rs.2,00,000/- as advance and had obtained signatures/thumb impressions of the vendors on some blank papers. Only one of the sellers has put his signatures and the other four of them had put their thumb impressions, which is also a relevant factor to be kept into consideration. The vendors stated that they had not executed any sale deed in their knowledge and that they had not received any sale consideration. Admission of signatures made / thumb impressions put on blank papers without knowledge or understanding of its contents would not amount to admission of execution of the document as per the law laid down by the Hon'ble Supreme Court in the case of **Veena Singh** (Supra). The appellate authority has committed an error in holding that the vendors have executed the sale deed.

14. The Registrar has drawn an undue inference from the non-refund of Rs.2,00,000/- by the vendors, when nobody has demanded its refund. The mere payment of Rs.2,00,000/- as advance amount to the vendors would not justify registration of a sale deed in respect of a property agreed to be sold for Rs.28,00,000/-, which is worth Rs.84,47,000/- as per the market rate fixed by the Collector. It is also relevant to note that in the appeal, the purchaser had not stated about payment of Rs.26,00,000/-, i.e., the balance amount of agreed sale consideration and when the purchasers denied having received the same consideration, in rejoinder, she stated that she had handed over four cheques for Rs.4,00,000/- each and had paid Rs.10,00,000/- in cash on undisclosed dates, without any receipts.

15. The learned counsel for the opposite party no.3 has submitted that it is admitted that a part of the sale consideration was received by the vendors and inadequacy of consideration or non-payment of full consideration does not vitiate the contract of sale. I am unable to accept this submission because inadequacy of consideration and payment of a minuscule amount as advance and non-payment of any consideration at the time of execution of sale-deeds are two distinct and different things. Handing over cheques is not payment of sale consideration, as the amount continues to remain in the bank account of the person and he does not part with it. The vendors

denied having received any consideration and the purchase could not prove payment of Rs.10,00,000/- in cash on various undisclosed dates. The purchaser could not establish payment of any amount as consideration at the time of the alleged execution of the sale deed. The requirement of section 74 (B) of the Registration Act was not fulfilled in the present case as payment of sale consideration is an essential ingredient for the completion of a transaction of sale.

16. In view of above, I am of the view that the petition deserves to be allowed and the order impugned deserves to be quashed. Accordingly, the petition is allowed. The judgment and order dated 10.10.2025, passed by the District Registrar/Additional District Magistrate, Finance and Revenue, Ambedkar Nagar in Case No.896 of 2022, under Section 72/73 of Registration Act, 1908 is hereby quashed.

17. At this stage, the learned counsel for the opposite party no.3 has submitted that a regular suit for cancellation of the sale deed executed by the vendors in favor of the petitioner nos. 8, 9, and 10 is pending consideration. Therefore, it is clarified that the observations made in this order are for the purpose of examining the validity of the impugned order dated 10.10.2025, passed by the Registrar only. The regular suit will be decided on its merits in accordance with law without being influenced by any observation made in this judgment.

(2026) 1 ILRA 178
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.01.2026

BEFORE

THE HON'BLE VIVEK SARAN, J.

Writ C No. 4681 of 2025

Kuldeep Kumar & Anr.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the migration of unfilled Scheduled Caste category seats to the open category was permissible under law during the third round of counselling by virtue of Clause 7(4) of the admission brochure; and whether any mandamus can be issued directing the respondents to allot SC Category seat to the petitioners.

HEADNOTE

Admission to Post Graduate Courses – U.P. Ayush P.G. Counselling 2024–25 – Clause 7(4) of the Brochure – Migration of unfilled reserved category seats in the third round of counselling – Policy decision of the State Government vide Government Order dated 02.09.2024 - Clause 10(V) and Clause 14(1) of Government Order - Scope of judicial interference in policy matters relating to admission - Reservation not a fundamental right - Articles 15 and 16 enabling provisions - No mandamus can be issued to enforce reservation – Brochure found in accordance with Government Order - Writ petition dismissed.

HELD:

Petitioners challenged Clause 7(4) of the Brochure for admission for the Academic Year 2024–25 on the ground that migration of seats from Scheduled Caste category to open category during the third round of counselling cannot be permitted even in absence of any suitable candidate attaining the cut off percentile at the relevant stage, and that the said clause is arbitrary. Court held that the State Government vide its order dated 02.09.2024 took a policy decision for U.P. Ayush P.G. Counselling–2024 and in Clause 10(V) of the Government Order, the migration of seats which remained unfilled of the reserved category in the third round of counselling has been provided. Clause 14(1) of the Government Order provides to offer remaining unfilled seats to all candidates in the stray vacancy round. Clause 7(4) of the Brochure was found to be in accordance with the Government Order dated 02.09.2024 issued by the State Government and therefore, it could not be faulted, especially in absence of any challenge to the said Government Order dated 02.09.2024. In so far as the applicability of Section 3 of the Act of 1994 is concerned, Court held that the same has no bearing at all as the Act of 1994 relates to Public Services and not to admission in educational courses, and therefore, reliance placed on the said provisions by the petitioners was wholly misconceived. Court further reiterated that the right to claim reservation is not a fundamental right and no writ of mandamus to enforce the same is to be issued, Articles 15 and 16 of the Constitution of India being enabling provisions only. Writ petition dismissed. (Paras 15–29) (E-5)

CASE LAW CITED

Union of India v. Ramesh Ram and Others, (2010) 7 SCC 234;

Avika Shahi and Others v. Medical Counselling Committee and Ors., Neutral Citation: AIR 2025 Delhi 217;

Saurav Yadav and Others v. State of Uttar Pradesh and Others, (2021) 4 SCC 542;

Andhra Pradesh Public Service Commission v. Baloji Badhavath and Others, (2009) 5 SCC1;

Bhuvnesh Pachauri v. State of U.P. and Others, 2018 (6) ADJ 22;

Amrit Yadav v. State of Jharkhand and others, 2025 SCC OnLine SC 280.

List of Acts

Constitution of India, 1950;

National Commission for Indian System of Medicine Act, 2020;

Uttar Pradesh Public Services (Reservation of Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994.

List of Keyword

U.P. Ayush P.G. Counselling 2024; Admission Brochure; Clause 7(4) of the Brochure; Migration of unfilled reserved category seats; Third round of counselling; Stray vacancy round; Government Order dated 02.09.2024; Policy decision of the State Government; Cut-off merit/percentile; No mandamus to enforce reservation; Reservation not a fundamental right; Articles 15 and 16 of the Constitution of India.

CASE ARISING FROM

Challenge to Clause 7(4) of the Admission Brochure for U.P. Ayush P.G. Counselling 2024–25, framed pursuant to Government Order dated 02.09.2024.

Appearances for Parties

Advs For Petitioner: Ravi Shekhar Sharma, Vinay Kumar Bharti

Advs For Respondents: C.S.C.

(Delivered by Hon'ble Vivek Saran, J.)

1. Heard Sri Ravi Shekhar Sharma, learned counsel for the petitioner and Sri Vaibhav Tripathi, learned counsel for the respondent nos.1 to 3.

2. The instant petition has been filed with the following reliefs:

"1. Issue a writ, order or direction in nature of certiorari to quash the Paragraph 4 of Clause 7 of the prospectus (prospectus is annexed as Annexure No.1 to this writ petition).

2. Issue a writ, order or direction in nature of mandamus commanding the respondents to take admission to petitioners on their reserved (SC) seats in Govt. Unani Medical College.

3. Issue a writ, order or direction in the nature of mandamus commanding the respondents to decide the representation dated 12.01.2025 (annexure no.2 to this writ petition)."

BRIEF FACTS OF THE CASE

3. The brief facts of the case are that the petitioners namely, Kuldeep Kumar and Vikas Gautam appeared in the AIAGET-2024 Post Graduate Entrance Examination in Unani Medicine and Surgery (BUMS) subject and the petitioner no.1 scored 23.2039268 percentile (equivalent to 23.20 per cent) and petitioner no.2 scored 24.0963855 percentile (equivalent to 24.09 percent). Both the petitioners belong to the Scheduled Caste category and their results of the examination was declared on 31.07.2024. The result dated 31.07.2024 of both the petitioners also discloses the all India categorywise cut off score which is as follows:

All India Category wise Rank							
Category	Cut off Percentile	Cut off Score	No. of candidates	Category	Cut off Percentile	Cut off Score	No. of Candidate
UR/EWS	50th Percentile	365-157	1113	UR/EWS-PwD	45th Percentile	153-152	2
OBC	40th Percentile	155-137	112	OBC-PwD	40th Percentile	-	-
SC	40th Percentile	154-152	2	SC-PwD	40th Percentile	-	-
ST	40th Percentile	150-142	2	ST-PwD	40th Percentile		

4. The cut off for Scheduled Caste category to which the petitioner belong was 40 percentile in the result dated 31.07.2024.

5. The Ayush Department of State of U.P. published the admission brochure for academic year 2024-25 for which admission process on the seats of P.G. courses for U.P. Ayush P.G. seats and according to which the counselling procedure for the academic session 2024-25 was to be adopted for the U.P. Ayush P.G. seats. The counselling was to take place in four rounds viz:(i) Pratham Chakra, (ii) Dwitiya Chakra, (iii) Tritiya Chakra and (iv) Stray Chakra Counselling.

6. It is the National Commission for Indian System of Medicine (hereinafter referred to as 'NCISM'), which is a statutory body established under Section 3 of the National Commission for

Indian System of Medicine Act, 2020 which is the body competent to determine the cut off merits at each round of counselling.

7. The NCISM during the course of U.P. P.G. Counselling reduced the required cut off merit and during the third round of counselling by letter dated 20.11.2024 reduced 15 percentile of the cut off merit for each of the categories. The said fact is recited in paragraph 4 of the counter affidavit which reads as under:

“..... It is further submitted that pursuant to the letter of NCISM dated 20.11.2024, it has been decided by the Board that reduction of 15 percentile be provided to each categories of candidates, as such no candidate be deprived from getting admission in view of the fact that in their round of counselling there is a provision of converting/absorbing the seats into other categories.....”

8. Thus for the third round of U.P.P.G. Counselling the cut off percentile for admission of Scheduled Caste category candidates became 25 percent. However, even at this time both the petitioners could not apply as their merit was lower than the qualifying percentage. During the third round of counselling the remaining seats reserved for SC category got migrated to the General category by virtue of Clause 7(4) of the Brochure, this Clause 7(4) reads as under:

“तृतीय चक्र में आरक्षित सीटों का आमेलन / परिवर्तन:-

क्र०सं०	श्रेणी (जिनका परिवर्तन होना है)	श्रेणी (जिनमें परिवर्तित होगी)
1	अनुसूचित जनजाति-ST (PwD)	अनुसूचित जनजाति-ST- OP
2	अनुसूचित जाति-SC (PwD)	अनुसूचित जाति-SC-OP
3	अनारक्षित-UR (PwD)	अनारक्षित-UR-OP
4	अन्य पिछड़ा वर्ग-OBC (PwD)	अन्य पिछड़ा वर्ग-OBC-OP
5	आर्थिक रूप से कमजोर वर्ग-EWS(PwD)	आर्थिक रूप से कमजोर वर्ग-EWS-OP
6	अनुसूचित जनजाति - ST	अनुसूचित जाति-SC-OP
7	अनुसूचित जाति - SC	अनारक्षित-UR-OP
8	अन्य पिछड़ा वर्ग-OBC	अनारक्षित-UR-OP
9	आर्थिक रूप से कमजोर वर्ग-EWS	अनारक्षित-UR-OP”

9. Thereafter, during the fourth round of counselling which is the stray chakra counselling, the NCISM further reduced the cut off percentile by 5 percentile by letter dated 13.01.2025 so as to enable the remaining unfilled seats be offered, the petitioners applied for participation in the fourth round of counselling by making deposit of the requisite amount of Rs.2000/- on 09.01.2025. It is however not clear from the averments made in the writ petition as to what was the outcome in the fourth round of counselling in which the petitioners participated.

10. Now after participating in the fourth round i.e. the stray chakra counselling the petitioners approached this Court challenging the Clause 7(4) of the Brochure.

CONTENTION OF THE PETITIONER

11. Learned counsel for the petitioner submitted that Clause 7(4) of the Brochure for admission for the Academic Year 2024-25 (hereinafter referred to as 'Brochure') is arbitrary inasmuch as migration of seats from SC category to open category during the third round of counselling cannot be permitted. Even in absence of any suitable candidate attaining the cut off percentile at the relevant third round of counselling. Learned counsel for the petitioner has placed reliance on Section 3(1) and Section 3(6) of the Uttar Pradesh Public Services (Reservation of Scheduled Caste, Scheduled Tribes and Other Backward Classes) Act, 1994 (hereinafter referred to as 'the Act of 1994') and the judgment rendered by the Hon'ble Supreme Court in *Union of India vs. Ramesh Ram and Others.*, *Avika Shahi and Others vs. Medical Counselling Committee and Ors.* and *Saurav Yadav and Others v. State of Uttar Pradesh and Others only by reference made in the Rejoinder Affidavit.*

CONTENTION OF THE RESPONDENT

12. Per contra, learned Standing Counsel for the respondent/State vehemently submitted that for the purposes of Uttar Pradesh Ayush P.G. Counselling 2024 (hereinafter referred to as U.P. P.G. Counselling) a Government Order dated 02.09.2024 was issued which infact has not been challenged and the Brochure has been framed in the lines of the said Government Order. He further submits that the State Government has taken care of the reservation policy and it is for the State Government to provide reservation and the petitioner do not have any fundamental right to claim the same. He further submits that in absence of any challenge to the Government Order dated 02.09.2024, Clause 7(4) of the Brochure cannot be termed to be violative of any provisions of law. Learned Standing Counsel further submitted that the counselling for the U.P. Ayush P.G. Counselling, 2024-25 has already concluded, in support of the said submission, he has placed reliance on Annexure-CA1 to the counter affidavit which is letter dated 10.07.2025 written b the Director, Unani Services, U.P., Lucknow.

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

ISSUES FOR CONSIDERATION

14. The questions which falls for consideration before this Court are as follows:

(I) Whether the migration of 'unfilled Scheduled Caste category seats' to the open category was permissible under law during the third round of counselling by virtue of Clause 7(4) of the admission brochure?

(II) Whether any mandamus can be issued directing the respondents to allot SC Category seat to the petitioner?

ISSUE NO.1

15. The State Government vide its order dated 02.09.2024 took a policy decision for U.P. Ayush P.G. Counselling-2024 on the basis of score obtained in AIAPGET examination. The subject of Government Order dated 02.09.2024 reads as under:

“शैक्षणिक सत्र 2024-25 में प्रदेश के आयुर्वेदिक, यूनानी एवं होम्योपैथी मेडिकल कालेजों में एम०डी०/एम०एस० पाठ्यक्रमों में ए०आई०ए०पी०जी०ई०टी० की मेरिट को अंगीकार करते हुए प्रवेश हेतु यू०पी० आयुष पी०जी० काउंसिलिंग आनलाइन कराने हेतु नीति निर्धारण के सम्बन्ध में।”

16. In Clause 10(V) of the Government Order dated 02.09.2024, the migration of seats which remained unfilled of the reserved category in the third round of counselling is provided. The said clause 10(V) reads as under:

"10(V)- तृतीय चक्र की आवंटन प्रक्रिया के समय यदि आरक्षित श्रेणी/उपश्रेणी की सीटें रिक्त रहती हैं, तो उन्हें नियमानुसार सम्बन्धित श्रेणी में आमेलित/परिवर्तित करते हुए तृतीय चक्र की आवंटन प्रक्रिया सम्पन्न की जायेगी।"

17. In Clause 14(1) of the Government Order provides to offer remaining unfilled seats to all candidates. Thus the offer of seats to the petitioner in the fourth round/stray chakra was not on account of reservation but as the remaining seats had to be offered to all. Relevant Clause 14(I) of the Government Order reads as under:

“14. स्ट्रे वैकेंसी चक्र-

(1) ऐसे अभ्यर्थी जिन्होंने यू०पी० आयुष पी०जी० काउन्सिलिंग 2024 की प्रथम, द्वितीय एवं तृतीय चक्र की काउन्सिलिंग के द्वारा कोई भी सीट आवंटित न हुई हो।”

18. Now coming to Clause 7(4) of the Brochure as referred to above, it is seen that the said clause is in accordance with the Government Order dated 02.09.2024 issued by the State Government.

19. With regard to the judgment passed by the Hon'ble Supreme Court in the case of **Saurav Yadav and Others (Supra)**, which was referred to by the learned counsel for the petitioner it is to be noted that the Hon'ble Supreme Court while dealing with the issue of migration of seats in absence of any suitable candidate in a particular category had left it to the wisdom of the competent authority to take a decision regarding the unfilled seats. The relevant paragraphs 49 and 59 reads as under:

"49. If there are unfilled vacancies, it is upto the authorities to act purely in terms of the concerned statutory provisions. Neither any case for issuance of mandamus, as prayed for, has been made out nor do we think it appropriate to pass any orders directing the concerned authorities to absorb the petitioners against unfilled vacancies.

.....

59.4. If the vacancies cannot be filled by the specified categories due to shortfall of candidates, the vacancies are to be 'carried forward' or dealt with appropriately by rules."

19. With regards to the judgment rendered in Ramesh Ram (Supra) referred to by the learned counsel for the petitioner' is concerned, the same is not applicable in the instant case inasmuch as the same was related to Civil Services Rules and dealt with the issue as to whether the reserved candidate who were selected on merit and placed in the list of general category candidates could be considered as reserved category candidates at the time of 'service allocation'.

20. With regards to the judgment rendered in **Avika Shahi (Supra)** referred to by the learned counsel for the petitioner is concerned, the said judgment is also not applicable in the facts and circumstances of the instant case as the Hon'ble Court dealt with the question of horizontal reservation.

21. In so far as the applicability of Section 3 of the Act of 1994 is concerned the same has no bearing at all as the Act of 1994 relates to Public Services and not to the admission in the educational courses. The statement of Act reads as under:

"Provided that the reservation under clause (c) shall not apply to the category of Other Backward Classes of citizens specified in Schedule II: Provided further that reservation of vacancies for all categories of persons shall not exceed in any year of recruitment fifty per cent of the total vacancies of that year as also fifty per cent of the cadre strength of the service to which the recruitment is to be made;"

22. Thus the reliance of the said provisions in the case of petitioner by learned counsel for the petitioner is wholly misconceived.

23. Thus in view of the aforesaid decision, this Court is of the considerate opinion that Clause 7(4) of the Brochure in accordance with the policy decision of the State Government issued vide Government Order dated 02.09.2024 and therefore, it cannot be faulted especially in absence of any challenge to the said Government Order dated 02.09.2024.

ISSUE NO.2

24. It has been settled in catena of judgments that the right to claim reservation is not a fundamental right and no writ of mandamus to enforce the same is to be issued. The Hon'ble Supreme Court in **Andhra Pradesh Public Service Commission v. Balaji Badhavath and Others** vide paragraph-18 has held as under:

"18. The Constitution of India lays down provisions both for protective discrimination as also affirmative action. Reservation of posts for the disadvantaged class of people as also seats in educational institutions are provided for by reason of Articles 15 and 16 of the Constitution of India. Reservation made for the members of the Scheduled Castes, Scheduled Tribes and other Backward Classes would, however, be subject to Article 335 of the Constitution of India. Concededly, no citizen of India can claim reservation as a matter of right. The provisions

contained in Articles 15 and 16 of the Constitution of India are merely enabling provisions. No writ of or in the nature of mandamus, thus, could be issued. [See C.A. Rajendran v. Union of India & Others, (1968) 1 SCR 721 at 731-733, Indra Sawhney and Others v. Union of India and Others [1992 Supp (3) SCC 217, para 165 to 169, 428 to 432, 741 and 742, Ajit Singh and Others (II) v. State of Punjab and Others (1999) 7 SCC 209, para 32 to 39, State of Punjab and Others v. Manjit Singh and Others (2003) 11 SCC 559, para 7 and 12]."

25. The aforesaid judgment has also been followed by this Court in the case of ***Bhuvnesh Pachauri v. State of U.P. and Others***.

26. The Hon'ble Supreme Court in the case of ***Amrit Yadav v. State of Jharkhand and others*** reported in vide paragraph 20 has observed as under:

"20. Further, the position of law is settled that though there is no fundamental right to claim reservation as Articles 16(4) and (4-A) of the Constitution of India are in the nature of enabling provisions only and do not mandate the State or its instrumentalities to provide reservation in every selection process but inspite thereof, the State's decision to not provide reservation has to be based on some quantifiable data and valid reasoning."

27. It is the well settled law that the reservation has to be taken care of by the concerned Government and the statutory body which in the present case is Government of U.P. and the NCISM. The statutory authority/NCISM had determined the merit i.e. the cut off for selection at each stage and the Government of U.P. have provided for the manner in which reservation of seats were to be provided vide Government Order dated 02.09.2024.

28. In view of the aforesaid discussion, no mandamus as prayed for can be granted.

29. The petition lacks merit and is accordingly, ***dismissed***.

29. No order as to cost.

(2026) 1 ILRA 185
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.01.2026

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.
THE HON'BLE SUDHANSHU CHAUHAN, J.

Writ C No. 37803 of 2022

Sanjay Kumar Pandey & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether, after the coming into force of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, mere vesting of surplus land in the State Government under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976, without the State having taken actual physical possession of the land in accordance with Sections 10(5) or 10(6) and without payment of compensation under Sections 11(7) and 11(8), is sufficient to sustain the ceiling proceedings and justify belated mutation of the land in favour of the State Government.

HEADNOTE

Urban Land (Ceiling and Regulation) Act, 1976, Sections 10(3), 10(5), 10(6), 11(7), 11(8) – Urban Land (Ceiling and Regulation) Repeal Act, 1999, Sections 3 and 4 – Mere vesting of the land declared surplus under the Act, 1976 without resuming de facto possession is of no consequence – Possession envisaged under Section 3 of the Repeal Act, 1999 is de facto and not de jure only – Requirement of giving notice under Sections 10(5) and 10(6) is mandatory – It is for the State to establish by cogent evidence on record that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession or forceful dispossession – Respondents failed to demonstrate as to how and when the possession of the land in question was taken – No notice under Section 10(6) – Failure to demonstrate that any amount (Sandeya Dhanrashi) had been paid – Proceedings initiated stood abated with the coming into force of the Repeal Act, 1999 – Impugned order dated 20.09.2021 quashed and revenue records directed to be corrected. (E-5)

HELD:

Survey of the holdings of Lalji (father of the petitioners) and the original recorded tenure-holder was conducted under the Urban Land (Ceiling and Regulation) Act, 1976. Competent Authority, Urban Land Ceiling, Varanasi passed an order in Ceiling Case declaring 14,483.40 sq. meters of land as surplus. On 31.12.1985, a Gazette notification under Section 10(3) was issued, whereby the surplus land was stated to have vested in the State Government. According to the petitioners, Sandeya Dhanrashi was never received by Sri Lalji or his legal heirs. No effective steps were taken by the authorities for taking physical possession of the land. The Urban Land (Ceiling and Regulation) Repeal Act, 1999 came into force. The Competent Authority, Urban Land Ceiling, thereafter passed the order dated 20.09.2021, directing that the surplus land measuring 14,483.40 sq. meters be recorded in the name of the State Government, deleting the names of the petitioners/original tenure-holders. Petitioners filed Writ-C No. 37803 of 2022 challenging the order dated 20.09.2021.

As per Section 3 of the Repeal Act, 1999 if possession of vacant land had been taken over on behalf of the State Government before the coming into force of the Repeal Act, 1999, the repeal of the Act, 1976 would not affect the vesting of such land under Section 10(3) of the Act, 1976. Consequently, the issue whether actual possession of the land declared as excess under the Act, 1976 was taken over or not, assumes great significance after the commencement of the Repeal Act, 1999. Where the possession of the land in question has not been taken over by the State Government, the proceedings under the Act would not survive and mere vesting of the vacant land in the State Government by operation of law, without actual possession, is not sufficient. Mere vesting of the land declared surplus under the Act, 1976 without resuming de facto possession is of no consequence. The onus is on the State to establish that actual physical possession of the excess vacant land was taken before the Repeal Act, 1999. It is for the State to establish by cogent evidence on record that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession or forceful dispossession.

In the present case, the respondents failed to demonstrate as to how and when the possession of the land in question was taken. The respondents also failed to demonstrate that any amount (Sandeya Dhanrashi) had been paid by the State Government as compensation in respect of the land in question to the land holder. The petitioners, their predecessors and transferees had remained in continuous possession of the land in question, and the proceedings initiated stood abated with the coming into force of the Repeal Act, 1999. The writ petition was allowed and the order dated 20.09.2021 was quashed. (*Paras 31, 34, 36, 37, 40, 41, 42*)

CASE LAW CITED

State of U.P. v. Hari Ram, (2013) 4 SCC 280;

A.P. Electrical Equipment Corporation v. Tahsildar & Ors., 2025 SCC OnLine SC 447;

List of Acts

Urban Land (Ceiling and Regulation) Act, 1976;
Urban Land (Ceiling and Regulation) Repeal Act, 1999.

List of Keyword

Urban land ceiling; Repeal Act, 1999; Vesting under Section 10(3); De facto possession; Notice under Sections 10(5) and 10(6); Sandeya Dhanrashi; Abatement of proceedings; Revenue entries; Mutation; State's burden of proof.

CASE ARISING FROM

Order dated 20.09.2021 passed by the Competent Authority, Urban Land Ceiling, Varanasi, recording surplus land in the name of the State Government after the coming into force of the Repeal Act, 1999.

Appearances for Parties

Advs For Petitioner: Santosh Kumar Srivastava
Advs For Respondents: C.S.C.; Ravi Prakash Pandey

(Delivered by Hon'ble Sudhanshu Chauhan, J.)

1. Heard Sri Sanjay Srivastava, learned counsel for the petitioners, learned Standing Counsel for the respondent nos. 1 to 3 and Sri Ravi Prakash Pandey, learned counsel for the respondent no.4.

2. It is contended on behalf of the petitioners that the father of the petitioners, Sri Lalji was the recorded tenure-holder of certain holdings situated in Village Baraipur, Pargana Shivpur, District Varanasi. A survey of the holdings of Sri Lalji was conducted on 17.08.1977, in pursuance thereto the statement of holdings was submitted by Sri Lalji under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the "Act, 1976"). Subsequently, a notice dated 31.07.1980 was served upon Sri Lalji to which, he submitted a reply dated 26.08.1980. Ultimately, the Competent Authority, Urban Land Ceiling Varanasi-respondent no.3 vide order dated 10.12.1980 passed in Case No. 792/1105/80-81 (State vs. Lalji Pandey) under Section 8(4) of the Act, 1976, declared 14,483.40 square meters of the holdings of Sri Lalji as surplus. Thereafter, a notice under Section 10(5) was issued on 03.03.1987.

3. It is also contended that an intimation under Section 11(8) of the Act, 1976, along with the notice of "Sandeya Dhanrashi" determined under Section 11(7) of the Act, 1976, was issued on 07.07.1987. It is the specific case of the petitioners that the "Sandeya Dhanrashi" was never received either by the original tenure-holder, Sri Lalji or by the petitioners. Sri Lalji had sought time to file objections to the proceedings under Section 11(8) of the Act, 1976 vide applications dated 07.07.1987 and 12.07.1987. Further, nothing much came out of proceeding so initiated under the Act, 1976.

4. It is further argued that after the demise of Sri Lalji, those holdings which had not been transferred to third parties were mutated in the names of the petitioners vide order dated 22.06.2018. The petitioners have filed the Khatauni for Fasli year 1425?1430 in support of their contention.

5. Under the circumstances it is stated that petitioners have filed the present writ petition being aggrieved by the order dated 20.09.2021 passed by the respondent no.3 vide Memo No. 111 dated 20.09.2021, morefully annexed as Annexure No. 1 to the writ petition, whereby in pursuance to the order passed in Case No. 792/1105/80-81 (State vs. Lalji Pandey) land measuring 14483.40 square meters has been recorded in the name of the State of U.P. after deleting the name of the original tenure-holders/petitioners.

6. The respondent nos. 1 to 3 per contra, do not dispute the factual aspects of the subject matter in controversy as far as proceeding under the Act, 1976 are concerned. However, it has been argued that all proceedings, including taking possession of the vacant land in excess of the ceiling limit, were completed prior to the commencement of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as the "Repeal Act, 1999"). It has also been argued that respondent no. 3, vide letter dated 28.03.2000, requested Varanasi Development Authority-respondent no. 4 to carry out the demarcation and physical verification of the land declared surplus in respect of 1533 matters including the land of Sri Lalji. The respondent no.4-Authority have adopted the contention of the respondent nos. 1 to 3.

7. Hence, it is the case of the petitioners that the possession of the land in question was never taken by the respondents and that the possession has continued to remain with the original tenure-holder/petitioners or their transferees till date. The petitioners, in support of their case, have filed the Khasras along with the writ petition. On the other hand, it is the case of the respondents that the entire proceedings under the Act, 1976, including taking possession of the surplus land, were completed prior to the coming into force of the Repeal Act, 1999. In this backdrop, it is necessary to consider the pleadings raised by the respective parties.

8. The petitioners, in Paragraphs 20?21 of the writ petition, have stated as under:-

"20. That it is pertinent to mention that the possession has never being taken from the original tenure holder or from the legal heirs /petitioners herein. The name of the tenure holder continued in the revenue records throughout and thereafter the name of the legal heirs of the original tenure holder Lalji Pandey was recorded in the Revenue records which continued up the impugned order dated 20.09.2021. The name of the State Government /Urban Land Ceiling was never recorded in the Revenue Records. In support thereof, the copies of the Khasra for the years 1426 pertaining to plots in question, is collectively being enclosed herewith and marked as Annexure No. 10 to this writ petition.

21. That in order to prove the continuous possession of the original tenure holder/petitioners/ purchasers over the land in question, the petitioner brings on records the Khasra for the fasli year 1383, 1384, 1410, 1418. A copy of the Khasra for the fasli years 1383, 1384, 1410, 1418 are collectively being enclosed herewith and marked as Annexure No. 11 to this writ petition."

9. In response thereto, respondent nos. 1 to 3, in Paragraph No. 25 of their counter affidavit, have stated as under:"

“25. That the contents of paragraph No. 19, 20, 21 & 22 of the writ petition are not admitted for the reasons given in the preceding paragraphs.”

10. Besides the contents of paragraph no.12 and paragraph no.19 of the counter affidavit of the respondents nos. 1 to 3 are also relevant in this regard and the same reads as under:-

“12. That it is relevant to mention here that all the proceedings were completed before the commencements of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 by the State and also regarding the physical verification and demarcation by the Varanasi Development Authority, Varanasi, a letter No. 6948 was sent to VDA on 28.03.2000 alongwith other lands classified under similar category. Copy of the letter dated 28.03.2000 is being filed herewith and marked as ANNEXURE-CA-7 to this affidavit.

19. That the contents of paragraph No. 9 of the writ petition are not admitted as stated hence denied. In reply thereto it is submitted that no information has been given by any of the petitioners regarding death of his father and the notice under Section 10(5) of the Act regarding possession was issued on 03.03.1987 and the possession was taken over the declared excess land.”

Thus, the respondent nos. 1 to 3 even otherwise fail to provide the date of possession of the land in question and the manner the same was taken. The alleged date on which, the possession of the land in question was transferred to Varanasi Development Authority is also not mentioned in the counter-affidavit.

11. Likewise, respondent no. 4 “Authority, in Paragraph No. 17 of its counter affidavit, has stated as under:”

“17. That the contents of Paragraph Nos. 20 to 23 of the writ petition are not admitted in the manner as stated hence, denied and in reply thereto, it is being submitted that the lands comprising total area 14483.40 Sq. Meter, which is subject matter of the present writ petition, had already been declared as surplus land under the provisions of the Act, 1976 and thereafter, the aforesaid land is duly recorded in the name of State Government in the Revenue Record and the same is in possession of the answering authority.”

12. Further the petitioners in paragraph no. 26 of the writ petition have stated as under :-

“26. That after the death of Original Tenure Holder Lal Ji the revenue entry were rectified and from khatauni fasali year 1425-1430 it is evident that vide order dated 22.06.2018, the names of the petitioners has been entered as legal heirs/waris of the original tenure holder Lalji son of Late Kedar on the land Aarazi nos. 71, 70, 296/2, 299, 336/2, 238/2, 54/2, 246/2. A copy of the relevant khatoni fasli year 1425-1430 mentioning the mutation order dated 22.06.2018 is being enclosed here with and marked as Annexure No. 13 to this writ petition”

13. In response thereto the respondent nos. 1 to 3 in paragraph no. 27 of their counter affidavit have stated as under :-

“27. That the contents of paragraph No. 24,25,26 & 27 of the writ petition are not admitted for the reasons given in the preceding paragraphs. However, it is further submitted that

no information regarding death of original tenure holder Lalji father of the petitioners has been given to the office of the competent authority, as such the name of the petitioner original tenure holder remain unchanged but name of any of the petitioner was never entered in revenue record."

14. Likewise, the respondent no.4 in paragraph no.19 of his counter affidavit has stated as under :-

"19. That the contents of Paragraph Nos. 25, 26 & 27 of the writ petition are not admitted in the manner as stated hence, denied and in reply thereto, it is being submitted that after completion of the proceeding provided under the Act, 1976, the land in question had been transferred to the V.D.A., Varanasi by the Competent Authority, Urban Land Ceiling, Varanasi."

Hence, the pleadings of the respondents are not in consonance with the evidence on record as the land in question was not recorded in the name of the State or the Varanasi Development Authority prior to passing of the impugned order dated 20.09.2021 but was in the name of petitioners/their transferees.

15. Further, the petitioners have produced the revenue records, including Khasras and Khataunis of the land in question, prepared much after the coming into force of the Repeal Act, 1999, to demonstrate that the petitioners and their predecessors/transferees continued to remain in possession of the land in question. At the same time, upon perusal of the counter affidavits filed by the respondents, it is evident that only vague assertions have been made regarding the alleged taking of possession by the respondents. No details regarding the manner in which, the possession was taken and the date of possession have been spelt out in their respective replies. Moreover, no serious dispute has been raised regarding the revenue entries continuing in the name of the original tenure holder/petitioners and their transferees.

16. The respondents have also utterly failed to furnish any plausible explanation as to why the land in question was recorded in the name of the State Government only vide order dated 20.09.2021 after a lapse of more than 22 years from the enforcement of the Repeal Act, 1999 and not prior thereto. Further, the respondents have relied upon the letter dated 28.03.2000 issued by respondent no. 3, which merely speaks about physical verification and demarcation of the land in question. The said letter by no stretch of imagination can be construed as evidence of the State having taken de-facto possession of the land nor does it reflect transfer of possession of the land in favour of respondent no. 4-Authority.

17. Thus, from the perusal of the revenue records filed by the petitioners in support of their case and in light of the stand taken by the respondents in their respective counter affidavits, it is difficult to arrive at a conclusion that the physical possession of the land in question had ever been taken by the respondents.

18. Another aspect of the matter concerns the payment of Sandeya Dhanrashi (compensation) to the predecessor of the petitioners, Sri Lalji. The petitioners have taken a specific stand in the writ petition that the Sandeya Dhanrashi was never received either by the original tenure-holder or by the petitioners. In Paragraph No. 17 of the writ petition, the petitioners have specifically stated as under:"

“17. That an intimation under Section 11(8) of the Urban Land Ceiling Act was issued on 07.07.1987 alongwith the notice of Sandeya Dhanrashi determined under Section 11(7) of the Urban Land Ceiling Act, 1976. However, the Sandeya Dhanrashi was never received by the original tenure holder / petitioners. Copy of the notice under Section 11(8) and 11(7) of the Urban Land Ceiling Act, 1976 dated 07.07.1987 is being enclosed here with and marked as Annexure No. 7 to this writ petition.”

19. The respondent nos. 1 to 3, in response thereto, have stated in Paragraph No. 24 of their counter affidavit that the proceedings under Sections 11(7) and 11(8) of the Act had taken place. These facts have also not been disputed by the petitioners. However, respondent nos. 1 to 3 have made no averments whatsoever regarding the payment of Sandeya Dhanrashi. Paragraph No. 24 of the counter affidavit filed by respondent nos. 1 to 3 reads as under:-

“24. That in reply to the contents of paragraph no. 15, 16, 17 & 18 of the writ petition it is stated that all the proceedings under relevant Act made by competent authority were completed and accepted by the original tenure holder and the determination of amount under Section 11(7) & 11(8) of the Act was done and no any question was raised by the original tenure holder. It is further stated that a time extension application dated 07.07.1987 was filed by Sri Lalji before competent authority but after passing a long time no objection or clarification was filed by the father of the petitioners', who was original tenure holder.”

20. The respondent no.4 in response to Paragraph no. 17 of the writ petition have not submitted any reply thereto in their counter affidavit stating that the matter relates to the Competent Authority, Urban Land Ceiling. The contents of the Paragraph No.15 of the counter affidavit filed by respondent no.4 reads as follows:-

“15. That the contents of Paragraph Nos. 15, 16, 17 & 18 of the writ petition need no comments by the answering authority as these paragraphs are related to the Competent Authority, Urban Land Ceiling, Varanasi.”

21. Under these circumstances, it is difficult to presume that the Sandeya Dhanrashi had ever been paid to the father of the petitioners, Sri Lalji or to the petitioners at any point of time.

22. It is relevant to observe here that the order impugned in the present writ petition has been passed by the Competent Authority, Urban Land Ceiling, Varanasi, on 20.09.2021. The fact that the impugned order has been passed on 20.09.2021, it would be obvious to presume that the records pertaining to the proceedings under the Act, 1976 were very much available with the respondents on the basis of which the impugned order has been passed and as such nothing prevented to respondents from placing the correct and complete facts of the case before this Court.

23. As far as the order dated 20.09.2021, impugned in the present writ petition, is concerned, although it refers to Ceiling Case No. 792/1105/80-81, it fails to disclose the date of the order allegedly passed in the said case by the Competent Authority-respondent no.3 to record the land in question in the name of the State in the revenue entries. It merely contains a vague assertion that

the mutation has been carried out on the basis of some mutation order passed in the past specifically referred to as “Purva Preshit Namantaran Aadesh”.

24. In this regard the petitioners in Paragraph No. 8 of the writ petition have categorically asserted that no such mutation order is in existence. Paragraph No. 8 of the writ petition reads as under:-

“8. That the Competent Authority, Urban Land Ceiling, Varanasi in its order/memo No. 111 dated 20.09.2021 has repeatedly/deliberately mentions in all khatauni, the word 'Purva Preshit Namantaran Aadesh' but failed to give any date /memo of the Namantaran (Mutation) order. Thus it is evident that the present direction vide memo No. 111 dated 20.09.2021 is based upon a nonexistent mutation order. However the Respondents ought to give details of the alleged mutation order and also bring on records the copy of the same so that the illegality committed by the respondent in passing the order dated 20.09.2021 after assumingly more than 40 years, of the alleged nonexistent 'Purva Preshit Namantaran Aadesh' could be revealed before this Hon'ble Court.”

25. The respondent nos. 1 to 3 in response thereto in Paragraph No. 18 of their counter affidavit have stated that all the proceedings in accordance with Act were completed and the mutation of order was issued by the office of competent authority but it could not be complied with.

26. The averments made in Paragraph No.18 of the counter affidavit reads as under:-

“18. That the contents of paragraph No. 7 & 8 of the writ petition are not admitted as stated hence denied. In reply thereto it is submitted that for the entering of the name of state after completing all the proceedings in accordance with Act "Parwana Amaldaramad" was issued by the office of the competent authority but it could not be complied with in time and by the letter 111 dated 20.09.2021 addressed to Tehsildar, Sadar, Varanasi the name of the state was entered in revenue record in place of name of original tenure holder Lalji not in place of name of the petitioners, because the land in question after publication in the State Gazette dated 31.12.1985, the entire land was vested absolutely in the State Government free from all encumbrances w.e.f date of the publication under Section 10(3) of the Act, which is legal just and proper.”

27. The respondent no.4-authority has failed to give any reply on merits of assertions made in paragraph 8 of the writ petition and in paragraph no. 10 of their counter affidavit it has simply been stated as follows:-

“10. That in reply to contents Paragraph No. 8 of the writ petition, it is respectfully submitted that the land in question is recorded in the name of State Government in the Revenue Record.”

28. Thus, The respondents have also failed to provide any plausible explanation as to why it took more than 22 years to correct the entries in the revenue records after the coming into force of the Repeal Act, 1999. Further there is no dispute regarding the fact that in meanwhile the land in

question continued to be recorded in the name of original tenure-holder/ petitioners/transferees in the revenue records, both in the Khasras and Khataunis.

29. Under these circumstances, the respondents have failed to justify the order dated 22.09.2021, which is impugned in the present writ petition, after a lapse of such a long duration. The respondents have also failed to demonstrate that the State had taken de-facto possession of the land in question and that the Sandeya Dhanrashi/compensation was paid to the recorded tenure holders.

30. Before advertng to the law in respect of the subject matter in controversy it is important to consider the relevant provisions, namely Sections 3 and 4 of the Repeal Act, 1999 and the same read as under:-

“3. Savings “(1) the repeal of the principal Act shall not affect-

(a) the vesting of any vacant land under sub-section (3) of section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of section 20 or any action taken thereunder, notwithstanding any judgment of any Court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of section 20.

(2) Where-

(a) any land is deemed to have vested in the State Government under sub-section (3) of section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and (b) any amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. Abatement of legal proceedings- *All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or any authority shall abate; Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority”*

31. A perusal of Section 3 of the Repeal Act, 1999 makes it evident that if possession of vacant land had been taken over on behalf of the State Government before the coming into force of the Repeal Act, 1999, the repeal of the Act, 1976 would not affect the vesting of such land under Section 10(3) of the Act, 1976. Consequently, the issue of whether actual possession of the land declared as excess under the Act, 1976 was taken over or not, assumes great significance after the commencement of the Repeal Act, 1999. This is because, if possession had not been taken over, the proceedings would abate under Section 4 of the Repeal Act, 1999, and the ownership of the land, though earlier vested in the State Government under Section 10(3) of the Act, 1976, would be

required to be restored to the original landholder, subject to repayment of any amount that may have been paid by the State Government in respect of such land.

32. The petitioners in support of their case have relied upon the law laid down by this Court in Writ-C No. 14094 of 2016 (Ramji & Ors. Vs. State of U.P. & Ors.) decided on 02.04.2025, Writ-C No. 4874 of 2023 (Atma Prasad Shukla Vs. State of U.P. & Anr.) decided on 02.05.2023 and Writ-C No.4689 of 2023 (Ram Prasidh Tiwari & Ors. Vs. State of U.P. & Ors.) decided on 09.05.2023. The facts of the present case are quite similar to that of Writ-C No. 4874 of 2023 and Writ-C No. 4689 of 2023, detailed above.

33. In this regard, the Hon'ble Supreme Court in the Case of **State of U.P. vs. Hari Ram 2013 (4) SCC 280** while considering the effect of Repeal Act, 1999 had held as under :-

“41. Let us now examine the effect of Section 3 of Repeal Act 15 of 1999 on sub-section (3) of Section 10 of the Act. The Repeal Act, 1999 has expressly repealed Act 33 of 1976. The objects and reasons of the Repeal Act have already been referred to in the earlier part of this judgment. The Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

42. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18-3-1999. The State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 4 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 4 of the Repeal Act”

34. Hence, in view of the above, it is clear that where the possession of the land in question has not been taken over by the State Government or by any person duly authorized by the State Government in this behalf or by the competent authority, the proceedings under the Act would not survive and mere vesting of the vacant land in the State Government by operation of law, without actual possession is not sufficient. Further the onus is on the State to establish that actual physical possession of the excess vacant land was taken before the Repeal Act, 1999.

35. The Hon'ble Supreme Court in the recent judgment in the case of **A.P. Eletricial Equipment Corporation Vs. Tahsildar & Ors. 2025 SCC OnLine SC 447** had laid down certain propositions of law governing the issue of possession in context with Section 10(5) and Section 10(6) respectively of the Act, 1976 read with Section 3 of the Repeal Act, 1999 and the same reads as under :-

“41. The propositions of law governing the issue of possession in context with Sections 10(5) and 10(6) respectively of the Act, 1976 read with Section 3 of the Repeal Act, 1999 may be summed up thus:

[1] The Repeal Act, 1999 clearly talks about the possession being taken under Section 10(5) or Section 10(6) of the Act, 1976, as the case may be.

[2] It is a statutory obligation on the part of the competent authority or the State to take possession strictly as permitted in law.

[3] In case the possession is purported to have been taken under Section 10(6) of the Act, 1976 the Court is still obliged to look into whether "taking of such possession" is valid or invalidated on any of the considerations in law.

[4] The possession envisaged under Section 3 of the Repeal Act, 1999 is de facto and not de jure only.

[5] The mere vesting of "land declared surplus" under the Act without resuming "de facto possession" is of no consequence and the land holder is entitled to the benefit of the Repeal Act, 1999.

[6] The requirement of giving notice under sub-sections (5) and (6) of Section 10 respectively is mandatory. Although the word "may" has been used therein, yet the word "may" in both the sub-sections should be understood as "shall" because a Court is obliged to decide the consequences that the legislature intended to follow from the failure to implement the requirement.

[7] The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18th March 1999.

[8] The State has to establish by cogent evidence on record that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (6) of Section 10 or forceful dispossession under sub-section (6) of Section 10."

36. The aforesaid proposition of law amongst others clearly states that mere vesting of the land declared surplus under the Act, 1976 without resuming de-facto possession is of no consequence and requirement of giving notice under Sections 10(5) and 10(6) is mandatory. It is for the State to establish by cogent evidence on record that there has been a voluntary surrender of vacant land or surrender and delivering of peaceful possession under sub section (6) of Section 10 or forceful dispossession under sub section (6) of Section 10.

37. As far as the present controversy is concerned the respondents have utterly failed to demonstrate as to how and when the possession of the land in question was taken by the respondents from the predecessors of the petitioners, Sri Lalji. The respondents have even failed to spell out the date of such possession in their respective counter affidavits. Further there is no whisper of any notice under Section 10(6) of the Act, 1976 in the pleadings of either of the parties.

38. At the same time the entries in the revenue records both in the Khataunies and the Khasras in the name of the original tenure holder/petitioners/transferees even much after coming into force of the Repeal Act, 1999 clearly indicate that the petitioners, their predecessor and transferees had continued to remain in possession of the land in question.

39. In this regard the Co-ordinate Bench of this Court in **Writ-C No. 14904 of 2016** vide judgment and order dated 20.04.2025, also relied upon by the petitioner, after considering the law laid down by the Hon'ble Supreme Court in the case of A.P. Electrical Equipment Corporation (supra) in paragraph no. 21 had held as under :-

“21. In the present case, though the State has not been able to indicate exactly as to when possession was taken by the State, it is clear from the facts that by a Government Order dated December 11, 1996 the State, after having supposedly taken possession of the land, had transferred the same to Prayagraj Development Authority. However, in the counter-affidavit the State has not been able to indicate any notice under Section 10 (6) of the Ceiling Act having been issued to the land holder for forceful dispossession nor any amount having been paid by the State Government as compensation with respect to such land. These above facts tilt the scale in favour of the petitioners and one has to conclude that even though there have been laches on the part of the petitioners, the State has ultimately not ever been able to show de facto possession.”

40. Even in the present case, the respondents have utterly failed to demonstrate that any notice under Section 10 (6) of the Act, 1976 had ever been issued to the land holder or dispossession from the land in question of the land holder had been carried out by the State or any amount (Sandeya Dhanrashi) had been paid by the State Government as compensation in respect of the land in question to the land holder. Hence, it is beyond doubt that the petitioners, their predecessors and transferees had remained in continuous possession of the land in question.

41. Under these circumstances, it is beyond doubt that the proceedings initiated in Ceiling Case No. 792/1105/80-81 (State vs. Lalji) under the Urban Ceiling Act, 1976 stood abated with the coming into force of the Repeal Act, 1999.

42. Hence the present writ petition is **allowed** and the order dated 20.09.2021 passed by Competent Authority-respondent no.3 as contained in Annexure No. 1 to writ petition is hereby quashed. The concerned revenue authorities are further directed to incorporate necessary correction in the revenue records accordingly within a period of one month of supply of certified copy of this order.

43. No order as to costs.

(2026) 1 ILRA 196
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.01.2026

BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE SATYA VEER SINGH, J.

Writ C No. 44298 of 2025

Haripuram Sahakari Awas Samiti & Anr. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

ISSUE FOR CONSIDERATION

I. Whether sale deeds executed by the society can be challenged in a reference under Section 70 of the Uttar Pradesh Co-operative Societies Act, 1965;

II. Whether the Arbitrator/Registrar can examine the validity of registered sale deeds under Section 70 of the Uttar Pradesh Co-operative Societies Act, 1965

HEADNOTE

U.P. Co-operative Societies Act, 1965, Section 70(1)(b) – Disputes which may be referred to arbitration – Dispute raised by a member against the society for dealing with the lands in favour of non-members – Claim seeking declaration that the sale deeds executed by the society be declared null and void – Scope of reference under Section 70 – It is not open for the Arbitrator/Registrar to examine the validity of the sale deeds under Section 70 of the Co-operative Societies Act – Arbitrator/Registrar, in dealing with the reference, can answer whether the society had authority or lacked authority to convey the lands – If any person, if felt aggrieved, the remedy lies before the civil Court having jurisdiction.

HELD:

Petitioners are a co-operative society. Respondent No. 4, a member thereof, sought reference to arbitration under Section 70 of the Uttar Pradesh Co-operative Societies Act, 1965, seeking a declaration that the sale deeds executed by the society in favour of purchasers be declared null and void. The society challenged the reference on the ground that such prayer was beyond the scope of Section 70. **Held:** In *Delhi Dayalbagh Cooperative House Building Society Limited v. Registrar, Cooperative Societies*, the Supreme Court observed that it is not open to examine the validity of registered sale deeds within the domain and ambit of Section 70 of the Co-operative Societies Act and that, if any person feels aggrieved, the remedy lies before the civil Court having jurisdiction. In the present case, the Arbitrator/Registrar, while dealing with the reference, will answer it on whether the society had authority or lacked authority to convey the lands. In the event the member is successful, he or the society can approach the competent civil Court for delivery up and cancellation of the registered sale deeds. (*Paras 1–7*)

CASE LAW CITED

Delhi Dayalbagh Cooperative House Building Society Limited v. Registrar, Cooperative Societies, (2019) 3 SCC 745.

List of Acts

Uttar Pradesh Co-operative Societies Act, 1965.

List of Keyword

Co-operative Societies Act; Registered sale deeds; Declaration null and void; Scope of arbitrator's jurisdiction; Domain and ambit of Section 70; Authority of society to convey land; Cancellation of sale deed; Civil Court jurisdiction.

CASE ARISING FROM

Reference sought by respondent No. 4 under Section 70 of the Uttar Pradesh Co-operative Societies Act, 1965 before the Registrar, Co-operative Societies.

Appearances for Parties

Advs For Petitioner: Abhishek Misra

Advs For Respondents: Arun Kumar; C.S.C.

(Delivered by Hon'ble Arindam Sinha, J.)

1. Petitioners are a cooperative society. Respondent no. 4 is member thereof. Said respondent has sought reference to arbitration under section 70 in Uttar Pradesh Co-operative Societies Act, 1965. English translation of the claim statement filed by respondent no. 4 before the Registrar was handed over by Mr. H.R. Mishra. From it we see, the purchasers were made party by respondent no. 4 in seeking the reference. Prayers made in the claim statement are reproduced below.

" 5. Reliefs sought

1. That the Plaintiffs most respectfully pray that the sale deed executed by Respondent No. 1, which was registered in the office of the Sub-Registrar-I, Agra Sadar, on 29/08/2024, bearing Deed No. 1, Volume No. 12414, Pages 213 to 230, Serial No. 7662, be declared null and void.

2. Any other relief which the Hon'ble Arbitration Court deems fit and proper in the facts and circumstances of the case may also be granted to the applicant.

3. That the respondents may also be directed to pay the litigation expenses to the applicant; failing which the applicant will suffer financial loss."

The society (petitioners) have come up against the reference, seeking quashing of it.

2. Mr. H.R. Mishra, learned senior advocate appears on behalf of petitioners (the society). He submits, his client, for its purposes, sold away some lands. The sale deeds executed by his client, which conveyed the lands were duly registered. Prayer of respondent no. 4 in the reference seeking that the sale deeds be declared null and void is beyond scope of reference provided in section 70. He relies on judgment of the Supreme Court in **Delhi Dayal bagh Cooperative House Building Society Limited v. Registrar, Cooperative Societies** reported in (2019) 3 SCC 745, paragraph 48. Last sentence in the paragraph is reproduced below.

"48.....In the given facts and circumstances, if the allotment has been made by the society as a freehold land to its members who have further transferred/sold the subject land/plot by registered sale deed to its successors/purchasers, their rights to become member of the society are indeed saved under Section 91 of the Act, 2003 that in no manner could be eluded by the byelaws and that apart if anyone has any objection regarding the registered instrument(sale deed) pursuant to which right has been created, at least it is not open to examine its validity within the domain and ambit of Section 70 of the cooperative societies Act and any person, if felt aggrieved, the remedy lies only before the civil Court having jurisdiction questioning the registered instrument within the parameters available under the law. "

(emphasis supplied)

3. Mr. Krishna Mohan Mishra, learned advocate Additional Chief Standing Counsel appears on behalf of State. Mr. Arun Kumar, learned advocate appears on behalf of respondent no. 4. He submits, the reference is well within scope provided under section 70. He relies on view taken by a learned single Judge of this Court in **Yaduraj Singh vs. District Assistant Registrar, Cooperative Societies and Others**, reported in **2013 (1) AWC 427**. He relies on paragraph 35 (Supreme Today Print), reproduced below.

"35. I therefore have no hesitation in rejecting the contention of petitioner(s) that respondents 1 and 2 have no jurisdiction to entertain dispute in question with respect to violation of conditions of sale-deed, bye laws and the Rules of Co-operative Society and to consider the consequences thereof on the sale deed(s) executed between the petitioner(s) and respondent no. 3 and to pass consequential order accordingly. The jurisdiction of respondents 1 and 2 to arbitrate in these matters is thus upheld."

Mr. Krishna Mohan Mishra draws attention to paragraph 6 in the judgment (Supreme Today Print) to submit, the learned single Judge expressed the view in paragraph 35 on the contention of petitioner therein, as recorded in paragraph 6. Said paragraph 6 is also reproduced below.

"6. The basic contention of learned Senior Counsel for the petitioner is that impugned orders are without jurisdiction. Respondent no. 2 had no jurisdiction to declare a sale deed, null and void since such an issue could have been raised in a court of law only by filing a civil suit. So far as the appellate order is concerned, it is submitted that the appellate authority has exceeded its jurisdiction in dismissing appeal inasmuch as, when the sole Arbitrator himself lacked jurisdiction, the Appellate Authority also could have no jurisdiction to entertain the appeal. Even otherwise, appeal involving the disputed amount exceeding Rs. 10,000/- is maintainable before U.P. Cooperative Tribunal, Lucknow, as per notification dated 4.3.1979 and hence appeal was not maintainable before the District Assistant Register (Co-operative Societies)."

4. We see that scope of reference of disputes has been provided in sub-section (1) of section 70. Clause (b) in section 70(1) is reproduced below.

"70 (1) Disputes which may be referred to arbitration.-(1) Notwithstanding anything contained in any law for the time being in force, if any dispute relating to the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken against a paid servant of a society arise-

(a)

*(b) **between a member**, past member or any persons claiming through a member, past member or deceased member, **and the society its Committee of Management** or any officer, agent or employee of the society including any past officer, agent or employee; or*

(c)

(d)"

(emphasis supplied)

5. Challenge to the reference is in respect of its scope. We are to see the sale deeds executed by the society, if can be challenged in a reference on a claim for them being declared null and void. It appears from **Delhi Dayalbagh Cooperative House Building Society Limited v. Registrar**,

6. In this case the dispute raised is by a member against the society for dealing with the lands in favour of non members. The non members have not applied to become members. Respondent no. 4 (member) has assailed the transactions and wants declaration that they be declared null and void. Facts in this case are distinct from facts in **Delhi Dayalbagh Cooperative House Building Society Limited (supra)**. However, we will go so far as to observe that in dealing with the reference the Arbitrator/ Registrar will answer it on authority had or lack of it, by the society, to convey the lands. In event respondent no. 4 is successful, he or the society can approach the competent civil Court for delivery up and cancellation of the registered sale deeds.

(2026) 1 ILRA 200
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 20.01.2026

THE HON'BLE IRSHAD ALI, J.

...Petitioners Versus

Addl. Commissioner Judicial Faizabad & Ors. ...Respondents

ISSUE FOR CONSIDERATION

Whether petitioners, in whose favour resolution of the Land Management Committee granting lease of Gaon Sabha land was not approved by the Sub-Divisional Magistrate, could claim any right or lawful possession over the land in dispute.

HEADNOTE

U.P. Zamindari Abolition and Land Reforms Act, 1950, Section 122-B – Unauthorised occupation of Gaon Sabha land – Recourse under Section 122-B for eviction – Resolution of Land Management Committee granting lease not approved by S.D.M. – No right accrues in favour of the allottee – Possession, if any, without authority wholly illegal – Petitioners admitted non-possession.

Writ petition dismissed. (E-5)**HELD:**

Gata No. 1135 was recorded as reserved for general Abadi. The Land Management Committee passed a resolution granting lease to the petitioners, which was not approved by the S.D.M. Despite the same, the petitioners claimed possession. No subsequent resolution allotting lease was ever approved. Held: Petitioners have no right over the land in dispute and any possession, if claimed, was wholly illegal. The Petitioners admitted non-possession. The provisions contained under Section 122-B are not applicable to the case of the petitioners. The Supreme Court directions in *In Re: Directions in the matter of demolition of structures* are not applicable where there is an unauthorised structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies, and also to cases where there is an order for demolition made by a Court of law. The said judgment was held to be inapplicable to the case of the petitioners. The impugned orders do not suffer from any infirmity or illegality. The writ petition was dismissed. (Paras 17–22)

CASE LAW CITED

Shiv Murat v. Board of Revenue, U.P., Allahabad and others, 2017 (4) AWC 4302;

In Re: Directions in the matter of demolition of structures;

Pradeep Kumar v. State of U.P. and 4 others, Writ – C No. 3968 of 2024, decided on 14.03.2024.

List of Acts

U.P. Zamindari Abolition and Land Reforms Act, 1950.

List of Keyword

Gaon Sabha land; Unauthorised occupation; Section 122-B; Resolution not approved by S.D.M.; Lease of abadi land; Exchange under Section 161; Eviction; Possession without authority.

CASE ARISING FROM

Orders dated 20.10.1997 passed by the Sub-Divisional Magistrate and 19.01.2001 passed by the Additional Commissioner (Judicial), Faizabad.

Appearances for Parties

Advs For Petitioner: O.N. Tripathi; Kuldeep Kaur; Rajeev Narayan Pandey

Advs For Respondents: C.S.C.; Abhishek Vishwakarma; Mohan Singh; Pankaj Gupta; R.N. Gupta; Satya Prakash; Shikhar Srivastava

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Rajeev Narayan Pandey, learned counsel for the petitioners, Sri Mohan Singh, learned counsel for respondent No.4, Sri Satya Prakash, learned counsel for respondent No.3 and Sri Rajiv Srivastava, learned Additional Chief Standing Counsel for respondent No.2.

2. The present writ petition has been filed against the impugned orders dated 20.10.1997 - annexure 6 to the writ petition and order dated 19.01.2001 passed by respondent No.2 and 1 respectively.

3. Factual matrix of the case is that Gata no. 1135 area 6 biswa 5 biswansi recorded as "Reserve for general Abadi" in khasra of fasli year 1395. Vide Resolution dated 3-12-1983 Land Management Committee allotted 1 Biswa each to both the petitioner and also allotted 1 Biswa to O.P. no. 3 and his father gata no. 1135 and in pursuance of that petitioner deposited the Nazrana on 28/05/84 and thereafter petitioners and O.P. no. 3 possess the allotted land.

4. Opposite party no. 3 filed a Suit no. 41/1988 Om Prakash vs Krishna Mohan & others stating therein land gata no. 1135 recorded as Abadi and prayed permanent injunction against the petitioner by denying the resolution dated 03-12-1983. When opposite party attempting to dispossess the petitioners from allotted land then petitioner moved application to the Revenue Authority who directed to the Supervisor Kanoongo and police restoring possession of the petitioners and authorities visited the land and restored the possession of the petitioners.

5. A misconceived application u/s 161 of U.P.Z.A & L.R Act have been filed by the opposite party No. 3 for exchange of gata no. 1135/0-6-5 from the gata no. 2057/0-7-0 & 1891/0-3-19 stating therein gata no. 1135 is recorded as Banjar and provisions of Rule 144, 145 & 146 of U.P.Z.A Rule have also not complied with. Under the Chairmanship of up-Pradhan who have no authority under the Law / Rules L.M.C. passed resolution for exchange of land.

6. On the application u/s 161 report have been sought from the Revenue authorities who filed their report stating therein gata no. 1135 reserved for Abadi and both parties are in possession over the gata no. 1135 and gata no. 1891 & 2057 recorded as Bhumidhar land and situated at the bank of Darban lake and also stated that before allowing the application both parties should be heard.

7. Vide letter dated 12-8-97 learned S.D.M requested to the learned D.G.C. Civil Ambedkar Nagar to provide legal opinion in matter and learned D.G.C. Civil send/provided legal opinion on 15-10-97 stating therein there are some legal impediment in the matter therefore at this stage exchange would not be proceeded with out curing the illegalities but without considering the provisions as well as legal opinion learned S.D.M approved the exchange.

8. Learned S.D.M. approved the exchange without considering the reports submitted by the revenue authority and provisions of section 161 of U.P.Z.A & L.R. Act as well as Rule 144, 145 & 146 of Z.A. Rules. Against the order dated 20-10-97 petitioners filed revision before the learned Commissioner Faizabad Division. Learned Additional Commissioner on the basis of report submitted by revenue authorities passed an order on 19.01.2001, whereby the claim setup by the petitioner has been rejected.

9. Submission of learned counsel for the petitioners is that once resolution was passed by Land Management Committee granting lease to the petitioner of Gata No.1135 and the same was returned by S.D.M., even then possession was handed over to the petitioner, therefore, without applying the provisions contained under Section 122 B the petitioners cannot be dispossessed.

10. He next submitted that eviction of the petitioner from the land in dispute can only be made after giving notice to him. He placed reliance upon a judgment in the case of **Shiv Murat Vs. Board of Revenue, U.P. Allahabad and others; 2017 (4) AWC 4302**, paragraphs 6, 8, 11, 13 & 18. He also placed reliance upon a judgment of Hon'ble Supreme Court in the case **In Re. Directions in the matter of demolition of structures**, paragraph 91.

11. Learned counsel for respondent No.3 and 4 along with learned Additional CSC submitted that once the resolution of Land Management Committee was not approved by the S.D.M., the petitioners have no right to hold possession over the land in dispute. In case they are holding the possession over the land in dispute, the same is illegal and without any basis.

12. They also pointed out that in Annexure 3 to the writ petition, the petitioners have admitted this fact that they are not in possession over the land in dispute, therefore, the claim setup by the petitioners is on irrelevant consideration and has no right to claim possession over the land in dispute. They placed reliance upon a judgment in the case of **Pradeep Kumar Vs. State of U.P. and 4 others; Writ C No.3968 of 2024** decided on 14.03.2024, paragraphs 6, 7 & 8.

13. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

14. To resolve the controversy involved in the matter, Section 122 B of U.P. Z.A. & L.R. Act is being quoted below:

122B. Powers of the Land Management Committee and the Collector.

- [(1) Where any property vested under the provisions of this Act in a Gaon Sabha or a local authority is damaged or misappropriated or where any Gaon Sabha or local authority is entitled to take or retain possession of any land under the provisions of this Act and such land is occupied otherwise than in accordance with the provisions of this Act, the Land Management Committee or local authority, as the case may be. shall inform the Assistant Collector concerned in the manner prescribed.

(2) Where from the information received under sub-section (1) or otherwise, the Assistant Collector is satisfied that any property referred to in sub-section (1) has been damaged or misappropriated or any person is in occupation of any land, referred to in that sub-section, in contravention of the provisions of this Act, he shall issue notice to the person concerned to show cause why compensation for damage, misappropriation or wrongful occupation as mentioned in such notice be not recovered from him or, as the case may be, why he should not be evicted from such land.

(3) If the person to whom a notice has been issued under sub-section (2) fails to show cause within the time specified in the notice or within such extended time not exceeding [thirty days] [Substituted by U.P. Act No. 20 of 1982 (w.e.f. 03.06.1981).] from the date of service of such

notice on such person, as the Assistant Collector may allow in this behalf, or if the cause shown is found to be insufficient, the Assistant Collector may direct that such person may be evicted from the land and may for that purpose, use, or cause to be used such force as may be necessary and may direct that the amount of compensation for damage, misappropriation or wrongful occupation be recovered from such person as arrears of land revenue.

(4) If the Assistant Collector is of opinion that the person showing cause is not guilty of causing the damage or misappropriation or wrongful occupation referred to in the notice under sub-section (2) he shall discharge the notice.

(4-A) Any person aggrieved by the order of the Assistant Collector under sub-section (3) or sub-section (4) may, within thirty days from the date of such order, prefer a revision before the Collector on the grounds mentioned in clauses (a) to (e) of Section 333.

(4-B) The procedure to be followed in any action taken under this section shall be such as may be prescribed.

(4-C) Notwithstanding anything contained in Section 333 or Section 333-A, but subject to the provisions of this section-

(i) every order of the Assistant Collector under this section shall, subject to the provisions of sub-sections (4-A) and (4-D), be final,

(ii) every order of the Collector under this section shall, subject to the provisions of sub-section (4-D), be final.

(4-D) Any person aggrieved by the order of the Assistant Collector or Collector in respect of any property under this section may file a suit in a Court of competent jurisdiction to establish the right claimed by him in such property.

(4-E) No such suit as is referred to in sub-section (4-D) shall lie against an order of the Assistant Collector if a revision is preferred to the Collector under sub-section (4-A).

Explanation. - For the purposes of this section, the expression 'Collector' means the officer appointed as 'Collector' under the provisions of the U.P. Land Revenue Act, 1901 and includes an Additional Collector].

[(4-F) Notwithstanding anything in the foregoing sub-sections, where any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe is in occupation of any land vested in a Gaon Sabha under Section 117 (not being land mentioned in Section 132) having occupied it from before [May 13, 2007] [Substituted by U.P. Act No. 24 of 1986.] and the land so occupied together with land, if any, held by him from before the said date as bhumidhar, sirdar or asami, does not exceed 1.26 hectares (3.125 acres), then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer, and [he shall be admitted as bhumidhar with non-transferable rights of that land under Section 195 and it shall not be necessary for him to institute a suit for declaration of his rights as bhumidhar with non-transferable rights in that land.] [Substituted by U.P. Act No. 11 of 2002 (w.e.f. 21.6.2002).]]

Explanation. - The expression "agricultural labourer" shall have the meaning assigned to it in Section 198.

(5) [Rules 115-C to 115-H of the U.R Zamindari Abolition and Land Reforms Rules, 1952, shall be and be always deemed to have been made under the U.P. Zamindari Abolition and Land Reforms Act, 1950 as amended by the Uttar Pradesh Land Laws (Second Amendment) Act, 1961, as if this section has been in force on all material dates and shall accordingly continue in force until altered or repealed or amended in accordance with the provisions of this Act.] [Substituted by U.P. Act No. 35 of 1976.]

15. On perusal of aforesaid provisions, it is evident that if the person is on unauthorized occupation of land by adopting the recourse provided under Section 122 B, he can be evicted from the land in dispute.

16. Relevant portion of the judgments relied upon by learned counsel for the parties are also being quoted below:

Judgments relied upon by learned counsel for the petitioners:

a) Shiv Murat (Supra):

6. *In rebuttal, learned Standing Counsel would submit (i) the plot sought for exchange is recorded as manure pit (Khad Ka Gaddha), therefore, being public utility land under section 132 cannot be exchanged; (ii) admittedly, there is no notice to the Gaon Sabha which is mandatory and without resolution of the Land Management Committee approving the exchange Sub-Divisional Officer could not have passed the order merely on the report of the Lekhpal; (iii) under section 127:B the panel lawyer of the State/Land Management Committee can maintain the revision on behalf of the State; (iv) section 161 does not confer any legal right upon the applicant seeking exchange.*

8. *The question for determination is as to whether the land vesting in the Gaon Sabha can be exchanged without notice to the Land Management Committee and without there being resolution of the Gaon Sabha approving the exchange.*

11. *Upon receiving such an application, Rule 145 requires that the Assistant Collector shall cause calculation of the rental value of the land proposed to be given in exchange and the land proposed to be received in exchange at hereditary rates and if he is satisfied that the exchange is not invalid according to the proviso to sub-section (1) of section 161 the Assistant Collector shall call upon the parties, if any, to show -cause why the exchange should not be made. Every such notice shall be accompanied by copy of the application. If the Assistant Collector decides that the exchange should be allowed, he shall also make an order for delivery of possession, if necessary, and for the correction of papers.*

13. *On plain reading of sub-clause (i) of section 161 and Rule 145, it is apparent that the Assistant Collector upon being satisfied with the conditions of exchange, as consequence of the Rule he is required to call upon the parties to show cause why the exchange should not be made and thereafter under Rule 146 the Assistant Collector is to decide the objections, if any, and pass suitable orders. It is, therefore, clear that without notice to the Gaon Sabha and in absence of resolution recording consent of the Land Management Committee the permission to make an exchange suo motu by the Assistant Collector on report of the Halka Lekhpal would be void not being mandated under section 161 of the Act:*

18. *From the conjoint reading of section 161, as well as, the Rules relating thereto, it transpires that the legislature has extended facility upon bhumidhar to exchange his bhumidhari land from land of another bhumidhar for their convenience upon satisfying the conditions for exchange. Such exchange cannot be valid unless permission of the Assistant Collector has been obtained. An exchange involves the transfer of property by one person to another and reciprocally the transfer of property by that other to the first person. There must be mutual transfer of ownership of one thing for the ownership of another.*

b) In Re. Directions in the matter of demolition of structures:

91. 91. *At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.*

A. NOTICE

i. *No demolition should be carried out without a prior show cause notice returnable either in accordance with the time provided by the local municipal laws or within 15 days' time from the date of service of such notice, whichever is later.*

ii. *The notice shall be served upon the owner/occupier by a registered post A.D. Additionally, the notice shall also be affixed conspicuously on the outer portion. of the structure in question.*

iii. *The time of 15 days, stated herein above, shall start from the date of receipt of the said notice.*

iv. *To prevent any allegation of backdating, we direct that as soon as the show cause notice is duly served, Intimation thereof shall be sent to the office of Collector/District Magistrate of the district digitally by email and an auto generated reply acknowledging receipt of the mail should also be issued from the office of the Collector/District Magistrate. The Collector/DM shall designate a nodal officer and also assign an email address and communicate the same to all the municipal and other authorities in charge of building Regulations and demolition within one month from today.*

v. *The notice shall contain the details regarding:*

a. *the nature of the unauthorized construction.*

b. *the details of the specific violation and the grounds of demolition.*

c. *a list of documents that the noticee is required to furnish along with his reply.*

d. *The notice should also specify the date on which the personal hearing is fixed and the designated authority before whom the hearing will take place;*

vi. *Every municipal/local authority shall assign a designated digital portal, within 3 months from today wherein details regarding service/pasting of the notice, the reply, the show cause notice and the order passed thereon would be available.*

B. PERSONAL HEARING

I. *The designated authority shall give an opportunity of personal hearing to the person concerned.*

II. *The minutes of such a hearing shall also be recorded.*

C. FINAL ORDER

I. *Upon hearing, the designated authority shall pass a final order.*

ii. *The final order shall contain:*

a. *the contentions of the noticee, and if the designated authority disagrees with the same, the reasons thereof;*

b. *as to whether the unauthorized construction is compoundable, if it is not so, the reasons therefor;*

c. *if the designated authority finds that only part of the construction is unauthorized/non-compoundable, then the details thereof.*

d. as to why the extreme step of demolition is the only option available and other options like compounding and demolishing only part of the property are not available.

D. AN OPPORTUNITY OF APPELLATE AND JUDICIAL SCRUTINY OF THE FINAL ORDER.

1. We further direct that if the statute provides for an appellate opportunity and time for filing the same, or even if it does not so, the order will not be implemented for a period of 15 days from the date of receipt thereof. The order shall also be displayed on the digital portal as stated above.

ii. An opportunity should be given to the owner/occupier to remove the unauthorized construction or demolish the same within a period of 15 days. Only after the period of 15 days from the date of receipt of the notice has expired and the owner/occupier has not removed/demolished the unauthorised construction, and if the same is not stayed by any court, the concerned authority shall take steps to demolish the same. It is only any appellate authority or a such construction which is found to be unauthorized and not compoundable shall be demolished.

iii. Before demolition, a detailed inspection report shall be prepared by the concerned authority signed by two Panchas.

E. PROCEEDINGS OF DEMOLITION

1. The proceedings of demolition shall be video-graphed, and the concerned authority shall prepare a demolition report giving the list of police officials and civil personnel that participated in the demolition process. Video recording to be duly preserved.

II. The said demolition report should be forwarded to the Municipal Commissioner by email and shall also be displayed on the digital portal.

Judgment relied upon by learned counsel for the respondents:

a) Pradeep Kumar (Supra):

6. Challenging the aforesaid order, learned counsel for the petitioner has contended that the revisional authority without appreciating the correct facts on record dismissed the revision. It is submitted that the plot i.e. Khasra No. 1071Gha Min. Rakba 0.2155 hectare of village Nandpur could not have been exchanged with Khasra No.350 Min. Rakba 0.2675 hectare and given to respondent no.5, inasmuch as there is a number of dispute pending with respect to the said land, and thus, the proceeding under Section 101 of U.P. Revenue Code, 2006 was illegally initiated on account of this fact, and the Sub Divisional Magistrate has erred in law in allowing the exchange of plot by order dated 25.09.2023.

7. Be that as it may, the order of Sub Divisional Magistrate dated 25.09.2023 reflects that the Sub Divisional Magistrate after hearing all the aggrieved persons, passed the order. The petitioner is complainant, and was not a party in the proceeding under Section 101 of U.P. Revenue Code, 2006, therefore, the petitioner has no locus to file the revision, inasmuch as the petitioner is not an aggrieved persons.

8. In such view of the fact, the revision preferred by the petitioner was not maintainable unless the petitioner should have taken leave of the revisional authority to prefer revision after demonstrating that the order dated 25.09.2023 passed by Sub Divisional Magistrate prejudices his rights and he is aggrieved person. In such view of the fact, this Court is not inclined to interfere with the order passed by the revisional authority.

17. It is admitted case of the parties that a resolution was passed by the Land Management Committee giving lease to the petitioners of Gata No.1135, which was not approved by the S.D.M. In spite of that, the petitioners are alleging that they are in possession over the land in dispute.

18. It is surprising that a person, who has no authority to hold possession over the land in dispute is alleging possession over the land in dispute. The provisions contained under Section 122 B are not applicable to the case of the petitioners.

19. In regard to judgment placed by learned counsel for the petitioners of Hon'ble Supreme Court, it has been provided therein that these directions will not be applicable if there is unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law. The judgment referred hereinabove is not applicable to the case of petitioners.

20. The petitioners have admitted in annexure No.3 to the writ petition that they are not in possession over the land in dispute, therefore, the impugned orders passed against the petitioners do not suffer from any infirmity or illegality and are just and valid.

21. It is however, made clear that the resolutions passed in favour of the petitioners was not approved by the competent authority i.e. S.D.M. vide order dated 31.10.1985 and it was returned back to the Land Management Committee and thereafter, no resolution allotting lease to the petitioners was ever submitted before the S.D.M., therefore, the petitioners have no right over the land in dispute and to adopt recourse as provided under law for unauthorized occupation on the land in dispute. The possession, if any, of the petitioners, is wholly illegal.

22. On the reasons recorded above, the writ petition fails and is hereby dismissed.

(2026) 1 ILRA 208
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.01.2026

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE INDRAJEET SHUKLA, J.

Writ Tax No. 7515 of 2025
 Along with
 Other Connected Cases

M/s SA Aromatics Pvt. Ltd.

...Petitioner

Versus

Union of India & Ors.

...Respondents

Issue for Consideration

Matter pertains to challenge to proceedings initiated under S.s 73 and 74 of the Central Goods and Service Tax Act, 2017 and the U.P. Goods and Service Tax Act, 2017, including the legality of composite Show Cause

Notices, applicability of S. 6(2)(b) of the Acts, permissibility of multiple adjudication orders arising from a single SCN, and the mandatory nature of limitation provisions. (Paras 2, 89-93, 99-100)

Headnotes

Central Goods and Services Tax Act, 2017 - Adjudication Proceedings - Composite Show Cause Notice - "we are not inclined to accept on principle that a composite notice may never be issued under S. 74 of the Acts" - validity left open to be examined in individual adjudication proceedings. (Para 89)

Central Goods and Services Tax Act, 2017-Jurisdiction - Parallel Proceedings -S. 6(2)(b) of the Acts - bar on initiation of proceedings on the "same subject-matter" - parallel proceedings impermissible. (Paras 92–93)

Central Goods and Services Tax Act, 2017- Adjudication - Multiple Orders from Single SCN - "one SCN may never give rise to two separate adjudication orders, by two different authorities". (Para 99)

Central Goods and Services Tax Act, 2017- Mandatory Nature - "any notice issued within six months from the end of the limitation to make the adjudication order is time barred". (Para 100)

Central Goods and Services Tax Act, 2017- Garnishee-like Directions -direction to service recipients to withhold payments without statutory backing held impermissible. (Para 100(iv)) (E-7)

Held:

On composite SCN - "while we are not inclined to accept on principle that a composite notice may never be issued under S. 74 of the Acts, we leave that question of validity of individual notices issued to individual noticees open to be examined in individual adjudication proceedings." (Para 89)

On S. 6(2)(b) of the Acts - "the issue is no longer res-integra - now after pronouncement of the Supreme Court in Armour Security (supra) the issue rests finally and firmly decided in favour of the petitioners." (Para 92)

On multiple adjudication orders from one SCN - "one SCN may never give rise to two separate adjudication orders, by two different authorities - Once an order is passed, the authority is rendered functus officio." (Para 99)

On limitation - "the issue of limitation provision being mandatory, are decided in favour of the petitioners such that any notice issued within six months from the end of the limitation to make the adjudication order is time barred." (Para 100)

Operative Directions - Writ Tax No. 7515 of 2025 and connected matters partly allowed / allowed / dismissed, as detailed in clauses (i) to (vi). "No orders as to costs." (Paras 100, 101)

Case Law Cited

State of West Bengal Vs. Kesoram Industries Ltd. and others, (2004) 10 SCC 201; *Dhananjaya Reddy Vs. State of Karnataka*, (2001) 4 SCC 9; *CIT, Mumbai Vs. Anjum M.H. Ghaswala and others*, (2002) 1 SCC 633; *Mehsana District Central Cooperative Vs. State of Gujarat and others*, (2004) 2 SCC 463; *Maharao Bheem Singh of Kota Vs. CIT*, (2017) 1 SCC 554; *State of Gujarat Vs. Arcelor Mittal Nippon Steel (India) Ltd.*, (2022) 6 SCC 459; *State of U.P. and others Vs. Jai Prakash Associates Ltd.*, (2014) 4 SCC 720; *B. Prabhakar Rao & others Vs. State of Andhra Pradesh & others*, 1985 (SUPP) SCC 432; *M/s Mathur Polymers Vs. Union of India*, 2025:DHC:7435-DB; *M/s Milroc Good Earth Developers Vs. Union of India*, (2025) 36 Centax, 97 (Bom); *Ambika Traders Vs. Additional Commissioner*, (2025) 33 Centax 189; *Titan Company Ltd. Vs. Joint Commissioner*, (2024) 15 Centax 118 (Mad.) ; *State of Jammu and Kashmir Vs. Caltex (India) Ltd.*, AIR 1966 SC 1350 ; *G. K. Trading Company Vs. Union of India & Ors.*, 2020 SCC OnLine All 1907 ; *Armour Security (India) Ltd. Vs. Commissioner, CGST, Delhi East Commissionerate & Anr.*, 2025 SCC OnLine SC 1700

List of Acts

Central Goods and Services Tax Act, 2017; Uttar Pradesh Goods and Services Tax Act, 2017; West Bengal Goods and Services Tax Act, 2017; Income Tax Act, 1961

List of Keywords

Proper Officer; Subject matter; Jurisdiction; Composite Show Cause Notice; S. 6(2)(b); Tax period; Financial Year; Limitation; Adjudication proceedings; Return-based assessment; parallel proceedings; functus officio; time barred

Case Arising From

ORIGINAL JURISDICTION: Writ Petitions filed challenging Show Cause Notices, adjudication orders, and consequential directions issued by Central and State GST authorities under S.s 73 and 74 of the Acts.

Appearances for Parties**Advs. for the Appellant / Petitioners:**

Mr. Dhruv Agarwal, learned Senior Advocate, assisted by Ms. Upasna Agrawal, Mr. Varun Srivastava, Mr. Salil Arora, Mr. Nalin Talwar, Mr. Rajesh Kumar Thakur, Mr. Suyash Agarwal, Mr. Praveen Kumar, Mr. Pranjal Shukla, Mr. Bharat Raichandani, alongwith other learned counsel.

Advs. for the Respondents:

Mr. N.C. Gupta, learned Senior Counsel; Mr. Sudarshan Singh; Mr. Dhananjay Awasthi; Mr. Gaurav Mahajan; Mr. Krishna Agarwal; Mr. Amit Mahajan; Mr. Parv Agarwal; learned Standing Counsel and Additional Chief Standing Counsel for the State.

(Delivered by Hon'ble Saumitra Dayal Singh, J.
&
Hon'ble Indrajeet Shukla, J.)

1. Heard Mr. Dhruv Agarwal, learned Senior Advocate, assisted by Ms. Upasna Agrawal, Mr. Varun Srivastava, Mr. Salil Arora, Mr. Nalin Talwar, Mr. Rajesh Kumar Thakur, Mr. Suyash Agarwal, Mr. Praveen Kumar, Mr. Pranjal Shukla, Mr. Bharat Raichandani (through video conferencing) alongwith Namit Kumar Sharma, Mr. Sudhanshu Yadav and Mr. Rishi Raj Kapoor, learned counsel for the petitioners; Mr. N.C. Gupta, learned Senior Counsel assisted by Mr. Sudarshan Singh, learned counsel for Union of India; Mr. Dhananjay Awasthi, Mr. Gaurav Mahajan, Mr. Krishna Agarwal, Mr. Amit Mahajan and Mr. Parv Agarwal, learned counsel for the revenue, Mr. Nimai Das, learned Additional Chief Standing Counsel, Mr. Arvind Mishra, learned Standing Counsel and Mr. Ankur Agarwal, learned Standing Counsel for the State.

2. The present batch of petitions has been filed to challenge the proceedings initiated under sections 74 and 73 of the Central Goods and Service Tax Act, 2017 and UP Goods and Service Tax Act, 2017, (collectively described as the Acts). Since these petitions raise common issues, they have been heard together. Broadly, it has been canvassed:

(i) it is not open to the revenue authorities to issue a composite Show Cause Notice (in short 'SCN') for different tax periods or to more than one noticee, especially for different Financial Years (in short □FYs□); (ii) in some of the cases such SCNs and Adjudication Orders have been passed in violation of the statutory prohibition contained in Section 6(2)(b) of the Acts. That may never be done. (iii) another, objection has arisen in one of the petitions - that in any case, it may be impermissible in law for two different authorities/Proper Officers, to pass separate orders both referable to one SCN; (iv) Further challenge has been raised in one petition to direction issued by the respondent authorities (to the service recipients of the petitioner), to withhold all payments due to the petitioners.

3. Reliance has been placed on the decisions of other High Courts. It has been strenuously urged, in same set of facts involving the same legal context, i.e. the Acts, the interpretation made by the High Courts at Calcutta, Karnataka, Kerala, Bombay, Madras and Andhra Pradesh may be followed.

4. On the other hand, learned counsel for the revenue have relied on another set of decisions of other High Courts to contend, the view taken by the Delhi High Court, High Court of Jammu & Kashmir and Ladakh, Calcutta High Court, Kerala High Court and Bombay High Court, to contend that a composite notice may be issued as it does not cause any prejudice and it does not involve any violation of the law. To the extent, the basis of the proposed demands and the proposed demands of tax and penalty have been clearly quantified, it remains with the noticee to respond to such notices in such way and in such manner as may be advised.

5. As to the remaining contentions, it has been submitted, statutory remedy of reply and appeal is available to the noticees. Therefore, no interference is warranted in the present batch of petitions.

6. Before proceeding further, we may reduce the bare facts involved in these cases in tabular form:

<i>Sl. No.</i>	<i>Writ Tax</i>	<i>Name</i>	<i>Show Cause Notice</i>	<i>Adjudication Order/Rectification Order</i>	<i>Passed under Section</i>	<i>F.Y.</i>
1.	7515/2025	<i>M/s SA Aromatics Pvt. Ltd. and another Vs. Union of India and 5 others</i>	30.09.2025 & 04.10.2025	-	74	
2.	7500/2025	<i>M/s S.D. Freshners Ltd. Through its Director Shri Mahesh Prasad and another Vs. Union of India and 5 others</i>	30.09.2025	-	74	
3.	1000/2025	<i>M/s Mandakini Accommodation Pvt.Ltd. Vs. Union of India and another</i>	27.03.2024	26.11.2024	74	2017-18, 2018-19, 2019-20, 2020-21 & 2021-22
4.	2537/2025	<i>M/s DBL Lucknow Sultanpur Highways Ltd. Vs. Union of India and 3 others</i>	-	04.02.2025 & rectification order dated 11.04.2025	74	2017-18
5.	4965/2025	<i>M/s NGT Nirman Pvt. Ltd. Vs. Union of India and 2 others</i>	28.05.2025	-	74	2018-19, 2019-20, 2020-21, 2021-22 & 2022-23
6.	1119/2025	<i>M/s Mandakini Heaven Huts Pvt. Ltd. Vs. Union of India and another</i>	30.08.2024	28.03.2024	74	2017-18, 2018-19, 2019-20, 2020-21 & 2021-22

7.	2246/2025	<i>Raj Trade Link Corporation Vs. Union of India and 2 others</i>	-	01.02.2025	74(1)	2024-25
8.	2247/2025	<i>Raj Trade Link Corporation Vs. Union of India and 3 others</i>	-	01.02.2025	74(1)	2024-25
9.	2454/2025	<i>Raj Trade Link Corporation Vs. Union of India and 3 others</i>	-	23.09.2024	74(1)	2024-25
10.	2456/2025	<i>Raj Trade Link Corporation Vs. Union of India and 3 others</i>	-	23.09.2024	74(1)	2024-25
11.	2569/2025	<i>M/s R.C. Brothers Jangal Bhelampur Jainulbedin Gorakhpur Vs. Union of India and another</i>	09.11.2023 and 06.12.2023	20.01.2025 & DRC-07 dated 30.01.2025	74	2017-18, 2018-19, 2019-20 & 2020-21
12.	2795/2025	<i>PSR Metals Pvt. Ltd. Vs. Additional Commissioner Central GST and 2 others</i>	-	01.02.2025 and DRC-07 dated 03.02.2025	74	2017-18, 2018-19 & 2019-20
13.	2838/2025	<i>Anukul Bindal Vs. Union of India and 2 others</i>	31.03.2023	28.01.2025/ 30.01.2025	122(1)(i i)	2024-25
14	8725/2025	<i>M/s Indian Enterprises Vs. State of U.P. and 2 others</i>	08.01.2024	29.04.2024 and rectification order dated 24.10.2024	73	

7. Next, the facts giving rise to Writ Tax No. 7515 of 2025 (M/S S.A. Aromatics Pvt. Ltd. Vs. Union of India and others), may be noted in brief. On 07.06.2019, a search was conducted in the case of that petitioner M/S S.A. Aromatics Pvt. Ltd. by the Central GST Authorities. Also, on 24.2.2020 officers of the State GST Department conducted a search at the premises of the said petitioner and seized a consignment of scented tobacco and books of accounts. A summary order was issued under Section 67 of the West Bengal GST Act, 2017/CGST Act, 2017, on 28.2.2020. On 11.3.2020, the said petitioner paid the demand of CGST and SGST together with cess, interest and penalty, for the Financial Year 2019-20 amounting to Rs. 7,91,668/-. On 24.03.2020, the said petitioner further paid tax, interest and penalty against the DRC-03. It was issued acknowledgement of such voluntary payment made under Section 74 (5) of the West Bengal GST Act, 2017, on 30.03.2021.

8. Thereafter, another search was conducted in the case of petitioner no. 2 on 17.04.2023. Yet, another search was conducted in the case of petitioner no. 1 M/S S.A. Aromatics Pvt. Ltd., on 18.04.2023. Statement made by petitioner no. 2 during his search was later retracted. In any case, petitioner no. 1 again made payment Rs. 15,53,522/- towards tax, interest and penalty, on 24.5.2023 against DRC-03. On 03.08.2023, another search was carried out by the officers of West Bengal GST Authority in the case of petitioner no. 1. On 11.09.2024, the premises of petitioner no. 1 were again inspected by the West Bengal GST Authority. However, a closure report was issued in that respect, on 17.03.2025. Thereafter, proceedings were initiated and continued calling for statements to be recorded and replies to be furnished. Later, the impugned SCN dated 30.09.2025, was issued to petitioner nos. 1 and 2.

9. In these facts, the petitioner M/S S.A. Aromatics Pvt. Ltd. has approached the Court, with the grievance noted earlier in this order. At the same time, in the two cases involving the petitioners

- M/S S.A. Aromatics Pvt. Ltd., M/S S.D. Fresheners Limited, an additional ground has been pressed that the SCN impugned in these writ petitions suffer from jurisdictional error on account of violation of Section 6(2)(b) of the Acts. Details of the same have been given in a tabular form, as below:

DATE	INVESTIGATING AGENCY	COMPANY NAME	SECTION	SCN DATE	ORDER DATE	TAX	PENALTY	INTEREST	TOTAL AMOUNT	PERIOD S	DRC 03 FILLED	DRC-04 RECD
24.02.2020	DRI&E	S.D. FRESHNERS LIMITED	74(5)	NO	24.06.2020	16610154	2491524	3609942	22711620	APR2019 TO MAR2020	25.03.2021	07.02.2025
		S.A. AROMATICS PVT LTD	74(5)	NO	24.06.2020	2506668	376000	216064	3101732	APR2019 TO MAR2020	24.03.2021	22.01.2025
DATE	INVESTIGATING AGENCY	COMPANY NAME	SECTION	SCN DATE	ORDER DATE	TAX	PENALTY	INTEREST	TOTAL AMOUNT	PERIOD S	DRC 07 FILLED	DRC-04 RECD
02.08.2023	BI SOUTH BENGAL (HQ)	S.D. FRESHNERS LIMITED	122(1)	01.09.2023	20.09.2023	0	3896670	0	3896670	AUG 2023 TO AUG2023	21.09.2023	NO ACKN
		S.A. AROMATICS PVT LTD	122(1)	01.09.2023	20.09.2023	0	1104051	0	1104051	AUG2023 TO AUG2023	21.09.2023	NO ACKN
02.08.2023	BI SOUTH BENGAL (HQ)	S.D. FRESHNERS LIMITED	122(1)	01.09.2023	20.09.2023	0	3896670	0	3896670	AUG 2023 TO AUG2023	21.09.2023	NO ACKN
		S.A. AROMATICS PVT LTD	122(1)	01.09.2023	20.09.2023	0	1104051	0	1104051	AUG2023 TO AUG2023	21.09.2023	NO ACKN
DATE	INVESTIGATING AGENCY	COMPANY NAME	SECTION	SCN DATE	ORDER DATE	TAX	PENALTY	INTEREST	TOTAL AMOUNT	PERIOD S	DRC 03 FILLED	CLOSURE REPORT
11.09.2024	B.I. SOUGH BENGAL (HWH)	S.A. AROMATICS PVT LTD	74(5)	NO	12.09.2024	1023400	153510	78510	1255420	APR2021 TO SEP2024	12.09.2024	17.03.2025
		S.D. FRESHNERS LIMITED	VERY MUCH RELEVANT WITH S.A. AROMATICS PVT LTD								05.03.2025 (A33, P457)	
DATE	INVESTIGATING AGENCY	COMPANY NAME	SECTION	SCN DATE	ORDER DATE	TAX	PENALTY	INTEREST	TOTAL AMOUNT	PERIOD S	DRC 03 FILLED	CLOSURE REPORT
13.06.2025	B.I. SOUTH BENGAL (HWH)	S.D. FRESHNERS LIMITED	74(5)	NO	18.06.2025	337677	50651	40521	428849	APR 2024 TO MAR2025	24.06.2025	21.07.2025
										comparat		

		S.A. AROMATI CS PVT LTD	74(5)	NO	18.06.2025	3057597	458638	1273168	4789403	ive to 2021-22, 2022-23, 2023-24, 2024-25)		
										APR 2021 TO MAR 2024 comparat ive to (2021- 22, 2022- 23, 2023- 24, 2024- 25)	24.06.20 25	21.07.20 25
DATE	INVESTIG ATING AGENCY	COMPANY NAME	SECTION	SCN DATE	ORDER DATE	TAX	PENALTY	INTER EST	TOTAL AMOUN T	PERIOD S	DRC 03 FILLED	CLOSU RE REPORT
17.04.2 023	DGGLGHA ZIABAD	S.D. FRESHNE RS LIMITED	74(1), 122	30.09. 2025	NA	NIL	NIL	NIL	NIL	AUG201 9 TO SPE2023		
		S.A. AROMATI CS PVT LTD	74(1), 122	30.09. 2025	NA	NIL	NIL	NIL	NIL	AUG201 9 TO SPE2023		

“Comments:-It has been seen that the search by DRI&E, Kolkata dated 24-02-2020, periods covered was from April’2019 to March’2020

search by SGST dated 11.09.2024, periods covered was from April2021 to Sep’2024

search by SGST dated 13.06.2025 based on comparison of sales of Pan Masala with Tobacco, periods covered was from April’2021 to March’2025

in S.A.Aromatics Pvt Ltd and in S D Freshners Limited periods covered was from April’2024 to March’2025 but it was comperative to Apr’2021 to March’2025

search by DGGI dated 17.04.2023 period covered was Oct’2019 to Sep’2023

Remarks:- So it is clear that the periods covered by DGGI is already covered in case DRI&E dt. 24-02-2020, SGST dt. 11-09-2024 and SGST dt. 13-06-2025.”

10. These petitions involving common issues have been heard together. Mr. Dhruv Agarwal, learned Senior Counsel would submit that the power to tax a subject must be express. He relied on State of West Bengal Vs. Kesoram Industries Ltd. and others, (2004) 10 SCC 201, wherein it has been observed as below:

“106. The judicial opinion of binding authority flowing from several pronouncements of this Court has settled these principles: (i) in interpreting a taxing statute, equitable considerations are entirely out of place. Taxing statutes cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; (ii) before taxing any person it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (iii) if the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject. There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly.

107. Power to tax is not an incidental power. According to Seervai, although legislative power includes all incidental and subsidiary power, the power to impose a tax is not such a power

under our Constitution. It is for this reason that it was held that the power to legislate in respect of inter-State trade and commerce (Entry 42 List I Schedule 7) did not carry with it the power to tax the sale of goods in inter-State trade and commerce before the insertion of Entry 92-A in List I and such power belonged to the States under Entry 54 in List II. Entry 97 in List I also militated against the contention that the power to tax is an incidental power under our Constitution.”
(emphasis supplied)

11. Second, he has invoked the principle - where a power is conferred to do a certain thing in a certain manner, that thing must be done in that way or not at all. Thus, he has relied on **Dhananjaya Reddy Vs. State of Karnataka, (2001) 4 SCC 9; CIT, Mumbai Vs. Anjum M.H. Ghaswala and others, (2002) 1 SCC 633; Mehsana District Central Cooperative Vs. State of Gujarat and others, (2004) 2 SCC 463.**

12. Third, referring to the language of Section 73 and comparing the same with Section 74 of the Acts, specifically referring to the provisions pertaining to Section 73/74 (1), 73/74 (2) and 73/74 (10), it has been stressed - the limitation to finalize any adjudication order is fixed/rigid. It has been prescribed with reference to the last date to furnish annual return for a Financial Year or (in the alternative) with reference to the date of refund. Cases of refund apart, the period of limitation is clearly referable to a Financial Year and/or tax period for which a return is to be filed.

13. That period of limitation being rigid and fixed, the limitation to issue a notice under Section 73/74 (1) ends three months (in cases falling under Section 73) and six months (in the case of Section 74 proceedings), before the end of the limitation to frame the order. To the extent the SCN dated 30.09.2025 has been first received by petitioner no. 2 in Writ Tax No. 7515 of 2025 on 8.10.2025, after expiry of minimum time limitation prescribed under Section 74 (3) read with Section 74 (10), clearly those proceedings are time barred. Reliance has been placed on a coordinate bench decision of this Court in **Daujee Abhushan Bhandar Pvt. Ltd. Vs. Union of India**. That petition arose from re-assessment proceedings under the Income Tax Act, 1961. At present, it has been submitted, the notice to petitioner no.2 was not issued at any point in time before it was dispatched through e-mail, on 08.10.2025.

14. Elaborating his submission, learned Senior Counsel has relied on **Maharao Bheem Singh of Kota Vs. CIT (2017) 1 SCC 554, State of Gujarat Vs Arcelor Mittal Nippon Steel (India) Ltd., (2022) 6 SCC 459** to submit - each Financial Year is an independent unit of assessment. Therefore, all SCNs required to be issued under Section 73/74 of the Acts may be issued only with reference to one or the other FY or tax period but not for more than one FY. Thus, in view of obligation to file annual returns, though it may be permissible for a proper officer to issue a SCN to a noticee for more than one tax period falling under one FY, a composite notice may never be issued for more than one tax period, falling in two different FYs.

15. Further, he would submit, wherever the legislature intended to provide for such composite notices to be issued, it has provided for the same, by enacting specific provisions to that effect such as those enacted under Chapter XIV - B of the Income Tax Act 1961 - for block assessment proceedings. Referring to those provisions, he has taken us to the definition of 'block period' (under the Act) and its effect - enabling the assessing authority to seek assessment of undisclosed

income across more than one unit of assessment i.e. Assessment Year. In absence of any parallel provision existing under the Acts, that effect of substantive law may not arise during adjudication proceedings under the Acts.

16. In the same way, referring to Section 158-BD of the Income Tax Act 1961, it has been submitted, wherever the legislature intended to provide for assessment of any person, based on facts found against another, it has provided for the same through a specific provision. In absence of similar provisions existing under the Acts, the revenue authorities, i.e. the Proper Officers under the Acts, do not have jurisdiction to issue a composite notice to multiple/more than one noticee.

17. Fourth, objecting to considerations of administrative exigency or convenience, learned Senior Counsel has relied on **State of U.P. and others Vs. Jai Prakash Associates Ltd., (2014) 4 SCC 720**, to submit that the defence of administrative chaos may not be recognized as a good ground to defend a proceeding that lacks jurisdiction. To the same effect, reliance has been placed on **B. Prabhakar Rao & others Vs. State of Andhra Pradesh & others, 1985 (SUPP) SCC 432**.

18. The above submissions are described to have found acceptance of the Karnataka High Court in **M/S Pramur Homes and Shelters Vs. Union of India and others, 2025:KHC:52750**. That High Court has reasoned - occasioned by the requirement to file monthly, quarterly and annual returns and the time limit prescribed, the requirement to issue individual SCNs for the purposes of adjudication may remain referable to the 'tax period' or a FY. Keeping in mind the principle applicable to assessment and payment of tax linked to the tax period and the timelines arising with reference thereto, it has been further reasoned that the decision of the Delhi High Court in **M/s Mathur Polymers Vs. Union of India, 2025:DHC:7435-DB** may not be a good law. The fact that the Special Leave Petition arising therefrom came to be dismissed by the Supreme Court may not cause any precedential effect in law.

19. Reliance has also been placed on a decision of Bombay High Court in **M/s Milroc Good Earth Developers Vs. Union of India, (2025) 36 Centax, 97 (Bom)** wherein the decision of the Delhi High Court in **Ambika Traders Vs. Additional Commissioner, (2025) 33 Centax 189** has been distinguished.

20. Further, the Bombay High Court (Goa Bench) has applied the ratio of the decisions of Madras and Kerala High Courts in **Titan Company Ltd. Vs. Joint Commissioner, (2024) 15 Centax 118 (Mad.)**; **R.A. & Co. Vs. Additional Commissioner of Central Taxes, Chennai South, (2025) 33 Centax 14 (Mad.)** and **Tharayil Medicals Vs. Deputy Commissioner, SGST Department, (2025) 29 Centax 395 (Ker.)**. In that the Bombay High Court has also taken note of the principle of law laid down by the Supreme Court in **State of Jammu and Kashmir Vs. Caltex (India) Ltd., AIR 1966 SC 1350** wherein it was observed as below:

"where an assessment encompasses different assessment years, each assessment year could be easily split up and dissected and the items can be separated and taxed for different periods. The said law was laid down keeping in mind that each and every Assessment Year will have a separate period of limitation and the limitation will start independently and that is the

reason why the Hon'ble Supreme Court has held that each assessment year could be easily split up and dissected and the items can be separated and taxed for different period. The said principle would apply to the present case as well."

21. Fifth, on the applicability of Section 6(2)(b) of the Acts, it has been submitted, that issue is no longer res integra. Directly, in the case of **G. K. Trading Company Vs. Union of India & Ors., 2020 SCC OnLine All 1907**, a coordinate bench of this Court had clearly ruled against multiple proceedings initiated in violation of Section 6(2)(b) of the Acts. That decision of this Court has been considered and the same principle applied recently by the Supreme Court in **Armour Security (India) Ltd. Vs. Commissioner, CGST, Delhi East Commissionerate & Anr., 2025 SCC OnLine SC 1700**. Referring to the chart (relied by him) i.e. the second table extracted above, it has been submitted, except for FY 2020-21, all other proceedings for all other 'tax periods' are covered under Section 74(5) of the Acts. To that extent, the impugned show-cause notice would remain barred on the strength of Section 6(2)(b) of the Acts.

22. Last, it has been submitted, the view taken by the Delhi High Court in **M/s Mathur Polymers (supra)** and **Ambika Traders (supra)** has not attained finality as may lend strong persuasive value to it. In a later case - **M/s Aparna Collection Vs. Union of India & Ors. W.P.(C) No. 890/2025**, the writ petition filed directly before the Supreme Court under Article 32 of the Constitution of India was disposed of with the following observation:

"The petitioner will be at liberty to bring to the notice of High Court the decisions of the Madras High Court and the Andhra Pradesh High Court and it can be considered and disposed of by the High Court on its own merits."

Thus, the issue is again engaging attention of the Delhi High Court. It has issued notice on the petition filed by **M/s Aparna Collection (supra)**.

23. Mr. Suyash Agrawal, learned counsel for some of the petitioners, has first adopted the submissions advanced by Mr. Dhruv Agarwal, learned Senior Advocate. He has pointed out that the adjudication proceedings challenged in Writ Tax Nos. 2247 of 2025 and 2454 of 2025 are barred on the principle contained in Section 6(2)(b) of the Acts.

24. An additional ground has been pressed by Mr. Suyash Agrawal in Writ Tax No. 2246 of 2025; 2247 of 2025; 2454 of 2025 and 2456 of 2025. It is thus submitted, against one SCN issued by the authority at Meerut, two adjudication orders have emerged - one by the Meerut authority and the other by the authority at Lucknow. Such proceedings are inherently defective as may never be sustained. The details of those proceedings thus assailed are summarized as below:

Sl. No.	Writ Tax	Name	Show Notice	Cause	Adjudication Order/Rectification Order	Passed under Section	F.Y.
1.	2246/2025	Raj Trade Link Corporation Vs. Union of India and 2 others	30.04.2022		01.02.2025	74(1)	2024-25

2.	2247/2025	<i>Raj Trade Link Corporation Vs. Union of India and 3 others</i>	30.04.2022	01.02.2025	74(1)	2024-25
3.	2454/2025	<i>Raj Trade Link Corporation Vs. Union of India and 3 others</i>	30.04.2022	23.09.2024	74(1)	2024-25
4.	2456/2025	<i>Raj Trade Link Corporation Vs. Union of India and 3 others</i>	30.04.2022	23.09.2024	74(1)	2024-25

25. In addition, he has further referred to the liabilities of persons registered under the Acts and persons not liable to registration. With reference to persons liable to registration, he has referred to the compliance obligation imposed on those persons - to file monthly and annual returns. He has referred to provisions of Section 74(3) of the Acts and relied on the words 'any period' and the phrase 'for such tax periods' appearing in Sub-Section 4 of the said Section. He would submit-allegations of fraud or willful suppression etc. must be recorded with reference to each 'tax period', separately. There can be no omnibus recital of those jurisdictional facts, pertaining to different 'tax periods', spread across different/more than one Financial Year, in a single Show Cause Notice. Elaborating his submission, he would submit, the word 'period' is not defined under the Acts, though the phrase 'tax period' is defined under Section 2(108) of the Acts. This means and refers only to a 'period' for which a return is required to be furnished under the Acts.

26. Next, he would submit, under Section 73 of the Acts, adjudication proceedings are preceded by search, scrutiny or audit. Under Section 61(3) of the Acts, the return may be processed. Only if no satisfactory explanation is furnished ☐for the month☐, appropriate action may be initiated, including adjudication. Further, by virtue of Section 74(10) of the Acts, an adjudication order itself is required to be passed within time prescribed with reference to the date of furnishing return. Since return may be furnished only with respect to a 'tax period', inherently under Section 74 of the Acts, such proceedings must arise and be restricted to one 'tax period', not exceeding a FY, against one SCN.

27. Then, referring to Rule 142 of the Rules framed under the Acts, it has been submitted that DRC-07 itself may not be issued for more than one FY. Hence adjudication proceedings may also be initiated, conducted and included, for one FY at a time, only.

28. With respect to challenge raised in Writ Tax No. 2247 of 2025, an additional ground based on Section 6(2)(b) of the Acts has been pressed. It has been pointed out that a SCN was issued on 18.01.2021 and order passed on 08.12.2021 under Section 122 of the U.P.G.S.T. Act. Later, the impugned Show Cause Notice dated 30.04.2022 was issued by the CGST authorities. That is clearly barred on the principle contained in Section 6(2)(b) of the Acts.

29. Next, Mr. Praveen Kumar, learned counsel for the petitioner in Writ Tax No. 4965 of 2025 has also adopted the submissions advanced by Mr. Dhruv Agarwal, learned Senior Advocate. He has pressed additional ground that no adjudication proceeding may have arisen because the recipient disclosed higher value and for that reason only short payment has been alleged.

30. Mr. Pranjal Shukla, learned counsel appearing in Writ Tax Nos. 1000 of 2025 and 1119 of 2025, has adopted the submissions advanced by Mr. Dhruv Agarwal, learned Senior Advocate.

31. Last, besides adopting the submissions advanced by other counsel for the petitioners, Mr. Bharat Raichandani, learned counsel appearing in Writ Tax No. 2537 of 2025 would submit, in the present case, the assessee was issued a composite notice for FYs 2017-18 and 2018-19. Referring extensively to the provisions of the Acts, he would stress that assessment may be made for a FY or its part, but never for more than one FY. He has taken us through the provisions for registration; Section 31 providing for issuance of Tax Invoice; Section 36 pertaining to period of retention of books of account; Section 37 pertaining to furnishing details of outward supplies; Section 39 pertaining to filing of annual returns; Section 49 pertaining to payment of tax, interest penalty and other amounts; the provisions falling under Chapter XII of the Acts pertaining to assessment including Section 59 pertaining to self-assessment, Section 60 pertaining to provisional assessment, Section 62 pertaining to assessment of non-filers (of return), Section 63 pertaining to assessment of unregistered persons. Reference has also been made to Section 35 of the Acts pertaining to audit provisions to be read with Rule 101, that clearly stipulates that audit may be done for a FY or a part thereof, or multiples thereof. Thus, wherever the legislature has permitted a single proceeding to encompass 'tax period' beyond one FY, it has specifically provided for the same using the expression "multiples thereof". To the extent no legislative intendment may exist either on a plain reading of Section 73 or Section 74 of the Acts, those proceedings must remain confined to 'period' not exceeding one FY, through one SCN.

32. Reference has also been made to the amnesty schemes brought under the Acts that were introduced and enforced keeping in mind the principle of one FY being one assessment unit. The concept of multiple 'tax periods' being bunched into a single proceeding under the Acts is alien to the basic scheme of the Acts. Even offences and compounding measures have been provided under the Acts on a Financial Year basis only.

33. Meeting the above submissions, Mr. Dhananjay Awasthi, learned counsel for the revenue has first pointed out that the provisions of Section 74 of the Acts are *pari materia* to provisions of Section 11A of the Central Excise Act, 1944. Heavily relying on the reasoning offered by the Delhi High Court in **Ambika Traders (supra)**, he would submit, there is no bar in law to issue a single SCN for multiple 'tax periods'. He has placed great reliance on the true import of Section 74 (10) of the Acts, to submit - the same is only a time limitation provision but not a provision to limit the scope of the proceedings initiated under a SCN. The said provision only provides the end date for termination of an adjudication proceeding. For that purpose, the legislature thought it fit to prescribe the outside time limit with reference to the last date of filing annual return for a tax period for which adjudication notice may have been issued. It does not limit or define the scope of the SCN. Rather, it defines the end point of time for such proceedings. Relying by the dozen, Shri Awasthi has placed before us decisions and orders of other High Courts including some not interfered with by the Supreme Court, upon Special Leave to Appeal filed there against. Reliance has also been placed on **M/s Mathur Polymers (supra)** against which Special Leave Petition (Civil) No. 50279 of 2025 was dismissed by the Supreme Court on 07.11.2025 and other decisions of the High Court of Jammu & Kashmir and Ladakh in **R.K. Ispat Ltd. vs Union of India & Ors.**, dated 30.9.2025; Kerala High Court in **X.L. Interiors vs Deputy Commissioner (Intelligence)**,

(2024) 25 Centax 416 (Ker.), Calcutta High Court in **Britannia Industries Ltd. vs Union of India**, **(2024) 25 Centax 430 (Cal.)**; Delhi High Court in **Delhi Foils vs Additional Commissioner**, **(2025) 31 Centax 253 (Del.)**; Bombay High Court in **Riocare India Pvt. Ltd. vs Assistant Commissioner, CGST and C.Ex.**, **(2025) 95 GSTL 39 (Bom.)**

34. Relying on a Circular issued by the CBIC dated 15.09.2025, it has been stressed, in view of pan-India application of the C.G.S.T. Act, 2017, a singular interpretation made in favour of the revenue is being enforced.

35. Then relying on **Sangeeta Singh vs Union of India (UOI) & Ors.**, **(2005) 7 SCC 484**, it has been stressed, the decisions of the other High Courts relied by the learned counsel for the petitioners, to the extent they seek to supply casus omissus without pre-conditions established therefor, do not lay down the correct law.

36. Next, reliance has been placed on **Palm Groves Cooperative Housing Society Ltd. vs Magar Girme and Gaikwad Associates & Ors.**, **(2025) INSC 1023** and **Grasim Industries Ltd. vs Collector of Customs, Bombay**, **(2002) 4 SCC 297**.

37. Mr. Gaurav Mahajan learned counsel for the revenue in some of the other matters has first adopted the submissions advanced by Mr. Dhananjay Awasthi. Second, he would submit, GST laws are unique. They are transaction based, not only for the purpose of levy or impost of tax but also for adjudication of disputes as well. To the extent a dispute may arise with respect to levy or collection of the correct tax amount, the same may be settled through proper adjudication proceedings involving similar transactions, by the same assessee or the same set of assessees. For resolution of such disputes, the adjudication proceedings do not recognize the end boundaries of individual FYs, arising from regular returns filed by the parties to a dispute i.e. assessees. If a SCN issued involves other disputes for which jurisdictional facts may not be established, that issue may remain open to challenge in proper facts.

38. Last, it has been submitted, no prejudice may be caused to the petitioners by issuance of a common Show Cause Notice.

39. Mr. N.C. Gupta learned Senior Advocate assisted by Mr. Sudarshan Singh learned counsel for Union has also adopted the submissions advanced by Mr. Dhananjay Awasthi. He has also stressed that Section 2(106) is relevant only for the purpose of a 'tax period' for which a return may be filed. Referring to Section 73(3), he would submit that it permits the Proper Officer to demand tax for more than the period for which the initial SCN may have been issued. Also, it has been stressed that Section 73(10) is only a time limitation provision.

40. In rejoinder, Mr. Dhruv Agarwal learned Senior Counsel for the petitioners has also referred to Section 74A of the Acts to clarify - from FY 2024-25 the scheme of Section 73 and 74 stands merged but not for the prior periods. Referring to **Caltex (India) Ltd (supra)**, he would submit that the said decision clarifies the position in law that an order of assessment may be passed for one AY, but not more.

41. Before we discuss the exact submissions advanced by learned counsel, on either side, certain provisions of the Acts are necessary to be noted. The words 'adjudicating authority', 'assessment', 'proper officer', 'quarter', 'return' and 'tax period' (amongst others) are defined under Section 2(4), 2(11), (91), (92), (97) and (106) of the Acts. They read as below:

'Section 2. - Definitions.-

(4) *"adjudicating authority" means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the [Central Board of Indirect Taxes and Customs], the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, [the National Appellate Authority for Advance Ruling,] [the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171]*

(11). *"assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment;*

(91) *"proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the Central tax who is assigned that function by the Commissioner in the Board;*

(92) *"quarter" shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year;*

(97) *"return" means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder;*

(106) *"tax period" means the period for which the return is required to be furnished;*
(emphasis supplied)

42. Then, levy provision is contained in Section 9 of the Acts. Those provisions provide for tax on all intra-State and inter-State supplies of goods or services, except alcoholic liquor for human consumption and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption.

43. Furnishing of details for outward supplies is prescribed under Section 37 of the Acts. Relevant to our discussion, Sections 37(1) of the Acts reads as below:

"Section 37. Furnishing details of outward supplies.-

(1) *Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically [subject to such conditions and restrictions and] in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details [shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies];*

(emphasis supplied)

44. Then, the provision for furnishing of monthly and other returns is contained in Section 39 of the Acts. Relevant to our discussion, provisions of Section 39(1) and (2) of the Acts read as below:

“Section - 39.-Furnishing of returns.-

(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, [within such time, and subject to such conditions and restrictions], as may be prescribed:

Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified herein.

(2) A registered person paying tax under the provisions of section 10, shall, for each Financial Year or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, tax paid and such other particulars in such form and manner, and within such time, as may be prescribed.

(emphasis supplied)

45. Next, provision for furnishing of annual returns as it exists today, reads as below:

“Section 44. Annual return. -

(1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the Financial Year, with the audited annual financial statement for every Financial Year electronically, within such time and in such form and in such manner as may be prescribed:

Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:

Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.]

(emphasis supplied)

46. Then, assessments are provided under Chapter XII of the Acts. In that, Sections 59, 60(1) and (3), 61(1), 62(1), 63 and 64(1), to the extent they are relevant to our discussion, read as below:

“59-Self-assessment

Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

60. Provisional assessment.-

(1) Subject to the provisions of sub-section (2), where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on provisional basis and the proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

...

(3) *The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-section (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment:*

Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

61. Scrutiny of returns-

(1) *The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.*

“62. Assessment of non-filers of returns-

(1) *Notwithstanding anything to the contrary contained in section 73 or section 74 [or section 74A], where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 or furnishing of the annual return for the Financial Year to which the tax not paid relates.*

63. Assessment of unregistered persons-

Notwithstanding anything to the contrary contained in section 73 or section 74 [or section 74A], where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44□for furnishing of the annual return for the Financial Year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

64. Summary assessment in certain special cases -

(1) *The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:*

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

(emphasis supplied)

47. Since audit provisions have also been referred to during submissions advanced, we may take note of provisions of Section 65(1) and 66(1) of the Acts and Rule 101 of the Rules framed thereunder. They read as below:

“Section 65. Audit by tax authorities-

(1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

66. Special audit-

(1) If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

Rule 101 of CGST Rules 2017**101. Audit-**

(1) The period of audit to be conducted under sub-section (1) of section 65 shall be a Financial Year [or part thereof] or multiples thereof.

*(2) Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in **FORM GST ADT-01** in accordance with the provisions of sub-section (3) of the said section.*

(3) The proper officer authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both, the input tax credit availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes.

(4) The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.

*(5) On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in **FORM GST ADT-02**.*

(emphasis supplied)

48. In that background, we may now notice the provisions of Section 73, 74 and 74A of the Acts. They read as below:

“73. Determination of tax [pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly

availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under 'section 50' and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under subsection (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of Show Cause Notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the Financial Year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

(12) The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24.

74. Determination of tax [pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts.-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the

person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under 'section 50' and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under subsection (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under 'section 50' and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the Financial Year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under 'section 50' and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

(12) The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24.

Explanation 1.-For the purposes of section 73 and this section,-

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under 'section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under 'section 73' or 'section 74, the proceedings against all the persons liable to pay penalty under [sections 122 and 125] are deemed to be concluded.

74A. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward.-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder:

Provided that no notice shall be issued, if the tax which has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised in a Financial Year is less than one thousand rupees.

(2) The proper officer shall issue the notice under sub-section (1) within forty-two months from the due date for furnishing of annual return for the Financial Year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within forty-two months from the date of erroneous refund.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The penalty in case where any tax which has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised,

(i) for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, shall be equivalent to ten per cent. of tax due from such person or ten thousand rupees, whichever is higher;

(ii) for the reason of fraud or any wilful-misstatement or suppression of facts to evade tax shall be equivalent to the tax due from such person. □

(6) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(7) The proper officer shall issue the order under sub-section (6) within twelve months from the date of issuance of notice specified in sub-section (2):

Provided that where the proper officer is not able to issue the order within the specified period, the Commissioner, or an officer authorised by the Commissioner senior in rank to the proper officer but not below the rank of Joint Commissioner of Central Tax, may, having regard to the reasons

for delay in issuance of the order under sub-section (6), to be recorded in writing, before the expiry of the specified period, extend the said period further by a maximum of six months.

(8) The person chargeable with tax where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, may,

(i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information shall not serve any notice under sub-section (1) or the statement under sub-section (3), as the case may be, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;

(ii) pay the said tax along with interest payable under section 50 within sixty days of issue of Show Cause Notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The person chargeable with tax, where any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, may,

(i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;

(ii) pay the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within sixty days of issue of the notice, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded;

(iii) pay the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within sixty days of communication of the order, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded.

(10) Where the proper officer is of the opinion that the amount paid under clause (i) of sub-section (8) or clause (i) of sub-section (9) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(11) Notwithstanding anything contained in clause (i) or clause (ii) of sub-section (8), penalty under clause (i) of sub-section (5) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

(12) The provisions of this section shall be applicable for determination of tax pertaining to the Financial Year 2024-25 onwards.

Explanation 1. For the purposes of this section,

(i) the expression all proceedings in respect of the said notice shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been

concluded under this section, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

Explanation 2. *For the purposes of this Act, the expression suppression shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.]*
(emphasis supplied)

49. For ready reference, Sections 75(4) and 75(10) of the Acts read as below:

“75. General provisions relating to determination of taxpayer.

(1)...

(2)...

(3)...

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(1)...

(2)...

(3)...

(4)...

(5)...

(6)...

(7)...

(8)...

(9)...

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within the period specified in sub-section (10) of section 73 or in sub-section (10) of section 74 or in sub-section (7) of section 74A.”

50. The judicial opinion on the core issue raised in this batch of petitions is divided between different High Courts. In that, this Court has yet not taken a view. On one hand, there are decisions of the Delhi High Court in **M/s Mathur Polymers (supra)**; **Ambika Traders (supra)** and, **Delhi Foils (supra)** as also of the High Court of Jammu and Kashmir and Laddakh in **R.K. Ispat Ltd. (supra)**; of the Kerala High Court in **X.L. Interiors (supra)**; of the Calcutta High Court in **Britannia Industries Ltd. (supra)** as also a decision of Bombay High Court in **Riocare India Private Ltd. (supra)**. Those have been relied by learned counsel for the revenue. On the other hand, there are decisions of the Karnataka High Court in **M/S Pramur Homes and Shelters (supra)**; Bombay High Court in **M/s Milroc Good Earth Developers (supra)**; Madras High Court in **Titan Company Ltd. (supra)**; and **R.A. & Co. (supra)** and Kerala High Court in **Tharayil Medicals (supra)**.

51. Though there is no direct decision of the Supreme Court laying down the binding law, at the same time, it is a fact-after Special Leave to Appeal against M/s Mathur Polymers (supra) and Ambika Traders (supra) were dismissed, in M/s Aparna Collection (supra) on a writ petition being

filed directly before the Supreme Court under Article 32 of the Constitution of India, the matter has been required to be examined by the Delhi High Court. That proceeding is pending.

52. We are benefited by the views and the counter views that have enriched the legal discourse experienced before different High Courts and their decisions that help us carry that discourse further on the issue - whether a SCN notice may be issued under Section 73/74 of the Acts involving more than one tax period, stretching beyond one FY and/or involving more than one noticee. Primarily, the interpretation made in favour of the revenue has sprung from the language of Sections 73 & 74 of the Acts. The decisions of the High Courts in favour of the revenue tend to reason that there is no warrant to read the word 'period' used in those provisions narrowly-to include therein a single tax period and in any case tax periods falling in one FY, only. In doing that, the other provisions of the Acts have also to be read.

53. On the other hand, the decisions in favour of the petitioners tend to reason that strict construction must be offered to the language of the Acts. Further, it is fundamental to tax jurisprudence that the unit of assessment is an AY or a FY. Also, enquiries, assessment and adjudication are based on filing of returns, therefore, adjudication process must also be referable only to that unit of assessment i.e. AY or FY only.

54. With respect, we are unable to subscribe to either view. Undeniably, the Acts are new/latest addition to the tax legislations. They came into existence and derive force of law from the 101st Constitutional Amendment and the consequent infusion of legislative competence. To that extent, the Acts do not offer continuance of the pre-existing Sales Tax or Central Excise or State Excise or Service Tax or Entry Tax laws. The Acts are not a continuance of the pre-existing laws. Rather, they are completely new legislations providing for a new levy together with a mechanism for levy, assessment as also determination of tax short paid or short levied etc.

55. Therefore, before the exact language of Sections 73 and 74 may be examined, to us it appears imperative to look at the general scheme of the Acts. For that purpose, we have extracted in extenso, the provisions of the Acts. Under the definition clause, namely Section 2 of the Acts 'Adjudicating Authority' has been defined to mean an authority that may make an order or decision under the Acts. Clearly, Adjudicating Authority, amongst others, may Act with respect to proceedings that may arise under Sections 73 and 74 of the Acts. Also defined under Section 2(91) of the Acts is the phrase 'Proper Officer,' meaning an Officer, who may be assigned to perform any function under the Acts. Again, amongst others, it is also referable to proceedings under Sections 73 and 74 of the Acts. Thus, the Proper Officer may act as the Adjudicating Authority under Sections 73 or 74 of the Acts.

56. Then, there are provisions defining the term 'quarter' [under Section 2(92) of the Acts], as the period of three consecutive calendar months ending on the last days of March, June, September and December, of every calendar year. The word 'return' defined under Section 2(97) of the Acts, means a return that may be prescribed under the Rules. Also, the words 'Tax Period' mean the period for which a return is required to be furnished. Read together with the substantive provisions, they do create a concept of FY as a unit of assessment.

57. As to furnishing returns, obligations have been created under Section 37 of the Acts, (to be complied with by suppliers); under Section 39, on every registered person, for every calendar month or part thereof and under Section 44, to file annual returns. That obligation may be further extended - to require filing of returns for every 'quarter', as well. Therefore, the obligation to file returns for each unit of assessment is clearly linked to a calendar month and FY, as understood in the realm of fiscal regimes. It may also extend to a quarter. To that extent there is no doubt. However, that obligation created by the law appears to be for the purpose of filing returns and payment of tax on self-assessment basis only.

58. Coming to the modes of assessment of tax liability, the Acts provide for a 'self-assessment' as the first mode for assessment and for payment of taxes under the Acts. It is directly linked to furnishing of returns. Therefore, it is return based i.e. linked to 'period', be it a month, quarter or Financial Year. Thus, under Section 59 of the Act, every registered person is obligated to self-assess his tax liability and furnish returns for that tax period, i.e., month or part thereof and Financial Year, and quarter, if required. If such person is unable to determine the value of goods or services or both or is unable to determine the rate of tax applicable thereto, he may be subjected to 'provisional assessment' in terms of Section 60 of the Act, at his request. That assessment may be followed by a 'final assessment'. In terms of section 60 (3) of the Act.

59. Thereafter, under Section 61 of the Acts, the legislature has provided for scrutiny of returns by way of another assessment procedure under Chapter XII of the Acts. Thereunder, the Proper Officer may scrutinize the return to verify the correctness of the return and to examine the discrepancies, if any. Deficiencies left unattended may lead to proceedings under Sections 73 and 74 of the Acts.

60. The Acts also provide for 'best judgment assessment' procedure, against registered persons who fail to file their returns. Similarly, under Section 63 of the Acts, failure to obtain registration (where required under the Acts), may also invite best judgment assessment procedure to be adopted against such person as well.

61. Last, under Section 64 of the Acts, a summary assessment is contemplated. However, it may only be resorted to in limited circumstances of some information or evidence coming to the hands of the Proper Officer, who may adopt such procedure with the prior approval of the Additional Commissioner or the Joint Commissioner, purely in the interest of revenue, if such Officer is of the belief that any delay in adopting such procedure would affect the interests of revenue.

62. To us, this part of the scheme of the Acts is based on obligation to file returns for different 'periods' and therefore, such proceedings and processes involve assessment-unit based determination of tax liability by way of 'assessment', whether by way of 'self-assessment' or 'provisional assessment' or 'best judgment assessment' either against non-filers of returns or against unregistered persons or in certain circumstances 'summary assessment'. Primarily, in that context FY or its part, is the unit of assessment. Hence, that concept is relevant to and may be applied in those circumstances, without any exception.

63. Thus, in the provisions pertaining to 'assessment' falling under Chapter XII of the Acts, their scheme clearly creates the concept of return-based assessment or assessment for a tax 'period'. That leads to the concept of assessment-unit whether a month or quarter or a FY. To the extent, such assessment may be made on the strength of or based on a pre-existing obligation to file a return of tax, the unit of assessment may remain a FY for which 'annual return' may have been filed or was mandatory to be filed. Therefore, for the purpose of assessment under Chapter XII of the Acts, a FY or its parts, i.e. months, quarter and FY may constitute assessment units to which that procedure to determine the tax liability may be applied.

64. It is equally true that with respect to audit, falling under Section 65 of the Acts read with Rule 101 of the Rules framed under the Acts, the plurality of periods transcending on FY is specifically intended by the enabling Rule. It uses the words "multiples thereof", clearly indicating that the audit may arise for multiple 'periods', that may cut across the terminal boundaries of a FY. However, audit is a provision to aid the provisions for assessment or determination of tax liability but not to determine or demand tax liability. Also, it is not a necessary part of provisions for assessment or determination of tax liability.

65. Therefore, it requires examination, whether by exclusion of such words or by not using same or similar phrases under Section 73 and 74 of the Acts, the legislature has intended otherwise. To us, it appears that the scheme of the Acts is in two parts, first with respect to assessment as has been discussed above and the other with respect to demand of tax or penalty short paid or short levied or refund wrongly paid or ITC wrongly availed etc.

66. While the assessment procedure traces its legacy to the pre-existing sales tax laws, whether under sales tax or entry tax laws and is comparable to assessment procedures under Income Tax Act, 1961, Sections 73 and 74 of the Acts trace their legacy primarily to the Central Excise and Service Tax laws. These are popularly referred to as adjudication proceedings.

67. Thus, an assessment may be made primarily to test the correctness and completeness of returns filed for any tax period referable to a FY or part thereof. However, adjudication provisions are separate. They stand on a completely different footing and must be read and understood in the context of the own language of the relevant provisions.

68. Keeping that in mind, Sections 73 and 74 appear after Chapter XIII (pertaining to Audits) and Chapter XIV (pertaining to Inspection, Search, Seizure and Arrest). They are part of Chapter XV pertaining to Demand of Recovery. Yet, they deliberately do not begin with any word, phrase or sentence indicating that they are subject to assessment of tax liability for any specific tax period.

69. On the contrary, they refer to a dispute with respect to specified tax amount, or penalty that may not have been paid, or may have been short-paid or erroneously refunded or where Input Tax Credit may have been wrongly availed or utilized for any reason. The use of the words 'where it appears' that 'any tax has not been...' enable the Proper Officer to identify a dispute of the nature specified in the later part of Sections 73(1) and 74(1) of the Acts.

70. In that context, sub-Section (1) of Sections 73 and 74 provide that the Proper Officer 'shall serve notice' - with respect to specified amount of tax not paid, tax short-paid or tax, wrongly refunded or ITC that may have been erroneously granted or wrongly availed or wrongly utilized. With respect to that dispute, the noticee is required to 'show cause' as to why they may not be required to pay the disputed amount of tax, along with interest and penalty.

71. By very nature of that proceeding contemplated by the legislature, the legislature has avoided conditioning it within the limits of a 'period' or 'tax period' or to one FY. Therefore, there is no warrant to restrict the application of Sections 73 and 74 of the Acts to singular 'tax period', emerging from obligation to file return for such tax period. It further appears that the legislature has deliberately avoided the language used under Chapter XII of the Acts pertaining to assessments, whether on the strength of returns or on a best judgment assessment basis and whether provisional or summary. On the contrary, the legislative intent is to demand specified amount of tax, penalty etc., arising from a dispute as to liability on a transaction or nature of transaction etc.

72. Thus, the legislative scheme is - where returns or obligation to file returns exist for any 'tax period' and doubts emerge as to their correctness or completeness, it is open to the Proper Officer to adopt the assessment procedure and make a return-based assessment for that 'tax period'. By very nature of that proceeding, it would be confined to the 'unit of assessment' for which that proceeding is drawn, being linked to the obligation to file return for such assessment unit i.e. month, quarter or year.

73. However, when a dispute arises - of the nature contemplated under Sections 73(1) and 74(1) of the Acts, the obligation to file returns and the tax period for which such returns are to be filed lose significance for the purpose of subject matter of the notice. The demand may be of (i) tax, or penalty short levied or short paid; (ii) refund wrongly granted or (iii) ITC wrongly granted or availed or utilized. Therefore, we reason, for the purposes of adjudicating a dispute under Sections 73 and 74 of the Acts, the return-based assessment procedure is extraneous. The legal prescriptions with respect to such demands may neither be introduced nor inferred by force of artificial legal reasoning, as they do not spring from the plain language employed by the legislature. Rather, those provisions refer to dispute of 'specified tax amount' that the revenue seeks to recover.

74. To introduce assessment procedures and its concepts, to adjudication proceedings would not only be alien to the concept of adjudication as created by the legislature, but if taken to its logical end, it would result in duplication of procedures to deal with the same contingencies; one by way of assessment and another by way of adjudication. That duplicity or surplusage of provisions is not desirable on first principle test. As noted above, we are of the opinion that assessment is a return-based procedure, whereas adjudication is a dispute-based procedure linked to specified tax amount etc. If that line of distinction is maintained between these two sets of procedures prescribed by the Acts, no dispute may survive.

75. In this regard, we may also note, under the classic return-based assessment procedures under the sales tax laws, there existed provisions for reassessment in certain circumstances, involving escapement of turnover, etc. That concept does not find any place under the Acts. To that extent, the adjudication procedure, especially under Section 73 of the Acts, is a clear replacement

for reassessment procedure. Thus, the adjudication procedure is traceable to the procedures of Central Excise and Service Tax regimes. The primary difference is - the reassessment procedure recognizes the FY or AY as a distinct unit of assessment, whereas the adjudication procedure breaches the end boundaries thereof and looks at the 'dispute' with respect to payability of specified amounts of tax or penalty or reversal of refund or availment of ITC etc., as the subject matter of the proceedings to be drawn.

76. In support of the above, we find further validation in the statutory provisions in Sections 73(3) and 74(3) of the Acts. The Proper Officer is permitted to issue a statement containing details of tax not paid or short-paid for 'such (other) periods', that may not have been included in or for which notice may not have been issued under Sections 73(1) and/or 74(1) of the Acts. By virtue of Sections 73(4) and 74(4), the Proper Officer has been specifically enabled to include within the scope of a pending adjudication - 'periods', involving the same dispute irrespective of FY or unit of assessment to which such 'periods' may relate, or to which the initial notice may relate.

77. The legislature has carefully avoided the use of the words 'tax period' under those sections as may have required a further reference of FY to which they may relate. Even though, by way of a general rule, the definition clause may apply unless the context otherwise requires, there is no ambiguity here. The legislative intent is not to link the statement issued by the Proper Officer under Sections 73(3) and/or 74(3) to a specific 'tax period'. Instead, it refers to any another 'period', including a 'tax period' or unit of assessment that may fall outside the FY to which the original notice under Sections 73(1) or 74 (1) relates.

78. The said sub-section further defines the scope of an adjudication proceeding to settle a 'dispute' for a specified tax amount etc. and not to make an assessment. It is so because the legislature has chosen to allow the Proper Officer to issue a statement and thus raise demand for other 'period', based solely on the consideration that such demand may spring on the same grounds for which the notice may have been issued, either under Section 73(1) or 74(1), the only difference being that for the purposes of Section 74(3), reasons have to be same for those other 'period/periods', and it may not be extended to cases of fraud etc.

79. Coming to the contention based on Section 73(10) [read with 73(3)] and Section 74(10) [read with 74(3)], those provisions do not govern the subject matter of the notice itself. Rather, those provisions refer only to the time limitation to initiate and conclude adjudication proceedings. They prescribe clear, predefined time limitation of three years or five years, respectively, from the due date of furnishing the 'annual return'. The mere fact that the legislature has chosen to use the phrase 'due date for furnishing of annual return' under sub-section (10) of Sections 73 and 74 to prescribe such limitation, it does not commend to us that therefore the proceedings initiated under those sections may only relate to or be referable to the individual 'tax period' for which an annual or other return may be filed.

80. The legislative wisdom is to be deciphered from the intent of the legislature as expressed by specific words used by it. To the extent, the legislature has clearly provided for the scope of proceedings; the manner of their initiation and conduct, and their time limitations through the various sub-clauses of Sections 73 and 74, we find no conflict between the language used in

Sections 73(1), (2), (3) and (4) or 74 (1), (2), (3) and (4) with that used in Section 73(10) or 74(10). While Sections 73(1) and 74(1) are provisions providing for the scope/ subject matter of those proceedings, Sections 73(2) read with 73(10) and 74(2) read with 74(10), ensure that notices are issued and proceedings are concluded within the time limitations prescribed under those provisions. Sections 73(3) read with 73(4) and Section 74(3) and 74(4), are provisions for the issuance of further statements by the Proper Officer that naturally cause increase of the specified tax dispute etc. arising on same facts, that may be adjudicated together. These provisions exist for the benefit of the revenue, not the assessee. They enlarge the pre-specified subject matter of the dispute, without extending the limitation therefor.

81. Barring cases of fraud etc. [falling under Section 74(4)], the legislature did not intend that the scope of the adjudication proceedings be curtailed or limited to a single tax period or to multiple tax periods falling within one Financial Year. That intent being absent, we are unable to subscribe to the contrary view taken by some of the other High Courts. With humility, we may add that we also do not find ourselves completely aligned to the reasoning of the other High Courts (at the other end of the spectrum), chiefly the Delhi High Court. Respectfully, we draw this point of distinction based on our interpretation of the scheme of the Acts, that provide for dual mechanisms - one return-based assessment referable to a 'tax period' and the other being adjudication based, for a pre-specified amount-based dispute pertaining to tax, penalty or ITC.

82. To read tax period not beyond the Financial Year, into Sections 73(1) and 74(1) would be to introduce an artificial restriction in the scope of Sections 73(1) and 74(1), not on strength of legislative language, but based on imagined restriction. In contrast, the adjudication procedure contemplates decision on disputes pertaining to specified tax, penalty, refund and ITC amounts. The legislature has specifically authorised the Proper Officer to, in addition to issuing notices under Section 73(1)/74(1), issue further statements with respect to other periods beyond that specified in the notice itself. Once that specific provision has been made, there is no room to introduce the concept of adjudication proceedings being confined to a unit of assessment/FY. To do that would be to do violence to the plain language of Section 73 (3)/74(3) and 73(4)/74(4) of the Acts. Standard rule to be applied in matters of interpretation of statutes being that every word used by the legislature be given its full and natural meaning unless a conflict arises, we find no occasion to restrict the scope of Section 73(3)/ 74(3) and 73(4)/74(4), by introducing an alien concept of unit of assessment/FY to adjudication proceedings.

83. Insofar as the concept discussed in **Caltex (India) Ltd (supra)** is concerned, it arose under the Income Tax Act and the Sales Tax Act, that only contemplated assessment procedures rather than adjudication procedures. As discussed above, and without being repetitive, we find that the said decision is wholly distinguishable. Assessments would remain return-based and therefore referable to individual 'tax period' only, even under the Act. However, the opposite is true for adjudications.

84. As to the rule of strict interpretation invoked, we may remain reminded that that rule applies to levy provisions or charging provisions of a taxing statute and not to its machinery provisions. In **CIT vs. Mahaliram Ramjidas, AIR (1940) PC 1224**, the Privy Council stated:

“The Section, although it is part of a taxing Act, imposes no charge on the subject, and deals merely with the machinery of assessment. In interpreting provisions of this kind the rule is that that construction should be preferred which makes the machinery workable utres valeat potius quam pereat

85. Then, applying that rule, in India **United Mills vs. Commissioner of Excess Profits Tax, (1955) SCR 810**, the Supreme Court adopted that rule and observed as below:

“That section is, it should be emphasised, not a charging section, but a machinery and a machinery section should be so construed as to effectuate the charging sections.”

86. In **State of West Bengal Vs. Kesoram Industries Ltd. (supra)** that rule of interpretation was discussed and applied in the context of a charging section. It was laid down, before a subject is taxed it must be shown that it falls within the ambit of the charging section by clear use of words to that effect, by the legislature. Ambiguity in that regard may always result in a benefit of doubt to the subject. Here as noted above, the charging section is Section 9 of the Act. There is no dispute as to the interpretation of that charging section. Therefore, that rule of strict interpretation of taxing statutes invoked to interpret the language of Section 73 and 74 of the Acts, not being charging sections but sections pertaining to demand of specified amounts of tax, penalty, refund (wrongly granted) and ITC (wrongly availed or utilized), is not applicable.

87. Insofar as further objection has been raised to composite notice being issued to multiple noticees, adjudication proceedings are referable to pre-identified and quantified disputes with respect to non-payment or short payment of tax, wrongful refund or wrongful availment or utilization of ITC. The challenge to the proceedings on the ground of multiple noticees has arisen (in this batch of petitions), in adjudication proceedings arising under Section 74 of the Acts and not under Section 73 of the Acts. As extracted above, the provisions of Section 74(12) of the Acts are specific. Clearly, they allow for multiple noticees to be included in one notice. Upon that specific inclusion made by the legislature, the submission to the contrary carries no weight. Suffice to note, there is no challenge to the validity of Section 74 (12) of the Acts. Once the legislature clearly contemplates issuance of one notice with respect to disputed quantified demand, there survives no room to consider that submission, any further.

88. Wherever it may be disputed that multiple noticees have been wrongly roped in together, that issue by very nature, would remain a mixed question of fact and law. Evidence would have to be led before any firm conclusion may be drawn, i.e. whether the dispute is such as may involve more than one noticee. It may normally be examined during statutory proceedings.

89. Therefore, while we are not inclined to accept on principle that a composite notice may never be issued under Section 74 of the Acts, we leave that question of validity of individual notices issued to individual noticees open to be examined in individual adjudication proceedings, subject to appropriate objections being raised. Thus, if any noticee objects that he is not liable for a disputed transaction giving rise to the adjudication proceeding or he has been wrongly included as a noticee, it may give rise to an objection in that case. That objection once raised would have to be dealt with and decided by the Adjudicating Authority on the own strength of the objection.

90. Further, we find no room to apply **Dhananjay Reddy (supra)** or **CIT, Mumbai (supra)** or **Mehsana District Central Cooperative (supra)**. To the extent, according to us adjudication proceedings do not arise by way of processing of returns filed for any 'tax period' and to the extent Sections 73 and 74 of the Acts do not use that phrase, there is no prescription in law to link adjudication proceedings to a 'tax period'. Therefore, the principle being invoked is inapplicable. Hypothetically, that principle may be invoked if in the course of an assessment procedure falling under Chapter XXII of the Acts, a Proper Officer seeks to make assessment beyond the unit of assessment/FY for which such exercise is undertaken, either with reference to a return filed or not filed, for a 'tax period'.

91. For such reasons, we also do not find any room to apply the ratio of **Maharao Bheem Singh of Kota (supra)** and **State of Gujarat Vs Arcelor Mittal Nippon Steel (India) Ltd.(supra)**.

92. Coming to the other issues of Section 6(2)(b) of the Acts, we find the issue is no longer res-integra. First in the case of **G.K. Trading Company (supra)** and now after pronouncement of the Supreme Court in **Armour Security (supra)** the issue rests finally and firmly decided in favour of the petitioners. Suffice to note that in **G.K. Trading Company (supra)** it was observed as below:

"19. In view of the above, we have reached to the following conclusions:

(i).....

(ii) The words "any proceeding" on the same "subject-matter" used in section 6(2)(b) of the Act, which is subject to conditions specified in the notification issued under sub-section (1) ; means any proceeding on the same cause of action and for the same dispute involving some adjudication proceedings which may include assessment proceedings, proceedings for penalties, etc., proceedings for demands and recovery under sections 73 and 74, etc."

93. If any doubt may have survived, the issue has been elaborately dealt with by the Supreme Court in **Armour Security (supra)**. There, it has been observed as below:

97. We summarize our final conclusion as under:

(i) Clause (b) of sub-section (2) of section 6 of the CGST Act and the equivalent State enactments bars the 'initiation of any proceedings' on the 'same subject-matter'.

(ii) Any action arising from the audit of accounts or detailed scrutiny of returns must be initiated by the tax administration to which the taxpayer is assigned.

(iii) Intelligence based enforcement action can be initiated by any one of the Central or the State tax administrations despite the taxpayer having been assigned to the other administration.

(iv) Parallel proceedings should not be initiated by other tax administration when one of the tax administrations has already initiated intelligence-based enforcement action.

(v) All actions that are initiated as a measure for probing an inquiry or gathering of evidence or information do not constitute 'proceedings' within the meaning of section 6(2)(b) of the CGST Act.

(vi) *The expression 'initiation of any proceedings' occurring in section 6(2)(b) refers to the formal commencement of adjudicatory proceedings by way of issuance of a show-cause notice, and does not encompass the issuance of summons, or the conduct of any search, or seizure, etc.*

(vii) *The expression 'subject-matter' refers to any tax liability, deficiency, or obligation arising from any particular contravention which the Department seeks to assess or recover.*

(viii) *Where any two proceedings initiated by the Department seek to assess or recover an identical or a partial overlap in the tax liability, deficiency or obligation arising from any particular contravention, the bar of section 6(2)(b) would be immediately attracted.*

(ix) *Where the proceedings concern distinct infractions, the same would not constitute a 'same subject-matter' even if the tax liability, deficiency, or obligation is same or similar, and the bar under section 6(2)(b) would not be attracted.*

(x) *The twofold test for determining whether a subject-matter is "same" entails, first, determining if an authority has already proceeded on an identical liability of tax or alleged offence by the assessee on the same facts, and secondly, if the demand or relief sought is identical.*

98. *We issue the following guidelines to be followed in cases where, after the commencement of an inquiry or investigation by one authority, another inquiry or investigation on the same subject-matter is initiated by a different authority.*

(a) *Where a summons or a show-cause notice is issued by either the Central or the State tax authority to an assessee, the assessee is, in the first instance, obliged to comply by appearing and furnishing the requisite response, as the case may be. We say, so because, mere issuance of a summons does not enable either the issuing authority or the recipient to ascertain that proceedings have been initiated.*

(b) *Where an assessee becomes aware that the matter being inquired into or investigated is already the subject of an inquiry or investigation by another authority, the assessee shall forthwith inform, in writing, the authority that has initiated the subsequent inquiry or investigation.*

(c) *Upon receipt of such intimation from the assessee, the respective tax authorities shall communicate with each other to verify the veracity of the assessee's claim. We say, so as this course of action would obviate needless duplication of proceedings and ensure optimal utilization of the Department's time, effort, and resources, bearing in mind that action initiated by one authority enures to benefit of all.*

(d) *If the claim of the taxable person regarding the overlap of inquiries is found untenable, and the investigations of the two authorities pertain to different 'subject-matters', an intimation to this effect, along with the reasons and a specification of the distinct subject-matters, shall be immediately conveyed in writing to the taxable person.*

(e) *The taxing authorities are well within their rights to conduct an inquiry or investigation until it is ascertained that both authorities are examining the identical liability to be discharged, the same contravention alleged, or the issuance of a show-cause notice. Any show-cause notice issued in respect of a liability already covered by an existing show-cause notice shall be quashed.*

(f) *However, if the Central or the State tax authority, as the case may be finds that the matter being inquired into or investigated by it is already the subject of inquiry or investigation by another authority, both authorities shall decide inter se which of them shall continue with the inquiry or investigation. In such a scenario the other authority shall duly forward all material and information relating to its inquiry or investigation into the matter to the authority designated to carry the inquiry or investigation to its logical conclusion. We say, so because, the taxable person*

except for being afforded the statutory protection from duplication of proceedings, otherwise has no locus to claim which authority should proceed with the inquiry or investigation in a particular matter.

(g) However, where the authorities are unable to reach a decision as to which of them shall continue with the inquiry or investigation, then in such circumstances, the authority that first initiated the inquiry or investigation shall be empowered to carry it to its logical conclusion, and the courts in such a case would be competent to pass an order for transferring the inquiry or investigation to that authority.

(h) If it is found that the authorities are not complying with these aforementioned guidelines, it shall be open to the taxable person to file a writ petition before the concerned High Court under article 226 of the Constitution of India.

(i) At the same time, taxable persons shall ensure complete cooperation with the authorities. It is incumbent upon them to appear in response to a summons and/or reply to a notice.

94. The third issue of limitation to issue a notice under Section 73 and 74 requires consideration. As noted above, the provision of Section 73(10) & 74(10) leave no doubt that the limitation to pass an adjudication order has been fixed with reference to the due date for furnishing annual return for the FY, to which the dispute may relate. Thus, if the dispute sought to be adjudicated pertains to or falls in 'tax periods' falling in three different FYs, the period of limitation to make a composite order would start running from the due date of furnishing of annual return for earliest/first FY (to which any 'period' may relate), such that if that date is crossed, the adjudication proceedings with respect to that FY would lapse but not the entire notice if segregation of the dispute exists, 'period' wise. The entire proceedings initiated by such notice may be declared time barred only if the limitation to make the order from the due date of filing annual return for the last FY (for which dispute is referred to adjudication), also lapses. In short, that issue will have to be dealt with, on individual facts.

95. Besides the use of word 'shall' in Section 73(10) & 74(10), Section 75(10) clearly stipulates that the time to pass the final order of adjudication, under those provisions, is rigid. Upon breach of time limitation (to pass adjudication order), expressly prescribed, the provisions of Sections 73(10) and 74(10) and therefore Sections 73(2) and 74(2) remain mandatory and may never be described as directory. There is no general or special power to relax that limitation. To that extent, we conclude that the period of limitation contemplated under Section 73(10) & 74(10) of the Acts is a hard/fixed period of limitation which admits to absolutely no relaxation. It is wholly mandatory.

96. If we admit any room to relaxing limitations, it will dilute the spirit of the provisions fundamentally. It is so, because not only those provisions provide for limitation to conclude the proceedings but they also provide for limitation to initiate the proceedings. Thus, under Section 73(1) read with Section 73(10) of the Acts, proceeding to adjudicate a dispute pertaining to tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized may be drawn within a period of three months before the end of limitation to pass the adjudication order. No other period of limitation to initiate the proceedings is permissible. Any relaxation in time to initiate the proceedings would necessarily involve either curtailment of minimal period prescribed by law to

allow for compliance of rules of natural justice or extension of period of limitation to conclude the proceedings. Neither is permissible, in the context of the language of the Acts, as discussed above.

97. Considered in that light, the prescription contained in Section 73(2) and 74(2) of three months and six months (before the end of termination of limitation to make the order) to initiate the proceedings, must also be read and understood as a hard/fixed period of limitation. In the context of adjudication proceedings contemplated and in view of the statutory mandate of the law under Sections 75(4) of the Acts, opportunity of hearing is mandatory before such orders may be passed. Therefore, the minimal period of three months or six months provided under Section 73(2) and 74(2), cannot be violated. Thus, there is inherent logic to accept such fixed period of limitation to issue the notices. In face of similar language used under Section 73(2) and 74(2) and consequences provided under Section 73(10) and 74(10) of the Acts, no different interpretation may be attempted to the similar words used in the same statute, in the same context. Doubt if any stands removed by the clear legislative intent contained in Section 75(4) of the Acts. Failure to conclude the adjudication proceedings within time granted by the Acts, would necessarily lead to such proceedings being deemed concluded.

98. Insofar as the audit provisions are concerned, we are unimpressed by the submissions advanced by learned counsel for the petitioners. Though audit may also lead to assessment and/or adjudication, it is not part of those proceedings. Thus, legislature has provided audit for 'tax period' or multiples thereof, by use of specific words and terms, to that effect. The legislature has also used the words 'such period' under Section 65 of the Acts and its delegate, the government has used the words 'multiples thereof'. Therefore, there can be no doubt that an audit may be directed for much longer period than a 'tax period' or a 'Financial Year', with the only limitation that it must be for completed periods and not for fractions thereof. However, it cannot be forgotten that an audit provision remains distinct and different in scope from proceedings for assessment for a FY or 'tax period' or for adjudication of a dispute of demand of specified amount of tax, penalty or ITC. At most, audit is part of the general power and scope of inquiries and investigation, to ascertain correct facts. What follows from an audit report is not a necessary part of either the assessment or adjudication proceeding. To that extent, there is no occasion to read or contrast the language of Section 65 of the Acts read with Rule 101 of the Rules framed thereunder, with the language used under Chapter XII of the Acts and Sections 73 and 74 of the Acts.

99. Insofar as Mr. Suyash Agarwal, learned counsel for one of the petitioners has raised another submission that one SCN may never give rise to two separate adjudication orders, by two different authorities, the same must be accepted as correct, without any reservation. It is in the very nature of things that an adjudication order is the culmination of proceedings initiated by an adjudication notice. In fact, that is generally true of all orders passed by statutory authorities arising from any statutory notice. Once an order is passed, the authority is rendered *functus officio* except to the extent of rectifications etc., where permitted. Also, unless a proceeding is transferred, in accordance with the governing law, to another authority, the proceedings initiated on the strength of a notice issued by one authority may be conducted and concluded by that authority and not by any other. The Acts do not contemplate an automatic transfer of proceedings. Here no objection has been raised by the revenue to the submissions thus advanced.

100. In view of the above conclusion drawn, the writ petitions must meet mixed results. While issue of composite notice is served under Section 74 of the Acts, both for different tax periods and FYs and also multiple assesses, is decided against the petitioners; the other objection based on Section 6(2)(b) of the Acts; multiple orders arising from a single notice, and the issue of limitation provision being mandatory, are decided in favour of the petitioners such that any notice issued within six months from the end of the limitation to make the adjudication order is time barred. The issue of composite notice, for different FYs and multiple noticees, is decided against the petitioners. Accordingly:

(i) Writ Tax No. 7515 of 2025 and 7500 of 2025 are allowed, except for challenge raised to adjudication proceedings initiated under Section 74 of the Central Act for the Financial Year 2020-21, to which Section 6(2)(b) of the Acts does not apply. Those proceedings may be conducted and concluded in accordance with law. Additionally, the notice issued to petitioner No. 2 upto the Financial Year 2019-20 is time-barred for the reason - the SCN was issued within six months from the end of limitation to make adjudication order. Thus, the remaining proceedings in these petitions are quashed.

(ii) Writ Tax No. 2454 of 2025 and 2456 of 2025 are allowed. The SCN were issued by respondent No. 2, Directorate General of Goods and Service Tax, Intelligence, Meerut. The petitioner filed replies to the notices and was heard by the said authority, resulting in the order dated 01.02.2025. Parallely, arising from the same SCN, two other orders came to be passed by the authority at Lucknow. Plainly, there is no order for transfer of proceedings to the authority at Lucknow and that authority had not issued the adjudication notice. Therefore, those proceedings are clearly bad besides being duplication of adjudication proceedings arising from one Show Cause Notice. Accordingly, the order dated 23.09.2024 passed by respondent no.3 is quashed.

(iii) In Writ Tax No. 2247 of 2025, the proceedings for the period July 2017 to April 2018 are also found to be hit by the bar of Section 6(2)(b) of the CGST Act, 2017. Accordingly, the said proceeding is quashed.

(iv) In Writ Tax No. 4965 of 2025, while no relief may be granted with respect to grounds of challenge to composite notice issued at the same time, the direction issued by respondent no.3 to the recipient of service provided by the petitioner - to withhold payments due to the petitioner, calls for interference. In absence of any power vested in the revenue authorities to issue such directions without any demand having arisen, the said direction is found to be not traceable to any power vested under the Acts. To that extent, direction is issued to respondent no.3 to not compel the recipient of service (of the petitioner) to withhold payments to the petitioner, in absence of any lawful garnishee proceedings.

(v) Writ Tax Nos. 2247 of 2025 and 4965 of 2025 are partly allowed to the extent noted above.

(vi) Writ Tax Nos. 2569 of 2025, 1119 of 2025, 2795 of 2025, 2537 of 2025, 2246 of 2025, 1000 of 2025, 2838 of 2025 and 8725 of 2025 stand dismissed.

101. No orders as to costs.

(2026) 1 ILRA 242
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.01.2026
BEFORE

THE HON'BLE PRAVEEN KUMAR GIRI, J.

Application U/S 528 BNSS No. 863 of 2026

Ajay Yadav

...Petitioner

Versus

State of U.P. & Anr.

...Respondents

Issue for Consideration

Matter pertains to challenge under S 528 BNSS seeking to "quash/set aside the Impugned Cognizance/Summoning order dated 28.05.2025 as well as to quash/set aside the impugned charge sheet and also to quash/set aside the entire proceedings of the Special Session Trial No. 207/2025" and whether "this Court finds no illegality or infirmity in the impugned cognizance-cum-summoning order" and the objections "relate to disputed questions of facts, which cannot be adjudicated at this stage by this Court while exercising its jurisdiction under S 528 of BNSS."

Headnotes

Bharatiya Nagarik Suraksha Sanhita, 2023 - S 528 - Quashing of cognizance-cum-summoning order - Scope of interference - Objections relating to delay in FIR, non-mentioning of place of occurrence and alleged improvement in statement - Held, relate to "disputed questions of facts" - Not adjudicable at this stage - Criminal Procedure - Cognizance based on police report - Whether Magistrate required to record reasons while issuing summons - In a case based upon the police report, the Magistrate is not required to record reasons for issuing the process - Criminal Proceedings - Delay in lodging FIR - Explanation of delay - there is a satisfactory explanation for the delay in lodging the FIR, inasmuch as opposite party no. 2 had sustained a fracture - FIR - non-mentioning of place of occurrence - Effect - an FIR is not expected to be an encyclopedia of all facts - Cognizance - Power of Magistrate - Addition or subtraction of Sections - the magistrate cannot exclude or include any Section into the chargesheet after investigation has been completed. (Para 7,9,10,16,17) (E-7)

Held: In view of the judgment of the Hon'ble Supreme Court in *State of Gujarat vs. Afroz Mohammed Hasanfatta* and subsequent judgment in *Pradeep S. Wodeyar vs. State of Karnataka*, "in a case based upon the police report, the Magistrate is not required to record his reason on merit or demerit of the case for summoning the accused" - This Court finds no illegality or infirmity in the impugned cognizance-cum-summoning order - The objections raised by the applicant relate to disputed questions of facts, which cannot be adjudicated at this stage by this Court while exercising its jurisdiction under S 528 of BNSS - Accordingly, the present application is dismissed at this stage - Needless to state that the accused-applicant shall have an opportunity of being heard at the stage of framing of charge under S 250 BNSS (corresponding S. 227 of Cr.P.C.). (Paras 16 - 19)

Case Law Cited

State of Gujarat vs. Girish Radhakrishnan Varde; **(2014) 3 SCC 659**; *State of Gujarat vs. Afroz Mohammed Hasanfatta*; **(2019) 20 Supreme Court Cases 539**; *Pradeep S. Wodeyar vs. State of Karnataka*; **(2021) 19 Supreme Court Cases 62.**

List of Acts

Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Bharatiya Sakshya Adhiniyam, 2023; Code of Criminal Procedure, 1973.

List of Keywords

cognizance-cum-summoning order - charge-sheet - delay in lodging the FIR - fracture in right clavicle lateral - sufficient ground for proceeding - disputed questions of facts - framing of charge - discharge - irregularities which vitiate proceedings

Case Arising From

ORIGINAL JURISDICTION: Application U/S 528 BNSS No. 863 of 2026 seeking to quash/set aside the Impugned Cognizance/Summoning order dated 28.05.2025, passed by Special Judge SC/ST Act, Jaunpur as well as to quash/set aside the impugned charge sheet bearing Charge Sheet No. A113/2025 dated 12.04.2025 and entire proceedings of Special Session Trial No. 207/2025 arising out of Case Crime No. 74/2025, Police Station-Mungra Badshahpur, District-Jaunpur.

Appearances for Parties

Adv. for the Appellant:

Amit Kumar Tiwari

Adv. for the Respondents:

Shri Manish Kumar Yadav, learned State Law Officer

(Delivered by Hon'ble Praveen Kumar Giri, J.)

1. Heard Amit Kumar Tiwari, learned counsel for the applicant and Shri Manish Kumar Yadav, learned State Law Officer for the State.

2. Learned counsel for the applicants submits that the present application has been filed under Section 528 BNSS with the relief which has been mentioned in the prayer clause of the application. The prayer clause is delineated below:-

"It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application and quash/set aside the Impugned Cognizance/Summoning order dated 28.05.2025, passed by Special Judge SC/ST Act, Jaunpur as well as to quash/set aside the impugned charge sheet bearing Charge Sheet No. A113/2025 dated 12.04.2025 and also to quash/set aside the entire proceedings of the Special Session Trial No. 207/2025 (State Vs. Akhilesh and others), under section 115(2), 352, 351(2), 117(2) B.N.S. and Section 3(2)(va) SC/ST Act, arising out of case crime no. 74/2025 Police Station-Mungra Badshahpur, District-Jaunpur, against applicant, which is pending in the court of learned Special Judge SC/ST Act, Jaunpur."

3. Learned counsel for the applicant submits that, in respect of the alleged incident dated 13.03.2025, as mentioned in the written information given by opposite party no. 2, an FIR was registered as Case Crime No. 74 of 2025 against five named accused persons, including the present applicant, and 10-12 unknown persons under Sections 191(2), 115(2), 352, 351(2) and 74 of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS'), and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short 'SC/ST (PA) Act') as amended in 2015 at Police Station - Mungra Badshahpur, District - Jaunpur.

4. Learned counsel for the applicant further submits that the first information report was lodged after a delay of six days and no explanation whatsoever has been furnished by the informant for such inordinate delay. It is further submitted that opposite party no. 2 has alleged that he sustained several injuries in the incident, pursuant to which an injury report was prepared. The injury report mentions four visible injuries on the person of opposite party no. 2. In view of the nature of the injuries, opposite party no. 2 was referred to a radiologist, and an X-ray examination was conducted on 21.03.2025, wherein a fracture of the right clavicle lateral was reported (right shoulder region).

5. Learned counsel for the applicant further submits that the FIR does not disclose the place of occurrence where the alleged incident is stated to have taken place. It is further submitted that opposite party no. 2, in his statement recorded before the Investigating Officer under Section 180 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS'), improved the version of the F.I.R. to strengthen the prosecution case, thereafter, the charge-sheet was submitted only under Sections 115(2), 352, 351(2) BNS, and Section 3(2)(va) of the SC/ST (PA) Act and Section 117(2) of BNSS.

6. Learned counsel for the applicant further submits that on the basis of the statement of opposite party no. 2, Sections 74 and 191(2) of the Bharatiya Nyaya Sanhita, 2023 were deleted by the Investigating Officer. It is further contended that the learned Special Judge has taken cognizance in a mechanical and routine manner, without due application of judicial mind, and has summoned the applicant and other co-accused persons by a cognizance-cum-summoning order dated 28.05.2025 under Sections 115(2), 352, 351(2) and 117 (2) of BNS, and Section 3(2)(va) of the SC/ST (PA) Act.

7. Per contra, learned State Law Officer, Sri Manish Kumar Yadav, submits that there is a satisfactory explanation for the delay in lodging the FIR, inasmuch as opposite party no. 2 had sustained a fracture in the right clavicle lateral (right shoulder region) and, therefore, the immediate priority of the injured was to seek medical treatment, thereafter the police was informed about the alleged incident. It is further submitted that an FIR is not expected to be an encyclopedia of all facts, and although the place of occurrence was not mentioned in the FIR, the same has been disclosed in the statement of opposite party no.2 recorded under Section 180 of BNSS that the alleged incident occurred at the back side of the house.

8. Learned State Law Officer further submits that in the x-ray report, there is a fracture in right clavicle lateral (right shoulder region) and the same has also been supported by the Radiologist and the name of the applicant has been mentioned in the statement of other witnesses also. He further submits that on the basis of the material collected during investigation, the Investigating Officer submitted charge-sheet though there is mistake of mentioning BNS in respect of Section 117(2) as BNSS, while the same has been corrected by the Court of cognizance in cognizance-cum-summoning order dated 28.05.2025.

9. Learned State Law Officer submits that in view of the judgment of the Hon'ble Supreme Court in **State of Gujarat vs. Girish Radhakrishnan Varde; (2014) 3 SCC 659** the impugned order of taking cognizance and issuing summons is strictly in accordance with law as the Court of

cognizance cannot add or subtract, exclude or include any Section mentioned in the charge-sheet at the time of taking of cognizance as the same is permissible at the time of framing of charge. He has relied upon paragraph Nos. 13 and 14 of the judgment in **State of Gujarat vs. Girish Radhakrishnan Varde (Supra)**. The Paragraph No.13 and 14 are delineated below:

"13. But if a case is registered by the police based on the FIR registered at the Police Station under Section 154 Cr.P.C. and not by way of a complaint under Section 190(a) of the Cr.P.C. before the magistrate, obviously the magisterial enquiry cannot be held in regard to the FIR which had been registered as it is the investigating agency of the police which alone is legally entitled to conduct the investigation and, thereafter, submit the chargesheet unless of course a complaint before the magistrate is also lodged where the procedure prescribed for complaint cases would be applicable. In a police case, however after submission of the chargesheet, the matter goes to the magistrate for forming an opinion as to whether it is a fit case for taking cognizance and committing the matter for trial in a case which is lodged before the police by way of FIR and the magistrate cannot exclude or include any section into the chargesheet after investigation has been completed and chargesheet has been submitted by the police.

14. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offence into the chargesheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the magistrate before whom the matter comes up for taking cognizance after submission of the chargesheet and as already stated, the magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under section 216, 218 or under section 228 of the Cr.P.C. as the case may be which means that after submission of the chargesheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the chargesheet.

(Emphasis supplied)"

10. Learned State Law Officer, further submits that in view of the judgment of the Hon'ble Supreme Court in **State of Gujarat vs. Afroz Mohammed Hasanfatta; (2019) 20 Supreme Court Cases 539**, in paragraph Nos. 22 and 23 of the judgment, held that the order of issuance of process without explicitly recording reason for its satisfaction for issue of process does not suffer from any illegality. The paragraph No. 22 and 23 of judgment is are being delineated below:-

“22. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 CrPC is not the same at the time of framing the charge. For issuance of summons under Section 204 CrPC, the expression used is “there is sufficient ground for proceeding...”; whereas for framing the charges, the expression used in Sections 240 and 246 IPC is “there is ground for presuming that the accused has committed an offence..”. At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 CrPC, detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police has filed charge-sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 CrPC.

23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file.”

11. He further submits that the evidence collected during investigation does not, by itself, fall within the category of proved evidence as contemplated under the Bharatiya Sakshya Adhiniyam, 2023. The same can be proved only when the witnesses are produced before the trial court and their statements are recorded on oath during examination-in-chief as well as cross-examination, and only thereafter the documents collected during investigation can be duly proved in accordance with law.

12. It is further submitted that non mentioning of time and place of occurrence are matters of appreciation of evidence and are required to be considered by the trial court under Section 234 BNSS (corresponding Section 211 of Cr.P.C.) at the stage of framing of charge.

13. Learned State Counsel further submits that as per Section 507 of BNSS (corresponding Section 461 Cr.P.C.), there is no irregularity which may vitiate the trial proceedings. For ready reference, Section 507 of BNSS is being quoted below:-

***"Section 507 - Irregularities which vitiate proceedings-** If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:-*

- (a) attaches and sells property under section 85;*
- (b) issues a search-warrant for a document, parcel or other things in the custody of a postal authority;*
- (c) demands security to keep the peace;*
- (d) demands security for good behaviour;*
- (e) discharges a person lawfully bound to be of good behaviour;*
- (f) cancels a bond to keep the peace;*
- (g) makes an order for maintenance;*
- (h) makes an order under section 152 as to a local nuisance;*
- (i) prohibits, under section 162, the repetition or continuance of a public nuisance;*
- (j) makes an order under Part C or Part D of Chapter XI;*
- (k) takes cognizance of an offence under clause (c) of sub-section (1) of section 210;*
- (l) tries an offender;*
- (m) tries an offender summarily;*
- (n) passes a sentence, under section 364, on proceedings recorded by another Magistrate;*
- (o) decides an appeal;*
- (p) calls, under section 438, for proceedings; or*
- (q) revises an order passed under section 491, his proceedings shall be void.*

14. Learned State Law Officer lastly submits that in view of Section 250 BNSS (corresponding Section 227 of Cr.P.C.), the accused shall be afforded an opportunity of hearing at the stage of framing of charge. For ready reference section 250 BNSS (corresponding Section 227 of Cr.P.C.) is being quoted below:

***"Section 250. Discharge - (1)** The accused may prefer an application for discharge within a period of sixty days from the date of commitment of the case under section 232.*

(2) If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. "

15. This Court has gone through the entire submissions advanced on behalf learned counsel for the parties, decisions relied upon by the learned State Law Officer and perused the record.

16. The Hon'ble Supreme Court in the case of **Afroze Mohammed Hasnain** (Supra) held that in a case based upon the police report, the Magistrate is not required to record his reason on merit or demerit of the case for summoning the accused. This judgment has been confirmed by the

Hon'ble Supreme Court its subsequent judgment passed in **Pradeep S. Wodeyar vs. State of Karnataka, (2021) 19 Supreme Court Cases 62**. The paragraph No.91 of this judgment is being quoted below for the sake of convenience :-

"91. While distinguishing the decision in Pepsi Foods Ltd. (supra) on the ground that it related to taking of cognizance in a complaint case, the court held since in a case of cognizance based on a police report, the Magistrate has the advantage of perusing the materials, he is not required to record reasons: State of Gujarat v. Afroz Mohammed Hasanfatta (2019) 20 SCC 539 : (2020) 3 SCC (Cri.) 876-2

23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file."

17. In view of the facts and circumstances of the case as well as law laid down by Hon'ble Supreme Court, this Court finds no illegality or infirmity in the impugned cognizance-cum-summoning order. The objections raised by the applicant relate to disputed questions of facts, which cannot be adjudicated at this stage by this Court while exercising its jurisdiction under Section 528 of BNSS.

18. Accordingly, the present application is **dismissed** at this stage.

19. Needless to state that the accused-applicant shall have an opportunity of being heard at the stage of framing of charge under Section 250 BNSS (corresponding Section 227 of Cr.P.C.).

Passport renewal; NOC; Right to travel abroad; Article 21; Article 19; S. 6(2)(f); GSR 570(E); Flight risk; Livelihood; Stage performer.

Case Arising From

ORIGINAL JURISDICTION: Application under S. 482 Cr.P.C. challenging order dated 30.06.2025 rejecting request for grant of NOC for renewal of passport and permission to travel abroad.

Appearances for Parties

Advs. for the Applicant:

Ms. Preeti Singh

Advs. for the Respondents:

Learned A.G.A.;

Sri S.B. Pandey, Senior Advocate and DSGI, assisted by Sri Varun Pandey

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Heard Ms. Preeti Singh, learned Counsel for the applicant as well as learned A.G.A. and Sri S.B. Pandey, learned Senior Advocate and DSGI assisted by Sri Varun Pandey, learned Counsel for the opposite parties no. 3 and 4.

2. The present application has been filed under Section 482 of Cr.P.C. challenging an order dated 30.06.2025, whereby the request of the application for grant of NOC for renewal of the passport and permit the applicant to travel abroad was rejected mainly on the ground that the applicant has not filed any document relevant for seeking the permission from the court to travel abroad like the specific period of travel, the country to which the applicant wishes to travel or for any other purpose.

3. In the light of the aforesaid, the counsel for the applicant argues that the applicant is a stage performer and performs throughout the territory of India and also outside India in various stage shows in which the applicant is invited. It is argued that in respect of a performance, which was scheduled to be held at Lucknow, in which, the applicant was to perform, however, the said show was cancelled, which led to lodging of an FIR with Case Crime No.621 of 2018, under Sections 406, 420 IPC, Police Station Ashiyana, District Lucknow. The applicant was enlarged on bail vide order, which is on record, in which, no condition was imposed by the court below with regard to the applicant not leaving the country without the permission of the Court. It is argued that in view of the pendency of the said case, the applicant was required to furnish an NOC from the trial court concerned in terms of the office memorandum issued under the Passports Act and the impugned order came to be passed.

4. The Counsel for the applicant further argues that the applicant receives offer for performance outside India, however, generally the conditions are that the applicant should have valid travel passport failing which the applicant is not likely to be offered any assignment for performance outside India. It is further argued that the case registered against the applicant through Case Crime No.621 of 2018 does not even directly implicate the applicant as the applicant was stated to perform as stage performer and the cancellation was beyond the powers of the applicant. It is further argued that in view of the denial of the NOC not only deprive from passport to travel abroad guaranteed under Article 21 of the Constitution of India but also violates the rights of the

applicant's to earn livelihood. It is also argued that the applicant has two children and substantial property within India and no material exists to suggest that the applicant would be at flight risk.

5. As regards the status of the pendency of the case, it is argued that there is no material to suggest that the case is proceeding and there is no likelihood to be concluded in near future, thus, it is argued that the impugned order deserves to be set aside and/ or directions be issued for renewal of the passport for a regular term of ten years on whatever condition this court deems fit being imposed so that the rights enshrined to the applicant are not adversely affected.

6. The Counsel for the Union of India, in the light of the provisions contained in the Passports Act, argues that there is no independent right of renewal of a passport vested and is subject to the restrictions contained in Section 6(2) of the Passports Act. It is argued that in terms of the directions issued by various courts, severity of the conditions prescribed under Section 6(2) of the Passports Act were liberalized and curtailed through office memorandums issued by the Union of India vide Notification dated 25.08.1993 and further clarified vide Notification dated 10.10.2019. It is argued that in the light of the said office memorandums, the application of the applicant has been rightly rejected by the court below and no interference is called for.

7. In rejoinder, the Counsel for the applicant draws my attention to the two earlier orders passed by this Court for consideration of the application of the applicant for renewal/ re-issuance of the passport vide separate orders. It is further argued that in view of the prevailing global scenario, the organizers occasionally insists that the performer and the team should have valid passport and thus, it may not always be possible to furnish the requisite documents at a prior point of time. It is further argued that the case pending against the applicant is of the year 2018, no material exists to demonstrate that the case likely to be concluded in near future. There are no specific allegation against the applicant even in the said FIR. Even the bail granted to the applicant does not impose any condition of not leaving India.

8. Considering the need of the applicant to travel abroad for performing to various countries, prima facie, no material exists to suggest that the applicant would be at flight risk or that her application for re-issuance/ renewal of the passport should not be considered in view of absence any adverse conduct of the applicant. The case of the applicant is pending since 2018, clearly on account of non-issuance/ non-grant of passport her rights are infringed merely because no documents have been filed, the request for travel abroad cannot be denied as has been done in the impugned order.

9. It is further argued that the order impugned dated 30.06.2025 is violative of Article 21 and Article 19 as well as contrary to the mandate of the Government Orders as well as the Office Memorandum, the same cannot be sustained and be set aside.

10. The issue with regard to the right of having a passport was duly considered by the Hon'ble Supreme Court in the case of **Mahesh Kumar Agarwal vs Union of India and another: 2025 INSC 1476**, wherein, following observations were made:

2. *Liberty, in our constitutional scheme, is not a gift of the State but its first obligation. The freedom of a citizen to move, to travel, to pursue livelihood and opportunity, subject to law, is an essential part of the guarantee under Article 21 of the Constitution of India. The State may, where statute so provides, regulate or restrain that freedom in the interests of justice, security or public order but such restraint must be narrowly confined to what is necessary, proportionate to the object sought to be achieved, and clearly anchored in law. When procedural safeguards are converted into rigid barriers, or temporary disabilities are allowed to harden into indefinite exclusions, the balance between the power of the State and the dignity of the individual is disturbed, and the promise of the Constitution is put at risk.*

8. *From a conjoint reading of Sections 5, 6, 7 and 8 of the Passports Act, a structured scheme emerges. Section 5 is the starting point. It prescribes the manner in which an application for a passport is to be made and requires the passport authority, subject to the other provisions of the Act, to decide the application by issuing or refusing the passport through a written order. Section 6 qualifies that power and sets out, in an exhaustive manner, the grounds on which the passport authority shall refuse to issue a passport or travel document. Sub-section (1) deals with refusal of endorsements for particular countries. Sub-section (2) governs refusal of issue itself and again begins with the words "subject to the other provisions of this Act". It obliges the authority to refuse issue where any of the situations in clauses (a) to (i) are present, including the pendency of criminal proceedings before a court in India under clause (f). Section 7 then addresses the duration of a passport. It provides that a passport shall continue in force for such period as may be prescribed, but also permits the authority, for reasons to be communicated in writing to the applicant, to issue a passport for a shorter period in an appropriate case. Section 8 deals with the converse situation where a passport has already been issued for a shorter period. It permits extension of such a passport, but expressly states that the provisions of the Act shall apply to such extension as they apply to the issue of the passport, thereby linking an extension back to the same statutory conditions and limitations that govern original issue under Sections 5 and 6.*

9. *Sections 9, 10 and 22 reinforce and complete this framework. Section 9 enables the Central Government, by rules, to prescribe the conditions subject to which and the form in which a passport shall be issued or renewed. It also permits, with prior approval of the Central Government, the imposition of case-specific conditions in addition to the prescribed ones. Section 10 operates at a later stage and deals with the life of a passport after it has been issued. It empowers the passport authority, in defined situations, to require production of the passport and to impound or revoke it. One such situation, under Section 10(3)(e), is where proceedings in respect of an offence alleged to have been committed by the holder are pending before a criminal court in India. Section 22 then confers on the Central Government the power, where it considers it necessary or expedient in the public interest, to exempt any person or class of persons from the operation of specified provisions of the Act or the Rules, subject to conditions. It is in exercise of this power that GSR 570(E) was issued, creating a controlled exemption from the bar in Section 6(2)(f) in favour of persons facing criminal proceedings who obtain permission from the concerned court and comply with the conditions set out in that notification.*

10. *On a plain reading, GSR 570(E) does two things. First, it recognises that persons facing criminal proceedings are not to be treated as absolutely disentitled to a passport. Instead, it permits such persons to obtain a passport, notwithstanding Section 6(2)(f), where the concerned criminal court has applied its mind and passed an order in relation to issuance or use of the passport and where the applicant furnishes an undertaking to appear before the court as and when*

required. Secondly, it structures the exercise of that exemption by tying the validity and use of the passport to the terms of the court's order. Thus, where the court specifies a period for which the passport is to be issued, the passport authority must honour that period. Where the court does not stipulate any period, the notification provides default rules, including issuance for a shorter period, ordinarily one year, in appropriate cases. What the notification does not do is to create a new substantive bar beyond Section 6(2)(f), or to insist that the criminal court must, in every case, grant a prior blanket permission to "depart from India" for specified dates as a jurisdictional precondition to the very issue or re-issue of a passport.

11. The OM dated 10.10.2019 does not create a new regime. It reiterates that GSR 570(E) must be "strictly applied", explains the procedure where criminal cases are pending and makes it clear that a "no objection certificate" or permission from the criminal court, read with the applicant's undertaking, may override an adverse police report with reasons recorded by the Passport Officer. It also contemplates situations where more than one court is dealing with the matter and indicates that the orders of all such courts are to be read together. The OM is thus an administrative restatement of the position under Section 6(2)(f), Section 22 and GSR 570(E), and cannot add to or cut down the exemption which the notification itself grants.

18. There is yet another aspect. The learned Single Judge treated the subsisting conviction in the Delhi case as an additional reason to sustain refusal under Section 6(2)(f). However, this Court in *Vangala Kasturi Rangacharyulu v. Central Bureau of Investigation* 2021 SCC OnLine SC 3549 has already drawn a clear distinction between an accused "facing trial in a criminal court" and a person who has been convicted and is pursuing an appeal and how the same can impact the issuance of a passport. The relevant paras of this judgement are as follows:

"7. The refusal of a passport can be only in case where an applicant is convicted during the period of 5 years immediately proceeding the date of application for an offence involving moral turpitude and sentence for imprisonment for not less than two years.

8. Section 6 2(f) relates to a situation where the applicant is facing trial in a criminal court.

9. Admittedly, at present, the conviction of the appellant stands still the disposal of the criminal appeal. The sentence which he has to undergo is for a period of one year. The passport authority cannot refuse the renewal of the passport on the ground of pendency of the criminal appeal.

10. The passport authority is directed to renew the passport of the applicant without raising the objection relating to the pendency of the criminal appeal in this Court. Subject to the other conditions being fulfilled, the Interlocutory Application stands disposed of."

24. Finally, even on the respondents' own reading of GSR 570(E), the consequence of an order which does not specify a longer period of validity is that the passport should be issued for a shorter duration, usually one year, and not that renewal must be refused altogether. The learned Single Judge and the Division Bench did not examine this aspect, because they proceeded on the premise that the appellant stood outside the exemption altogether. Once it is recognised that the appellant is within the exempted class, the correct question for the passport authority is the appropriate period of validity in the facts of the case, not whether any renewal is permissible at all. In the present matter, given that the Delhi High Court has expressly authorised renewal for ten

years and the NIA Court has imposed stringent conditions including redeposit and prior permission for travel, we see no justification to curtail the normal period of validity.

25. In the light of the above discussion, we are unable to sustain the approach adopted by the learned Single Judge and the Division Bench. Both have treated Section 6 2(f) as an absolute bar so long as any criminal proceeding is pending, without giving full effect to the statutory exemption mechanism under Section 22 and GSR 570(E), and without adequately appreciating that the criminal courts actually dealing with the appellant's cases have consciously permitted renewal while retaining stringent control over any foreign travel. They have, in effect, converted a qualified restriction, designed to secure the presence of an accused, into a near-permanent disability to hold a valid passport, even where the criminal courts themselves do not consider such a disability necessary.

26. We clarify that our conclusions are confined to the legal interplay between Sections 5, 6, 7, 8, 9, 10 and 22 of the Passports Act, GSR 570(E) and the OM dated 10.10.2019, on the facts of the present case. We express no opinion on the merits of the criminal proceedings pending before the NIA Court, Ranchi, or on the appeal pending before the Delhi High Court, nor do we dilute in any manner the power of those courts to vary, strengthen or relax the conditions of bail, including conditions relating to travel abroad, in accordance with law.

27. It is needless to observe that nothing in this judgment curtails the powers of the passport authority under Section 10 of the Passports Act. If any future order of a competent court, or any subsequent development, requires impounding or revocation of the appellant's passport, it shall be open to the authority to act in accordance with Section 10 and other applicable provisions. Equally, if the appellant violates any condition imposed by the NIA Court, Ranchi, or the Delhi High Court, it will be open to those courts to take such steps, including modification of bail and recall of permissions, as may be warranted."

11. On the interpretation of the provisions of the Office Memorandum as well as the provisions of the Passports Act, it is clear that the issuance of passport and the conditions to not leave the country without the permission of a court are two distinct things. In the present case even in the bail order, no such restrictions has been placed upon the applicant for travelling abroad, thus, on the reasoning and the law laid down in the case of Mahesh Kumar Agarwal (Supra), the impugned order cannot be justified.

12. The order impugned is premised on the foundation that any restrictions were placed on the rights of the applicant to travel abroad whereas no such restrictions appeared to be placed upon the applicant even in the bail order, as such, the order impugned dated 30.06.2025 is quashed.

13. Directions are issued to the trial court to issue an NOC to the applicant for grant of passport which shall be processed for normal period of 10 years.

14. It shall however be open to the prosecution to seek variance of the condition of the bail order, if so desired based upon the contingencies that may be pleaded by the prosecution in the pending case.

15. It is clarified that the passport of the applicant shall be renewed for a period of ten years in accordance with law by the passport authority.

16. The application stands **allowed**.

17. This Court records its appreciation for the assistance provided by Ms. Rajshree Lakshmi, Research Associate/ Law Clerk in deciding the present case.

(2026) 1 ILRA 255
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 19.01.2026

BEFORE

THE HON'BLE PRAVEEN KUMAR GIRI, J.

Application U/S 528 BNSS No. 7072 of 2025

Avneesh Kumar

...Applicant

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Matter pertains to whether "the learned Judicial Magistrate took cognizance under Ss. 379 and 411 IPC after lapse of more than three years" and whether such cognizance, taken "beyond the period of limitation as provided under Ss. 468 and 469 Cr.P.C.", is sustainable in law. (Paras 4, 5, 6, 15)

Headnotes

Criminal Procedure Code, 1973 -Ss. 468, 469 - Bar to taking cognizance after lapse of period of limitation - no Court shall take cognizance after the expiry of the period of limitation - Offence punishable upto three years - Cognizance taken "after lapse of more than three years" - Held unsustainable - Limitation -Commencement of period - S. 469 Cr.P.C. - The period of limitation shall commence on the date of the offence - Incident dated 13.04.2019 -Supplementary charge-sheet submitted on 25.11.2024 -Cognizance dated 27.11.2024 -Beyond prescribed period - Judicial Discipline - Cognizance Order - Mandatory provision - where a provision is mandatory, the court should not take cognizance contrary to the mandate of law - Article 21 - Procedure established by law -Taking cognizance contrary to statutory bar amounts to violation of "procedure established by law" - Practice contrary to statute - Such practice cannot substitute a law which is not mentioned in the Code of Criminal Procedure.

Held: Where a provision is mandatory, the court should not take cognizance contrary to the mandate of law - the entire proceeding of case No. 94500 of 2024 as well as charge sheet dated 26.06.2021 along with cognizance order dated 27.11.2024 in respect of the applicant Avneesh Kumar and co-accused Suraj Thakur are hereby quashed - The proceedings against the other five accused shall continue, against whom separate charge-sheet was submitted and cognizance was taken within the period of limitation.(Paras 15,16,17)

Case Law Cited

P.K. Chaudhary vs. Commander, 48 BRTF (GRET); (2008) 13 SCC 229; Surinder Mohan Bikal vs. Ascharaj Lal Chopra; (1978) 2 SCC 403; State of Punjab v. Sarwan Singh; (1981) 3 SCC 34.

List of Acts

Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023; Indian Penal Code, 1860; Constitution of India (Article 21)

List of Keywords

Cognizance - period of limitation - bar to taking cognizance - supplementary charge-sheet - procedure established by law - mandatory provision - practice prevalent - violation of the fundamental rights - quashed - abuse of the process of the Court.

Case Arising From

ORIGINAL JURISDICTION: Application under S. 528 B.N.S.S. seeking to "quash the entire proceeding of case No.94500 of 2024... as well as charge sheet dated 26.06.2021 along with cognizance order dated 27.11.2024 passed by Chief Judicial Magistrate Firozabad."

Appearances for Parties**Advs. for the Appellant:**

Shri Pawan Singh Pundir

Advs. for the Respondents:

Shri Pankaj Kumar Tripathi

(Delivered by Hon'ble Praveen Kumar Giri, J.)

1. The affidavit filed by the Circle Officer, City, Firozabad is taken on record.
2. Learned counsel for the applicant submits that he has filed the instant application under Section 528 BNSS with the relief which has been mentioned in the prayer clause of the application.

3. The relief which has been mentioned in the application is delineated below:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the present application under section 528 B.N.S.S. and quash the entire proceeding of case No.94500 of 2024 (State Vs. Sooraj Thakur and others), arising out of case crime No.246 of 2019, under Sections 379, 411 IPC, Police Station- Firozabad North, District Firozabad, pending in the court of Chief Judicial Magistrate Firozabad as well as charge sheet dated 26.06.2021 alongwith cognizance order dated 27.11.2024 passed by Chief Judicial Magistrate Firozabad."

4. This Court, vide order dated 07.01.2026, directed the concerned, the then Chief Judicial Magistrate, Firozabad, to submit her explanation as to why cognizance was taken beyond the limitation period as provided under Sections 468 and 469 Cr.P.C. The order dated 07.01.2026 is being reproduced hereinbelow:

"1. The personal affidavit filed today by the Circle Officer, City, Firozabad is taken on record.

2. Today, Shri Praveen Kumar Tiwari, Circle Officer, Firozabad, is present before the Court. He has acquainted the Court with the facts of the case that the incident occurred on 13.04.2019 and in respect of which an F.I.R. was lodged as Case Crime No. 246 of 2019 under Section 379 I.P.C. in Police Station Firozabad North, District Firozabad, against unknown persons while during investigation, the names of seven persons came to light, namely (i) Aman Sakya, (ii)

Tanuj Gautam, (iii) Adarsh Yadav, (iv) Vishal @ Raja, (v) Rahul @ Bhagauna, (vi) Suraj Thakur and (vii) Avneesh Kumar.

2. After investigation, the first charge-sheet was prepared on 14.06.2019 under Sections 379 and 411 I.P.C. against the accused (i) Aman Sakya, (ii) Tanuj Gautam, (iii) Adarsh Yadav, (iv) Vishal @ Raja, (v) Rahul @ Bhagauna and the charge-sheet along with the case diary was submitted in the court of the concerned Judicial Magistrate. The learned Judicial Magistrate took cognizance against the offences in respect of aforesaid five accused persons on 17.06.2019.

3. The investigation, however, remained pending against two accused persons, namely Suraj Thakur and Avneesh Kumar. In respect of these two accused persons, second charge-sheet under Sections 379 and 411 I.P.C. was prepared on 26.06.2021 after about two years. The second charge-sheet was kept in the office of the Circle Officer, City, District Firozabad, up to 24.11.2024 and thereafter, it was submitted in the court of the Judicial Magistrate on 25.11.2024, after the expiry of the limitation period as provided under Sections 468 as well as 469 Cr.P.C. (corresponding Section 514 and 515 BNSS). The provisions of Section 468 and 469 Cr.P.C. are delineated below:

"Section 468. Bar to taking cognizance after lapse of the period of limitation.-

(1) Except as otherwise provided elsewhere in this Code, **no Court shall take cognizance of an offence of the category** specified in sub-section (2), **after the expiry of the period of limitation.**

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

Section 469. Commencement of the period of limitation.-

(1) **The period of limitation**, in relation to an offender, shall commence-

(a) **on the date of the offence;** or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to the police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded."

4. Learned Judicial Magistrate, ignoring the provisions of Sections 468 and 469 Cr.P.C., took cognizance on 27.11.2024, under Sections 379 and 411 IPC which is punishable upto three years and fine, after lapse of more than three years, which was against the provisions of law and was an abuse of the process of the Court, thus violating the fundamental rights enshrined under Article 21 of the Constitution of India, as due process of law is required to be followed.

5. *The Circle Officer present before the Court further acquainted the Court that as soon as this fact came to the knowledge of the senior officers of the district, an inquiry has been initiated against the erring official who delayed to submit the charge-sheet before the court after three years from the date of the incident.*

6. *The court of Magistrate cannot take cognizance after expiry of the period prescribed under Section 468 Cr.P.C. and if cognizance is taken by the concerned Judicial Magistrate beyond the period of limitation, the same is against the provisions of law, therefore, the proceedings of the trial court have been stayed only in respect of two accused persons, namely Suraj Thakur and Avneesh Kumar.*

7. *The Circle Officer present before the Court also acquainted the Court with the fact that the inquiry is going on and shall be concluded to its logical end and the report of the inquiry along with its outcome shall be communicated to this Court.*

8. *Learned AGA submits that as indirectly, the alleged accused persons, who have a long criminal history of about eight cases of similar nature have been acquitted, as no court can take cognizance after expiry of the period of limitation.*

9. *The present Chief Judicial Magistrate, Firozabad and the then Chief Judicial Magistrate, Firozabad who has taken cognizance in the matter, are directed to submit their explanation to this Court, disclosing their names, on or before 19.01.2026.*

10. *The trial court is directed that this Court has only stayed the proceedings in respect of accused Suraj Thakur and Avneesh Kumar.*

11. *The Circle Officer, City, Firozabad shall remain present before this Court on the next date fixed.*

12. *The Superintendent of Police, Firozabad, the District Magistrate, Firozabad and the Chief Judicial Magistrate, Firozabad, are directed to take notice of this order in the monthly meeting and inform all the police officers to complete investigation within the time frame prescribed under the Code of Criminal Procedure and submit police report within the limitation period as prescribed under law and the Judicial Magistrates are directed to take notice of the provisions of Sections 468 and 469 Cr.P.C. as well as of Sections 514 and 515 BNSS, while taking cognizance.*

13. *List this case on 19.01.2026 for further hearing.*

14. *Registrar (Compliance) is directed to obtain the said explanation from the present Chief Judicial Magistrate, Firozabad and the then Chief Judicial Magistrate, Firozabad who has taken cognizance in the matter. "*

5. Today, Shri Praveen Kumar Tiwari, Circle Officer, Firozabad, is present before this Court and submits that though the incident occurred on 13.04.2019 and the first information report was lodged on 16.04.2019 and the charge-sheet was prepared against two accused persons, namely Avneesh Kumar and Suraj Thakur on 26.06.2021, but the same was kept by the then Circle Officer as well as the Head Constable in the office of the Circle Officer and as the offence was punishable up to three years, therefore, if the charge-sheet is not submitted in the Court within three years from the date of the alleged incident, the concerned Magistrate cannot take cognizance as it is barred under Sections 468 and 469 Cr.P.C. and indirectly the accused will be acquitted as no further proceedings shall be initiated against the accused in the time barred case. In the present case, the charge-sheet was submitted in the court on 24.11.2024, after lapse of three years, and the learned

Judicial Magistrate took cognizance on 25.11.2024, ignoring the above-mentioned provisions and took cognizance beyond the period of limitation.

6. Shri Praveen Kumar Tiwari, Circle Officer, further informs this Court that the then Circle Officer is not in service at present and the Head Constable is in service, therefore, departmental proceedings have been initiated against the Head Constable and the same shall travel up to its logical end.

7. This Court has perused the order dated 01.12.2025. The relevant portion of the same is quoted hereinbelow:

1. Heard Shri Pawan Singh Pundir,, learned counsel for the applicant, learned AGA for the State.

2. Learned counsel for the applicant submits that he has filed the present application under Section 528 BNSS for the following prayer, which has been mentioned in the prayer clause of this application. The prayer clause is delineated below:-

“It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the present application under section 528 B.N.S.S. and quash the entire proceeding of case No.94500 of 2024 (State Vs. Sooraj Thakur and others), arising out of case crime No.246 of 2019, under Sections 379, 411 IPC, Police Station- Firozabad North, District Firozabad, pending in the court of Chief Judicial Magistrate Firozabad as well as charge sheet dated 26.06.2021 along with cognizance order dated 27.11.2024 passed by Chief Judicial Magistrate Firozabad.

3. Shri Pawan Singh Pundir, learned counsel for the applicant, submits that regarding the alleged incident dated 13.04.2019, a First Information Report was lodged by Shri Krishnakat in respect of theft of his motorcycle, and the police of Police Station- Firozabad North, District-Firozabad registered an FIR against one unknown person as Case Crime No. 246 of 2019 under Section 379 IPC Indian Penal Code, 1860 (corresponding Section 303(2) B.N.S.).

*4. Shri Prateek Tyagi, learned AGA for the State submits that initially, **first police report/charge-sheet** has been prepared on 14.06.2019 against Aman Shah, Tanuj Gautam, Adarsh Yadav, Vishal Raja and Rahul alias Bhagona under Sections 379 and 411 IPC (corresponding Sections 303(2) & 317(2) of B.N.S.).*

5. Learned counsel for the applicant further submits that in the confessional statement of co-accused Vishal Raja dated 04.10.2020 recorded in Supplementary Case Diary (S.C.D.) No. 2, for the first time, name of applicant-accused as well as one Suraj Thakur came in the picture and the Investigating Officer submitted charge-sheet against the applicant and one Suraj Thakur in the concerned court on 26.06.2021, after seen/ verification of the same by the concerned Circle Officer. He further submits that the cognizance has been taken against the applicant for the offence under Sections 379 and 411 IPC on 27.11.2024 by the then learned Chief Judicial Magistrate, Firozabad and thereafter, registered the case as Case No. 94500 of 2024 (State v. Sooraj Thakur and others).

6. He further submits that the alleged incident occurred on 13.04.2019; the First Information was lodged on 16.04.2019 u/s 379 & 411 IPC which is punishable up to three years; the first charge-sheet has been prepared and submitted u/s 379 & 411 IPC against five persons on 14.06.2019. The counsel for the applicant further submits that, for the first time, name of the

applicant came in the picture in the confessional statement of co-accused, Vishal Raja dated 04.10.2022; recorded in S.C.D. Parcha No. 2 and thereafter, supplementary charge-sheet has been prepared and submitted in the concerned court u/s 379 & 411 IPC against the applicant and Suraj Thakur on 26.06.2021 but the learned Magistrate took cognizance on 27.11.2024 on the supplementary charge-sheet dated 26.06.2021 after three years and registered the case as Case No. 94500 of 2019 (State v. Sooraj Thakur and others), u/s 379 & 411 IPC, Police Station-Firozabad North, District- Firozabad, thus, as per Sections 467 r/w 468 r/w 469 CrPC (corresponding Sections 513, 514 and 515 BNSS), the concerned Judicial Magistrate cannot take cognizance as it is time-barred, beyond the period of three years as per the conditions made under Section 469 CrPC and no reason has been mentioned also in the cognizance order dated 27.11.2024 passed by the then Chief Judicial Magistrate, Firozabad as to taking cognizance beyond expiry of period of limitation. It is further submitted that as per the mandatory provision enshrined under Sections 467, 468, 469 CrPC, the concerned court cannot take cognizance beyond the period of limitation as provided in the Sections, therefore, the proceedings pending the concerned trial court is against the procedure established by law/ Code of Criminal Procedure and it is violating the fundamental right of the applicant as provided under **Article 21 of the Constitution of India**, i.e. "No person shall be deprived of his life or personal liberty, except according to procedure established by law". The provisions of Sections 467, 468, 469 CrPC are delineated below :-

"467. Definitions. For the purposes of this Chapter, unless the context otherwise requires, "period of limitation" means the period specified in section 468 for taking cognizance of an offence.

468. Bar to taking cognizance after lapse of the period of limitation.-(1) Except as otherwise provided elsewhere in this Code, **no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.**

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) **three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.**

1[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

469. Commencement of the period of limitation. (1) The period of limitation, in relation to an offender, shall commence,-

(a) **on the date of the offence; or**

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier, or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded."

7. The **classification** of offences has been mentioned in the **first schedule** of the Code of Criminal Procedure. The relevant part of the First Schedule in respect of Sections 379 & 411 are being quoted below :-

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or Non-bailable	By what court triable
379	Theft	Imprisonment for 3 years, or fine or both	Cognizable	Non-bailable	Any Magistrate
411	Dishonestly receiving stolen property knowing it to be stolen	Imprisonment for 3 years, or fine or both	Cognizable	Non-bailable	Any Magistrate

8. Learned A.G.A., Shri Pankaj Kumar Tripathi, submits that in this case, after expiry of the period as prescribed under law, cognizance cannot be taken but the learned Judicial Magistrate has taken cognizance beyond the limitation period as provided under Sections 468 and 469 Cr.P.C.

9. The then Chief Judicial Magistrate, Firozabad, Minakshi Sinha, in her explanation dated 12.12.2025, mentioned in paragraph Nos. 4 and 6 with an assurance that she will be more careful in future. Paragraph Nos. 4 and 6 of the aforesaid explanation are quoted hereinbelow:

4. That as regards the allegations of the two accused persons named above before the Hon'ble Court that the issue of limitation being involved in the matter was not taken note of and not mentioned in the cognizance taking order dated 27.11.2024, it is most humbly submitted to the Hon'ble Court that at the time of taking of cognizance on 27.11.2024 on the supplementary charge-sheet, none including the Assistant Public Prosecutor of the State had invited my attention to the issue of limitation and due to bona fide oversight the point of limitation did not come to my mind and in all good faith the said cognizance taking order was passed by me on 27.11.2024 on the supplementary charge-sheet in discharge of my judicial functions of my court. It is humbly submitted to the Hon'ble Court that as per the usual practice prevalent in all magisterial courts in the State of Uttar Pradesh, and perhaps in other states too, no in depth enquiry or examination of the record is made on receiving the police report i.e. the charge-sheet (or the final report) for purposes of taking cognizance of the offences and only a prima facie view is formed by the Magistracy on the basis of material contained in the case diary.

6. That in case, the Hon'ble Court still finds any lapse on my part in passing the aforesaid cognizance taking order dated 27.11.2024 on the said supplementary charge-sheet, it is most humbly submitted that the same had not occurred on account of any mala fides on my part but as a matter of purely bona fide oversight for which I most sincerely regret to the Hon'ble Court and assure to be more careful in future."

10. The then Chief Judicial Magistrate, Firozabad, Minakshi Sinha, who is currently posted as the Chief Judicial Magistrate, Saharanpur has not submitted explanation as person having knowledge of law but as a layman, as per her explanation "as per the usual practice prevalent in all magisterial courts in the State of Uttar Pradesh, and perhaps in other states too, no in depth enquiry

or examination of the record is made on receiving the police report i.e. the charge-sheet (or the final report) for purposes of taking cognizance of the offences and only a prima facie view is formed by the Magistracy on the basis of material contained in the case diary". Such practice cannot substitute a law which is not mentioned in the Code of Criminal Procedure. For such explanation and passing of impugned order, it may be assumed that she is taking her judicial service very lightly and is not treating it as a serious obligation to impart justice. The behaviour as well as the conduct of the Presiding Officer as reflected from her explanation as well as cognizance order deserves initiation of departmental proceedings, as the same prima facie demonstrates conduct unbecoming of the office held by her, but taking a very lenient view, this Court is silent on this aspect.

11. The Chief Judicial Magistrate, Minakshi Sinha, is directed to be more cautious in future and to pass orders strictly in accordance with law and existing law may not be substituted by practice (if any) is illegally prevalent in all the Magisterial Courts in the State of U.P.

12. The other Judicial Magistrates as well as courts are also directed not to follow such practice, as mentioned in the explanation of the Chief Judicial Magistrate, Minakshi Sinha.

13. The **Registrar General of the Allahabad High Court** is directed to communicate this order to the Judicial Training and Research Institute (J.T.R.I.), Lucknow to impart such training to the Judicial Officers, as cognizance is the base of a criminal case so cognizance order must be passed in accordance with law.

14. Learned counsel for the applicant submits that as per the judgment of the Hon'ble Supreme Court in **P.K. Chaudhary vs. Commander**, 48 BRTF (GRET); (2008) 13 SCC 229 and **Surinder Mohan Bikal vs. Ascharaj Lal Chopra**; (1978) 2 SCC 403 as well as **State of Punjab v. Sarwan Singh**; (1981) 3 SCC 34, the learned court cannot take cognizance after expiry of the limitation period.

15. This Court has gone through the entire facts of the case as well as the provisions of law laid down by the Hon'ble Supreme Court in the judgments of **P.K. Chaudhary** (supra), **Surinder Mohan Bikal** (supra) as well as **Sarwan Singh** (supra) and has formed the opinion that where a provision is mandatory, the court should not take cognizance contrary to the mandate of law.

16. Accordingly, the entire proceeding of case No. 94500 of 2024 (State Vs. Sooraj Thakur and another), arising out of case crime No.246 of 2019, under Sections 379, 411 IPC, Police Station- Firozabad North, District Firozabad, pending in the court of Chief Judicial Magistrate Firozabad as well as charge sheet dated 26.06.2021 alongwith cognizance order dated 27.11.2024 passed by Chief Judicial Magistrate Firozabad in respect of the applicant Avneesh Kumar and co-accused Suraj Thakur are hereby **quashed**.

17. The proceedings against the other five accused namely, (i) Aman Sakya, (ii) Tanuj Gautam, (iii) Adarsh Yadav, (iv) Vishal @ Raja and (v) Rahul @ Bhagauna shall continue, against whom separate charge-sheet was submitted and cognizance was taken within the period of limitation.

18. Accordingly, the application is **disposed of**.

(2026) 1 ILRA 263
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 16.01.2026

BEFORE

THE HON'BLE SAURABH LAVANIA, J.

Application U/S 482 No. 10684 of 2024

Krishna Mohan Tripathi

...Applicant

Versus

S.P., C.B.I./A.C.B. Lucknow

...Opposite Party

Issue for consideration

Whether offence u/ Sec. 13(1)(d) r/w S. 13(2) and Sec 13(1)(e) r/w S. 13(2) are same?

Headnotes

Prevention of Corruption Act, 1988-S. 13(1)(d) r/w S. 13(2) and S. 13(1)(e) r/w S. 13(2)- Quashing of proceedings - Art. 20(2) of the Constitution of India- Second FIR - same transaction- separate F.I.R. was lodged- Second Case/Case-in-Issue under Section 13 (1)(e) of PC Act- relates to disproportionate assets accumulated by the applicant during his service period - 'First Case'- registered on the written complaint- under Section 13 (1)(d) of PC Act related to illegal gratification/illicit gain- both offence are different/distinct - not of the same transaction -could be separately charged and tried-**Application dismissed.** (E-9)

Case Law Cited

1. T.T. Antony Vs. State of Kerala, (2001) 6 SCC 181
2. V.K. Puri vs. Central Bureau of Investigation, (2007) 6 SCC 91
3. Prem Shankar Singh vs. State of U.P. thru CBI, 2019 SCC OnLine All 4743
4. State of Rajasthan v. Surendra Singh Rathore, 2025 SCC OnLine SC 358
5. Sangeetaben Mahendrabhai Patel v. State of Gujarat, (2012) 7 SCC 621
6. Mohan Baitha Vs. State of Bihar [(2001) 4 SCC 350]
7. Anju Chaudhary Vs. State of U.P. [(2013) 6 SCC 384]
8. P. v. State of Uttarakhand [2022 KHC 6634]

List of Acts

1. The Prevention of Corruption Act, 1988
2. The Indian Penal Code

List of Keywords

Doctrine of Double Jeopardy; separately charged and tried.

Appearances of parties

Counsel for Applicant(s) : Chandra Bhushan Pandey, Asim Kumar Singh Counsel for Opposite Party(s) : Anurag Kumar Singh

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

1. Heard Shri C.B. Pandey, Advocate along with Shri Asim Kumar Singh, Ms Tripti and Shri Mohit Ashok, learned counsel for the applicant and Shri Anurag Kumar Singh, learned counsel for the C.B.I.

2. By means of the present application, the applicant Krishna Mohan Tripathi has impeached the proceedings related to Criminal Case No.12 of 2011, arising out of F.I.R. No.RC0062010A0010/2010 dated 24.02.2010 under Section 13 (1)(e) read with 13 (2) of the Prevention of Corruption Act, 1988 (in short "PC Act"), Police Station-CBI/ACB, Lucknow pending in the Court of Special Judge, CBI/Anti Corruption (West), Lucknow.

3. The main prayer sought in the petition reads as under :

"to quash the impugned criminal proceeding in Criminal Case No. No.12/2011 arises out of FIR No.RC0062010A0010/2010, dated 24.02.2010, under Section 13(1)(e) r/w 13(2) of P.C. Act, 1988, Police Station-CBI/ACB, Lucknow, pending before the Learned Special Judge, CBI/Anti Corruption (West), Lucknow."

4. Upon due consideration of pleadings and documents on record as also the submissions advanced by Shri C.B. Pandey, learned counsel for the applicant, and Shri Anurag Kumar Singh, who appeared for C.B.I., this Court is of the view that prayer/relief, quoted above, has been sought based upon the following :

(A) Article 20(2) of the Constitution of India and Section 300 (1) Cr.P.C. These provision(s) are based upon the principle embodied in the Maxim(s) (i) "Nemo debet bis vexari pro una et eadem causa" (no one should be vexed twice for the same cause) and (ii) "Nemo debet bis puniri pro uno delicto" (no one ought to be punished twice for one offence). According to these provision(s), in nutshell, an accused/a person once punished or acquitted cannot be subsequently tried and /or punished for the same offence. In other words "After a person faces a judicial trial and receives a punishment or acquittal for an offence, he is legally protected from being subjected to another trial and punishment for that exact offence".

(B) Section 71 of I.P.C. This provision provides that 'where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offence, unless it be so expressly provided.

(C) Section 220 of Cr.P.C. This provision relates to the joinder of charges of offences committed by the same person. It applies to a case in which different offences or acts are parts of a single transaction. If the offences are committed in the course of the same transaction, they may be tried together. This section is an enabling provision. It permits the Court to try more than one offence in one trial. The Court may or may not try all the offences together in one trial. If the Court tries the offences separately, it does not commit any illegality. The accused in a case has no vested right to seek joinder of charges and trial of more offences in one trial. The expression "same transaction" in Section 220 of Cr.P.C. is relevant for deciding the question of whether the series of acts are so connected together to be tried at one trial. There cannot be a universal formula for the purpose of determining whether two or more acts constitute the same transaction. The commonality of purpose or design and continuity of action manifest that the same or different offences were committed in the course of the same transaction. The proximity of time, unity of place, unity or

community of purpose or design and continuity of action make the series of acts alleged against the person to constitute the same transaction.

(D) Section 13 of the Prevention of Corruption Act, 1988 (in short "PC Act"), as applicable in this case. This provision deals with 'Criminal Misconduct by a Public Servant'. Based upon this Section, in nutshell, it has been alleged that 'Criminal Misconduct' by a Public Servant, as mentioned under Section 13 (1)(d) of PC Act, the applicant has already been convicted and therefore he cannot be tried for the offence as mentioned under Section 13 (1)(e) of PC Act.

(E) Judgment passed in the case of T.T. Antony Vs. State of Kerala, (2001) 6 SCC 181. In this judgment the Hon'ble Apex Court observed that "Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 Cr.P.C."

5. For considering the main prayer sought in the instant application, to the view of this Court, the following facts of the case are relevant, which are related to two cases indicated herein under :-

(i) Criminal Case No.17/2010 arising out of FIR lodged on 30.10.2009 at Police Station - CBI/ACB, Lucknow, registered as Case Crime No.RC0062009A0033 (in short "First Case").

(ii) Criminal Case No.12 of 2011 arising out of FIR lodged on 24.02.2010 at Police Station - CBI/ACB, Lucknow registered as RC No.0062010A0010 i.e. Case-in-Issue (in short 'Second Case/Case-in-Issue').

6. The relevant facts of First Case, arising out of Case Crime No.RC0062009A0033, are as under :

6.1. Written report dated 30.10.2009 was submitted by Sunil Kumar Singh son of Maheshwar Prasad Singh (in short "Complainant") before Superintendent of Police, CBI, Lucknow. Annexed at page 52A of the paper book.

6.2. According to the aforesaid Written Report dated 30.10.2009, the applicant demanded total Rs.70,000/- from the Complainant for the purposes of renewal of licence of 'Three Trollies' and 'One Stall' related to Basti and Khalilabad Railway Station(s).

6.3. It is to be noted that the applicant, an employee of Railways, was discharging the duties of the post of C.R.M., I.R.C.T.C., Gomti Nagar, Lucknow.

6.4. Based upon the aforesaid Written Report dated 30.10.2009 an F.I.R. was lodged on 30.10.2009, at Police Station CBI/ACB, Lucknow, registered as Case Crime No. RC0062009A0033, under Section 7, 13 (1)(d) read with 13 (2) of the PC Act. In nutshell, this F.I.R. relates to demand of illegal gratification.

6.5. Thereafter on 31.10.2009 the CBI team caught the present applicant red handed at his residence, where the bribe money i.e. Rs.70,000/- was recovered from the Briefcase of the applicant and the applicant was arrested.

6.6. The Trap Memo was also prepared on 31.10.2009.

6.7. The CBI thereafter filed the charge sheet against the applicant under Section(s) 7, 13(1)(d) read with 13 (2) of the PC Act.

6.8. Trial Court thereafter proceeded in the matter which includes framing of charges and recording the statement(s) of independent witnesses of prosecution namely Santosh Kumar Saravgi and Saurav Paul as also the recording of statement of the applicant under Section 313 Cr.P.C.

6.9. Trial Court namely Special Judge, CBI/Anti Corruption (West), Lucknow (in short "Trial Court"), after conclusion of evidence, passed the judgment on 11.08.2024 in Criminal Case No.17 of 2010, arising out of Case Crime No.RC0062009A0033, under Section 7, 13 (1)(d) read with 13 (2) of the PC Act.

6.10. Trial Court vide judgment dated 11.08.2024 convicted the applicant for the offence under Section 7 of PC Act and also for the offence under Section 13 (1)(d) read with Section 13 (2) of the PC Act.

6.11. It is to be noted that the judgment of conviction dated 11.08.2024 relates to F.I.R./Case Crime No.RCNo.0062009A0033 of 2009, CBI/ACB Lucknow.

7. The relevant facts of 'Second Case/Case-in-Issue' arising out of Case Crime No.RC00622010A0010, are as under :

7.1. After apprehending the applicant red handed, the house of the applicant was also searched on 31.10.2009 and during search the prosecution/CBI found various assets. Relevant portion of Memo prepared in this regard is extracted herein under :

ASSETS

The assets possessed by Sri K.M. Tripathi as on 31.10.2009.

Immovable Assets

1. House at B-1/12, L Road, Type-B

Mahanagar Extension, Lucknow : Rs. 60,00,000/-

2. House at 70, Mall Avenue, Lucknow : Rs.50,00,000/- (approx)

3. House at Village- Kotha, Distt- Gorakhpur : Rs.20,00,000/- (approx)

4. 1/5th of 1.7 Hectare agricultural land at

Village - Kotha, Distt – Gorakhpur : Ancestral

Total : Rs.1,30,00,000/-

Movable Assets

a) Sri K.M. Tripathi possesses following movable assets in the name of him and his family members, details of which are given as under –

- 1. One Maruti Esteem Car : Rs.4,49,405/-*
- 2. Gold Jewellery items : Rs.51,91,810/-*
- 3. Silver Jewellery items : Rs.5,87,619/-*
- 4. Cash : Rs.24,91,000/-*
- 5. Household Inventory items*
(including cost of 2 LCD Home Theatres,
- 6 Air Conditioners, Firearms,*
- 44 Bottles of Liquor, Furniture etc.) : Rs.41,03,594/-*
- Total : Rs.1,28,23,428/-*

b) Bank Deposits

Besides the above movable assets, Sri K.M. Tripathi has following bank accounts in different banks in his name and in the names of his family members along with the balance amounts as on 31.10.2009 –

<i>S. No.</i>	<i>A/c No.name of the Bank and Branch Name</i>	<i>Name of the A/C holder</i>	<i>Amount in Rs.</i>
<i>1.</i>	<i>07810053493, HDFC Bank, M.G. Road, Lucknow.</i>	<i>Smt. Poonam Tripathi (wife)</i>	<i>54,477/-</i>
<i>2.</i>	<i>05500100000096, Bank of Baroda, Hazratganj Branch, Lucknow.</i>	<i>-do-</i>	<i>21,181/-</i>
<i>3.</i>	<i>628101073549, ICICI Bank, M.G. Road, Hazratganj, Lucknow.</i>	<i>Sri K.M. Tripathi</i>	<i>2876/-</i>
<i>4.</i>	<i>6281062580, ICICI Bank, M.G. Road, Hazratganj, Lucknow</i>	<i>Smt. Poonam Tripathi</i>	<i>3210/-</i>
<i>5.</i>	<i>1189667 ABN AMRO Bank, M.G. Road, Lucknow</i>	<i>Sri K.M. Tripathi</i>	<i>1236/-</i>
<i>6.</i>	<i>1189667 ABN AMRO Bank, M.G. Road, Lucknow</i>	<i>Smt. Poonam Tripathi</i>	<i>35,438/-</i>
<i>7.</i>	<i>26700400004051, Bank of Baroda, Gomti Nagar, Lucknow</i>	<i>Sri K.M. Tripathi</i>	<i>1,87,754/-</i>
<i>8.</i>	<i>2186101006843, Canara Bank, Sapru Marg, Lucknow</i>	<i>Sri K.M. Tripathi</i>	<i>2,07,430/-</i>
		<i>Total</i>	<i>5,13,602/-</i>

Total Movable Assets = (a)+(b) = Rs.1,28,23,428/- + 5,13,602/-
= Rs.1,33,37,020/-

Total Assets = Immovable assets + Movable assets = Rs.1,30,00,000/- + Rs.1,33,37,030/-
= Rs.2,63,37,030/-"

7.2. Considering the aforesaid assets found in the search, the officer of CBI namely A.K. Sharma, Deputy Superintendent of Police, CBI, ACB, Lucknow wrote a letter dated 09.12.2009 to Superintendent of Police, CBI, ACB, Lucknow, indicating aforesaid therein and in this letter concluded as under :

INCOME

<i>1. Income from property settlement</i>	<i>: Rs.4,00,000/-</i>
<i>2. Housing loan from Bank of Baroda</i>	<i>: Rs.32,00,000/-</i>
<i>3. Loan from LIC</i>	<i>: Rs.8,00,000/-</i>
<i>4. Income from maturity of LIC Policy</i>	<i>: Rs.46,880/-</i>
<i>5. Sale proceeds of jewellery</i>	<i>: Rs.5,98,000/-</i>

Total : Rs.50,44,880/-

Thus the total income of Sri K.M Tripathi = Net Salary Income + Income other than salary
Total Income = 37,50,293/- + 50,44,880/- = Rs.87,95,173/-

Expenditure

<i>(a). Non verifiable expenditure</i>	<i>: Rs.16,22,117/-</i>
<i>[1/3 of (Gross salary - Income Tax deductions)</i>	
<i>(Income Tax Deductions are not yet known)</i>	
<i>(b). Verifiable expenditure</i>	
<i>i). Expenses on education of children</i>	<i>: Rs.8,80,000/-</i>
<i>ii). Stamp duty paid on Mahanagar house property</i>	<i>:Rs.7,24,000/-</i>
<i>iii). Registration Fee paid on Mahanagar House property</i>	<i>: Rs.5040/-</i>
<i>iv). Stamp Duty paid on house at Mall Avenue</i>	<i>:Rs.70,100/-</i>
<i>v). Expenses on Rental Car</i>	<i>: Rs.1,50,000/-</i>
<i>vi). Miscellaneous expenditure</i>	<i>: Rs.11,715/-</i>
<i>vii). Taxi fare paid as per records</i>	<i>:Rs.28,386/-</i>
<i>viii). Hotel bills of stay at Pune</i>	<i>: Rs.31,552/-</i>

Total : Rs.19,00,793/-

Total Expenditure : (a) + (b) =

Rs.16,22,117/- + Rs.19,00,793/- = Rs.35,22,910/-

Disproportionate Assets possessed by Sri K.M. Tripathi =

Assets as on 31.10.2009 - Assets possessed on 6.3.1989 + expenditure between 6.3.1989 to 31.10.2009 - Income between 6.3.1989 to 31.10.2009

= 26337030-0+3522910 -8795173 = Rs.2,10,64,767

Percentage Disproportionate Asset=
$$\frac{21064767 \times 100}{8795173} = 239.5(\text{approx})\%$$

While calculating the Disproportionate Assets of Sri K.M. Tripathi, the immovable / movable assets existing in his name and in the name of his dependent family members have been taken into account.

During investigation, the general reputation of Sri K.M. Tripathi has not been found above board. He is known as a corrupt officer particularly during his posting as Sr. DCM, Lucknow and CRM, IRCTC, Lucknow. Investigation has also revealed that a number of immovable properties were acquired by him which are highly undervalued and registered below the market rates. It has also been revealed that Sri K.M. Tripathi has not declared any major source of income other than his salary.

There is strong possibility that during open investigation, disproportionate assets will further increase as there are more immovable properties. the details of which could not be gathered due to paucity of time. During open investigation, the expenditure on house hold articles, demat accounts details credit cards details, pleasure trip, expenses and some more bank accounts details in the name of Sri K.M. Tripathi and his family members are likely to be revealed.

In view of the above facts, a regular case U/s 13 (2) r/w 13 (1) (e) of PC. Act, 1988 may be registered against Sri K.M. Tripathi, the then Chief Regional Manager, Indian Railway Catering and Tourism Corporation Limited, Regional Office, Lucknow for the possession of disproportionate assets to his known source of income to the tune of Rs. 2,10,64,767/-.

Sd.
09.12.2009
(A. K. SHARMA),
Dy. Supdt. of Police,
CBI, ACB, Lucknow

After obtaining necessary permission of the Govt. vide letter No. 2009/ V-2/ IRCTC/14 dt. 08.02.2010 as required U/s 6 A of DSPE Act 1946, a regular case u/s 13 (2) r/w 13 (1)(e) of P. C. Act, 1988 against Sri K.M. Tripathi, the then Chief Regional Manager, Indian Railway Catering and Tourism Corporation Limited, Regional Office, Lucknow is registered and entrusted to Sri Surender Rai, Inspector, CBI, ACB, Lucknow for investigation.

7.3. From a bare perusal of above quoted portion of the letter dated 09.12.2009 indicates that after obtaining necessary permission of the Government of India vide letter No.2009/V-2/IRCTC/14 dated 08.10.2010 as required under Section 6A of DSPE Act, 1946, a regular case under Section 13 (2) read with Section 13(1)(e) of PC Act was registered against the applicant and one Sri Surender Rai, Inspector, CBI, ACB, Lucknow was directed to investigate the matter on 24.02.2010 itself, the date of second FIR i.e. FIR/Case Crime No. RC0062010A0010 dated 24.02.2010, in relation to which the present application for the relief(s) sought, quoted above, has been filed.

8. While pressing the instant application for the relief sought, quoted above, Sri Chandra Bhushan Pandey, learned counsel for the applicant submitted that pending Criminal Case arising out of FIR/Case Crime No.RC0062010A0010/2010 is not in consonance with the spirit of relevant statutory provision and also Article 20(2) of Constitution of India.

9. Elaborating the aforesaid, Shri Pandey submitted as under :

(i) In Section 13(1) of the Act of 1988, expression/word 'or' has been mentioned in relation to all the sub-sections and as such the trial for the offence under Section 13(1)(e) of the Act of 1988 cannot proceed for the reason that the applicant has already been convicted for the offence under Section 13(1)(d) of the Act of 1988.

(ii) Subsequent/second FIR lodged on 24.10.2010 registered as FIR/Case Crime No.RC0062010A0010, the basis of Criminal Case No.12 of 2011 i.e. 'Second Case/Case-in-Issue', is also not in consonance with the principles settled in this regard. Reliance in this regard has been placed on the judgment passed by the Hon'ble Apex Court in the case of **T.T. Antony vs. State of Kerala and others, (2001) 6 SCC 181**. Referred paragraphs of which are as under :

"19. The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC.

20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.

xxxxxxx xxxxxxxx xxxxxxx xxxxxxx xxxxxxx

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 CrPC

empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution."

(iii) The trial pertaining to subsequent/second FIR cannot proceed in terms of Article 20(2) of the Constitution of India, Section(s) 220, 221 and 300 Cr.P.C. and Section 71 of IPC.

10. Opposing the instant application, Sri Anurag Kumar Singh, Advocate, who appeared for the opposite party/CBI, submitted that the applicant is not entitled for the main relief sought in this application, quoted above. In continuation Sri Singh submitted as under :

(i) Based upon Written Report dated 30.10.2009 an FIR was lodged on 30.10.2009 registered as Case Crime No. RC0062009A0033.

(ii) The applicant was caught red handed on 31.10.2009 and the 'Trap Memo' was also prepared, based upon the same the first case was registered as Case Crime No. RC0062009A0033.

(iii) In the Case Crime No. RC0062009A0033, the charge sheet was filed for the offence under Sections 7 and 13(2) read with Section 13(1)(d) of the PC Act.

(iv) Subsequent to filing of the charge sheet, the trial court proceeded in the matter and ultimately found that the applicant is guilty for the offence under Section 7 and Section 13(1)(d) read with Section 13 (2) of the PC Act and therefore passed the judgment dated 11.08.2014 whereby convicted the applicant.

(v) The Case Crime No. RC0062010A0010, in relation to which the instant application has been filed, was registered based upon the assets found during search after seeking necessary permission from the Government of India as required under Section 6A of DSPE Act, 1946, under Section 13(2) read with Section 13(1)(e) of the PC Act, which relates to disproportionate assets.

(vi) For the offence indicated under Section(s) 7 and 13 (1)(d) of the PC Act the applicant has already been convicted vide order dated 11.08.2014.

(vii) Section 13(1)(d) relates to demand of illegal gratification and Section 13(1)(e) relates to disproportionate assets. Thus, Section 13(1)(e) is the separate offences. As such, the applicant can be tried for both the offences separately.

(viii) In the 'First Case' i.e. Case Crime No. RC0062009A0033 related to Section 13(1)(d), the applicant has already been convicted and the present case would be dealt with on the basis of assets found during search and the income of the applicant of which the applicant is legally entitled.

(ix) The 'First Case' i.e. Case Crime No. RC0062009A0033 under Section 13 (1)(d) of the PC Act was based upon the different evidence and the Case-in-Issue, arising out of Case Crime No. RC0062010A0010, under Section 13 (1)(e) of PC Act is based upon different evidence.

(a) On the aforesaid, reference has been made to page 128 of the paper book, which is the copy of 'List of Articles' filed in Case Crime No. RC0062009A0033, CBI/ACB, Lucknow. The same reads as under :

"LIST OF ARTICLES IN RC 0062009 A0033, CBI, ACB, Lucknow.

1. Sealed envelope containing tainted money amounting to Rs. 70,000/-.
2. 5 sealed bottles containing pink colour solution of Sodium Carbonate, water and Phenolphthalein powder.
3. One sealed envelope containing remaining Phenolphthalein powder used during pre-trap proceedings.
4. One sealed envelope containing piece of paper used during pre-trap proceedings.
5. Specimen seal used by CBI during laying of trap.
6. Two sealed CDs containing the recorded conversation between the accused Shri K.M. Tripathi and Shri Sunil Kumar Singh, the complainant and accused Shri Ajay Kumar Srivastava and Shri Sunil Kumar Singh, the complainant.
7. One briefcase belonging to accused Shri K.M. Tripathi from which the tainted GC Notes were recovered."

(b) Reference has also been made to copy of 'List of Documents' filed in Case Crime No. RC0062010A0010 (Second Case/Case-in-Issue). Relevant portion of the same is extracted hereunder :

List of Documents in RC-0062010A0010

Sl. No.	Description of documents
1.	FIR of RC0062010(A)0010
2.	Sale deed of House No.70 Duplex Awaas Vikas Parishad, Mall Avenue, Lko
3	Letter No.5914/RC-10(A)/2010/CBI,ACB/Lucknow, date 29-07-2010
4.	Letter No.5617/RC-10(A)/2010/CBI, ACB/Lucknow, dated 13.07.2010
5.	Valuation report of House No. 70 Duplex Awaas Vikas Parishad, Mall Avenue, LKO.
6.	Seizure Memo dt.10.5.2010
7.	Sale deed of H. No.B-1/12 L. Road Type B, Mahanagar, Extension, LKO.
8.	Search-List on 31.10.2009 along with Valuation report of Gold ornaments,

	Silver Ornaments, Coins and Utensils.
9.	Inventory memo on 31.10.2009.
10.	Document related (Invoice) to purchased maruti Car from T.S. Motar Ltd. LKO.
11.	Certified copy of license of Revolver.
12.	Certified copy of license of Rifle
13.	Fax No.05912416680 dt.13.04.2011 related to Kamal Armoury, Moradabad, Bill dt. 09.09.2005
14.	FIR of Case Crime No.1201, 1202/09 P.S. Hazratganj, Lucknow.
15.	Seizure Memo dt. 20.04.2010
16.	Documents related to Royal Bank of Scotland (RBS) A/C No.1189656
17.	Seizure Memo dt. 4.5.2010
18.	Documents related to bank of Baroda, Gomti nagar, Vipul Plaza, Vipul Khand, Lko's A/C No.26700400004051 of overdraft loan
19.	Seizure Memo dt. 20.5.2010
20.	Documents related from Canara bank Sapru Marg LKO A/C No.2186101006843
21.	Seizure Memo dt.20.5.2010
22.	Documents related from ICICI Bank, Br-Hazratganj LKO A/C No.628101073549
23.	Seizure Memo dt. 06.9.2010
24.	Documents related to Share Certificate No.423412 of IDBI Bank Br-Hazratganj, LKO.
25.	Seizure Memo dt. 31.12.2010
26.	Documents related to Bank of Baroda, Gomti nagar, Vipul Plaza, Vipul Khand, Lko's A/C No.26700600007135 of Housing Loan

27.	Documents related to Car Loan pertaining to ICICI Bank Hazratganj LKO Agreement No.LALUC00005490563.
28.	Seizure Memo dt 14.01.2011
29.	Documents relating to LIC Lucknow Policy No. 211162383, 211279715, 211528424, 215896557
30.	Seizure Memo dt. 9.07.2010
31.	Certified Photo Copy of A/C No.CLSB/01/020198 of Corporation Bank of India Br-Indranagar Lko, Certified Photo copy of A/C No.SB/01/004298 of Corporation Bank of India Br-Gomtinagar Lko.
32.	Seizure Memo dt 17-1-2011.
33.	Certified Photo copy of A/C No.SB/1/004298 of Corporation Bank of India Br-Gomtinagar Lko,
34.	Seizure memo dt 22-10-2010
35.	Certified Photo copy of A/C statement of SBI Gorakhpur related to A/C/11049774987 on 24-05-09 to 30-05-09
36.	Seizure memo dt 08.09.2010
37.	Documents related to Agricultural Income
38.	Seizure Memo dt 09-04-2010
39.	Certified Photo copy of letter dt 26-11-09 from Shri Anil Tekariwa, to SP, CBI, ACB Lko along with statement A/C 1854000101009317 holder of Shri Anil Tekariwal.
40.	Seizure memo dt 20-01-2011
41.	Certified Photo copy of A/C statement, A/C 1854000101009317 holder of Shri Anil Tekariwal
42.	Seizure Memo dt 13-05-2010
43.	Certified Photo copy of A/C Statement, A/C 00500100000096 holder of Smt. Poonam Tripathi

44.	Seizure Memo dt 8-07-2010
45.	Certified Photo copy of purchase Voucher, Bank statement of Bank of India, Br-Mahanagar, Lko, Ledger A/C of Smt. Poonam Tripathi.
46.	Seizure Memo dt 28-05-2010
47.	Documents related to Aviva Life Insurance Ltd. LKO Policy No.RSG/1307840
48.	Gift deed of Late Umrawati Devi
49.	Seizure Memo dt 14-05-2010
50.	Attested copy of Fees amount paid by Shri K.M. Tripathi to school for his daughters education.
51.	Seizure memo dt 10-06-2010
52.	Letter dated 09-06-2010 expenditure on education son of Shri K.M. Tripathi
53.	Documents related to education expenditure on education daughter of Shri K.M. Tripathi
54.	Documents related to education expenditure on education son of Shri K.M. Tripathi
55.	Documents related to expenditure on Hotel Taj Blue Diamond, Pune's by Shri K.M. Tripathi, Bill No.82512 dt.12.07.06, amount Rs.31,582/-
56.	Seizure Memo dt 10-11-2010
57.	Documents related to Certified Photo copy of pay particulars of Shri Mrishna Mohan Tripathi, 1989 to Aug-2008
58.	Seizure Memo dt 02-12-2010
59.	Certified copy of statement of Immovable property, Annual property return, Transaction of Immovable property, salary statement, year 2008-9, 2009-10
60.	Letter No.IRCTC/RO/Lko/GEN CORRES dt 14-03-11
61.	Letter No -E/PC/KM Tripathi/YDPM dt 4-4-11

62.	Seizure Memo dt 19-11-2010
63.	Certified copy of personal File of Shri Krishna Mohan Tripathi, with the note sheet.
64.	Prosecution Sanction Order letter no.RCNO. 0062010A0010, 2011/V2/IRCTC/12-CBI New Delhi, Date 29-11-2011

(c) Reference has also been made to the copy of the 'List of Witnesses' filed in Case Crime No.RC0062010A0010. The names and particulars of Witnesses, as indicated in this document, are as under :

List of Witnesses in RC0062010A0010

Sl. No.	Description of the witnesses
1.	Shri Ajay Kumar Sharma, the then Dy. Supdt of Police, CBI, ACB, Lucknow
2.	Shri Md. Yahiya Qureshee S/o Shri Balagat Husain, Ad. Khajanchi Bazar, P.O.- Basharatpur, Gorakhpur, Present Address- Janpath, Chandralok, Aliganj, Lucknow
3	Shri Amresh Chandra Tripathi, Asstt. IG Registration (First) Lucknow
4.	Shri Pradeep Kumar S/o Gul Rajiram, Valuation Officer, Income Tax Office, Lucknow
5.	Shri Pradeep Kumar Aren S/o Shri Brajendra Singh Gupta, 2/301, East end Apart., Mayur Vihar, Phase-I
6.	Shri Rajesh Pratap Singh, Daily Wages Clerk, O/o Sub-Registrar (III), Lucknow
7.	Shri Manoj Kumar Srivastava, Sub-Registrar-III, Registrar Office, Lucknow (Statement not recorded)
8.	Shri Santosh Kumar Saravgi Sr. Manager, Punjab National Bank, Circle Office, LKO
9.	Shri Pushkar Nath Kesharwani, R/O B-711, Sector-C, Mahanagar, Lucknow
10.	Shri Manish Kumar Pandey, Bungalow Khalasi, R/O Patti Dilippur, P.S.- Patti, Distt-Pratapgarh (UP)
11.	Shri Harish Chandra Saxena, Prop. Kamal Armoury, Arms Dealer, Moradabad
12.	Shri Anoop Kumar Shukla, Joint General Manager, Small Arms Factory, Kanpur (Statement not recorded)
13.	Shri Ashish Kumar, Price Counter / Computer Operator, Cheers Model Shop, ShahNazaf Road, LKO
14.	Shri Punit Arora, Operational Manager, Royal Scotland Bank-13, MG Marg, LKO
15.	Shri Gaurav Seth, Lobby Manager, Royal Scotland Bank-13, MG Marg, LKO

16.	Shri Naresh Chandra Tripathi S/o Late Jeevan Lal, Operation Manager, Bank of Baroda, Br-Charbagh, LKO
17.	Shri Harish Kumar Purwar, Sr. Manager, Bank of Baroda, Br-Gomti Nagar, LKO
18.	Shri Sharat Kumar S/o Raj Narain Srivastava, Sr. Branch Manager, Canara Bank, Br-Sapru Marg, LKO
19.	Shri Ashwini Kumar Vyas S/o Shri Sadanand Vyas, Asstt. Branch Manager, ICICI Bank, Br.- Hazratganj, Lucknow.
20.	Shri Sumit Sinha S/o Shri Sudhir Kumar Sinha, R/o D-1/420 H.L. Colony, LKO, Asstt. Manager, IDBI Bank, Br- Hazratganj, Lucknow.
21.	Shri Upendra Singh, S/o Late Lallu Singh, Universal Tailor, Bank of Baroda, Br.- Gomti Nagar, LKO.
22.	Shri Rohit Sahni, Cluster Manager, ICICI Bank, Br.- Hazratganj, Lucknow.
23.	Shri Anil Kumar Mishra, Chief Manager, LIC, Hazratganj, Lucknow.
24.	Shri Vinay Kumar Tripathi S/o Late Kedar Nath Tripathi, R/o Betiya Hata, Gorakhpur, 3/89
25.	Shri Gaurav Mishra, Clerk, Corporation Bank Br.- Gomti Nagar, Lucknow.
26.	Shri Ramesh Mishra S/o Ramvraksh Mishra R/o 577 Mamford Ganj, Allahabad, AGM, S.B.I., R.A.,S., M.E.C.C., Gorakhpur.
27.	Shri Dayaram Prajapati S/o Shri Thakurdeen Prajapati, I/C Nayab Tahsildar, Tahsil-Khajni, Gorakhpur.
28.	Shri Pramod Kumar S/o Shri Sachiddanand, Lekhpal Village-Kotha, Tahsil-Kajni, Gorakhpur.
29.	Shri Anil Tekriwal S/o RadheyShyam Tekriwal, 1-Sapru Marg, Lucknow, owner of Cox and Kings Travels Agency, Lucknow.
30.	Shri Rajesh, Personnel of Punjab National Bank Br-Aliganj, Lucknow.
31.	Shri Madan Lal Bhagat, Sr. Manager, Bank of Baroda Br-Hazratganj, Lucknow.
32.	Shri Nishank Rastogi, Partner of the Firm Lallu Lal Jugal Kishore, Jeweller, M-12 Gole Market, Mahanagar, Lucknow.
33.	Shri Shailesh Kumar Mishra, Branch Manager, AVIVA Life Insurance Co., Lucknow.
34.	Shri Ganesh, Peon, Loreto Convent Intermediate College, 99 M.G. Marg, Lucknow.
35.	Smt. L. Georg, Principal, Loreto Convent Intermediate College, Lucknow. (Statement not recorded)
36.	Shri Carloze Miz S/o Shri Julias Miz, Office Asstt., St. Francis College, Lucknow.
37.	Father Vin Saint Pintu, Principal, St. Francis College, Lucknow. (Statement not recorded)
38.	Smt. M. Abraham, Principal, La-Marteniar Girls College, Lucknow. (Statement not recorded)

39.	Shri E. Disuza, Principal, La-Marteniar College, Lucknow (Statement not recorded)
40.	Shri Sandeep Mukherjee, General Manager, Hotel Taj Blue Diamond, Pune, (Statement not recorded)
41.	Shri Kunwar Singh Rawat S/o Late Preetu Singh Rawat, Chief Vigilance Inspector, Head Office, North Railway Vigilance Department, Baroda House, New Delhi.
42.	Shri ChandraKant Jha, S/o Shrikant Jha, Executive, IRCTC, North Zone, New Delhi.
43.	Shri VayuNandan Shukla, Sr. Executive Finance, IRCTC, Regional Office, Gomti Nagar, Lucknow.
44.	Shri Jagdish Kunwar Srivastava, Sr. Clerk, Personnel Section (Gazetted), N.E.R., LKO.
45.	Shri Ramesh Pandey S/o Shri Brindavan Pandey, Chief Vigilance Inspector, Vigilance Office, N.E.R., Gorakhpur.
46.	Shri Md. Istiyaq Khan S/o Md Ilhaq Khan, Account Officer, O/o Sr. Finance Manager, North Railway, Lucknow.
47.	Shri Sunil Kumar, Deputy Secretary (D&A), Ministry of Railways, Railway Board, New Delhi. (Statement not recorded)
48.	Surendra Rai, Inspector, Investigating Officer.

(x) To establish/prove the Second Case/Case-in-Issue before the trial court arising out of Case Crime No. RC0062010A0010, the prosecution, as per charge sheet, would produce 48 witnesses including the complainant namely Sri Ajay Kumar Sharma, the then Deputy Superintendent of Police, CBI/ACB, Lucknow, who was not the complainant of Case Crime No. RC0062009A0033.

(xi) The complainant of the Case Crime No. RC0062009A0033 was Sunil Kumar Singh, who was examined before the Trial Court, and on the basis of whose complaint the applicant was caught red handed on 31.10.2009 and from the possession of the applicant an amount to the tune of Rs.70,000/- was recovered and thereafter phenolphthalein test of the applicant was also carried out and 'Trap Memo' was prepared.

(xii) Other witnesses in Criminal Case No. 17 of 2010, arising out of Case Crime No. RC No.RC0062009A0033, were Santosh Kumar Saraogi, Senior Manager, Punjab National Bank, Circle Office, Lucknow and Saurav Paul, Agriculture Officer, Punjab National Bank, Circle Office, Lucknow (witnesses of recovered amount of Rs.70,000/- from the possession of the applicant on 31.10.2009).

(xiii) As both the aforesaid FIRs relate to different offences, the case of T.T. Anthony (Supra) would not be applicable in the instant case. Other provisions, as pointed out by Sri C.B. Pandey, Advocate, would also not be applicable in the instant case.

(xiv) The time period and set of accused as also witnesses in both the cases are different.

(xv) In 'First Case' arising out of Case Crime No.RC0062009A0033, Ajay Kumar Sharma was also an accused and he has been acquitted by the trial court. The Second Case/Case-in-Issue is only against the applicant.

(xvi) First Case arising out of Case Crime No. RC0062009A0033 was related to recovery of amount i.e. Rs.70,000/- on 31.10.2009 from the possession of the applicant and therefore the applicant was charged related for the offence under Section 13 (1)(d) of PC Act.

(xvii) The Second Case/Case-in-Issue relates to acquired assets, which were found not proportionate to the known sources of income of the applicant, during his service period w.e.f. 06.03.1989 (the date of joining the service) and 31.10.2009 (the date of search) and therefore the separate F.I.R. was lodged, registered as Case Crime No. RC0062010A0010, under Section 13 (1)(e) of PC Act and in this section subsequently the charge-sheet was filed.

(xviii) In support of submissions advanced, Sri Anurag Kumar Singh has placed reliance on the following judgments :

(a) **V.K. Puri vs. Central Bureau of Investigation, (2007) 6 SCC 91.** Relevant paragraphs referred are extracted herein under :

"11. The 1988 Act is a special Act. It overrides the provisions of the general law viz. the Code of Criminal Procedure. But, then when a matter is not covered by the 1988 Act, in view of sub-section (3) of Section 5 of the 1988 Act, the provisions of the Code of Criminal Procedure shall clearly be applicable.

12. A distinction exists between a case filed under Sections 13(1)(c) and 13(1)(d) of the 1988 Act, on the one hand, and Section 13(1)(e) thereof, on the other.

13. Ingredients of the offence under Section 13(1)(e) of the 1988 Act are:

(i) the accused is a public servant;

(ii) the nature and extent of the pecuniary resources of property found in his possession;

(iii) his known sources of income i.e. known to the prosecution;

(iv) such resources or properties found in possession of the accused were disproportionate to his known sources of income.

14. Once, however, the aforementioned ingredients are established by the prosecution, the burden of proof would shift on the accused to show that the prosecution case is not correct. (See M. Krishna Reddy [(1992) 4 SCC 45 : 1992 SCC (Cri) 801] , para 7.)

15. One of the ingredients of offences, therefore, is known sources of income. What is material therefor is that the criminal misconduct had been committed during the period the accused held office and not the places where he had held offices. The fact that the appellant had bank accounts within the jurisdiction of the Delhi Courts as also immovable properties is not in dispute. The respondent in the charge-sheet has clearly pointed out that one of his known sources of income was the rental received by him from his Delhi flat. The same had been given due credit for the purpose of arriving at a prima facie satisfaction that the assets possessed by him are disproportionate to his known sources of income.

16. From a perusal of the charge-sheet, it furthermore appears that the appellant is said to have acquired large properties including several bank accounts. For the purpose of proving the offence, therefore, on the one hand, known sources of income must be ascertained vis-a-vis the possession of property or resources which were disproportionate to the known sources of income of public servant and the inability of the public servant to account for it, on the other. Whereas the burden to prove the first part of the offence is on the prosecution, in the event the same is proved, it would shift to the public servant concerned. (See *P. Nallammal* [(1999) 6 SCC 559 : 1999 SCC (Cri) 1133].)

17. It is not a case where the offence revolves round any conspiracy or abetment to commit an offence. It is also not a case falling under clauses (c) and (d) of sub-section (1) of Section 13 of the 1988 Act as was the case in *Braj Bhushan Prasad* [(2001) 9 SCC 432 : 2002 SCC (Cri) 576]. The appellant is not accused of commission of such an offence. No other person has been charged with the offence of abetment and conspiracy. The question of finding out the place where the offence was completed, thus, does not arise in this case.

18. Strong reliance has been placed by Mr Nageswara Rao on a Single Judge Bench decision of the Kerala High Court in *Banwarilal Jhunjhunwalla v. Union of India* [AIR 1959 Ker 311] wherein it was observed:

“13. Taking the first offence under Section 5(2) of the Prevention of Corruption Act, alleged to have been committed by Thomson, there can be little doubt that it was committed within the State of Kerala where he passed inferior jungle wood as timber of the contract quality and issued false certificates to that effect. (Of course these statements are as yet no more than assumptions based on the prosecution case, in accordance with which the question of jurisdiction has to be determined and it is unnecessary to repeat this caution at every stage of the discussion.)

When Thomson did this, he was undoubtedly abusing his position as a public servant, and it is a legitimate inference that he thereby obtained for himself or at least for the contractors, a pecuniary advantage. The act of abusing his position as a public servant certainly took place within the Kerala State where the false certificates were issued, and even if the consequence of obtaining a pecuniary advantage for himself or for the contractors which consequence makes that act an offence took place elsewhere, under Section 179, Criminal Procedure Code, the Special Judge for Kerala would have jurisdiction to try the offence. That the Special Judge has jurisdiction to try Thomson for the offence under Section 5(2) of the Prevention of Corruption Act is, in fact, not disputed.”

19. However, therein the factual matrix was absolutely different. In a case of this nature, the question of completion of any offence does not arise.

20. In a case involving Section 13(1)(e) of the 1988 Act, what is necessary is as to whether keeping in view the period in question, commonly known as check period, the public servant has acquired wealth which is disproportionate to his known sources of income. It has nothing to do with individual case of bribery. It has nothing to do with a series of acts culminated into an offence.

21. Each court, where a part of the offence has been committed, would, therefore, be entitled to try an accused. The 1988 Act does not bar application of Section 178 of the Code of Criminal Procedure. If application of the provision of Section 178 of the Code of Criminal Procedure is not barred, the fact that the appellant has a part of his known sources of income at Delhi, in our opinion, would confer jurisdiction upon the Delhi Courts. It is one thing to say that

only the Special Courts will have jurisdiction to try the offence, but for the purpose of arriving at a decision as to the Special Judge of which place shall have the requisite jurisdiction, the situs of the property may or may not have any relevance. Once the situs of the property is held to have relevance for the purpose of ascertaining his known source of income and consequent acquisition of disproportionate assets, in our opinion, the Special Judge concerned will also have the requisite jurisdiction to try the case. For the said purpose, purport and object for which the 1988 Act has been enacted must be taken into consideration. The doctrine of purposive construction therefor must be taken recourse to.

22. With respect, Punchhi, J. (as the learned Chief Justice then was) in Kamal Dev [(1986) 3 Crimes 305 (P&H)] was not concerned with such a question and in that view of the matter, the following observations made in para 4 may not have strict application : (Crimes p. 306, para 4)

"4. The commission of the offence of criminal misconduct has nexus to the period of his office. It is so intimately interlinked that it is the place of office which would determine the place of commission of his misconduct. It is through his office alone that one can determine his known source of income and if his property which is presently in his possession or in possession of someone on his behalf, or has at any time during the period of his office been in his possession or of someone on his behalf, then it is relatively to be viewed with the period of his office. In this context, the place of office assumes importance, for that would determine the jurisdiction in which the offence of criminal misconduct would be triable. Thus, in the instant case, I am of the view that it was the Special Judge at Chandigarh who had the jurisdiction to try the offence against the petitioner."

23. In any event, as would appear from para 5 of the said judgment itself, the learned Judge did not intend to determine the said question finally as ultimately the doctrine of forum conveniens had been taken recourse to for holding that although more than one Special Judge may have jurisdiction to try the offence, the Special Judge at Chandigarh would be the appropriate authority to have the case tried before it in the interest of justice."

(b) Prem Shankar Singh vs. State of U.P. thru CBI, 2019 SCC OnLine All 4743. Relevant paragraphs referred are extracted herein under :-

"10. The Supreme Court in the case of State of Jharkhand through S.P., CBI v. Lalu Prasad Yadav alias Lalu Prasad, (2017) 8 SCC 1 in paragraphs 40, 41, 42, 49 and 50 which summarising the law on the point has held as under:-

"40. In the instant case, offences are not the same offence. There can be different trials for the same offence if tried under two different enactments altogether and comprised of two different offences under different Acts/statutes without violation of the provisions of Article 20(2) or Section 300 CrPC. This Court has decided the issue in various cases:

40.1. In Kharkan v. State of U.P. [Kharkan v. State of U.P., (1964) 4 SCR 673 : AIR 1965 SC 83 : (1965) 1 Cri LJ 116] this Court has laid down thus: (AIR p. 86, para 10)

"10.... Even if the two incidents could be viewed as connected so as to form parts of one transaction it is obvious that the offences were distinct and required different charges. The assault on Tikam in fulfilment of the common object of the unlawful assembly was over when the unlawful assembly proceeded to the house of Tikam to loot it. The new common object to beat Puran was formed at a time when the common object in respect of Tikam had been fully worked out and even if

the two incidents could be taken to be connected by unity of time and place (which they were not), the offences were distinct and required separate charges. The learned Sessions Judge was right in breaking up the single charge framed by the Magistrate and ordering separate trials. In this view the prior acquittal cannot create a bar in respect of the conviction herein reached."

40.2. In *Maqbool Hussain v. State of Bombay* [*Maqbool Hussain v. State of Bombay*, 1953 SCR 730 : AIR 1953 SC 325 : 1953 Cri LJ 1432] this Court has laid down thus: "The appellant had smuggled gold into India and was booked under Section 167(8) of the Sea Customs Act, 1878 and subsequently when no one came to claim the gold, he was charged under Section 8 of FERA. He challenged this as violation of Article 20(2). The Court analysed the scope of Article 20(2) and held that the "prosecution" must be before a court of law or judicial tribunal. The plea of double jeopardy was discarded as it was held that the Customs Authorities were not a judicial tribunal or court. For double jeopardy, the test is whether the former offence and the offence now charged have the same ingredients in the sense that the facts constituting the one are sufficient to justify a conviction of the other and not that the facts relied on by the prosecution are the same in the two trials."

40.3. In *State of Bombay v. S.L. Apte* [*State of Bombay v. S.L. Apte*, (1961) 3 SCR 107 : AIR 1961 SC 578 : (1961) 1 Cri LJ 725] a Constitution Bench of this Court has laid down as to the issue regarding conviction under Section 409 IPC and Section 105 of the Insurance Act. The submission of double jeopardy was repelled with respect to offences under Section 11 IPC and Section 105 of the Insurance Act. It was held that the offences under both the Acts are distinct due to their ingredients. So as to constitute double jeopardy two offences should be identical.

40.4. In *T.S. Baliah v. ITO* [*T.S. Baliah v. ITO*, (1969) 3 SCR 65 : AIR 1969 SC 701], the appellant was sought to be prosecuted under Section 177 IPC and Section 52 of the Income Tax Act, 1922 for furnishing wrong information in his tax returns. On consideration of Section 26 of the General Clauses Act, this Court held that the provision did not provide a bar on trial and conviction for the same offence under more than one enactment in case ingredients of offences are distinct. It only barred double punishment and not double conviction.

40.5. In *Collector of Customs v. Vasantraj Bhagwanji Bhatia* [*Collector of Customs v. Vasantraj Bhagwanji Bhatia*, (1988) 3 SCC 467 : 1988 SCC (Cri) 679] the question arose whether acquittal of an accused charged with having committed the offence punishable under Section 111 read with Section 135 of the Customs Act, 1969 created a legal bar to the accused, subsequently being prosecuted under Section 85 of the Gold (Control) Act, 1968. It was held that the ingredients of the offence under each of the enactments were quite different. The Court applied the test developed in *Maqbool Hussain* [*Maqbool Hussain v. State of Bombay*, 1953 SCR 730 : AIR 1953 SC 325 : 1953 Cri LJ 1432] and held the two offences to be different in scope and contents of their ingredients. The Court also relied upon *S.L. Apte* [*State of Bombay v. S.L. Apte*, (1961) 3 SCR 107 : AIR 1961 SC 578 : (1961) 1 Cri LJ 725] decision and observed that what is necessary is to analyse the ingredients of the two offences and not the allegations made in two complaints. No doubt about it that there can be separate offences but ingredients would remain same under penal provision but that would also not make out a case of violating the provisions of Article 20(2) of the Constitution and Section 300 CrPC.

40.6. In case ingredients of the offences to be tried separately arise out of the same offence, there can be separate trials under two enactments, if the ingredients constituting two offences are different under different Acts, there is no bar for separate trials. In *State of Bihar v. Murad Ali Khan* [*State of Bihar v. Murad Ali Khan*, (1988) 4 SCC 655 : 1989 SCC (Cri) 27] it was

held: (SCC pp. 665, 667 & 668, paras 24, 28 & 31) The expression "any act or omission which constitutes any offence under this Act" in Section 56 of the Wild Life (Protection) Act, 1972, merely imports the idea that the same act or omission might constitute an offence under another law and could be tried under such other law or laws also. Further held that, if there are two distinct and separate offences with different ingredients under two different enactments, a double punishment is not barred. The same set of facts can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under IPC and at the same time constitute an offence under any other law.

40.7. In State of Rajasthan v. Hat Singh [State of Rajasthan v. Hat Singh, (2003) 2 SCC 152 : 2003 SCC (Cri) 451] this Court was dealing with vires of the Rajasthan Sati (Prevention) Act, 1987. It was urged that Sections 5 and 6 of the new Sati Act were overlapping. It was held that with regard to Article 20(2) that subsequent trial or a prosecution and punishment are not barred if the ingredients of two offences are distinct. There can be separate offences from same set of facts and hence no double jeopardy.

40.8. In Monica Bedi v. State of A.P. [Monica Bedi v. State of A.P., (2011) 1 SCC 284 : (2011) 1 SCC (Cri) 22] this Court considered the meaning of the expression "same offence" employed in Article 20(2) and observed that second prosecution and conviction must be for the same offence. If the offences are distinct, there is no question of the rule as to double jeopardy being applicable. This Court has observed thus: (SCC pp. 293 & 295, paras 26 & 29) "26. What is the meaning of the expression used in Article 20(2) "for the same offence"?

What is prohibited under Article 20(2) is, that the second prosecution and conviction must be for the same offence. If the offences are distinct, there is no question of the rule as to double jeopardy being applicable.

29. It is thus clear that the same facts may give rise to different prosecutions and punishment and in such an event the protection afforded by Article 20(2) is not available. It is settled law that a person can be prosecuted and punished more than once even on substantially same facts provided the ingredients of both the offences are totally different and they did not form the same offence."

40.9. In Sangeetaben Mahendrabhai Patel v. State of Gujarat [Sangeetaben Mahendrabhai Patel v. State of Gujarat, (2012) 7 SCC 621: (2012) 4 SCC (Civ) 305 : (2013) 3 SCC (Cri) 445], with respect to double jeopardy, this Court has laid down thus: (SCC pp. 633-34, para 33)

"33. In view of the above, the law is well settled that in order to attract the provisions of Article 20(2) of the Constitution i.e. doctrine of autrefois acquit or Section 300 CrPC or Section 71 IPC or Section 26 of the General Clauses Act, ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not the identity of the allegations but the identity of the ingredients of the offence. Motive for committing offence cannot be termed as the ingredients of offences to determine the issue. The plea of autrefois acquit is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge. "

40.10. In State of Rajasthan v. Bhagwan Das Agrawal [State of Rajasthan v. Bhagwan Das Agrawal, (2013) 16 SCC 574 : (2014) 6 SCC (Cri) 319] there were 3 FIRs registered with

respect to illegal supply of explosives. Charge was under the Explosives Act. This Court held that the nature and manner of the offences committed by the accused persons were not identical but were different, and as such FIRs were not relating to the same offence as different acts happened in different places. As such the provisions contained in Section 186 CrPC would not apply.

40.11. In *State (NCT of Delhi) v. Sanjay* [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] this Court considered the maxim *nemo debet bis vexari pro una et eadem causa* i.e. no man shall be put in jeopardy twice for one and the same offence. In case ingredients are different there can *Prem Shankar Singh v. State of U.P.*, 2019 SCC OnLine All 4743 be separate trial for the same offence also. This Court has laid down thus: (SCC pp. 805-06, para 52)

“52. It is well-known principle that the rule against double jeopardy is based on a maxim *nemo debet bis vexari pro una et eadem causa*, which means no man shall be put in jeopardy twice for one and the same offence. Article 20 of the Constitution provides that no person shall be prosecuted or punished for the offence more than once. However, it is also settled that a subsequent trial or a prosecution and punishment has no bar if the ingredients of the two offences are distinct.”

41. In the light of the aforesaid discussion, it is appropriate to consider the submissions raised by Shri Surendra Singh, learned Senior Counsel appearing on behalf of Lalu Prasad Yadav. It was submitted by the learned Senior Counsel that since the conspiracy was between 1988 and 1996 which included the period of 1994-1995, the conviction has been made on the charge of conspiracy from 1988 to 1996 which included all the treasuries of the erstwhile State of Bihar. There was no charge of separate conspiracy. Charges being similar in the cases which have been quashed. No case is made out for trial under Section 120-B. Same and identical circumstances are being relied upon by the prosecution. There are no new or additional circumstances in the cases which have been quashed. The conspiracies referred to are one and the same and not different conspiracies. Thus, in view of the trial which had concluded, there cannot be further trial on the charge of conspiracy.

42. We are unable to accept the submissions raised by the learned Senior Counsel. Though there was one general charge of conspiracy, which was allied in nature, the charge was qualified with the substantive charge of defalcation of a particular sum from a particular treasury in particular time period. The charge has to be taken in substance for the purpose of defalcation from a particular treasury in a particular financial year exceeding the allocation made for the purpose of animal husbandry on the basis of fake vouchers, fake supply orders, etc. The sanctions made in Budget were separate for each and every year. This Court has already dealt with this matter when the prayers for amalgamation and joint trial had been made and in view of the position of law and various provisions discussed above, we are of the opinion that separate trials which are being made are in accordance with the provisions of law otherwise it would have prejudiced the accused persons considering the different defalcations from different treasuries at different times with different documents. Whatever could be combined has already been done. Each defalcation would constitute an independent offence. Thus, by no stretch, it can be held to be in violation of Article 20(2) of the Constitution or Section 300 CrPC. Separate trials in such cases is the very intendment of law. There is no room to raise such a grievance. Though evidence of general conspiracy has been adduced in cases which have been concluded, it may be common to all the cases but at the same time offences are different at different places, by different accused persons. As and when a separate offence is committed, it becomes punishable and the substantive charge

which has to be taken is that of the offence under the PC Act, etc. There was conspiracy hatched which was a continuing one and has resulted into various offences. It was joined from time to time by different accused persons, so whenever an offence is committed in continuation of the conspiracy, it would be punishable separately for different periods as envisaged in Section 212(2), obviously, there have to be separate trials. Thus it cannot be said to be a case of double jeopardy at all. It cannot be said that for the same offence the accused persons are being tried again.

x x x x

49. This Court has distinguished general conspiracy from a number of separate conspiracies having a similar general purpose. Where different groups of persons cooperate towards their separate ends without any privity with each other, each combination constitutes a separate conspiracy. It was held that in the case there was single general conspiracy to smuggle gold into India from foreign countries. The contention raised was that separate conspiracies were raised by the accused in the facts of the said case. The facts are quite different in the instant case. The question which has come up for consideration did not arise in the aforesaid decision and this Court has held that there was no prejudice caused to the accused persons by not making separate trials.

50. The modus operandi being the same would not make it a single offence when the offences are separate. Commission of offence pursuant to a conspiracy has to be punished. If conspiracy is furthered into several distinct offences there have to be separate trials. There may be a situation where in furtherance of general conspiracy, offences take place in various parts of India and several persons are killed at different times. Each trial has to be separately held and the accused to be punished separately for the offence committed in furtherance of conspiracy. In case there is only one trial for such conspiracy for separate offences, it would enable the accused person to go scot-free and commit a number of offences which is not the intendment of law. The concept is of "same offence" under Article 20(2) and Section 300 CrPC. In case distinct offences are being committed there has to be independent trial for each of such offence based on such conspiracy and in the case of misappropriation as statutorily mandated, there should not be joinder of charges in one trial for more than one year except as provided in Section 219. One general conspiracy from 1988 to 1996 has led to various offences as such there have to be different trials for each of such offence based upon conspiracy in which different persons have participated at different times at different places for completion of the offence. Whatever could be combined has already been done. Thus we find no merit in the submissions made by the learned Senior Counsel appearing on behalf of the accused persons."

11. Thus, when the accused have entered into separate conspiracies for committing the offences in each block, the filing of separate charge sheet in pursuance of one FIR, is neither illegal nor improper and the trial court has rightly taken cognizance in each charge sheet."

11. Considered the aforesaid and perused the record.

12. In order to come to the conclusion, this Court finds it appropriate to refer relevant provisions pointed out before this Court by the counsel for the applicant and based upon which he advanced his submissions.

(a) Article 20 (2) of the Constitution of India.

20(2). No person shall be prosecuted and punished for the same offence more than once.

(b) Section 220 Cr.P.C.

"Section 220 Trial for more than one offence

1. If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

2. When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in Sub-Section (2) of section 212 or in Sub-Section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

3. If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

4. If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts.

5. Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860)."

(c) Section 300 Cr.P.C.

"300. Person once convicted or acquitted not to be tried for same offence.

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of Section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under Section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any Court to which the first mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of Section 26 of the General Clauses Act, 1897 (10 of 1897) or of Section 188 of this Code. Explanation. - The dismissal of a complaint, or the discharge of the accused is not an acquittal for the purposes of this section.

Illustrations

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(b) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(c) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(d) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless this case comes within sub-section (3) of this section.

(e) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may subsequently be charged with, and tried for, robbery on the same facts.

(f) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts."

(d) Section 71 IPC.

"S. 71 Limit of punishment of offence made up of several offences

Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

(e) Section 13 of the Act of 1988.

"13. Criminal misconduct by a public servant.-

(1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) If he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage, or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation. For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

13. In the facts/contexts of the instant case it would be useful to refer some pronouncements, in addition to which have been placed before this Court by the counsel for the parties.

(i) In the case of State of **Rajasthan v. Surendra Singh Rathore, 2025 SCC OnLine SC 358**, the Hon'ble Apex Court considered the various pronouncements on the issue related to lodging of 'Second FIR' including the judgment passed in the case of **T.T. Antoney (Supra)** and thereafter concluded as under :-

"9. From the above conspectus of judgments, inter alia, the following principles emerge regarding the permissibility of the registration of a second FIR:

9.1 When the second FIR is counter-complaint or presents a rival version of a set of facts, in reference to which an earlier FIR already stands registered.

9.2 When the ambit of the two FIRs is different even though they may arise from the same set of circumstances.

9.3 When investigation and/or other avenues reveal the earlier FIR or set of facts to be part of a larger conspiracy.

9.4 When investigation and/or persons related to the incident bring to the light hitherto unknown facts or circumstances.

9.5 Where the incident is separate; offences are similar or different."

(ii) In the case of **Sangeetaben Mahendrabhai Patel v. State of Gujarat, (2012) 7 SCC 621**, for coming to the conclusion (para 33) on the issue related to scope and application of 'Doctrine of Double Jeopardy' the Hon'ble Apex Court took note of Article 20(2) of Constitution of India, Section 171 of IPC, Section 300 of Cr.P.C., 26 of General Clauses Act, Section 11 of CPC and 115 of Indian Evidence Act and also various pronouncements related to the same. The relevant para(s) of the report are extracted herein under:

"9. The sole issue raised in this appeal is regarding the scope and application of the doctrine of double jeopardy. The rule against double jeopardy provides foundation for the pleas of autrefois acquit and autrefois convict. The manifestation of this rule is to be found contained in Section 300 CrPC; Section 26 of the General Clauses Act and Section 71 IPC.

13. In Maqbool Hussain v. State of Bombay [(1953) 1 SCC 736 : AIR 1953 SC 325 : 1953 Cri LJ 1432] , the Constitution Bench of this Court dealt with the issue wherein the central issue arose in the context of the fact that a person who had arrived at an Indian airport from abroad on being searched was found in possession of gold in contravention of the relevant notification, prohibiting the import of gold. Action was taken against him by the Customs Authorities and the gold seized from his possession was confiscated. Later on, a prosecution was launched against him in the criminal court at Bombay charging him with having committed the offence under Section 8 of the Foreign Exchange Regulation Act, 1947 (hereinafter called "the FERA ") read with the relevant notification. In the background of these facts, the plea of autrefois acquit was raised seeking protection under Article 20(2) of the Constitution of India (hereinafter called "the Constitution ")

14. This Court in Maqbool Hussain [(1953) 1 SCC 736 : AIR 1953 SC 325 : 1953 Cri LJ 1432] held that the fundamental right which is guaranteed under Article 20(2) enunciates the principle of "autrefois convict "or "double jeopardy "i.e. a person must not be put in peril twice for the same offence. The doctrine is based on the ancient maxim nemo debet bis punire pro uno delicto, that is to say, that no one ought to be punished twice for one offence. The plea of autrefois convict or autrefois acquit avers that the person has been previously convicted or acquitted on a charge for the same offence as that in respect of which he is arraigned. The test is whether the former offence and the offence now charged have the same ingredients in the sense that the facts constituting the one are sufficient to justify a conviction of the other and not that the facts relied on by the prosecution are the same in the two trials. A plea of autrefois acquit is not proved unless it is shown that the verdict of acquittal of the previous charge necessarily involves an acquittal of the latter.

15. The Constitution Bench of this Court in S.A. Venkataraman v. Union of India [AIR 1954 SC 375 : 1954 Cri LJ 993] explained the scope of doctrine of double jeopardy, observing that in order to attract the provisions of Article 20(2) of the Constitution, there must have been both prosecution and punishment in respect of the same offence. The words "prosecuted" and "punished" are to be taken not distributively so as to mean prosecuted or punished. Both the factors must coexist in order that the operation of the clause may be attracted.

16. In Om Parkash Gupta v. State of U.P. [AIR 1957 SC 458 : 1957 Cri LJ 575] and State of M.P. v. Veereshwar Rao Agnihotri [AIR 1957 SC 592 : 1957 Cri LJ 892] this Court has held that the prosecution and conviction or acquittal under Section 409 IPC do not debar trial of

the accused on a charge under Section 5(2) of the Prevention of Corruption Act, 1947 because the two offences are not identical in sense, import and content.

17. In *Leo Roy Frey v. Supt., District Jail* [AIR 1958 SC 119 : 1958 Cri LJ 260] , proceedings were taken against certain persons in the first instance before the Customs Authorities under Section 167(8) of the Sea Customs Act and heavy personal penalties were imposed on them. Thereafter, they were charged for an offence under Section 120-B IPC. This Court held that an offence under Section 120-B IPC is not the same offence as that under the Sea Customs Act : (AIR p. 121, para 4)

“4. ... The offence of a conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore, quite separate offences.”

(emphasis added)

18. In *State of Bombay v. S.L. Apte* [AIR 1961 SC 578 : (1961) 1 Cri LJ 725] the Constitution Bench of this Court while dealing with the issue of double jeopardy under Article 20(2) of the Constitution, held : (AIR pp. 581 & 583, paras 13 & 16)

“13. To operate as a bar the second prosecution and the consequential punishment thereunder, must be for ‘the same offence’. The crucial requirement therefore for attracting the article is that the offences are the same i.e. they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations of facts in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their identity is made out....

16. The next point to be considered is as regards the scope of Section 26 of the General Clauses Act. Though Section 26 in its opening words refers to ‘the act or omission constituting an offence under two or more enactments’, the emphasis is not on the facts alleged in the two complaints but rather on the ingredients which constitute the two offences with which a person is charged. This is made clear by the concluding portion of the section which refers to ‘shall not be liable to be punished twice for the same offence’. If the offences are not the same but are distinct, the ban imposed by this provision also cannot be invoked.”

(emphasis added)

19. In *Roshan Lal v. State of Punjab* [AIR 1965 SC 1413 : (1965) 2 Cri LJ 426] , the accused had caused disappearance of the evidence of two offences under Sections 330 and 348 IPC and, therefore, he was alleged to have committed two separate offences under Section 201 IPC. It was held that neither Section 71 IPC nor Section 26 of the General Clauses Act came to the rescue of the accused and the accused was liable to be convicted for two sets of offences under Section 201 IPC, though it would be appropriate not to pass two separate sentences. A similar view has been reiterated by this Court in *Kharkan v. State of U.P.* [AIR 1965 SC 83 : (1965) 1 Cri LJ 116]

20. In *Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra* [AIR 1965 SC 682 : (1965) 1 Cri LJ 608] , while dealing with the issue, this Court held : (AIR pp. 688-89, paras 11-12)

“11. ... The previous case in which this accused was convicted was in regard to a conspiracy to commit criminal breach of trust in respect of the funds of the Jupiter and that case

was finally disposed of by this Court in *Sardul Singh Caveeshar v. State of Bombay* [AIR 1957 SC 747 : 1957 Cri LJ 1325]. Therein it was found that Caveeshar was a party to the conspiracy and also a party to the fraudulent transactions entered into by the Jupiter in his favour. The present case relates to a different conspiracy altogether. The conspiracy in question was to lift the funds of the Empire, though its object was to cover up the fraud committed in respect of the Jupiter. Therefore, it may be that the defalcations made in Jupiter may afford a motive for the new conspiracy, but the two offences are distinct ones. Some accused may be common to both of them, some of the facts proved to establish the Jupiter conspiracy may also have to be proved to support the motive for the second conspiracy. The question is whether that in itself would be sufficient to make the two conspiracies the one and the same offence.

12. ... The two conspiracies are distinct offences. It cannot even be said that some of the ingredients of both the conspiracies are the same. The facts constituting the Jupiter conspiracy are not the ingredients of the offence of the Empire conspiracy, but only afford a motive for the latter offence. Motive is not an ingredient of an offence. The proof of motive helps a court in coming to a correct conclusion when there is no direct evidence. Where there is direct evidence for implicating an accused in an offence, the absence of proof of motive is not material. The ingredients of both the offences are totally different and they do not form the same offence within the meaning of Article 20(2) of the Constitution and, therefore, that article has no relevance to the present case. "

(emphasis added)

21. In *State of A.P. v. Kokkiliagada Meerayya* [(1969) 1 SCC 161 : AIR 1970 SC 771] this Court while having regard to Section 403 CrPC, 1898, held : (SCC pp. 163-64, para 6)

"6. The following important rules emerge from the terms of Section 403 of the Code of Criminal Procedure:

(1) An order of conviction or acquittal in respect of any offence constituted by any act against or in favour of a person does not prohibit a trial for any other offence constituted by the same act which he may have committed, if the court trying the first offence was incompetent to try that other offence.

(2) If in the course of a transaction several offences are committed for which separate charges could have been made, but if a person is tried in respect of some of those charges, and not all, and is acquitted or convicted, he may be tried for any distinct offence for which at the former trial a separate charge may have been, but was not, made.

(3) If a person is convicted of any offence constituted by any act, and that act together with the consequences which resulted therefrom constituted a different offence, he may again be tried for that different offence arising out of the consequences, if the consequences had not happened or were not known to the court to have happened, at the time when he was convicted.

(4) A person who has once been tried by a court of competent jurisdiction for an offence and has been either convicted or acquitted shall not be tried for the same offence or for any other offence arising out of the same facts, for which a different charge from the one made against him might have been made or for which he might have been convicted under the Code of Criminal Procedure. "

(emphasis added)

22. The Constitution Bench of this Court in *Collector of Customs v. L.R. Melwani* [AIR 1970 SC 962 : 1970 Cri LJ 885] repelled the contention of the respondents therein that their

criminal prosecution for alleged smuggling was barred because proceedings were earlier instituted against them before the Collector of Customs. It was observed that neither the adjudication before the Collector of Customs was a prosecution, nor the Collector of Customs was a court. Therefore, neither the rule of autrefois acquit can be invoked, nor the issue estoppel rule was attracted. The issue estoppel rule is but a facet of doctrine of autrefois acquit.

23. This Court has time and again explained the principle of issue estoppel in a criminal trial observing that where an issue of fact has been tried by a competent court on an earlier occasion and a finding has been recorded in favour of the accused, such a finding would constitute an estoppel or *res judicata* against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the acceptance/reception of evidence to disturb the finding of fact when the accused is tried subsequently for a different offence. This rule is distinct from the doctrine of double jeopardy as it does not prevent the trial of any offence but only precludes the evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding has been recorded at an earlier criminal trial. Thus, the rule relates only to the admissibility of evidence which is designed to upset a finding of fact recorded by a competent court in a previous trial on a factual issue. (*Vide Pritam Singh v. State of Punjab* [AIR 1956 SC 415 : 1956 Cri LJ 805] , *Manipur Admn. v. Thokchom Bira Singh* [AIR 1965 SC 87 : (1965) 1 Cri LJ 120] , *Workmen v. Gujarat Electricity Board* [(1969) 1 SCC 266 : AIR 1970 SC 87] and *Bhanu Kumar Jain v. Archana Kumar* [(2005) 1 SCC 787 : AIR 2005 SC 626] .)

24. In *V.K. Agarwal v. Vasantraj Bhagwanji Bhatia* [(1988) 3 SCC 467 : 1988 SCC (Cri) 679 : AIR 1988 SC 1106] wherein the accused were prosecuted under the Customs Act, 1962 (hereinafter referred to as "the Customs Act") and subsequently under the Gold (Control) Act, 1968, [hereinafter called as "the Gold (Control) Act"] it was held that : (SCC p. 474, para 7)

"7. ... the ingredients of the two offences are different in scope and content. The facts constituting the offence under the Customs Act are different and are not sufficient to justify the conviction under the Gold (Control) Act. "

(emphasis in original)

It was held that what was necessary is to analyse the ingredients of the two offences and not the allegations made in the two complaints.

25. In *P.V. Mohammad Barmay Sons v. Director of Enforcement* [1993 Supp (2) SCC 724 : 1993 SCC (Cri) 777 : AIR 1993 SC 1188] it was held : (SCC p. 732, para 11)

"11. The further contention that under the Customs Act, 1962 for the selfsame contravention, the penalty proceedings terminated in favour of the appellant, is of little avail to the appellant for the reasons that the two Acts operate in different fields, one for contravention of FERA and the second for evasion of [excise] duty. The mere fact that the penalty proceedings for evasion of the [excise] duty had ended in favour of the appellant, does not take away the jurisdiction of the enforcement authorities under the Act to impose the penalty in question. The doctrine of double jeopardy has no application. "

(See also *State of Bihar v. Murad Ali Khan* [(1988) 4 SCC 655 : 1989 SCC (Cri) 27 : AIR 1989 SC 1] , *Union of India v. K.V. Jankiraman* [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322 : AIR 1991 SC 2010] , *State of T.N. v. Thiru K.S. Murugesan* [(1995) 3 SCC 273 : 1995 SCC (L&S) 668 : (1995) 29 ATC 555] and *State of Punjab v. Dalbir Singh* [(2001) 9 SCC 212 : 2002 SCC (Cri) 1018] .)

26. In *A.A. Mulla v. State of Maharashtra* [(1996) 11 SCC 606 : 1997 SCC (Cri) 305 : AIR 1997 SC 1441] the appellants were charged under Section 409 IPC and Section 5 of the Prevention of Corruption Act, 1947 for making false panchnama disclosing recovery of 90 gold biscuits on 21-9-1969 although according to the prosecution case the appellants had recovered 99 gold biscuits. The appellants were tried for the same and acquitted. The appellants were also tried for the offence under Section 120-B IPC, Sections 135 and 136 of the Customs Act, Section 85 of the Gold (Control) Act and Section 23(1-A) of FERA and Section 5 of the Imports and Exports (Control) Act, 1947. The appellants filed an application before the Judicial Magistrate contending that on the selfsame facts they could not be tried for the second time in view of Section 403 of the Code of Criminal Procedure, 1898 (corresponding to Section 300 CrPC).

27. This Court held : (*A.A. Mulla case* [(1996) 11 SCC 606 : 1997 SCC (Cri) 305 : AIR 1997 SC 1441] , SCC pp. 613-14, para 22)

“22. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the respective parties, it appears to us that the ingredients of the offences for which the appellants were charged in the first trial are entirely different. The second trial with which we are concerned in this appeal, envisages a different fact situation and the enquiry for finding out facts constituting offences under the Customs Act and the Gold (Control) Act in the second trial is of a different nature. ... Not only the ingredients of offences in the previous and the second trial are different, the factual foundation of the first trial and such foundation for the second trial is also not indented (sic). Accordingly, the second trial was not barred under Section 403 CrPC of 1898 as alleged by the appellants. ”

(emphasis added)

28. In *Union of India v. Sunil Kumar Sarkar* [(2001) 3 SCC 414 : 2001 SCC (L&S) 600 : AIR 2001 SC 1092] , this Court considered the argument that if the punishment had already been imposed for court-martial proceedings, the proceedings under the Central Rules dealing with disciplinary aspect and misconduct cannot be held as it would amount to double jeopardy violating the provisions of Article 20(2) of the Constitution. The Court explained that the court-martial proceedings deal with the penal aspect of the misconduct while the proceedings under the Central Rules deal with the disciplinary aspect of the misconduct. The two proceedings do not overlap at all and, therefore, there was no question of attracting the doctrine of double jeopardy. While deciding the said case, the Court placed reliance upon its earlier judgment in *R. Viswan v. Union of India* [(1983) 3 SCC 401 : 1983 SCC (L&S) 405 : AIR 1983 SC 658] .

29. In *Union of India v. P.D. Yadav* [(2002) 1 SCC 405 : 2002 SCC (L&S) 149] , this Court dealt with the issue of double jeopardy in a case where the pension of the official, who stood convicted by a Court Martial, had been forfeited. The Court held : (SCC p. 425, para 25)

“25. ... This principle is embodied in the well-known maxim *nemo debet bis vexari*, (si constat curiae quod sit) *pro una et eadem causa* meaning no one ought to be vexed twice if it appears to the court that it is for one and the same cause. Doctrine of double jeopardy is a protection against prosecution twice for the same offence. Under Articles 20-22 of the Indian Constitution, provisions are made relating to personal liberty of citizens and others. ... Offences such as criminal breach of trust, misappropriation, cheating, defamation, etc., may give rise to prosecution on criminal side and also for action in civil court/other forum for recovery of money by way of damages, etc., unless there is a bar created by law. In the proceedings before General Court Martial, a person is tried for an offence of misconduct and whereas in passing order under

Regulation 16(a) for forfeiting pension, a person is not tried for the same offence of misconduct after the punishment is imposed for a proven misconduct by the General Court Martial resulting in cashiering, dismissing or removing from service. Only further action is taken under Regulation 16(a) in relation to forfeiture of pension. Thus, punishing a person under Section 71 of the Army Act and making order under Regulation 16(a) are entirely different. Hence, there is no question of applying principle of double jeopardy to the present cases. "

30. *In State of Rajasthan v. Hat Singh [(2003) 2 SCC 152 : 2003 SCC (Cri) 451 : AIR 2003 SC 791]* this Court held that as the offence of glorification of Sati under Section 5 of the Rajasthan Sati (Prevention) Act, 1987, is different from the offence of violation of prohibitory order issued under Section 6 thereof, the doctrine of double jeopardy was not attracted for the reason that even if the prohibitory order is promulgated, a subsequent criminal act even if it falls under Section 5 could not be covered under Section 6(3) of the said Act. Doctrine of double jeopardy is enshrined in Section 300 CrPC and Section 26 of the General Clauses Act. Both the provisions employ the expression "same offence".

31. *Similar view has been reiterated by this Court in State of Haryana v. Balwant Singh [(2003) 3 SCC 362 : 2003 SCC (L&S) 279 : AIR 2003 SC 1253]*, observing that there may be cases of misappropriation, cheating, defamation, etc. which may give rise to prosecution on criminal side and also for action in civil court/other forum for recovery of money by way of damages, etc. Therefore, it is not always necessary that in every such case the provisions of Article 20(2) of the Constitution may be attracted.

32. *In Hira Lal Hari Lal Bhagwati v. CBI [(2003) 5 SCC 257 : 2003 SCC (Cri) 1121 : AIR 2003 SC 2545]* this Court while considering the case for quashing the criminal prosecution for evading the customs duty, where the matter stood settled under the Kar Vivad Samadhan Scheme, 1998, observed that once the tax matter was settled under the said Scheme, the offence stood compounded, and prosecution for evasion of duty, in such a circumstance, would amount to double jeopardy.

33. *In view of the above, the law is well settled that in order to attract the provisions of Article 20(2) of the Constitution i.e. doctrine of autrefois acquit or Section 300 CrPC or Section 71 IPC or Section 26 of the General Clauses Act, the ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not the identity of the allegations but the identity of the ingredients of the offence. Motive for committing the offence cannot be termed as the ingredients of offences to determine the issue. The plea of autrefois acquit is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge.*

(iii) In the case of **Mohan Baitha Vs. State of Bihar [(2001) 4 SCC 350]**, the Hon'ble Apex Court has considered the scope of Section 220 Cr.P.C. by constructing the meaning of the expression "same transaction". In Mohan Baitha, the Supreme Court observed as under:-

"The expression "same transaction" from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity

of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria."

(iv) In the case of **Anju Chaudhary Vs. State of U.P. [(2013) 6 SCC 384]**, while considering the test to be applied for determining the question as to whether two or more acts constitute the same transaction, the Hon'ble Apex Court observed as under :-

"43. It is true that law recognizes common trial or a common FIR being registered for one series of acts so connected together as to form the same transaction as contemplated under Section 220 of the Code. There cannot be any straight jacket formula, but this question has to be answered on the facts of each case. This Court in the case of Mohan Baitha v. State of Bihar [(2001) 4 SCC 350], held that the expression 'same transaction' from its very nature is incapable of exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense in the ordinary use of language must decide whether or not in the very facts of a case, it can be held to be one transaction.

44. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the Court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.

45. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction."

(emphasis supplied)

(v) In the case of **P. v. State of Uttarakhand [2022 KHC 6634]**, the appellant therein allegedly committed rape on a girl in February 2016. Later, he made a demand for money and refused to marry her when the demand was not met. Later on, he hurled abuses at her and threatened to kill her. A complaint was filed by the victim, which was forwarded for investigation under Section 156(3) Cr. P.C. The Police submitted a Final Report clubbing both the acts alleging offences under Sections 376, 504 and 506 of IPC. On the issue/question, "whether the offences were distinct or not", the Hon'ble Apex Court held that the offences were distinct in nature and those being different offences could be separately charged and tried. Following the decisions in **Mohan Baitha v. State of Bihar (Supra)** and **Anju Chaudhary v. State of U.P. (Supra)**, the Hon'ble Apex Court held that for several offences to be part of the same transaction, the test which

has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action.

14. Upon due consideration of aforesaid, this Court is of the view that the instant application, based upon the provision(s) referred above as also "Doctrine of Double Jeopardy", has no force and being so is liable to be dismissed.

15. The conclusion aforesaid is for the reason that both the offences i.e. offence under Section 13 (1)(d) of PC Act and offence under Section 13 (1)(e) of PC Act are different/distinct and are not of the same transaction and therefore, being different/distinct offences could be separately charged and tried.

16. The aforesaid is evident and established from the following :

(A) Offence indicated under Section 13 (1)(d) of the PC Act relates to illegal gratification/illicit gain.

(B) Offence under Section 13 (1)(e) of the PC Act relates to disproportionate assets.

(C) 'First Case', arising out of Case Crime No. RC0062009A0033, under Section 13 (1)(d) of PC Act was related to illegal gratification/illicit gain.

(D) 'First Case' registered as Case Crime No. RC0062009A0033, under Section 13 (1)(d) of PC Act, concluded vide judgment of conviction of the applicant dated 11.08.2024, was registered on the written complaint of Sumit Kumar Singh on 30.10.2009. According to this complaint illegal demand was made by the applicant.

(E). On 31.10.2009 from the Briefcase of the applicant Rs.70,000/- (tainted notes) were recovered. Phenolphthalein test of the applicant was carried out and 'Trap Memo' was prepared. Thereafter, the Charge Sheet against the applicant was filed under Section 13 (1)(d) of PC Act.

(F) Second Case/Case-in-Issue, arising out of Case Crime No. RC00622010A0010, under Section 13 (1)(e) of PC Act, relates to disproportionate assets accumulated by the applicant during his service period w.e.f. 06.03.1989 (the date of joining the service) and 31.10.2009 (the date of search). Therefore, the separate F.I.R. was lodged, registered as Case Crime No. RC0062010A0010, under Section 13 (1)(e) of PC Act and in this section subsequently the charge-sheet was filed.

(G) To establish/prove the Second Case/Case-in-Issue before the trial court arising out of Case Crime No. RC0062010A0010, under Section 13 (1)(e) of the PC Act, the prosecution, as per charge sheet would produce 48 witnesses including the complainant namely Sri Ajay Kumar Sharma, the then Deputy Superintendent of Police, CBI/ACB, Lucknow, who was not the complainant of Case Crime No. RC0062009A0033, under Section 13 (1)(d) of PC Act.

(H) The complainant of the Case Crime No. RC0062009A0033, under Section 13 (1)(d) of PC Act, was Sunil Kumar Singh, who was examined before the Trial Court and on the basis of whose

complaint the applicant was caught red handed on 31.10.2009 and from the possession of the applicant an amount to the tune of Rs.70,000/- (tainted notes) was recovered.

(I) Other witnesses in Criminal Case No. 17 of 2010, arising out of Case Crime No. RC No.RC0062009A0033, under Section 13 (1)(d) of PC Act, were Santosh Kumar Saraogi, Senior Manager, Punjab National Bank, Circle Office, Lucknow and Saurav Paul, Agriculture Officer, Punjab National Bank, Circle Office, Lucknow (witnesses of recovered amount i.e. Rs.70,000/- from the possession of the applicant on 31.10.2009).

(J) In 'First Case' arising out of Case Crime No.RC0062009A0033, under Section 13 (1)(d) of PC Act, Ajay Kumar Sharma was also an accused and he has been acquitted by the trial court.

(K) The Second Case/Case-in-Issue is only against the applicant.

(L) The time period, set of accused of above indicated both the offences are not same.

(M) The evidence as also the witnesses in both the cases are not same. [See para 10 (ix) of this judgment]

17. Accordingly, the application is **dismissed**. No order as to costs.

(2026) 1 ILRA 297
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.01.2026

BEFORE

THE HON'BLE PRAVEEN KUMAR GIRI, J.

Application U/S 528 BNSS No. 12575 of 2025

Umme Farva

**...Applicant
Versus**

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Matter pertains to whether the learned Judicial Magistrate, in respect of non-cognizable offences under Ss 504 and 507 I.P.C., could take cognizance under S 190(1)(b) Cr.P.C. treating the police report as a state case, without converting the same into a complaint under S 2(d) Explanation Cr.P.C. (corresponding S 2(1)(h) Explanation BNSS) and without affording opportunity of hearing under S 223 first proviso BNSS. (Paras 23-31, 42)

Headnotes

Criminal Procedure - Non-cognizable offence - Ss 504 and 507 I.P.C. - Punishable up to two years - Summons case - Registration of F.I.R. instead of N.C.R. – Improper - Police report in non-cognizable case - To be treated as complaint under S 2(d) Explanation Cr.P.C. - Magistrate required to take cognizance under S 190(1)(a) Cr.P.C. - Not under S 190(1)(b) - Protest petition - If fulfilling requirements of complaint - Magistrate may treat as complaint - Procedure under Ss

200 and 202 Cr.P.C. applicable - Final Report (Closure Report) - If submitted exonerating accused - I.O. under obligation to file complaint under Ss 177 and 182 IPC (corresponding Ss 212 and 217 BNS) - S 195(1)(a) Cr.P.C. compliance mandatory - Police Regulations - Mandatory registration of F.I.R. or N.C.R. - Paragraphs 97, 102, and 103 of U.P. Police Regulations - Failure to follow procedure violates Article 21 Cognizance - Must be in accordance with procedure established by law - BNSS applicability - Cognizance on pending investigation on or after 01.07.2024 to be taken as per BNSS. (E-7)

Held: The Judicial Magistrate “erroneously passed cognizance-cum-summoning order under S 506 and 507 IPC for a non-cognizable offence in derogation of the provisions of Cr.P.C.” and “neither converted the police report disclosing ‘non cognizable offence’ into ‘complaint’ as per the provision of Explanation to S 2(d) of Cr.P.C. nor took cognizance under S 190(1)(a) Cr.P.C.” but “took cognizance under S 190(1)(b) Cr.P.C. and summoned the applicant without affording him an opportunity of hearing provided under First Proviso of S 223 BNSS” - The impugned cognizance-cum-summoning order dated 23.10.2024 is quashed and set aside - Matter remanded to the learned Judicial Magistrate to pass fresh order in accordance with law after providing opportunity of hearing to the accused - Judicial Magistrates/Courts directed that in case final report/closure report is submitted in favour of accused, written complaint under S 195(1)(a) Cr.P.C. (corresponding S 215(1)(a) BNSS) for offences under Ss 177 and 182 IPC (corresponding Ss 212 and 217 BNS) must also be filed. (Paras 42, 44, 45 - 48)

Case Law Cited

State of Punjab vs. Raj Singh and another, (1998) 2 SCC 391; Bhagwant Singh vs. Commissioner of Police and Another, (1985) 2 SCC 537; Vishnu Kumar Tiwari, (2019) 8 SCC 27; Mukhtar Zaidi v. The State of Uttar Pradesh and Another, (2024) 4 S.C.R. 655; Deepu and Ors. v. State of U.P. and Ors., (2024) 8 ILRA 903; Prempal and others v. State of U.P. and another, Application U/S 528 BNSS No.1624 of 2025

List of Acts

Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023; Indian Penal Code, 1860; Bharatiya Nyaya Sanhita, 2023; Constitution of India

List of Keywords

Non-cognizable offence; Police report; Final report; Closure report; Protest petition; Cognizance; S 2(d) Explanation; S 190(1)(a); S 190(1)(b); S 195(1)(a); S 223 BNSS; Article 21; Summons case; Abuse of process; Complaint case.

Case Arising From

ORIGINAL JURISDICTION: Application U/S 528 BNSS No. 12575 of 2025 — Challenge to cognizance/summoning order dated 23.10.2024 in Misc. Case No. 750/12/2024 arising out of Case Crime No. 1004/2023, Police Station-Kwarsi, District-Aligarh.

Appearances for Parties

Advs. for the Appellant:

Mr. Satish Kumar Dubey, Mr. Manoj Kumar Pandey

Advs. for the Respondents:

Mr. Najam Uz Zaman Khan, Sri Pankaj Kumar Tripathi

(Delivered by Hon’ble Praveen Kumar Giri, J.)

1. Heard Mr. Satish Kumar Dubey, Advocate holding brief of Mr. Manoj Kumar Pandey, learned counsel for the applicant, Mr. Najam Uz Zaman Khan, learned counsel for O.P. No.2 and Sri Pankaj Kumar Tripathi, learned A.G.A. for the State.

2. Learned counsel for the applicant submits that he has filed the instant application under Section 528 BNSS (Corresponding Section 482 Cr.P.C.) with the relief which has been mentioned in the prayer clause of the application.

3. The **relief** which has been mentioned in the application is delineated below:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the impugned Cognizance/summoning order dated 23.10.2024 including the entire proceedings of Misc. Case No. 750/12//2024 (Dr. Mahmood Alam Khan vs. Umme Farva and others) pending in the Court of Chief Judicial Magistrate, Aligarh arising out of Case Crime No. 1004/2023, Under Sections 506, 507 IPC registered at Police Station-Kwarsi, District-Aligarh."

4. **The brief facts of this case as per the First Information Report is that** the Informant/O.P. no.2 was working as a Research Professor in the year 2020 at Hanyang University, Seoul. Wife of informant (i.e. present applicant) was living in a live-in-relationship with one Afzan Khan, a resident of Chongiu University, Korea. When the informant came to know about this relationship, he complained to Korea Police on the one hand and also took exception to his wife, then she took divorce from the informant and as per Sharia, their relationship ended. In order to save the future and career of his elder child, the informant left his job and filed a case for guardianship in the Family Court, Aligarh under the Guardians and Wards Act on 05.02.2021, which is still pending. Further allegation in the FIR is that, wife of the informant and her live-in partner are using facebook for defaming the informant and his daughter by uttering unwarranted, uncalled for and filthy language towards them. The accused have also threatened the informant, not to come or live in India, otherwise he would be eliminated.

5. The opposite party No. 2 (Husband) lodge First Information Report as Case Crime No.1004 of 2023 under section 504, 507 IPC, Police Station-Kwarsi, District-Aligarh against the applicant-accused (wife).

6. **Learned counsel for the applicant submits** that the applicant, who happens to be wife of O.P. no.2, has never committed any offence, as alleged against her in the FIR, but she has been implicated in this case, as well as other cases due to malafide intention, just to harass her and no reason. He submits that marriage of the applicant was solemnized with O.P. no.2 according to Islamic rites and rituals on 14.04.2008 and just thereafter, O.P. no.2 has started harassing her and she was also subjected to various kinds of cruelty. He next submits that, even after birth of a son, within the wedlock, even then the behaviour of O.P. no.2 did not improve, so the applicant-wife was not happy with the husband i.e. O.P. no. 2 . He submits, that O.P. no.2 even ousted the applicant from her in-laws house, so she was left with no choice, but to reside in her parental house. He submits that, when the applicant started living at her parental home, the O.P. no.2 has filed several complaints against her, on the basis of false allegations and the present criminal proceedings is also outcome of one of those cases. He submits that during course of investigation, when no evidence was found showing involvement of the applicant in the alleged crime, the concerned Investigating Officer submitted final report (closure report) on 19.06.2024 before concerned Judicial Magistrate. Thereafter, O.P. no.2 filed a protest petition on 22.10.2024 and the

concerned Magistrate allowed the protest petition and rejected the final report dated 19.06.2024 and took cognizance under section 190(1)(b) Cr.P.C. and proceeded as State case, vide order dated 23.10.2024, under section 504, 507 IPC, which has been challenged along with the entire proceedings of the case in this application. He submits that the learned Magistrate has failed to appreciate the evidence collected during course of investigation in its right perspective and has passed the cognizance-cum-summoning order, in an arbitrary manner and against the provision of law, which is liable to be quashed and set aside.

7. **Per contra, learned counsel appearing on behalf of O.P. no.2 submits** that, there is no illegality or infirmity in the cognizance-cum-summoning order passed by learned Magistrate and warrants no interference by this Court. He submits that O.P. no.2 has filed protest petition against the final report submitted by the concerned I.O. in the matter and the learned Magistrate, after appreciation of evidence collected during the course of investigation, has found, that a prima facie case is made out against the applicant and has passed the said order, which suffers from no illegality or impropriety in any manner whatsoever.

8. **Learned Additional Government Advocate** has adopted the arguments advanced by learned counsel for O.P. No.2 and argued more or less on the similar lines. He further submits that the learned Magistrate has passed the impugned order after properly appreciating the evidence collected during the investigation and hence no interference is required by this Court in the ongoing criminal proceedings against the applicant.

9. Heard learned counsels appearing on behalf of both sides and perused the entire record, and took into consideration the provision of law as law laid down by Hon'ble Supreme Court and High Courts.

10. It has come on record that the O.P. No. 2, husband of the applicant, gave information to the police, regarding the incident dated 28.09.2023. The Station House Officer (S.H.O.) of Police Station- Kwarsi, District- Aligarh registered the First Information Report on 28.09.2023, as Case Crime No. 1004/2023, under Sections 504 and 507 I.P.C. (Corresponding Sections 352 and 351(4) BNS).

11. The law provides that under **Section 504 I.P.C.**, the maximum imprisonment is two years or fine or both, which is **non-cognizable**, bailable and triable by any Magistrate. So far as, **Section 507 I.P.C.** is concerned, that is also **non-cognizable**, bailable and triable by the First Class Magistrate. In **both sections**, the punishment is **upto two years**, therefore, it is a summons case rather than a warrant case. The S.H.O. of the police station, rather than treating it as non-cognizable report under Section 155 Cr.P.C., (Corresponding Section 174 BNSS) registered as First Information Report (F.I.R.) under Section 154 Cr.P.C., (Corresponding Section 173 BNSS) treating the same as cognizable offence, by misusing the process of law, right from the beginning of the case.

12. The police officer is under an obligation as per paragraph No. 97, 102 and 103 U.P. Police Regulations to register an F.I.R. or N.C.R. in accordance with law, as prescribed under the Code of Criminal Procedure. Otherwise, it will amount to violation of not only the provision mentioned in

the Cr.P.C., but also the fundamental right, enshrined under Article 21 of the Constitution i.e. "no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law."

13. The paragraphs 97, 102 and 103 of the U.P. Police Regulations are being quoted below:

"97. Whenever information relating to the commission of a cognizable offence is given to an officer-in-charge of a police station the report will immediately be taken down in triplicate in the check receipt book for reports of cognizable offences (Police Form No. 341). The step will on no account be delayed to allow time for the true facts to be ascertained by a preliminary investigation. Even if it appears untrue, the report must be recorded at once. If the report is made orally, the exact words of the person who makes it, including his answers to any questions put to him should be taken down and read over to him; he must sign each of the three parts, or if he cannot write, he must make his mark or thumb-impression. If a written report is received an exact copy must be made, but the signature or mark of the messenger need not be taken. In all cases the officer-in-charge of the station must sign each of the three parts and have the seal of the station stamped on each. The triplicate copy will remain in the book; the duplicate copy will be given to the person who makes the oral or brings the written report; the original will be sent forthwith through the Superintendent of Police to the Magistrate having jurisdiction with the original written report (if any) attached.

The practice of delaying first information reports until they can be sent to headquarters attached to special or general diaries is contrary to the provisions of Criminal Procedure Code and is prohibited.

If there is an Assistant or Deputy Superintendent incharge of the subdivision, and stationed at a place other than the headquarters of the district, the original should be sent through him to the Magistrate.

x x x x

102. When a report is made of a non-cognizable offence, the important portion of the report should be recorded in the check receipt book for reports of non-cognizable offence (Police Form NO. 347). The informant should be required to sign or affix his mark to each of the two copies. The duplicate copy should be given to him, the original remaining in the book. The substance of the report should be entered in the general diary, and, if the report is in writing, the proper containing should be attached to the diary. The informant should also be referred to the Magistrate, as required by Section 155 of the Code of Criminal Procedure, 1973 (2 of 1974).

103. The responsibility imposed on the officer-in-charge of police station by Section 154 and 155(1) of the Code of Criminal Procedure, 1973 (2 of 1974) or non-cognizable, will be enforced, and he must countersign all reports of either kind recorded."

14. In this case, the Investigating Officer, investigated the matter and found that, no case has been made out against the wife/accused-applicant under Sections 504 and 507 I.P.C., and thereafter, he prepared the **police report/final report** (closure report) on 19.06.2024 under Section 173(2) Cr.P.C. (Corresponding Section 193(3) BNSS) and submitted the report in the court of Magistrate, without a written complaint of offence committed under Section 177 and 182 IPC

(Corresponding Section 212 and 217 Bharatiya Nyaya Sanhita, 2023) in respect of furnishing false information, as provided under Section 195(1)(a) Cr.P.C. (Corresponding Section 215(1)(a) Bharatiya Nagarik Suraksha Sanhita, 2023).

15. Sections 177 and 182 IPC (Corresponding to sections 212 and 217 of B.N.S.) cannot be made redundant, that is to say that, in case any false information is furnished with intent to cause public servant to use his lawful power to injury of another person, the Investigating Officer shall also prepare a police report in form of complaint as provided/required under Section 195(1)(a) Cr.P.C. (corresponding Section 215(1)(a) BNSS). Thus, giving a false information to police to lodge an **F.I.R. or N.C.R.** attracts offence provided under Section 177 and 182 IPC (corresponding Section 212 and 217 BNS) and if after investigation, the Investigating Officer finds that no such incident occurred as alleged in the F.I.R. or N.C.R., the Investigating Officer is under statutory obligation, not only to submit a final report/closure report but also to submit a report of offence of Section 177 and 182 IPC (corresponding Section 212 and 217 BNS) in form of complaint as provided, under Section 195(1)(a) Cr.P.C. (corresponding Section 215(1)(a) of BNSS) for taking cognizance. Otherwise, the concerned police officers are liable for committing an offence as mentioned under Section 199 (b) BNS (corresponding Section 166A(b) of Cr.P.C.). The Section 199 BNS is delineated below :-

Section. 199 Public servant disobeying direction under law.-

Whoever, being a public servant-

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter; or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation; or

(c) fails to record any information given to him under sub-section (1) of section 174 of the Bhartiya Nagarik Suraksha Sanhita, 2023 in relation to cognizable offence punishable under section 64, section 65 section 66, section 67, section 68, section 71, section 73, section 76, section 122 or section 141 or section 142, shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

16. The learned Judicial Magistrate shall not accept the Final Report, if the same is not accompanied with a written complaint, under Section 177 and 182 I.P.C. (corresponding Section 212 and 217 BNS). The proceedings can only be initiated upon the filing of a proper complaint, in line with the principle analogous to the Section 195(1)(a) CrPC. (Corresponding Section 215 (1) (a) BNSS). Section 177 and 182 of IPC (Corresponding Sections 212 and 217 BNS) and Section 195 (1) Cr.P.C. (Corresponding Section 215 (1) BNSS) are being reproduced below :-

“Section 177 I.P.C. Furnishing false information.-Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both. "

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***"Section 182 I.P.C. False information, with intent to cause public servant to use his lawful power to the injury of another person-*Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such public servant-**

(a). to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b). to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. "

x

x

x

x

***Section. 212 of B.N.S. Furnishing false information.-*Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false,-**

(a). shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both;

(b). where the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

x

x

x

x

***Section 217 of B.N.S.- False information, with intent to cause public servant to use his lawful power to injury of another person-* Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant –**

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him; or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

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Section 195(1) Cr.P.C. No Court shall take cognizance-

(a) (i) of any offence punishable under sections **172 to 188** (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence,

Except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections **193 to 196** (both inclusive), **199, 200, 205 to 211** (both inclusive) and **228**, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section **463**, or punishable under section **471**, section **475** or section **476**, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence **in a proceeding in any Court**, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

Except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

x

x

x

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Section 215 (1) BNSS - No Court shall take cognizance –

(a) (i) of any offence punishable under sections 206 to 223 (both inclusive but excluding section 209) of the Bharatiya Nyaya Sanhita, 2023; or

(ii) of any abetment of, or attempt to commit, such offence; or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate or of some other public servant who is authorised by the concerned public servant so to do;

(b) (i) of any offence punishable under any of the following sections of the Bharatiya Nyaya Sanhita, 2023, namely, sections **229 to 233** (both inclusive), **236, 237, 242 to 248** (both inclusive) and **267**, when such offence is alleged to have been committed in, or in relation to, **any proceeding in any Court**; or

(ii) of any offence described in sub-section (1) of section **336**, or punishable under sub-section (2) of section **340** or section **342** of the said Sanhita, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court; or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

17. As per the judgment of the Hon'ble Supreme Court passed in **State of Punjab vs. Raj Singh and another, (1998) 2 Supreme Court Cases 391**, though under Section 173 of the B.N.S.S. (corresponding Section 154 of the Cr.P.C.) an F.I.R. can be registered under section 172 to 188 I.P.C. (Corresponding section 206 to 223 of B.N.S., excluding Section 209 B.N.S. (Corresponding Section 174A IPC) and thereafter investigation can be done but chargesheet cannot be submitted in the above sections after conclusion of investigation, even if offence is made out against the alleged accused persons, while a written complaint shall be filed by the concerned police officer as required under Section 195 of the Cr.P.C. (corresponding Section 215 of the B.N.S.S.). The relevant paragraph of the said judgment is quoted below:-

"2. We are unable to sustain the impugned order of the High Court quashing the F.I.R. lodged against the respondents alleging commission of offences under Sections 467 and 468 I.P.C. by them in course of the proceeding of a civil suit, on the ground that Section 195 (1) (b) (ii) Cr.P.C. prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 Cr.P.C. it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1) Cr. P.C.; and it has nothing to do with the statutory power of the police to investigate into an F.I.R. which discloses a cognisable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in Court. In other words, the statutory power of the Police to investigate under the Code is not in any way controlled or circumscribed by Section 195 Cr.P.C. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the Court would not be competent to take cognizance thereof in view of the embargo of Section 195(1) (b) Cr. P. C., but nothing therein deters the Court from filing a complaint for the offence on the basis of the F.I.R. (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in section 340 Cr. P.C. The judgment of this Court in Gopal Krishna Menon and Anr. Vs. D. Raja Reddy [AIR 1983 SC 1053], on which the High Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the Civil Court and hence it was held that the Court could not take cognizance on such a complaint in view of Section 195 Cr. P. C."

18. The offence is always against the State therefore, if the Investigating Officer is submitting police report/final report(closure report) under section 193(3) BNSS (corresponding Section 173(2) Cr.P.C.), he shall also submit police report in form of written complaint under section 212 and 217 BNS (Corresponding Sections 177 and 182 IPC), against the informant and witnesses. **The format of police report, in form of written complaint** under section 212 and 217 BNS (Corresponding Sections 177 and 182 IPC) as provided under Section 215(1)(a) BNSS (Corresponding Section 195(1)(a) Cr.P.C.), in case of false information, to police to use his lawful power to injury any person, **in Hindi language as well as in English language** are delineated below :-

प्रारूप

न्यायालय श्रीमान मुख्य न्यायिक मजिस्ट्रेट /विशेष न्यायालय, जिला

परिवाद संख्या वर्ष 20.....

(अंतर्गत धारा 2(1)(ज), 210 (1) (क), 215 (1) (क), 223, 225 भारतीय नागरिक सुरक्षा संहिता)

(समतुल्य अंतर्गत धारा 2(घ), 190(1)(क), 195 (1)(क), 200, 202 द० प्र० स०)

अभियोग अंतर्गत धारा 212 एवं 217 भारतीय न्याय संहिता , 2023 चलाने के संबंध में

(समतुल्य धारा 177 एवं 182 भा० द० स०)

प्रकरण में:

राज्य द्वारा, विवेचक अधिकारी के माध्यम से (नाम; पद: थाना)

..... परिवादी / विवेचक

बनाम

अभियुक्त/सूचनाकर्ता एवं अन्य का नाम (जिसने झूठी जानकारी उपलब्ध कराई) एवं पूर्ण पता

..... प्रतिवादीगण /अभियुक्तगण / सूचनाकर्ता एवं साक्षीगण

महोदय,

अत्यंत विनम्र निवेदन है कि:

1. यह कि वर्तमान परिवाद पत्र/प्रार्थना पत्र प्रार्थी (विवेचक) द्वारा भारतीय न्याय संहिता की धारा 212 एवं 217 (समतुल्य धारा 177 एवं 182 भारतीय दंड संहिता) के अंतर्गत, प्रथम सूचना रिपोर्ट दर्ज कराने वाले वादी एवं अन्य व्यक्तियों के विरुद्ध विधिक कार्यवाही हेतु प्रस्तुत किया जा रहा है, क्योंकि वादी ने झूठी जानकारी/तथ्यों/प्रपत्रों के आधार पर प्रथम सूचना रिपोर्ट (F.I.R एवं N.C.R.)(मुकदमा अपराध संख्या _____, वर्ष __, धारा _____, थाना _____, जनपद _____), दर्ज कराकर, उसमें वर्णित अभियुक्तगण के विरुद्ध पुलिस अधिकारी (लोक सेवक) से उसकी वैधानिक शक्तियों का दुरुपयोग करार कर क्षति पहुंचाया ।

2. यह कि उक्त प्रथम सूचना रिपोर्ट (संज्ञेय/असंज्ञेय अपराध) दिनांक _____ को मुकदमा अपराध संख्या__सन__अंतर्गत धारा____ थाना _____ भारतीय न्याय संहिता के अंतर्गत श्री _____ एवं अन्य व्यक्तियों के विरुद्ध, प्रतिवादी/सूचनादाता द्वारा लगाए गए आरोपों के आधार पर पंजीकृत की गई थी, जो विवेचना उपरांत असत्य पाई गई। तदोपरांत उसमें अंतिम आख्या तैयार कर न्यायालय भेजी जा रही है ।

3. यह कि विस्तृत विवेचना उपरांत यह तथ्य स्पष्ट हुआ कि प्रतिवादी द्वारा लगाए गए समस्त आरोप पूर्णतः असत्य, निराधार एवं दुर्भावनापूर्ण थे, जिन्हें केवल नामजद व्यक्तियों को क्षति पहुँचाने के आशय से दर्ज कराया गया था। (तथ्य संलग्नित केस डायरी में उपलब्ध है)

4. यह कि विवेचना से निम्नलिखित तथ्य प्रतिपन्न हुए-

(i) प्रतिवादी द्वारा दिनांक _____ समय__ बजे को स्थान _____ पर घटना ----- घटित होना नहीं पाया गया।

(ii) स्वतंत्र गवाहों के कथन प्रतिवादी/ सूचनाकर्ता के कथन को पूर्णतःअस्वीकार करते हैं।

(iii) विवेचना के दौरान संकलित अभिलेखीय साक्ष्य प्रथम सूचना रिपोर्ट में लगाए गए आरोपों का खंडन करते हैं।

(iv) प्रतिवादी की नामजद व्यक्तियों से पूर्ववर्ती शत्रुता थी, जो गवाहों के कथनों से स्पष्ट होता है।

(v) प्रतिवादी द्वारा दुर्भावनापूर्ण उद्देश्य से असत्य जानकारी के आधार पर प्रथम सूचना रिपोर्ट (FIR/NCR) दर्ज कराया गया।

5. यह कि उपर्युक्त तथ्यों के आधार पर, दिनांक .././20... को अंतिम आख्या (Closure Report) इस माननीय न्यायालय के समक्ष प्रस्तुत किया जा रहा है, जिसमें यह निष्कर्ष निकाला गया है कि प्रथम सूचना रिपोर्ट (F.I.R./N.C.R.) असत्य एवं दुर्भावनापूर्वक संस्थापित की गई थी।

6. यह कि प्रतिवादी का आचरण स्पष्ट रूप से भारतीय न्याय संहिता के प्रावधानों के अंतर्गत, धारा 212 एवं 217 (धारा 177 एवं 182 भारतीय दंड संहिता) के अंतर्गत अपराध की श्रेणी में आता है। उपरोक्त धाराएं निम्नवत उद्धृत किया जा रहा है :-

भारतीय न्याय संहिता की धारा 212. मिथ्या सूचना देना- जो कोई, किसी लोक सेवक को, ऐसे लोक सेवक के नाते, किसी विषय पर सूचना देने के लिए विधिक रूप से आबद्ध होते हुए, उस विषय पर सच्ची सूचना के रूप में ऐसी सूचना देता है, जिसका मिथ्या होना वह जानता है या जिसके मिथ्या होने का विश्वास करने का कारण उसके पास है.- (क) वह सादा कारावास से, जिसकी अवधि छह मास तक की हो सकेगी, या जुर्माने से जो पांच हजार रुपए तक का हो सकेगा, या दोनों से, दंडित किया जाएगा;

(ख) वह सूचना, जिसे देने के लिए वह विधिक रूप से आबद्ध है, कोई अपराध किए जाने के विषय में हो, या किसी अपराध के किए जाने का निवारण करने के प्रयोजन से, या किसी अपराधी को पकड़ने के लिए अपेक्षित हो, तो वह दोनों में से, किसी भांति के कारावास से, जिसकी अवधि दो वर्ष तक की हो सकेगी, या जुर्माने से, या दोनों से, दंडित किया जाएगा ।

भारतीय न्याय संहिता की धारा 217- इस आशय से मिथ्या सूचना देना कि लोक अपनी सेवक विधिपूर्ण शक्ति का उपयोग दूसरे व्यक्ति को क्षति करने के लिए करे - जो कोई, किसी लोक सेवक को कोई ऐसी सूचना, जिसके मिथ्या होने का उसे ज्ञान या विश्वास है, इस आशय से देता है कि वह उस लोक सेवक को प्रेरित करे या यह सम्भाव्य जानते हुए देता है कि वह उसको उसके द्वारा प्रेरित करेगा कि वह लोक सेवक-

(क) कोई ऐसी बात करे या करने का लोप करे जिसे वह लोक सेवक, यदि उसे उस संबंध में, जिसके बारे में ऐसी सूचना दी गई है, तथ्यों की सही स्थिति का पता होता तो न करता या करने का लोप न करता; या

(ख) ऐसे लोक सेवक की विधिपूर्ण शक्ति का उपयोग करे जिस उपयोग से किसी व्यक्ति को क्षति या क्षोभ हो,

वह दोनों में से, किसी भांति के कारावास से, जिसकी अवधि एक वर्ष तक की हो सकेगी, या जुर्माने से, जो दस हजार रुपए तक का हो सकेगा, या दोनों से, दंडित किया जाएगा ।

7. यह कि भारतीय नागरिक सुरक्षा संहिता, 2023 की धारा 215(1)(a), (समतुल्य धारा 195(1)(क) भारतीय प्रक्रिया संहिता) की धारा के अधीन, कोई भी न्यायालय उक्त अपराधों का संज्ञान तब तक नहीं लेगा, जब तक कि संबंधित लोक सेवक द्वारा लिखित रूप में शिकायत प्रस्तुत न की जाए।

भारतीय नागरिक सुरक्षा संहिता की धारा 215(1) को निम्नवत उद्धृत किया जा रहा है:-

भारतीय नागरिक सुरक्षा संहिता की धारा 215 (1) कोई न्यायालय, -

(क) (i) भारतीय न्याय संहिता, 2023 की धारा 206 से धारा 223 (जिनके अंतर्गत धारा 209 के सिवाय ये दोनों धाराएं भी हैं) के अधीन दंडनीय किसी अपराध का या

(ii) ऐसे अपराध के किसी दुष्प्रेरण या ऐसा अपराध करने के प्रयत्न का; या

(iii) ऐसा अपराध करने के लिए किसी आपराधिक षड्यंत्र का,

संज्ञान संबद्ध लोक सेवक के, या किसी अन्य ऐसे लोक सेवक के, जिसके वह प्रशासनिक तौर पर अधीनस्थ है या कोई अन्य लोक सेवक जो संबद्ध लोक सेवक द्वारा ऐसा करने के लिए प्राधिकृत है, लिखित परिवाद पर ही करेगा, अन्यथा नहीं:

(ख) (i) भारतीय न्याय संहिता, 2023 की निम्नलिखित धाराओं अर्थात् धारा 229 से धारा 233 (जिनके अंतर्गत ये दोनों धाराएं भी हैं), धारा 236, धारा 237, धारा 242 से धारा 248 (जिनके अंतर्गत ये दोनों धाराएं भी हैं) और धारा 267 से किन्हीं के अधीन दंडनीय किसी अपराध का, जब ऐसे अपराध के बारे में यह अभिकथित है कि वह किसी न्यायालय में की कार्यवाही में या उसके संबंध में किया गया है; या

(ii) उक्त संहिता की धारा 336 की उपधारा (1) में वर्णित या धारा 340 की उपधारा (2) या धारा 342 के अधीन दंडनीय अपराध का, जब ऐसे अपराध के बारे में यह अभिकथित है कि वह किसी न्यायालय में की कार्यवाही में प्रस्तुत किए गए या साक्ष्य में दिए गए किसी दस्तावेज के बारे में किया गया है; या

(iii) उपखंड (i) या उपखंड (ii) में विनिर्दिष्ट किसी अपराध को करने के लिए आपराधिक षड्यंत्र या उसे करने के प्रयत्न या उसके दुष्प्रेरण के अपराध का, संज्ञान ऐसे न्यायालय के, या न्यायालय के ऐसे अधिकारी के, जिसे वह न्यायालय इस निमित्त लिखित रूप में प्राधिकृत करे या किसी अन्य न्यायालय के, जिसके वह न्यायालय अधीनस्थ है लिखित परिवाद पर ही करेगा अन्यथा नहीं।

गवाहों की सूची

निम्नलिखित व्यक्तियों को प्रतिवादी की मिथ्या एवं दुर्भावनापूर्ण मंशा को सिद्ध करने हेतु अभियोजन पक्ष के गवाह के रूप में स्वीकार किए जाने की प्रार्थना है

1. पी० डब्ल्यू-1: श्री -----[विवेचक (परिवादी) प्रथम सूचना रिपोर्ट] परिवादी स्वयं/विवेचना अधिकारी - अंतिम रिपोर्ट एवं संपूर्ण अन्वेषण श्रृंखला को सिद्ध करने हेतु।

2. पी.डब्ल्यू.-2: श्री _____ (प्रथम सूचना रिपोर्ट में झूठा फँसाया गए अभियुक्तगण ।

3. पी.डब्ल्यू.-3: श्री ____ (स्वतंत्र गवाह/पड़ोसी) - यह सिद्ध करने हेतु कि कथित घटना कभी घटित ही नहीं हुई।

4. पी.डब्ल्यू.-4: श्री ____ (संबंधित अभिलेखीय दस्तावेजों के संरक्षक, जैसे - शासकीय अभिलेख/सीसीटीवी इत्यादि) - प्रतिवादी के कथन की असत्यता सिद्ध करने हेतु।

पी.डब्ल्यू.-5: श्री ____ (सहायक पुलिस अधिकारी/अन्वेषण दल का सदस्य) - अन्वेषण कार्यवाही को सिद्ध करने हेतु।

(यह सूची उदाहरणार्थ है तथा आवश्यकता पड़ने पर अन्य गवाह भी जाँच/विचारण की कार्यवाही के दौरान प्रस्तुत किए जा सकते हैं।)

प्रार्थना

उपर्युक्त तथ्यों एवं परिस्थितियों के आधार पर, माननीय न्यायालय से विनम्र प्रार्थना है कि कृपया -

1. इस आवेदन को संपूर्ण केस डायरी सहित, भारतीय न्याय संहिता की धारा 212 एवं 217 (धारा 177 एवं 182 भारतीय दंड संहिता) के अंतर्गत एक परिवाद (शिकायत) के रूप में ग्रहण किया जाए एवं धारा 210 (1) (क) भारतीय नागरिक सुरक्षा संहिता, 2023 (समतुल्य धारा 190 (1) (क) द० प्र० स०) में संज्ञान लेते हुए धारा 227 भारतीय नागरिक सुरक्षा संहिता, 2023 (समतुल्य धारा 204 द० प्र० स०) में तलब कर दण्डित किया जाय।

2. उपर्युक्त उल्लिखित साक्षियों की सूची अभिलेख पर लिया जाए तथा उपरोक्त गवाहों को धारा 223 एवं 225 भारतीय नागरिक सुरक्षा संहिता, 2023 के तहत गवाही से अवमुक्त किया जाय जैसा कि धारा 223 (second Proviso) भारतीय नागरिक सुरक्षा संहिता, 2023 में वर्णित है

3. न्यायहित में इस माननीय न्यायालय को जो अन्य आदेश/आदेशावली उचित एवं आवश्यक प्रतीत हो, वह पारित करने की कृपा करें।

परिवादी

दिनांक :----

(विवेचक अधिकारी

अ०स०..सन ..धारा _)

नाम :-

पद :-

थाना :----- जिला :-----

मोबाइल :-

सत्यापन

मैं, श्री _____, पुत्र श्री _____, जनपद _____ वर्तमान में थाना _____, पर नियुक्त, इस बात का सत्यापन करता हूँ कि उपर्युक्त परिवाद पत्र के विषय तथ्य वस्तु मेरी व्यक्तिगत

जानकारी, की गई विवेचना एवं संधारित अभिलेखों के आधार पर सही एवं सत्य है। इसमें कोई भी महत्वपूर्ण तथ्य गोपित नहीं रखा गया है।

यह सत्यापन मैंने _____ में आज दिनांक ____ 20__ को किया।

परिवादी /विवेचक

नाम: _____

पद: _____

थाना: _____ जिला: _____

परिशिष्टों की सूची

क्र. सं.	अभिलेख का विवरण	परिशिष्ट संख्या
1.	वाद अपराध सं० थाना का प्रथम सूचना रिपोर्ट (एफ.आई.आर.) की प्रतिलिपि संपूर्ण केस डायरी सहित।	परिशिष्ट-
2.	विवेचक द्वारा दिनांक को तैयार अन्तिम आख्या/समापन प्रतिवेदन	परिशिष्ट-
3.	अन्य कोई प्रासंगिक अभिलेख	परिशिष्ट

FORMAT:

In the Court of Chief Judicial Magistrate/ Special Court, District.....

Complaint Case No.....Year.....

(Under sections 2(1)(h), 210 (1) (a), 215 (1)(a), 223 B.N.S.S.)

(Corresponding to Sections 2(d), 190(1)(a), 195 (1), 200 Cr.P.C.)

(To Prosecute under section 212 and 217 OF B.N.S)

(Corresponding to Section 177 and 182 I.P.C)

In the matter of:

State Through Investigating Officer.....(Name; Rank;Police Station)

.....Applicant/Complainant

Versus

[Accused person/ Informant and others witnesses Name (i.e. furnished False informant) and full Address]

..Respondents

SIR,

IT IS MOST RESPECTFULLY SUBMITTED:-

1. **That** the present Complaint is being filed by the Complainant/Investigating Officer of the First information Report/Non-Cognizable report registered as Case Crime No._____,Year_____, Under section _____,Police Station _____, District _____, against the opposite

parties/informant and witnesses of the first information report for giving false information to the public servant /police to use his lawful power to cause injury to the alleged accused persons of the F.I.R.

2. **That** the FIR/NCR was registered on date _____ as case crime no. _____ year _____ under Sections _____ BNS, Police Station _____ District _____ against Shri _____ S/o _____ Address _____ and others, based on allegations made by Shri _____, Shri _____ (opposite parties/informant and witness)-, which was found false after investigation.

3. **That** upon thorough investigation, it was found that the allegations made in the FIR were false, frivolous and malicious, and lodged only with an intent to cause injury to the persons named in the FIR/NCR (The entire material is available in the annexed case diary).

4. **That** the investigation revealed the following material facts:

(i) *The incident, as alleged by the respondent to have occurred on _____ at _____, which never took place.*

(ii) *The statements of independent witnesses clearly negate the version of the respondent/informant.*

(iii) *Documentary records collected during investigation contradict the allegations in the FIR.*

(iv) *The respondent had previous enmity with the named persons, which is evident from witness statements.*

(v) *The Respondents lodged FIR on the false information with ulterior motive.*

5. **That** in view of the investigation, the Final Report/Closure Report dated --/--/20-- has been submitted before this Court, concluding that the FIR was false and maliciously instituted against the accused of the F.I.R.

6. **That** the conduct of the informant and witness squarely attracts the offence as provided under sections 212 and 217 of Bhartiya Nyaya Sanhita, 2023 (Corresponding sections 177 and 182 of the Indian Penal Code),: The Sections are quoted herein below:-

Section 212 BNS. Furnishing false information.-Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false,-

(a) *shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both;*

(b) *where the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

Section 217 BNS False information, with intent to cause public servant to use his lawful power to injury of another person- Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

7. That under Section **215(1)(a) B.N.S.S.** (Corresponding section 195(1)(a)(i) Cr.P.C.), no Court shall take cognizance of the offences mentioned under sections 212 and 217 of BNS (Corresponding sections 177 and 182 of I.P.C.) **except on the complaint in writing of the public servant concerned.**

Section 215(1) B.N.S.S (Corresponding to section 195(1) of Cr.P.C.) is being quoted below:

Section 215 (1) BNSS - No Court shall take cognizance –

(a) of any offence punishable under **sections 206 to 223** (both **inclusive but**

(i) excluding section 209) of the Bharatiya Nyaya Sanhita, 2023; or

(ii) of any abetment of, or attempt to commit, such offence; or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate or of some other public servant who is authorised by the concerned public servant so to do;

(b) of any offence punishable under any of the following sections of the

(i) Bharatiya Nyaya Sanhita, 2023, namely, sections **229 to 233** (both inclusive), **236, 237, 242 to 248** (both inclusive) and 267, when such offence is alleged to have been committed in, or in relation to, **any proceeding in any Court**; or

(ii) of any offence described in sub-section (1) of section **336**, or punishable under sub-section (2) of section **340** or section **342** of the said Sanhita, when such offence is alleged to have been committed in **respect of a document** produced or given in **evidence in a proceeding in any Court**; or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

LIST OF WITNESSES

The following witnesses may kindly be treated as prosecution witnesses for proving the falsity and malicious intent of the Opposite parties/Informant and witness.

1. **PW-1:** Shri _____ S/o _____ Address _____ implicated in the FIR with malice complainant/Investigating Officer himself -To prove the final report and entire chain of investigation.

2. **PW-2:** Shri _____ S/o _____ Address _____ (Independent Witness/Neighbour) - To prove that the alleged incident never took place.

3. **PW-3:** Shri _____ (Custodian of relevant documentary records, e.g., official registers/ CCTV etc.) - To prove falsity of respondent-s version.

4. **PW-4:** Shri _____ (Supporting Police Officer / member of investigation team) - To prove the investigation proceedings.
(The list is illustrative and more witnesses may be produced if required during inquiry/trial.)

Prayer

Based on the above-mentioned facts and circumstances, it is respectfully prayed before this Hon'ble Court that:

1. This application, along with the complete case diary, may kindly be accepted as a complaint under sections 212 and 217 of BNS (Corresponding sections 177 and 182 of the Indian Penal Code). And pleased to take cognizance under Section 210(1)(a) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (Corresponding Section 190(1)(a) of the Code of Criminal Procedure) and issue process under Section 227 of the BNSS, 2023 (Corresponding Section 204 of the CrPC), and summon and punish the accused.

2. The list of the above-mentioned witnesses and the accused persons be taken on record and exempt the witnesses to record their statements under section 223 and 225 of BNSS (Corresponding section 200 (proviso) Cr.P.C.) as provided under section 223 (second Proviso) of the BNSS and summon the accused, who gave false information to the police to use his lawful power to cause injury to the alleged accused of the F.I.R.

3. Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the interest of justice.

Date: _____

Complainant

(Investigating Officer)

Name: _____

Rank: _____

Police Station: _____ District:-----

Mobile no.: _____

VERIFICATION

I, Shri _____, son of Shri _____, presently posted as _____ at Police Station _____, District _____, do hereby verify that the contents of the above complaint are true and correct to my personal knowledge, based on the investigation conducted and records maintained. Nothing material has been concealed.

Verified at place _____ on this __ day of ___, 20.

Date:-

Complainant
(Investigating Officer)

Name: _____

Rank: _____

Police Station: _____ District:-----

INDEX OF ANNEXURES

Sr. No.	Particulars of Document	Annexure.No.
1.	True copy of FIR of Case Crime No.--/--, P.S.----- along with entire case diary	Anx. A.
2.	Final Report/Closure Report dated ----20---- prepared by the I.O.	Anx. B.
3.	Any other relevant documents	Anx. C.

19. Under Section 173(2) Cr.P.C. (corresponding section 193(3) of the BNSS), neither the word 'charge-sheet' nor 'final report' or 'closure report' is mentioned, only the term 'Police report' is mentioned after the completion of investigation.

20. The term "police report" used in the CrPC as well as the BNSS refers to the report submitted after completion of investigation under Section 173(2) (corresponding Section 193(3) of the BNSS). If the police report discloses the commission of an offence, then, as per **U.P. Police Regulation, Paragraph 122**, it shall be treated as a chargesheet, to be submitted in Form No. 339. However, if the report does not disclose the commission of any offence, it shall be treated as a final report under Paragraph 122 and submitted in Form No. 340 of the U.P. Police Regulations. **Paragraph 122** of U.P. Police Regulations is quoted below:-

"122. Completion of Investigation and submission of final report or charge sheet should be as soon as possible.- (i) An investigation should be completed as soon as possible and when complete the investigating officer must comply with the provisions of Section 161-171 and 173 of the Code of Criminal Procedure, 1973 (2 of 1974). The report prescribed by Section 173 must under that section be submitted by the officer incharge of the police station under intimation to the Superintendent of Police and should be in the form of chargesheet (Police Form No. 339), if the case is sent for trial and in the form of final report (Police Form No. 340), if the case is not sent for trial. The charge-sheet with the final diary in the cases shall be submitted to the Court through the Circle Officer and the Public Prosecutor and should reach the Court within four weeks of the date of lodging of the first information report in summons and warrants cases and eight weeks in Sessions cases. None of the Circle Officer and the Public Prosecutor should normally retain the charge-sheet for more than a week and the latter should submit it to the Court concerned within the time-limit prescribed. The prescribed time-limit should not be allowed to exceed except for very special reasons.

(ii) *As soon as possible but in any case not later than a month of the expiry of each quarter, the Superintendent of Police shall submit to the District Magistrate, in the prescribed form and in duplicate, a quarterly list of cases in which charge-sheet could not be submitted within the prescribed time-limit of 4/8 weeks. The District Magistrate will forward it to the Range Deputy Inspector General of Police endorsing the other copy with his comments to the Commissioner of the Division. The Range Deputy Inspector General of Police will thereupon compile in the prescribed form, a statement of delayed cases and submit it to the Inspector General of Police who will forward the same to Government in Home Department (Police A) with his comments.*

(iii) *The final report must in all cases be submitted through the Superintendent of Police.*

(iv) *The information as the result of investigation must, as required by Section 173 (i) (b), Criminal Procedure Code, 1973 (2 of 1974) be sent by the officer in charge of the police station to the complainant if any in Police Form No. 47, at the time he submits the charge-sheet or the final report, as the case may be.*

21. In case of false first information report, if a written complaint against the informant and witness under section 215(1)(a) BNSS (corresponding section 195(1) (a) Cr.P.C.) is not filed by the Investigating Officer, under section 212 and 217 BNS (corresponding section 177 and 182 of I.P.C.) for giving false information to the police then it will amount that the Investigating Officer, Station House Officer, Circle Officer of the area and the prosecuting officer concerned are not discharging their official duty and liable to departmental proceedings as well as contempt proceedings.

22. Thus, the expressions 'chargesheet' and 'final report' originates from the U.P. Police Regulations, and not from the CrPC or the BNSS.

23. In this case, the O.P. no.2 (husband of the applicant) filed a protest petition on 22.10.2024 before the court of Chief Judicial Magistrate, Aligarh. The learned Chief Judicial Magistrate accepted the protest petition and took cognizance on the final report (closure report) treating it as a chargesheet of cognizable offence, as well as a State case under Section 190(1)(b) Cr.P.C. (Correspondent Section 210(1)(b) BNSS), while offence under section 504 and 506 I.P.C. is a non-cognizable offence attracts provision of Section 2(d) Explanation Cr.P.C., the same has also been mentioned in the cognizance-cum-summoning order dated 23.10.2024. The operative portion of the order dated 23.10.2024 is delineated below:

"प्रार्थी डा० महमूद आलम खान का प्रोटेस्ट प्रार्थना पत्र स्वीकार किया जाता है। विवेचक द्वारा प्रस्तुत अन्तिम आख्या 225/2024, दिनांकित 19-06-2024 निरस्त की जाती है। अभियुक्तगण उम्मे फारवा व अफजल खान के विरुद्ध धारा 190 (1) (बी) दं०प्र०सं० के अधीन भा०द०सं० की धारा 504, 507 के अन्तर्गत विचारण हेतु संज्ञान लिया जाता है। प्रकरण स्टेट केस के रूप में चलेगा। अभियुक्तगण के लिये नकलें तैयार करायी जायें। अभियुक्तगण जरिये सम्मन नियत दिनांक के लिए तलब हो। पत्रावली वास्ते हाजिरी दिनांक 09-12-2024 को पेश हो।" दिनांक:- 23.10.2024.

24. Learned Chief Judicial Magistrate has taken cognizance on 23.10.2024 under Section 190(1)(b) Cr.P.C. (Corresponding Section 210(1)(b) BNSS to prosecute the applicant/accused-wife under Sections 504 and 507 I.P.C. as a State case rather than complaint as the offence is non-cognizable covered by Section 2(d) Explanation of Cr.P.C. (corresponding section 2(1)(h) Explanation BNSS) and summoned also without providing opportunity of hearing to the accused as provided under section 223 First Proviso of the BNSS as held by a Division Bench of this Court in paragraph 16(iii) of the judgment of Deepu and Ors. v State of U.P. and Ors., (2024) 8 ILRA 903 (Crl. Misc. Writ Petition No.12287 of 2024) that the cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS.

25. As per the provisions of the Code of Criminal Procedure or BNSS, in a case of non-cognizable offence, first of all an N.C.R. is registered under Section 155(1) Cr.P.C. (corresponding section 174(1) BNSS) and as per Section 155(2) Cr.P.C. (corresponding section 174(2) BNSS), the police officer cannot investigate the matter without an order of the Judicial Magistrate of the concerned district. After investigation in an N.C.R., if a charge-sheet is submitted again, under a non-cognizable offence, then as per Section 2(d) Explanation of Cr.P.C. [Corresponding Section Explanation to Section 2(1)(h)], the charge-sheet shall be treated as a complaint and the Investigating Officer shall be treated as the complainant and the learned Judicial Magistrate, then has to take cognizance under Section 190(1)(a) Cr.P.C. [Corresponding Section 210 (1)(a)] as a complaint case, rather than as a police case under Section 190(1)(b) Cr.P.C. [Corresponding Section Section 210 (1)(b)] In the present matter, the learned Chief Judicial Magistrate, Aligarh has not followed the provisions of law and treated a non-cognizable offence as a cognizable offence. This Court earlier in the matter of Prempal and others v. State of U.P. and another, Application U/S 528 BNSS No.1624 of 2025, passed an order on 26.11.2025 giving a detailed direction on Section 2(d) Explanation Cr.P.C. (corresponding Section 2(1)(h) Explanation of B.N.S.S.).

26. Before taking cognizance under Section 190 Cr.P.C. (Corresponding Section 210 B.N.S.S.), the learned Judicial Magistrate is under obligation to look into the matter, whether the case is time-barred as per Section 468 and 469 Cr.P.C. (Corresponding Section 514 and 515 BNSS) or not. After taking cognizance under Section 190(1)(a) [Corresponding Section Section 210 (1)(a)], the learned Judicial Magistrate has to proceed with the case as a complaint case and if the complainant is a public servant then there is no need of recording the statement of the complainant as well as witness as provided under section 200 first proviso of Cr.P.C. (corresponding section 223 second proviso BNSS) and the learned Judicial Magistrate may also proceed as per the provisions of Section 202 Cr.P.C., (Corresponding Section 225 BNSS) either to conduct an inquiry or to direct for investigation to verify the facts of the case for dismissing the complaint under Section 203 Cr.P.C. (Corresponding Section 226 BNSS) as well as summoning under Section 204 Cr.P.C. (Corresponding Section 227 BNSS) and also provides opportunity of hearing to the accused before passing any order of cognizance or summoning the proposed accused as provided under section 223 first proviso of BNSS w.e.f. 01.07.2024

27. Both Sections 504 and 507 I.P.C. (Corresponding Section 352 and 351(4) of B.N.S.) are punishable up to two years, therefore, as per Section 2(w) Cr.P.C., (Corresponding Section 2(1)(x) BNSS) it is a summons case and not a warrant case. As per Section 2(x) Cr.P.C., (Corresponding Section 2(1)(z) BNSS) a warrant case means an offence punishable with death, imprisonment for

life, or imprisonment for a term exceeding two years. Thus, since the punishment in the present matter is only up to two years, the case shall be proceeded as a summons case, if prima facie case is made out of the offences.

28. In a summons case, if the complainant does not appear before the Court, the complainant may be acquitted under Section 256 Cr.P.C. (Corresponding Section 279 BNSS) due to absence of the complainant or in case of his death and there is also provision for withdrawal of complaint under Section 257 Cr.P.C. (Corresponding Section 280 BNSS).

29. This is the case, where prima facie, there is an abuse of the process of the court as well as the code by which fundamental right provided under Article 21 of the Constitution of India has been violated as no procedure has been adopted by the learned Chief Judicial Magistrate, Aligarh, who passed the impugned cognizance order on the protest petition and proceeded as police case in non-cognizable offences rather a complaint.

30. In the present matter, an FIR was initially registered even though the allegations disclosed only a non-cognizable offence, for which only an NCR ought to have been registered. Despite this, the Investigating Officer proceeded to investigate the matter and has submitted a Final Report (Closure Report). In terms of the Explanation to Section 2(1)(h) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) (corresponding Section 2(d) Explanation of Cr.P.C.), when a report is submitted by a police officer in relation to a non-cognizable case, such report is required to be treated as a complaint, and the officer submitting it, is deemed to be the complainant. Accordingly, the Final Report filed in the present case must, as a matter of legal procedure, be treated as a complaint if offence is made out.

31. If after perusal of entire case diary, a cognizable offence is made out, then the judicial magistrate shall treat the final/closure report as a chargesheet and take cognizance under section 190 Cr.P.C. (Corresponding Section 210 of the BNSS) to check the arbitrariness of the I.O. If it is treated as final report i.e. not disclosing any offence then :-

- (i) either direct for further investigation,*
- (ii) or invite protest petition from the informant and after perusal of protest petition-*
 - (a) either treat it as complaint in case of extraneous material u/s 190(1)(a) Cr.P.C. (Corresponding Section 210(1)(a) of the BNSS),or*
 - (b) direct for further investigation for recovery of any item etc. which cannot be done in a complaint proceeding at initial stage.*
 - (c) In case of acceptance of Final/Closure report and rejection of the protest petition, proceed for taking cognizance under section 177 and 182 IPC (Corresponding Section 212 and 217 BNS) in accordance with law.*

32. If the learned Judicial Magistrate or Court finds that there is no proper investigation, then may direct for further investigation.

33. If after perusal of entire case diary, the learned Magistrate finds that no offence is made out, treat the charge-sheet as final report (closure report) and thereafter either direct for further

investigation or invite protest petition and thereafter either direct for further investigation or treat the protest petition as complaint, if any extraneous material comes/appears to have come on record.

34. If after investigating, a final report (closure report) is prepared by the I.O. in favour of the accused of the FIR to submit in the Court, he shall also file a complaint along with the final report (closure report) against the informant and witnesses for giving false information to the police under section 177 and 182 of I.P.C. (Corresponding Sections 212 and 217 BNS) and if a protest petition is also filed, for which the proceedings under Sections 177 and 182 of the I.P.C. (Corresponding Sections 212 and 217 BNS) is initiated by the police, the proceedings of section 177 and 182 I.P.C. (corresponding section 212 and 217 of the BNS) shall be kept in abeyance till the acceptance of the final/closure report or rejection of the protest petition/application. Thus, if the protest petition is dismissed/rejected by the Magistrature or court, the Magistrate or court shall proceed with the complaint filed under section 177 and 182 I.P.C. (corresponding section 212 and 217 of B.N.S.).

35. As per the judgment of **Bhagwant Singh vs. Commissioner of Police and Another, (1985) 2 SCC 537**, the law laid down by the Hon'ble Supreme Court is that if a final report is prepared exonerating the accused person, the informant must be informed about the final report that the accused has been exonerated. In the present case it is not clear, whether the learned Judicial Magistrate has issued any notice to the informant regarding the closure report/final report exonerating the alleged accused. However, the informant, i.e., Opposite Party No. 2, filed a protest petition against the final report which exonerated the alleged accused-wife. In BNSS, as per Section 193(3)(ii), it has been mentioned that the Investigating Officer shall inform to the informant about progress of the investigation as well as completion of investigation, though there is no concept of protest petition in BNSS also.

36. Although the BNSS has come into force on 1 July 2024 and the alleged offence took place prior to the date of its enforcement, it is a settled principle of law that the procedure, that is more beneficial to the accused must be adopted. In case of **Deepu (Supra)**, the Division bench of this Court in paragraph no.16 (iii) held that on or after 01.07.2024, the procedure mentioned under the Bhartiya Nagarik Suraksha Sanhita, 2023 shall be applicable on offences committed under the Indian Penal Code or other Special Act. The paragraph No. 16 is delineated below:

“16 .On the basis of above analysis, this Court is also summarising the law regarding effect of repealing the IPC and Cr.P.C. by BNS and BNSS respectively and same is being mentioned as below:

(i) If an FIR is registered on or after 1.7.2024 for the offence committed prior to 1.7.2024, then FIR would be registered under the provisions of IPC but the investigation will continue as per BNSS.

(ii) In the pending investigation on 01.07.2024 (on the date of commencement of New Criminal Laws), investigation will continue as per the Cr.P.C. till the cognizance is taken on the police report and if any direction is made for further investigation by the competent Court then same will continue as per the Cr.P.C.;

(iii) The cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS and all the subsequent proceeding including enquiry, trial or appeal would be conducted as per the procedure of BNSS.

(iv) Section 531(2)(a) of BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or application is commenced after 01.07.2024, the same will be proceeded as per the procedure of BNSS.

(v) The pending trial on 01.07.2024, if concluded on or after 01.07.2024 then appeal or revision against the judgement passed in such a trial will be as per the BNSS. However, if any application is filed in appeal, which was pending on 01.07.2024 then the procedure of Cr.P.C. will apply.

(vi) If the criminal proceeding or chargesheet is challenged before the High Court on or after 01.07.2024, where the investigation was conducted as per Cr.P.C. then same will be filed u/s 528 of BNSS not u/s 482 Cr.P.C. "

37. After completion of investigation, if the Investigating Officer submits a police report under Section 173(2) CrPC (Corresponding Section 193(3)(i) BNSS) stating either, that an offence is made out or no offence is made out against the accused, then under Section 193(3)(ii) BNSS, the police officer, within a period of ninety days, shall inform the informant about the progress of investigation and also about the filing of the police report under Section 193(3)(i) BNSS, ensuring timely opportunity to object/protest the closure report (final report), while under the Cr.P.C., there is no specific time-frame for informing the informant/victim about the progress of investigation. The provisions mentioned under Section 193(3)(ii) BNSS is being delineated below :-

"Section 193(3) (ii). The police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim. "

38. Section 193(3)(ii) of BNSS ensures the principles laid down by the Hon'ble Supreme Court in **Bhagwant Singh(Supra)** affording opportunity of hearing to the informant to file protest petition in case of police report, exonerating the accused is filed by the Investigating Officer after completion of investigation before the Judicial Magistrate/Court competent to take cognizance.

39. As per the judgment of Hon'ble Supreme Court in **Vishnu Kumar Tiwari, (2019) 8 SCC 27** and in **Mukhtar Zaidi v. The State of Uttar Pradesh and Another, (2024) 4 S.C.R. 655** if a protest petition fulfils the requirements of a complaints, Magistrate may treat as a complaint and deal with the same as required under sections 200 and 202 of Cr.P.C.

40. It is a well settled law that in the case of non-cognizable offence, the learned Judicial Magistrate is under obligation to take cognizance under Section 190(1)(a) Cr.P.C. [corresponding section 210(1)(a)] and proceed the case as a complaint case and not as a police case and the procedure of complaint case shall be adopted to summon and try the alleged accused person.

41. Having gone through the record of this case, the Court finds that the impugned cognizance-cum-summoning order is not passed in accordance with law/procedure, therefore, it is a case of violation of Article 21 of the Constitution of India.

The Article 21 is quoted below:-

“Article 21. Protection of life and personal liberty. -No person shall be deprived of his life or personal liberty except according to procedure established by law. ”

42. Based on the foregoing deliberations, this court, now proceeds to examine the validity and correctness of the impugned order, in the case at hand, the Judicial Magistrate erroneously passed cognizance-cum-summoning order under Section 506 and 507 IPC for a non cognizable offence in derogation of the provisions of Cr.P.C. In essence, the Judicial Magistrate has neither converted the police report disclosing 'non cognizable offence' into 'complaint' as per the provision of Explanation to Section 2(d) of Cr.P.C. nor took cognizance under Section 190(1)(a) Cr.P.C. to proceed as 'trial of summons-case' instituted on complaint, but took cognizance under Section 190(1)(b) Cr.P.C. and summoned the applicant without affording him an opportunity of hearing provided under First Proviso of Section 223 BNSS, and also erroneously proceeded as trial of summons-case instituted on police report rather than complaint.

43. It is pertinent to mention here that this Court has considered an identical issue in **Application U/S 528 BNSS No.1624 of 2025, Prempal and others v. State of U.P. and another**, and given directions therein, while disposing of the said application vide order dated 26.11.2025.

44. In view of the foregoing discussion, the impugned cognizance-cum-summoning order dated 3.10.2024 passed by learned Judicial Magistrate is hereby **quashed and set aside**. The matter is remanded to the learned Judicial Magistrate, who shall pass a fresh order in accordance with law as well as observation made by this Court, after providing opportunity of hearing to the accused. This exercise shall be done within three months from the date of the order in accordance with law.

45. Apart from the above directions, this Court also directs all the Judicial Magistrates or Courts that in case a final report i.e. closure report is submitted in favour of alleged accused, the learned Judicial Magistrates/Courts shall receive the entire case diary along with documents and final report i.e. closure report, but the Judicial Magistrates/Courts shall also direct the Investigating Officer/Police for submitting written complaint against informant, as well as witnesses of the FIR as provided under section 195(1)(a) Cr.P.C. (corresponding Section 215(1)(a) BNSS) in respect of furnishing false information with intent to cause public servant to use his lawful power to the injury of the alleged accused persons, whose names are mentioned in the first information report as well as during investigation, for committing offences of Section 177 and 182 of the Indian Penal code, 1860 (corresponding Section 212 and 217 of Bhartiya Nyay Sanhita).

46. It is further directed that, the learned Judicial Magistrates/ Courts, first of all while taking cognizance of the offences after perusal of entire case diary and documents, if prima facie appears otherwise, invite protest petition from the informant and after hearing the informant, if finds that offences is made out, take cognizance either under Section 190(1)(a) or 190(1)(b) Cr.P.C. (corresponding Section 210(1)(a) or 210(1)(b) BNSS) and if no offence is made out, then proceeds on the written complaint, which is submitted by the Investigating Officer under Section 195(1)(a) Cr.P.C. (corresponding Section 215(1)(a) BNSS) in respect of offence of Section 177 and 182 IPC (corresponding Section 212 and 217 of BNS) for furnishing false information against the alleged accused of the FIR to use the police his lawful power to cause injury to the alleged accused persons.

47. The Director General of Police, U.P. is directed to instruct all police officers within the State that, while completing the investigation, if a final report (closure report) exonerating the accused is submitted in the court, then in every case, where the police machinery has been misused by furnishing false, frivolous, or misleading information, a written complaint as per Section 215(1) BNSS (corresponding Section 195(1) Cr.P.C.) must be filed before the competent Magistrate/Court of offence mentioned under Section 212 and 217 BNSS (corresponding Section 177 and 182 IPC) against the informant and witnesses of the case crime. Failure to do so will render the purpose of Section 212 and Section 217 BNS (corresponding Section 177 and 182 IPC) redundant and is likely to defeat the legislative intent behind these provisions.

48. It is further directed that the Director General of Police, U.P., Commissioner of Police, Senior Superintendent of Police, Superintendent of Police to direct all the Investigating Officer, Station House Officer and Forwarding Officer i.e. Circle Officer, Additional S.P., S.P. and Public Prosecutor that in case of final report/closure report filed under section 193 of BNSS (corresponding Section 173 Cr.P.C.), the police shall also submit a report in the form of complaint as prescribed Section 215(1)(a) BNSS (corresponding Section 195(1)(a) Cr.P.C.) referred hereinabove in paragraph no.18 of this order/judgment to the concerned Judicial Magistrate/Court for taking cognizance of offences provided under section 212 and 217 BNS (corresponding sections 177 and 182 of IPC) against informant and witness in case the final report/closure report is accepted and the protest petition is rejected.

49. Further direction is given to the police authority that if an Investigating Officer does investigation and ultimately found that no offence is made out, he is not only under obligation to submit final report, as per paragraph 122 of the U.P. Police Regulations, but he is also duty bound to submit a written complaint for giving false information to the police under Section 212 and 217 of BNS (corresponding Sections 177 and 182 of IPC) for taking cognizance as provided under section 215(1)(a) BNSS (corresponding Section 195(1)(a) Cr.P.C.) otherwise, the Investigating Officer, Station House Officer and Forwarding Authority i.e. Circle Officer and Public Prosecutor shall be liable of committing offence as mentioned under Section 199(b) BNS (corresponding Section 166A(b) of IPC).

50. If the observation made by this Court is not followed in letter and spirit, it would amount to contempt of court, and the aggrieved person may approach this Court for appropriate action against such contemptuous conduct of the police authorities as well as the judicial officers. All the exercise shall be done within 60 days from the date of this order by the police authorities as well as the judicial officers to regulate judicial proceedings in accordance with law.

51. With the aforesaid observations, and directions the present application under section 528 BNSS stands **disposed of**.

52. The explanation submitted by the Judicial Magistrate was perused by the court and after going through the same, it appear to be satisfactory to some extent. The observations made in this order shall not affect future service or career prospects of the concerned Magistrate.

(2026) 1 ILRA 322
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 12.01.2026

BEFORE

THE HON'BLE RAJEEV BHARTI, J.

Application U/S 482 No. 34372 of 2016

Faujdar Yadav & Ors.

...Applicants

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for consideration

Legality of proceedings u/s 3(1)Da, Dha & 3(2)(va) of SC/ST Act

Headnotes

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989-Neither the FIR nor the charge sheet specifies the exact caste-related words allegedly used- nor does it disclose intention to humiliate the informant - no independent public witness-not in public place-mandatory statutory requirement- abuse of process of the Court- proceedings under Sections 3(1)Da, Dha & 3(2)(va) of SC/ST Act quashed. **Application partly allowed.** (E-9)

Case Law Cited

1. Ramesh Chandra Vaishya Vs. State of U.P. & Another, Criminal Appeal No.1617, (2023) 0 SC 550, decided on 19.05.2023
2. Swaran Singh vs. State, reported in (2008) 8 SCC 435
3. Hitesh Verma Vs. The State of Uttarakhand & Another reported in (2020) 10 SCC 710
4. State of Haryana and Ors. vs. Bhajan Lal & Ors., reported in 1992 Supp (1) SCC 335

List of Acts

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

List of Keywords

Caste-related words, place within public view, insult or intimidation.

Appearances of parties

Counsel for Applicant(s) : Kailash Pati Singh Yadav Counsel for Opposite Party(s) : G.A., Praveen Kumar Singh

(Delivered by Hon'ble Rajeev Bharti, J.)

1. Rejoinder affidavit filed today is taken on record.
2. Heard learned counsel for the applicants, learned A.G.A. appearing for the State, learned counsel for opposite party no.2 and perused the material brought on record.
3. The present application has been filed for quashing the impugned charge sheet dated 07.07.2016, bearing charge sheet no.15/16 in Special Criminal Case No.96 of 2016 (State Vs.

Faujdar and others), arising out of Case Crime No.317 of 2016, under Sections 323, 504 I.P.C. & 3(1)Da, Dha & 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "SC/ST Act"), Police Station - Saidpur, District- Ghazipur, pending in the Court of Special Judge SC/ST Act, Ghazipur.

4. Brief facts of the case are that on 17.03.2016 an N.C.R. No.63 of 2016 was lodged at Police Station- Saidpur, District- Ghazipur-under Sections 323, 504 I.P.C. against the applicants by the opposite party no.2 stating therein that on 17.03.2016, the applicants were constructing drain in the field of opposite party no.2 forcefully and when the same being opposed by opposite party no.2, the applicants abused him by using caste related words and also assaulted his son with lathi and danda.

5. Learned counsel for the applicant submits that the invocation of the provisions of SC/ST Act is wholly misconceived inasmuch as the essential statutory ingredients of the alleged offence having been committed "in any place within public view" is completely absent." It is contended that, as per the prosecution case itself, the alleged incident was only witnessed by the informant Shyam Dev Gaud and his son Vinod Gaud, who are admittedly interested and related witnesses and no independent member of the public was present at the place of occurrence.

6. It is further argued that neither the FIR nor the charge sheet specifies the exact caste-related words allegedly used, nor does it disclose whether the alleged caste-related words, if any, were made with intention to humiliate the informant on account of his caste and in a place within the public view, which is mandatory statutory requirement for attracting offences under SC/ST Act "in any place within public view".

7. Learned counsel for the applicant in support of his argument has placed reliance upon the judgment of Hon'ble Supreme Court in **Ramesh Chandra Vaishya Vs. State of U.P. & Another, Criminal Appeal No.1617, (2023) 0 SC 550, decided on 19.05.2023**, wherein it has been held that every insult or intimidation does not constitute an offence under SC/ST Act and that in the absence of any independent public witness and public view, continuance of proceedings under SC/ST Act would amount of abuse of process of law.

8. The Hon'ble Supreme Court has consistently held in the case of **Swaran Singh vs. State**, reported in **(2008) 8 SCC 435**, that the expression "in any place within the public view" does not mean merely a place accessible to the public, but requires the presence of independent members and interested witness does not specify this requirement. Similarly in **Hitesh Verma Vs. The State of Uttarakhand & Another reported in (2020) 10 SCC 710**, the Hon'ble Supreme Court has held that the dispute occurring in a private place or where any member of the public is present does not attract offence under Section 3(1) Da, Dha of SC/ST Act.

9. In support of his contention, learned counsel for the applicant has also placed reliance upon in the case of **State of Haryana and Ors. vs. Bhajan Lal & Ors., reported in 1992**

Supp (1) SCC 335, that if the contents of the FIR, taken on its face value, does not make out any case against the appellant, such an FIR registered with ulterior motive deserves to be quashed.

10. For a ready reference Sections 3(1)Da, Dha and 3(2)(v) of SC/ST Act are reproduced hereunder:-

Provision in Hindi Bare Act of the SC/ST Act.	Provision in English Bare Act of SC/ST Act.
(द) अनुसूचित जाति या अनुसूचित जनजाति के किसी सदस्य को अवमानित करने के आशय से लोक दृष्टि में आने वाले किसी स्थान पर अपमानित या अभित्रस्त करेगा;	Section 3(1)(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;
(ध) लोक दृष्टि में आने वाले किसी स्थान पर जाति के नाम से अनुसूचित जाति या अनुसूचित जनजाति के किसी सदस्य को गाली गलौज करेगा;	Section 3(1) (s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;
3(2) (va) अनुसूची में विनिर्दिष्ट कोई अपराध किसी व्यक्ति या संपत्ति के विरुद्ध, यह जानते हुए करेगा कि ऐसा व्यक्ति अनुसूचित जाति या अनुसूचित जनजाति का सदस्य है या वह संपत्ति ऐसे सदस्य की है, वह ऐसे अपराधों के लिए भारतीय दंड संहिता के अधीन यथा विनिर्दिष्ट दंड से दंडनीय होगा और जुर्माने से भी दंडनीय होगा ।	Section 3(2) (va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;

11. From a perusal of FIR and the charge sheet, this Court finds that specific caste-based utterances are not disclosed; the alleged occurrence is supported only by the statement of the informant and his son, who are interested witnesses, and no independent public witness is shown to have been present at the time of alleged incident and the mandatory ingredients of intent to humiliate in public view are conspicuously absent.

12. In view of the above facts and settled position of law, this Court is of the considered opinion that the continuation of criminal proceedings under Section 3(1)Da, Dha and 3(2)(va) of SC/ST Act against the applicant would be an abuse of process of the Court and cannot be sustainable in law.

13. Accordingly, the present application is partly **allowed**.

14. The proceedings of Special Criminal Case No.96 of 2016 (State Vs. Faujdar and others), arising out of Case Crime No.317 of 2016, under Sections 3(1)Da, Dha & 3(2)(va) of SC/ST Act,

Police Station - Saidpur, District- Ghazipur, pending in the Court of Special Judge SC/ST Act, Ghazipur, are hereby quashed.

15. It is clarified that the proceeding with respect to the other sections related to Indian Penal Code, if otherwise made out, may continue in accordance with law.

(2026) 1 ILRA 325
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.01.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Application U/S 528 BNSS No. 35779 of 2025

Kuldeep Verma

...Applicant

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Matter pertains to "whether prima facie the allegations levelled by the victim on the applicant accused is sufficient to proceed with the trial or continuance of the trial would amount to gross abuse of process of law?" (Para-11)

Headnotes

Bhartiya Nyaya Sanhita, 2023 - S 69 - Sexual intercourse by employing deceitful means - False promise of marriage - Prima facie case - Allegation that accused "continuously entered in sexual intercourse with the opposite party no. 2 on false promise of marriage, since last 11 years" - Accused admittedly already married - Marriage certificate dated 24.04.2025 annexed - FIR dated 20.06.2025 - Whether continuation of proceedings amounts to abuse of process - Held, No - Matter requires trial.

Bhartiya Nyaya Sanhita, 2023 - S 528 - Quashing of charge sheet - Scope of interference at pre-trial stage - Where allegations and material disclose prima facie offence - Court would not embark upon appreciation of evidence - Application dismissed.

Bhartiya Nyaya Sanhita, 2023 - Ss 63, 64(2)(f), 69 - Deceitful means - *Position of trust* - *Teacher* - Accused a teacher where victim pursued B.Ed. - Prima facie knowledge of subsisting marriage - Distinction between 'false promise' and 'breach of promise' noted.

Held: The facts alleged in the F.I.R. and the material available on record on the face of it reveals the prima facie facts that the victim is residing in the house of accused-applicant and was in relationship with the accused-applicant since last 11 years - S 69 of Bhartiya Nyaya Sanhita, 2023 provides that 'Whoever, by deceitful means or by making promise to marry a woman without any intention of fulfilling the same, has sexual intercourse with her... shall be punished - It is an admitted fact that the accused-applicant was already married when he came in contact with opposite party no. 2 - In the present case, the applicant accused prima facie knew from the beginning that he could not marry the opposite party no. 2, as he was already married - On the basis of prima facie facts, this Court does not find sufficient ground to quash the charge sheet and the proceedings. Hence, the application moved under S 528 B.N.S.S. is devoid of merits and liable to be dismissed - The application under S 528 B.N.S.S. is dismissed. (Paras-12, 15-22)

Case Law Cited

Biswajyoti Chatterjee Vs. State of West Bengal and another, SLP (Criminal) No. 4261/2024; Uday Vs State of Karnataka (referred in Biswajyoti Chatterjee); Km. Neha Anuragi Vs. State of U.P. and another, Criminal Revision No. 8743/2025; Pramod Suryabhan Pawar Vs. State of Maharashtra, (2019) 9 SCC 608.

List of Acts

Bhartiya Nyaya Sanhita, 2023; Bhartiya Nagarik Suraksha Sanhita; Bhartiya Sakshya Adhiniyam, 2023; Indian Penal Code (referred)

List of Keywords

Charge sheet; cognizance order; sexual intercourse by employing deceitful means; false promise of marriage; consensual relationship; prima facie facts; marriage certificate; teacher; position of trust; quash; abuse of process of law.

Case Arising From

Application under S 528 B.N.S.S. seeking to quash "the charge sheet dated 08.08.2025, the cognizance order dated 26.08.2025 passed by the Chief Judicial Magistrate, Aligarh and the proceedings in trial of Case No. 2823/2025 (State Vs Kuldeep) arising out of Case Crime No. 521/2025, Police Station- Quarsi, District- Aligarh.

Appearances for Parties

Advs. for the Appellant:

Shri Mritunjay Dwivedi.

Advs. for the Respondents:

Ms. Akansha Gaur (for opposite party no. 2);
Shri Raj Baran, learned A.G.A. for State.

(Delivered by Hon'ble Avnish Saxena, J.)

1. The present application under Section 528 B.N.S.S. has been moved by the accused-applicant to quash the charge sheet dated 08.08.2025, the cognizance order dated 26.08.2025 passed by the Chief Judicial Magistrate, Aligarh and the proceedings in trial of Case No. 2823/2025 (State Vs Kuldeep) arising out of Case Crime No. 521/2025, Police Station- Quarsi, District- Aligarh for the offences in Bhartiya Nyaya Sanhita 2023 under Sections, 69 (Sexual intercourse by employing deceitful means), 115(2) (Voluntarily causing hurt), 352 (Intentional insult with the intent to provoke breach of peace) and 351(3) (Criminal Intimidation).

2. Heard Shri Mritunjay Dwivedi, learned counsel for applicant, Ms. Akansha Gaur, learned counsel for opposite party no. 2 and Shri Raj Baran, learned A.G.A. for State. Perused the record.

3. The opposite party no. 2 (Victim) has lodged the FIR on 20.06.2025 at 23:56 hours against the accused-applicant with the allegation that the victim is residing in the house of accused-applicant and in relations with the accused-applicant since last 11 years, during this period accused-applicant has entered into sexual intercourse with the victim on making false promise of marriage. He also violently hurt her by kicks and fist while entering into sexual intercourse. He also threatened the victim not to open her mouth otherwise he would defame her. The accused-applicant kept the victim as his wife. On 27.05.2025 at about 9:00 p.m., the accused-applicant has beaten the victim due to which she suffered knee injury. She has given a written information at the police station concerned on which the accused-applicant has entered into a written compromise and ready to keep the victim with him but after leaving the police station, he again stated not to keep her with

him as she is suffering from 'Rasauli' (Uterine Fibroids) and further threatened to implicate her and her family members in false cases and hurl abuses.

4. With the above allegations the F.I.R. has been registered for the offences under Sections 69, 115(2), 352 and 351(3) of B.N.S.

5. In the statement recorded under Section 180 B.N.S.S., the victim has stated that she is 39 years of age. Since 2014-15 the victim is in relations with the accused-applicant. Many a times the accused-applicant has promised her to marry and entered into sexual intercourse, but whenever she asked to talk to the family, he ignores the talk of marriage on the pretext of ill health of his parents and marriage of his sister. She became mentally disturbed and while she was suffering with 'Rasauli' the accused-applicant refused to get her treated in hospital. She has reiterated the incident of 27.05.2025 and the threatening.

6. In her statement under Section 183 B.N.S.S., she has stated that for the first time she was raped by the accused-applicant after she was administered with sedative cold drink, thereafter entered in sexual intercourse on false promise of marriage. She did her Ph.D. while residing alongwith applicant in his house. In the year 2017-18 she has married the applicant at a temple where he put vermilion on her head. Two years back, he has also got her signature on the certificate of marriage of Aarya Samaj Mandir. Further stated that Rs. 15 lakh has been given by her mother to the accused-applicant and has again asked for Rs. 10 lakh. Further stated that once accused-applicant taken the victim to Bateshwar, but while returning he has left her alone on the road. On 18.06.2025, he has filed frivolous case, although on 17.06.2025 they underwent compromise.

7. On these allegations and material the charge sheet is submitted against the accused-applicant.

8. The learned counsel for accused-applicant submits that the relations between the accused-applicant and opposite party no. 2/Victim is consensual in nature as is reflected from the allegation levelled, which continued since the year 2014. The place of incident is alleged to be the house of applicant where according to the victim she is living as wife of the applicant and already married to the applicant. Further submits that the allegation of sexual intercourse on false promise of marriage cannot be sustained or prima facie made out because according to the victim she was already married to the applicant at Aarya Samaj Mandir. On the point of accepting the amount of Rs. 15 lakh the learned counsel submits that there is no basis for the said allegation. Hence the allegation is baseless. Further submits that the only injury shown by the victim is knee injury for which she has been referred to Orthopedic for management of knee injury and except the knee injury there is no other injury found, which could be attributed on accused-applicant that the injury has been inflicted by the accused-applicant. Learned counsel further submits that on 29.08.2018, the victim has moved a complaint and the victim herself has given the statement to the police that she came to know that the accused-applicant is already married, hence, withdrew the complaint. The report of Deputy Superintendent of Police, District- Aligarh is dated 25.09.2018 addressed to Senior Superintendent of Police, District- Aligarh, wherein the enquiry report is submitted that the victim herself withdrew the complaint alleging therein that she does not want to continue with the case, as she is studying. This report is part of the application (Page-79). It is further submitted that on

18.06.2025 the accused-applicant has moved an application under Section 173(4) B.N.S.S. at the court of Judicial Magistrate-1, Aligarh which is registered as Application No. 75/11/2025 (Kuldeep Verma Vs. Pooja Rani and four others), wherein it is stated that the victim is continuously harassing the accused-applicant and his family since the year 2014, when the victim took admission in the college for doing B.Ed. Course at Khair Kanya Mahavidyalaya where the accused-applicant was a private Lecturer. The victim has met the wife of accused applicant and requested his wife to allow him to help her in studies. It is on the insistence of his wife that the accused-applicant has permitted the victim to seek his help in studies but gradually the opposite party no. 2/Victim in connivance with her family members started blackmailing the applicant and demanded money, which led to the moving of the application. It is thereafter that the present F.I.R. has been lodged by opposite party no. 2 on 20.06.2025. The learned counsel submits that accused-applicant has been falsely implicated in the case. He relied on the judgment in **Biswajyoti Chatterjee Vs. State of West Bengal and another** decided by Hon'ble the Supreme Court by order dated 07.04.2025 in SLP (Criminal) No. 4261/2024 (Paragraph-17) and further relied upon the order dated 08.09.2025 passed the by a co-ordinate Bench of this Court in **Criminal Revision No. 8743/2025 (Km. Neha Anuragi Vs. State of U.P. and another) (Paragraph-7)**. The relevant paragraphs of each citation are quoted underneath:-

In Biswajyoti Chatterjee (supra):-

*“17. In the case of **Uday Vs State of Karnataka**, the Court had acquitted the accused on the basis that she was a mature college student who had consented to sexual intercourse with the accused of her own free will. It is unlikely that her consent was not based on any misconception of fact. In Uday (supra), the Court noted that:*

“21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.”

In Km. Neha Anuragi (supra) :-

7. After hearing the submissions of learned counsel for the parties and on perusal of record, it is not in dispute that the applicant and opposite party No.2 were in relationship for four years and this fact was known to all employees as well as officials of Tehsil. Subsequently, on

refusal by opposite party No.2 to get married to the applicant, the applicant made a complaint to the Sub Divisional Magistrate as well as to police. However, during enquiry by the Sub Divisional Magistrate and also by the police officers on the complaint made by the applicant, both the parties settled their dispute and applicant decided not to pursue the case. However, the report of Tehsildar dated 8.1.2024 also shows that there was consensual relationship between the parties and applicant herself requested to withdraw her complaint against opposite party No.2. Though there is allegation that initially physical relationship was made by opposite party No.2 with the applicant by playing trick and subsequently, he assured the applicant for marriage, it is also not in dispute that the applicant remained in relationship with opposite party No.2 for a considerably long time. This fact shows that it was a case of consensual relationship between the applicant and opposite party No.2 and thereafter their relationship fell apart due to refusal of opposite party No.2 to get married to the applicant. ”

9. **Per contra**, learned counsel for opposite party no. 2 and learned A.G.A. have submitted that the accused-applicant continuously entered in sexual intercourse with the opposite party no. 2 on false promise of marriage, since last 11 years. It is subsequent to the act of the accused that the opposite party no. 2 came to know that the accused-applicant is already married. This shows that the promise of marriage with the opposite party no. 2 was false from the very beginning. Further submits that the victim was initially not aware about the marital status of the applicant and that the applicant has three children, it is only after lodging the F.I.R. that the victim came to know about the fact of marriage. Further submits that applicant and victim were married at Aarya Samaj Mandir on 24.04.2025 and later on, they both resided together as husband-wife. The victim, time and again, asked for ceremonial and formal marriage but the applicant refused. Further submits that there is no compromise between the parties ever entered and the police report dated 25.09.2018 is false. Further submits that the victim suffered injuries at the hand of the accused-applicant. There is marriage between the two which has been solemnized on 24.04.2025. The opposite party no. 2 has filed marriage certificate along with counter affidavit. Further submits that in the thesis submitted by the accused-applicant the name of victim is mentioned as his better half, which is filed along with supplementary counter affidavit. Hence, submits that the application moved by the applicant is devoid of merits and liable to be dismissed.

10. This Court has taken into consideration the rival submissions made by the parties and perused the record.

11. Point of concern in the present application is whether prima facie the allegations levelled by the victim on the applicant accused is sufficient to proceed with the trial or continuance of the trial would amount to gross abuse of process of law?

12. The facts alleged in the F.I.R. and the material available on record on the face of it reveals the prima facie facts that the victim is residing in the house of accused-applicant and was in relationship with the accused-applicant since last 11 years. The sexual intercourse for the first time was the result of unconsciousness of victim and subsequently, on false promise of marriage. It is further revealed that at one point of time the accused-applicant and victim resided as husband-wife in the same house, at Aligarh. The statement of victim recorded under Section 183 B.N.S.S. also reveals the same facts and it is the contention of the victim that she came to know about marriage

of applicant only after lodging of the F.I.R. The intra departmental report which has been given by Deputy S.P.-Aligarh to Senior Superintendent of Police, Aligarh on 25.09.2018 shows the statement of opposite party no. 2, wherein she is admittedly aware about the marriage of applicant and therefore, she has entered into compromise. The same is however denied and not the part of case diary, but relied on by the applicant. This report is reiterated underneath:

"जाँच आख्या:- उक्त संदर्भित प्रकरण की जाँच व दौरान आवेदिका कुं पूजा रानी पुत्री श्री मुकेश कुमार निवासी गूलर रोड थाना देहली गेट जनपद अलीगढ़ ने अपने बयानों ने बताया कि वह करीब 3-4 वर्ष पूर्व कस्बा खैर के खैर कन्या महाविद्यालय में बी.एड की शिक्षा प्राप्त कर रही थी तो उस समय श्री कुलदीप वर्मा पुत्र नेत्रपाल वर्मा निवासी मौ० नई बस्ती थाना खैर भी उक्त विद्यालय में शिक्षण का कार्य कर रहे थे। इसी दौरान उसके एवं कुलदीप वर्मा के बीच स्लेबस को लेकर जानकारी हेतु आपस में जान पहचान हो गई और स्लेबस के सम्बन्ध में एक दूसरे की फ़ोन पर वार्ता होती रही, आवेदिका अविवाहित है जिस कारण आवेदिका एवं कुलदीप वर्मा के बीच आपस में शादी को लेकर नज़दीकिया बढ़ना आवेदिका ने अपने बयानों में बताया परन्तु जब आवेदिका को कुलदीप वर्मा के शादी शुदा होने एवं अपने आप को शिक्षारत होना बताते हुए शिक्षा में किसी प्रकार का व्यवधान उत्पन्न ना हो इस कारण अपने द्वारा दिये गये उक्त प्रार्थना पत्र पर कुलदीप वर्मा के विरुद्ध कोई कार्यवाही ना किये जाने के सम्बन्ध में जाँच के दौचन लिखित बयान दिये। जैसा कि आवेदिका के बयानों से स्वतः स्पष्ट है। आवेदिका अपने द्वारा दिये गये उक्त प्रार्थना पत्र पर अब कोई कानूनी कार्यवाही नहीं चाहती है। इस तरह आवेदिका कुं पूजा रानी उपरोक्त के उक्त प्रार्थना पत्र पर अन्य किसी पुलिस कार्यवाही की आवश्यकता प्रतीत नहीं होती है।"

13. In the statement under Section 183 B.N.S.S. the victim has specifically stated about the marriage solemnized with the accused-applicant in the year 2018 and has also annexed the certificate of marriage.

14. Thus, these facts alleged is required to be taken into consideration on the face of it, weigh on the touchstone of legal prepositions.

15. Section 69 of Bhartiya Nyaya Sanhita, 2023 provides that

"Whoever, by deceitful means or by making promise to marry a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."

16. The provision contained in Section 69 of B.N.S. is a new induction in penal law, wherein sexual intercourse with a woman, by deceitful means including false promise of marriage is not 'Rape', but is made punishable. Prior to the enactment the courts interpret the conduct of parties in view of the provisions of Section 375 I.P.C. (Rape) coupled with the provision of Section 90 I.P.C (Consent known to be given under fear or misconception). The explanation provided under Section

69 B.N.S. of 'Deceitful means' "shall include the false promise of employment or promotion, inducement, or marrying after suppressing identity."

17. It is an admitted fact that the accused-applicant was already married when he came in contact with opposite party no. 2. It is also an admitted fact that the accused-applicant is a teacher in the college, where the opposite party no. 2 is pursuing her B.Ed. Course. Moreover, the opposite party no. 2 has filed a certificate of marriage solemnized between the accused applicant and opposite party no. 2 to show the intensity in their relation and states that she was not aware about the marriage of applicant, which came to her knowledge after lodging the F.I.R. It is worth mentioning that in the marriage certificate the date of solemnization of marriage was 24.04.2025 and the F.I.R. has been lodged on 20.06.2025. The opposite party no. 2 in her counter affidavit has annexed the marriage certificate of Arya Samaj Mandir, Agra as Annexure CA-2. The relevant paragraph of counter affidavit is reiterated underneath:

*"That the contents of paragraph no. 9 & 10 of affidavit to the extent of record, call for no comments. However it is submitted that the opposite party no. 2 was not aware of the marital status of the applicant so also the fact that he had three children and the said fact came to the knowledge of the opposite party no. 2 only after lodging the present FIR. The fact of marriage was not within the knowledge of the opposite party no. 2 and therefore she agreed to marry the applicant in Arya Samaj Mandir on 24.04.2025 and later on they both were residing together as husband and wife in the house of the applicant. The opposite party no. 2 was time and again requesting the applicant to do a ceremonial/format marriage with the opposite party no. 2, however the applicant refused to do the same and since the relationship of applicant with the opposite party was over more than 10 years therefore even after repeated harassment and denial she could not leave the applicant who was her alleged husband. A copy of the marriage certificate issued by the Arya Samaj Mandir, Agra is being filed herewith and marked as **Annexure No. C.A.-2** to this affidavit."*

18. The applicant in reply to the aforesaid mentioned paragraph has merely stated that the certificate is fraud and he will file appropriate application under Section 195 and 340 Cr.P.C. at an opportune time, further mentioned, that the two stands of the opposite party no. 2 cannot go simultaneously, which are sexual intercourse on false promise of marriage and the marriage between the parties. The relevant paragraph-5 of the rejoinder affidavit is reiterated underneath:

"5. That the content of paragraph no. 6 of the counter affidavit is not admitted as stated in reply there to it is submitted that the contents of paragraph no. 9 and 10 of the affidavit filed in support of the affidavit are reasserted, it is further submitted that in the first information report, the opposite party no. 2 stated that the relation was established on the ground of the false promise of marriage, however she herself annexed a document claiming that she is being married with the applicant though the documents dated 24.04.2025 is a false, frivolous and concocted documents regarding which the proceeding under section 195 and 340 of the Cr.P.C. was going to be launched separately, but first of all, it must be clarified that whether it is a case of false promise of marriage or it is a case of humiliation after marriage both allegations can not run concurrently as both are voice-versa to each of other."

19. Though the charge sheet is not submitted under the offence of rape, but it would be expedient in the interest of justice that the provision of rape under Section 63 of B.N.S. is required to be dealt with along with Section 64(2)(f). Wherein, there are several circumstances mentioned in Section 63 B.N.S. which amount to

the definition of rape whereas sub section (iv) of Section 63 provides 'with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully marriage;

20. It would also not be out of place to mention that Section 120 of Bhartiya Sakshya Adhiniyam 2023 provides a presumption as to absence of consent in certain prosecution for rape. This presumption in certain cases, only qualifies upon the authorities provided under sub-section (2) of Section 64 of B.N.S., wherein the offence of rape committed by police officers, public servant, member of Armed Forces and others is dealt with. In the same category the act of a teacher is also provided under subsection (2)(f) of Section 64, reiterated, being a relatives, guardian or teacher of, or a person in a position of trust or authority towards a woman, commits rape of such woman;' the presumption provides that where intercourse by accused is proved and the question is whether it was that the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

21. Even otherwise Section 69 B.N.S. provides for sexual intercourse by employing deceitful means and false promise of marriage as one of the deceitful means. In the case of **Pramod Suryabhan Pawar Vs. State of Maharashtra, (2019) 9 SCC 608**, Hon'ble the Supreme Court has drawn a clear distinction between 'false promise of marriage, which is given on understanding by the maker that it will be broken' and 'a breach of promise which is made in good faith but subsequently not fulfilled'. It is former which out rightly attracts penal provision.

22. In the present case, the applicant accused prima facie knew from the beginning that he could not marry the opposite party no. 2, as he was already married. It is a matter of trial to decipher from evidence, whether the opposite party no. 2, victim was knowing the marital status of the applicant and despite that she has entered into sexual intercourse with him, which continued for eleven long years. On the basis of prima facie facts, this Court does not find sufficient ground to quash the charge sheet and the proceedings. Hence, the application moved under Section 528 B.N.S.S. is devoid of merits and liable to be dismissed.

23. The application under Section 528 B.N.S.S. is dismissed.

(2026) 1 ILRA 332
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 16.01.2026

BEFORE

THE HON'BLE RAJIV LOCHAN SHUKLA, J.

Application U/S 528 BNSS No. 39747 of 2025

Mohammad Shahzad

...Applicant

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Matter pertains to Whether, for enforcement of arrears of maintenance under S 125(3) read with S 421 Cr.P.C., in proceedings under S 128 Cr.P.C., the Family Court can issue simultaneous recovery and arrest warrants, or whether recovery in the manner provided for levying fines must first be undertaken and exhausted before any sentence of imprisonment can be imposed.

Headnotes

Code of Criminal Procedure, 1973 - Ss. 125(3), 128 and 421 - Bharatiya Nagarik Suraksha Sanhita, 2023 - S. 528 - Family Courts Act, 1984 - Ss. 10 and 18 - Enforcement of Maintenance Orders - Issuance of simultaneous warrants for recovery and arrest - Legality of - Held, "no warrant of arrest can be issued" for recovery of arrears - Efforts are to be made "first, to recover the arrears of maintenance/enforce the order of maintenance in the manner provided for levying fines" - Simultaneous issuance of warrants for recovery and arrest "is not contemplated under the Code of Criminal Procedure." (Paras 9, 10).

Family Courts Act, 1984 - Ss 10 and 18 - Execution of orders under Chapter IX Cr.P.C. - To be executed "in the manner prescribed for the execution of such order by that Code" - Family Court not empowered to curtail liberty except in manner provided by Cr.P.C. or C.P.C. (Paras 14, 15, 16).

Constitution of India - Article 21 - "No person shall be deprived of his life or personal liberty except according to procedure established by law" - Liberty cannot be curtailed except in accordance with law - Issuance of arrest warrants for recovery of maintenance arrears illegal.(Paras 17, 18, 19).

Supreme Court directions - Rajnesh v. Neha - Enforcement/Execution of maintenance orders -To be enforced as per statutory provisions - Word 'may' used in para 132 - CPC provisions "in addition to the regular mode of recovery provided under the Code of Criminal Procedure". (Paras 6, 25, 26, 27).

Practice of issuing non-bailable warrants by Family Courts for recovery of maintenance - "Clearly against specific statutory provisions and the directions given by the Supreme Court" - "This practice must stop"(Para 11).(E-7)

Held: A perusal of S 421 Cr.P.C. indicates that no warrant of arrest can be issued - It is only on failure to deposit the amount or arrears remaining after execution of the warrant, that imprisonment can be awarded - the simultaneous issuance of warrants for recovery and arrest is not contemplated under the Code of Criminal Procedure - Nothing in the Act of 1984 empowers the Family Court to curtail the liberty of an individual except in the manner provided for in the Code of Criminal Procedure or the Code of Civil Procedure, as the case may be - S 18(2) of the Act of 1984 clearly provides that an order passed by a Family Court under Chapter IX of the Cr.P.C. shall be executed in the manner provided for the execution of such order by the Code of Criminal Procedure - Liberty of an individual can be curtailed only in the manner prescribed by law and not otherwise - The act of issuance of arrest warrants is not merely a misinterpretation of the law laid down by the Supreme Court and the statutory law itself, but, is an act of overstepping its jurisdiction by the Family Court, which is absolutely illegal - A person who is liable to pay maintenance is not to be treated as a person who has committed a crime - As stated above, no arrest warrant can be issued for recovery of arrears of maintenance, this application is allowed -The impugned order dated 25.09.2025 is, thus, set aside." (Paras - 9,10,14,16,18,19,28)

Case Law Cited

Rajnesh vs. Neha & Another (2021) 2 SCC 324

List of Acts

The Bharatiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S.); Code of Criminal Procedure, 1973; Code of Civil Procedure, 1908; Family Courts Act, 1984; Uttar Pradesh Family Courts (Court) Rules, 2006; Constitution of India (Article 21)

List of Keywords

Maintenance; Arrears; Recovery Warrant; Arrest Warrant; S 125(3) Cr.P.C. - S 421 Cr.P.C.; Enforcement/Execution; Family Court; Article 21; Personal Liberty; Attachment of Salary; Order XXI C.P.C.

Case Arising From

Application under S 528 B.N.S.S. filed for quashing the order dated 25.09.2025 passed by Additional Principal Judge, Family Court, Court No. 2, Aligarh in Misc. Case No. 548 of 2024 under S 128 Cr.P.C., whereby recovery/arrest warrants were issued to recover arrears of maintenance.

Appearances for Parties

Advs. for the Appellant:

Sri Kuldeep Kumar

Advs. for the Respondents:

Learned A.G.A. for the State of U.P.

(Delivered by Hon'ble Rajiv Lochan Shukla, J.)

1. This application under Section 528 B.N.S.S. has been filed by the applicant for quashing the order dated 25.09.2025 passed by Additional Principal Judge, Family Court, Court No.2, Aligarh in Misc. Case No.548 of 2024 (Smt. Shajiya Khan & Another vs. Mohammad Shahzad) under Section 128 of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C."), Police Station - Banna Devi, District Aligarh, whereby the Additional Principal Judge has issued recovery/arrest warrants against the applicant to recover arrears of maintenance against the applicant passed in Maintenance Case No.1111 of 2017 (Smt. Shajiya Khan & Anr. vs. Mohammad Shahzad) under Section 125 Cr.P.C.

2. Heard Sri Kuldeep Kumar, learned counsel for the applicant, learned A.G.A. for the State and perused the material on record.

3. Learned counsel for the applicant states that pursuant to an order passed against the applicant under Section 125 Cr.P.C., in proceedings under Section 128 Cr.P.C., recovery and arrest warrants have been issued against the applicant. Learned counsel for the applicant, relying upon the decision of the Supreme Court in **Rajnesh vs. Neha & Another (2021) 2 SCC 324**, contends that the orders for maintenance can be enforced in view of the specific statutory provisions as well as the directions given by the Supreme Court in *Rajnesh* (supra).

4. Learned A.G.A. has contended that this Court, vide order dated 25.04.2024 passed in Criminal Revision No. 1235 of 2024, had granted protection to the applicant, subject to the condition that he shall pay Rs. 10,000/- per month to the opposite party No. 2 and Rs. 5,000/- per month to the opposite party No. 3. This Court had further directed the applicant to pay 50% of the arrears of maintenance within a period of one month, and the remaining 50% of the arrears of maintenance was directed to be paid to the opposite parties No.2 and 3 in three equal monthly installments commencing from 25th June, 2024. It was further directed that, in case of default in the said payments, the Principal Judge would be at liberty to recover the arrears along with 10% interest. Learned A.G.A. states that as the directions of the High Court have been violated, the impugned order has rightly been passed issuing recovery warrants against the applicant. Learned A.G.A., however, states that there was nothing in the order of the High Court to indicate that the arrest of the applicant would be effected to recover the arrears of maintenance. Learned A.G.A.

also does not dispute the fact that no arrest warrants can be issued for recovery of arrears of maintenance under Sections 125(3) and 128 Cr.P.C. He states that the maintenance orders can be enforced in view of the directions given by the Supreme Court in the decision of **Rajnesh (supra)**, referred to above.

5. In view of the order that is being proposed to be passed, no notices are being issued to opposite parties No. 2 and 3.

6. The Supreme Court, in the case of **Rajnesh (supra)**, in paragraph 132, has given the following directions with respect to the enforcement/execution of orders of maintenance:

"(e) Enforcement/Execution of orders of maintenance

132. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the Hindu Marriage Act, 1955; Section 20(6) of the DV Act; and Section 128 of CrPC, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21."

7. Section 125(3) Cr.P.C. provides the manner in which a warrant for the recovery of the maintenance amount may be issued. Section 125(3) Cr.P.C. reads as under:

"125(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made;

***Provided** that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due;*

***Provided further** that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.*

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him."

8. A perusal of the provision, quoted above, clearly indicates that recovery of the arrears of maintenance can be made in the manner provided for levying fines. The procedure for issuance of warrant for levy of fine has been given under Section 421 Cr.P.C., which are quoted herein below:

"421. Warrant for levy of fine.-(1) *When an offender has been sentenced to pay a fine the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-*

(a) issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender;

(b) issue a warrant to the collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter;

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of Sub-Section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any properly attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of Sub-Section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law;

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender." [emphasis added]

9. A perusal of the above mentioned provisions would clearly indicate that for recovery of maintenance amount, a warrant is to be issued, which is to be executed in the manner provided for under Section 421 Cr.P.C. and a perusal of Section 421 Cr.P.C. indicates that no warrant of arrest can be issued. It is only on failure to deposit the amount or arrears remaining after execution of the warrant, that imprisonment can be awarded.

10. Section 125(3) Cr.P.C. clearly indicates that efforts are to be made, first, to recover the arrears of maintenance/enforce the order of maintenance in the manner provided for levying fines, and if the warrant is not executed or is partially executed, the Court may sentence the person, directed to pay the maintenance amount, to imprisonment for the whole or any part of each month's allowance for maintenance, interim maintenance, or expenses of proceedings, as the case may be, which remain unpaid after the execution of the recovery warrant. Thus, the simultaneous issuance of warrants for recovery and arrest is not contemplated under the Code of Criminal Procedure. Even the directions given by the Supreme Court do not contemplate any such practice, as has been adopted in the present case.

11. This Court has observed in a number of cases that orders are being passed by the Family Courts issuing warrants of arrest along with recovery warrants and in some cases issuing non-bailable warrants. This is clearly against specific statutory provisions and the directions given by the Supreme Court in the case of Rajnesh (supra). This practice must stop and the recovery of arrears of maintenance is to be made in the manner prescribed by the statute or not at all.

12. Section 125(3) Cr.P.C. itself contemplates that cause can be shown by the person against whom order of maintenance has been passed for not complying with the order, as the opening lines of Section 125(3) Cr.P.C. state that "If any person so ordered fails without sufficient cause to comply with the order.....". Thus, sufficient cause can be shown for non-payment of the amount. The procedure for enforcement of orders of maintenance/interim maintenance ought to be of first issuance of notice to the person ordered to pay maintenance. Thereafter, if sufficient cause is not shown, warrants for recovery can be issued in the manner provided for levying fines. The procedure, as indicated in the judgment of the Supreme Court in **Rajnesh (supra)**, may then be followed. Any other procedure for recovery of arrears of maintenance, which has not been provided for under Sections 125(3) and 421 Cr.P.C., and paragraph 132 of the judgment of the Supreme Court in **Rajnesh (supra)**, is not to be resorted to.

13. The Family Courts Act, 1984 (hereinafter called as "Act of 1984"), also provides for the procedure, which is to be followed by the Family Courts in deciding proceedings before it. Section 10 of the Act of 1984, provides as under :

"10. Procedure generally.-(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other."

14. Even though, sub-section (3) of Section 10 of the Act of 1984 gives liberty to the Family Court in laying down its own procedure but the same is restricted to arriving at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other. Nothing in the Act of 1984 empowers the Family Court to curtail the liberty of an individual except in the manner provided for in the Code of Criminal Procedure or the Code of Civil Procedure, as the case may be.

15. Section 18 of the Act of 1984 provides for execution of decrees and orders. Section 18 of the Act of 1984 is reproduced herein below:

"18. Execution of decrees and orders.-(1) A decree or an order [other than an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)], passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the execution of decrees and orders.

(2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.

(3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court to which it is sent for execution."

16. Section 18(2) of the Act of 1984 clearly provides that an order passed by a Family Court under Chapter IX of the Cr.P.C. shall be executed in the manner provided for the execution of such order by the Code of Criminal Procedure. Thus, a perusal of the provisions, enumerated above, and the directions given by the Supreme Court leave no room for doubt that for enforcement of an order of maintenance, warrants of arrest cannot be issued. Liberty of an individual can be curtailed only in the manner prescribed by law and not otherwise.

17. Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 21 is sacrosanct and forms the basic structure of our Constitution. The fundamental right, so granted to an individual, cannot in any manner, be abridged except in the manner provided for by the law and not on a misunderstanding of the law by the Courts.

18. In the opinion of this Court, the act of issuance of arrest warrants is not merely a misinterpretation of the law laid down by the Supreme Court and the statutory law itself, but, is an act of overstepping its jurisdiction by the Family Court, which is absolutely illegal.

19. A person who is liable to pay maintenance is not to be treated as a person who has committed a crime. His personal dignity and liberty cannot be trampled with by the Courts in their excessive enthusiasm in enforcement of orders of maintenance, even if they come to a finding that there has been a deliberate non-payment of arrears of maintenance pursuant to an order of Court. The Courts must keep in mind that every individual must be treated with dignity that befits his status as a free citizen of the country. The manner in which arrest warrants are routinely issued is not only illegal but also inhumane, as it tramples upon the dignity of an individual who is subjected to arrest and produced before the Court as if he were accused of a crime.

20. The orders of the Supreme Court in **Rajnesh (supra)** have been duly communicated to all Courts, and any violation of the same cannot be allowed to go unchecked.

21. Another issue, which has been raised during arguments before this Court regarding execution of the orders of maintenance in the manner provided for the execution of money decrees as laid down by the Supreme Court in **Rajnesh (supra)**. The learned counsel for the applicant, relying upon the directions given in paragraph 132, contends that procedure under Section 125(3) Cr.P.C. ought not be followed, but, the provisions of the Code of Civil Procedure specifically Sections 51, 55, 58 and 60 read with Order XXI C.P.C. have to be followed.

22. As indicated above, the provisions of the Act of 1984 clearly indicate that for proceedings under Chapter IX of the Code of Criminal Procedure, the provisions of the Code of Criminal Procedure shall be followed.

23. The Uttar Pradesh Family Courts (Court) Rules, 2006 (hereinafter referred to as "U.P. Family Court Rules"), in Chapter VIII, provide for the execution of orders of the Family Court. For ready reference, Chapter VIII of the U.P. Family Court Rules, are reproduced hereinbelow:

"35. Execution of Orders.- The provisions of Code of Civil Procedure for execution of orders passed in all matters except the orders passed on petition under Chapter IX of Code of Criminal Procedure shall apply. The provisions of execution of orders in Code of Criminal Procedure shall apply to orders passed under Chapter IX of the Code of Criminal Procedure.

36. An order passed under Chapter IX of the Code of Criminal Procedure for maintenance allowance may be executed by the Court by attachment of salary as provided in section 60 and order 21 of the Code of Civil Procedure in addition to the mode of recovery provided in subsection (3) of Section 125 of the said Code.

37. An application under Section 125/126 under Chapter VII of the Code of Criminal Procedure may be filed at the place where the wife, minor child, parent, as the case may be resides.

38. The pendency of an application for interim maintenance under Section 125 or 126 as the case may be under Chapter IX of the Code of Criminal Procedure shall not be a ground to stay or suspend the main proceedings under Section 125 or 126 of the Code.

39. In the pending execution proceeding for recovery of any defaulted amount the Family Courts shall not register a new case. An application for recovery of defaulted amount of maintenance in the pending execution case shall be sufficient for recovering the amount."

24. A perusal of Rule 36, quoted above, shows that the procedure prescribed under the Code of Civil Procedure specifically for attachment of salary under Section 60 and Order XXI of the Code of Civil Procedure is in addition to the mode of recovery provided in sub-section (3) of Section 125 Cr.P.C. Thus, it leaves no room for doubt that the procedure, which is to be followed for recovery of arrears of maintenance in proceedings under Section 125 Cr.P.C., is as given under Section 125(3) Cr.P.C.

25. The Supreme Court while considering the case of **Rajnesh (supra)**, was not only dealing with award of maintenance/enforcement of maintenance orders only under the Code of Criminal Procedure but also under other laws. To interpret the directions of the Supreme Court in the manner, as is being suggested by the learned counsel for the applicant, would be incorrect. The Supreme Court, in paragraph No.132 of the directions given has used the word 'may' and the same has been done taking into account the various provisions under which maintenance can be sought by an aggrieved person.

26. Thus, it is no doubt true that the U.P. Family Court Rules provide for attachment of salary as provided in Section 60 and Order XXI of the Code of Civil Procedure; however, the same is only in addition to the regular mode of recovery provided under the Code of Criminal Procedure. Furthermore, Rule 36 provides for the attachment of salary, as provided under Section 60 and Order XXI of the Code of Civil Procedure and would not apply to cases where the person against whom the order of maintenance is to be enforced is not receiving salary.

27. In the opinion of the Court, the provisions of Rule 36 of the U.P. Family Court Rules, Section 60 C.P.C. and Order XXI of C.P.C., when read together, leave no room for doubt that the

same would apply only to salaries, as provided under Rule 48 and 48-A of Order XXI of the Code of Civil Procedure. The entire chapter for execution of decrees cannot be made applicable as the Code of Criminal Procedure is quite exhaustive when it comes to the manner of recovery of arrears of maintenance /enforcement of orders of maintenance. The provisions of the Code of Civil Procedure specifically Section 60 and Order XXI have been provided under Rule 36 in addition to the regular modes of recovery for salaried professions. Thus, the contention of the applicant that the recovery can be made only by invoking the provisions of the Code of Civil Procedure, that too, with respect to the execution of money decrees is not in consonance with the directions given by the Supreme Court, the Family Courts Act and Rules and the Code of Criminal Procedure.

28. As stated above, no arrest warrant can be issued for recovery of arrears of maintenance, this application is **allowed**. The impugned order dated 25.09.2025 passed by Additional Principal Judge, Family Court, Court No.2, Aligarh in Misc. Case No.548 of 2024 (Smt. Shajia Khan & Another vs. Mohd. Shahzad) under Section 128 Cr.P.C., Police Station - Banna Devi, District Aligarh is, thus, set aside. The matter is remitted back to the Additional Principal Judge, Family Court, Court No. 2, Aligarh, to decide the application for enforcement of the order of maintenance strictly in accordance with the statutory provisions and the directions given by the Supreme Court in **Rajnish (supra)**.

(2026) 1 ILRA 340
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.01.2026

BEFORE

THE HON'BLE VIVEK KUMAR SINGH, J.

Application U/S 528 BNSS No. 48021 of 2025

Manjoo Devi

...Applicant
Versus

State of U.P. & Ors.

...Opposite Parties

Issue for Consideration

Matter pertains to whether criminal revision against confiscation order passed by the District Magistrate under S. 5-A of the U.P. Prevention of Cow Slaughter Act, 1955 lies before the Sessions Judge or the Divisional Commissioner in light of Government Notification dated 15.10.2024. (Para 12, 14)

Headnotes

Bhartiya Nagarik Suraksha Sanhita (B.N.S.S.) - S. 528 - Maintainability - Confiscation of vehicle - U.P. Prevention of Cow Slaughter Act, 1955 - S. 5-A - Statutory Remedy - Revisional Jurisdiction. Criminal Revision - Maintainability - "Since the revision was filed after Government Notification dated 15.10.2024, therefore, it was not maintainable before the learned Sessions Judge." Government Notification dated 15.10.2024 - Revisional Jurisdiction - "the Governor is pleased to authorise the Divisional Commissioner to satisfy himself at any time as to the legality or propriety of the action taken under the S. 5-A call for and examine the record of any case and pass such order thereon as he may deem fit."

Revisional Authority - Divisional Commissioner - "It is further Clarified that aforesaid authority Conferred to Division Commissioner may be known as Revisional Jurisdiction."

Efficacious Remedy - "a criminal revision before Divisional Commissioner alone will lie against the confiscation order passed by the District Magistrate in U.P. Prevention of Cow Slaughter Act, 1955."

Liberty to approach proper forum - Limitation - "the concerned Divisional Commissioner will entertain her revision without going into the question of limitation."

Interim Protection - "the execution of order dated 19.10.2024 shall not be given effect to, till final judgment of Revisional Court." (Para 7,13,14,15,16)

Held: U.P. Prevention of Cow Slaughter Act, 1955 does not provide any forum of appeal or revision against the order of confiscation regarding the seized vehicle passed by the District Magistrate - a criminal revision before Divisional Commissioner alone will lie against the confiscation order passed by the District Magistrate in U.P. Prevention of Cow Slaughter Act, 1955 - criminal revision in the Court of District Judge would not lie against the confiscation order passed by the District Magistrate - The proper remedy is to file revision before Divisional Commissioner concerned - dispose of this application with a liberty to the applicant to approach the proper forum by filing a revision before Divisional Commissioner concerned within a month - the concerned Divisional Commissioner will entertain her revision without going into the question of limitation - the execution of order dated 19.10.2024 shall not be given effect to, till final judgment of Revisional Court - With the aforesaid observations, the present application is disposed of. (Paras 12 - 17)

Case Law Cited

Mustakeem Begum vs. State of U.P. and Three Others, Crl. Misc. Writ Petition No. 9028 of 2021

List of Acts

Bhartiya Nagarik Suraksha Sanhita (B.N.S.S.), 2023; U.P. Prevention of Cow Slaughter Act, 1955; Prevention of Cruelty to Animals Act, 1960; Code of Criminal Procedure (Cr.P.C.), 1973; Uttar Pradesh General Clauses Act, 1904; Constitution of India (Article 226 and Article 348)

List of Keywords

Confiscation; Bovines; Revisional Jurisdiction; Divisional Commissioner; Notification; Maintainability; Efficacious remedy; Limitation.

Case Arising From

ORIGINAL JURISDICTION: Application U/S 528 B.N.S.S. filed to quash an order dated 10.10.2025 passed by learned Sessions Judge, Chandauli, in Criminal Revision No. 134 of 2025; and order dated 19.10.2024 passed by District Magistrate, Chandauli, in Case No. 393 of 2024 under S. 5(A) of U.P. Prevention of Cow Slaughter Act, 1955, arising out of Case Crime No. 34 of 2024.

Appearances for Parties

Advs. for the Appellant:

Sri Rajesh Kumar Yadav, Sri Shivam Yadav

Advs. for the Respondents:

Sri Ravindra Kumar Singh, learned A.G.A. for the State.

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

1. Sri Rajesh Kumar Yadav, Sri Shivam Yadav, learned counsel for the applicant and Sri Ravindra Kumar Singh, learned A.G.A. for the State.

2. The present Application U/S 528 of Bhartiya Nagarik Suraksha Sanhita (hereinafter referred to as "B.N.S.S.") has been filed to quash the impugned order dated 10.10.2025 passed by learned Sessions Judge, Chandauli, in Criminal Revision No. 134 of 2025 (Manju Devi vs. State of U.P.), as well as the order dated 19.10.2024, passed by District Magistrate, Chandauli, in Case No. 393 of 2024 (Computerized Case No. D202414180000393), under Section 5(A) of U.P. Prevention of Cow Slaughter Act, 1955, arising out of Case Crime No. 34 of 2024, under Section 3/5A/5B/8 of the U.P. Prevention of Cow Slaughter Act, 1955 and Section 11 of the Prevention of Cruelty to Animals Act, 1960, P.S. Sakaldiha, District Chandauli.

3. Brief facts of the case are that on the basis of an information, Vehicle Tata Magic bearing Registration No. U.P. 67 BT 0122 of the applicant, was seized by the police personnel on 07.03.2024 and they found that it was carrying certain bovines. It is also suspected that the said vehicle was used in the illegal transportation of bovines. Thereafter an F.I.R. bearing Case Crime No. 34 of 2024, under Sections 3/5A/8/5B of the U.P. Prevention of Cow Slaughter Act, 1955, (hereinafter referred to as "the Act, 1955") and Section 11 of the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as "the Act, 1960"), was registered at P.S. Sakaldiha, District Chandauli, on 07.03.2024. The applicant was owner of the aforesaid vehicle. Thereafter an application was moved by the Investigating Officer on 09.03.2024 before the Superintendent of Police, District Chandauli, who put his report on 30.03.2024 with a prayer to confiscate the aforesaid vehicle. The proceedings under Section 5-A(7) under the Act, 1955, was initiated by the District Magistrate, Chandauli. The notice was also issued to the applicant who did not appear before the District Magistrate, Chandauli, and no objection was filed by her, therefore, the opportunity of hearing of the applicant was closed and the District Magistrate, Chandauli, proceeded ex-parte and confiscated the aforesaid Tata Magic Vehicle No. UP 67 BT 0122.

4. Being aggrieved with the order dated 19.10.2024 passed by the District Magistrate, Chandauli, the applicant filed a Criminal Revision No. 134 of 2025 before the learned Sessions Judge, Chandauli, which was also dismissed by the learned Sessions Judge, Chandauli, vide order dated 10.10.2025 for the reason that criminal revision was not maintainable, hence the present application under Section 528 B.N.S.S. has been moved by the applicant with a prayer to set-aside the aforesaid orders dated 19.10.2024 and 10.10.2025.

5. Learned counsel for the applicant has submitted that the applicant had purchased the aforesaid vehicle for delivery of vegetables in the market and driver as well as the cleaner of the said vehicle were not authorized to transport bovines. The applicant has nothing to do with the alleged offence. The applicant had no knowledge in respect of alleged commission of offence. The police has illegally made the applicant one of the accused in the F.I.R. and no one has claimed ownership of the vehicle and the applicant only is the registered owner of the vehicle and the said confiscated vehicle be released in her favour.

6. Learned A.G.A. has submitted that present Application U/S 528 B.N.S.S. is not maintainable. The applicant wrongly and illegally challenged the order of District Magistrate, Chandauli, before learned Sessions Judge, Chandauli. The learned Sessions Judge, Chandauli, has no jurisdiction to entertain criminal revision against the confiscation order of the District Magistrate, Chandauli. The remedy lies before the Divisional Commissioner against the

confiscation order passed by the District Magistrate, Chandauli, in view of Government Notification dated 15.10.2024.

7. The learned A.G.A. has further submitted that the U.P. Prevention of Cow Slaughter Act, 1955, does not mention any remedy against confiscation order passed in the Act. Earlier a co-ordinate Bench of this Court in **Crl. Misc. Writ Petition No. 9028 of 2021 (Mustakeem Begum vs. State of U.P. and Three Others)**, held that the Act does not provide any forum of appeal or revision against the order of confiscation regarding seized vehicle passed by the District Magistrate. Thereafter, it was held in the aforesaid case vide order dated 26.04.2024, that in such circumstances, provisions of criminal revision under Section 397 of Cr.P.C., shall be applicable and a criminal revision in the Court of Sessions Judge against such order would lie. Later on a Notification was issued by the Government of U.P. on 15.10.2024 and the criminal revision was filed by the applicant on 10.06.2025 challenging the order of the District Magistrate in the court of District Judge. It was laid down in the Government Notification dated 15.10.2024 that if the legality or the propriety of the action taken under Section 5-A of the Act, 1955, is to be challenged, the same could be challenged before the Divisional Commissioner. Since the revision was filed after Government Notification dated 15.10.2024, therefore, it was not maintainable before the learned Sessions Judge and the present application under Section 528 B.N.S.S. is also not maintainable.

8. The Division Bench of this Court while deciding the case of **Mustakeem Begum (supra)**, has made following observations in paragraph nos. 18, 19 and 20 of the writ petition.

" 18. Section 5-A of PCSA defines the provisions under the Act and provides procedures for seizure and confiscation of the vehicle and animals beef or cow progeny, seized under the Act. It does not provide any forum of appeal or revision against the order of confiscation regarding the seized vehicle passed by the District Magistrate. Therefore, the provisions of criminal revision u/s 397 Cr.P.C. shall be applicable. Section 397 Cr.P.C. provides for institution of criminal revision in the court of Sessions against the order passed by the District Magistrate and other Executive Magistrate supporting to the District magistrate. Thus, the petitioner has been provided suitable and appropriate forum u/s 397 Cr.P.C. to seek remedy against the impugned order passed by the District Magistrate. The provisions of this writ petition filed under Article 226 of the Constitution of India is an extraordinary jurisdiction which can be exercised when the petitioner cannot obtain suitable relief from any other forum. There is no extraordinary circumstance shown by the petitioner which may entitle him to obtain relief from this writ court.

19. There is no merit in this writ petition and the same is liable to be dismissed.

20. Accordingly, the writ petition is dismissed."

9. Confronted with the above Notification dated 15.10.2024, learned counsels for the applicant prayed that the applicant may be permitted to file a criminal revision against the impugned order dated 19.10.2024 and it was also prayed that delay occurred in the above circumstances be also condoned.

10. The Act, 1955, is an Act to prevent the slaughter of cow and its progeny in the State of Uttar Pradesh. Section 5-A of the Act, 1955, is reproduced as hereunder :

"5-A. Regulation on transport of cow, etc. - (1) *No person shall transport or offer for transport or cause to be transported any cow, or bull or bullock, the slaughter whereof in any place in Uttar Pradesh is punishable under this Act, from any place within the State to any place outside the State, except under a permit issued by an officer authorised by the State Government in this behalf by notified order and except in accordance with the terms and conditions of such permit.*

(2) *Such officer shall issue the permit on payment of such fee not exceeding [five hundred rupees] for every cow, bull or bullock as may be prescribed :*

Provided that no fee shall be chargeable where the permit is for transport of the cow, bull or bullock for a limited period not exceeding six months as may be specified in the permit.

(3) *Where the person transporting a cow, bull or bullock on a permit for a limited period does not bring back such cow, bull or bullock into the State within the period specified in the permit, he shall be deemed to have contravened the provision of sub-section (1).*

(4) *The form of permit, the form of application therefore and the procedure for disposal of such application shall be such as may be prescribed.*

(5) *The State Government or any officer authorised by it in this behalf by general or special notified order, may, at any time, for the purpose of satisfying itself, or himself, as to the legality or propriety of the action taken under this section, call for and examine the record of any case and pass such orders thereon as it or he may deem fit].*

(6) *Where the said conveyance has been confirmed to be related to beef by the competent authority or authorised laboratory under this Act, the driver, operator and owner related to transport, shall be charged with the offence under this Act, unless it is not proved that the transport medium used in crime, despite all its precautions and without its knowledge, has been used by some other person for causing the offence.*

(7) *The vehicle by which the beef or cow and its progeny is transported in violation of the provisions of this Act and the relevant rules, shall be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner of Police will do all proceedings of confiscation and release, as the case may be.*

(8) *The cow and its progeny or the beef transported by the seized vehicle shall also be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner will do all proceedings of the confiscation and release, as the case may be.*

(9) *The expenditure on the maintenance of the seized cows and its progeny shall be recovered from the accused for a period of one year or till the release of the cow and its progeny in favour of the owner thereof whichever is earlier.*

(10) *Where a person is prosecuted for committing, abetting, or attempting to an offence under Sections 3, 5 and 8 of this Act and the beef or cow-remains in the possession of accused has been proved by the prosecution and transported things are confirmed to be beef by the competent authority or authorised laboratory, then the Court shall presume that such person has committed such offence or attempt or abetment of such offence, as the case may be, unless the contrary is proved.*

(11) *Where the provisions of this Act or the related rules in context of search, acquisition, disposal and seizure are silent, the relevant provisions of the Code of Criminal Procedure, 1973 shall be effective thereto."*

11. Section 5-A of the Act, 1955, authorizes the law enforcement officers to seize any vehicle by which the beef or cow and its progeny is transported in violation of the provisions of the Act and

the rules made thereunder. The District Magistrate/Commissioner of Police is authorised to do all proceedings of confiscation and release, as the case maybe.

12. After hearing the counsel for the parties, it becomes apparent that U.P. Prevention of Cow Slaughter Act, 1955 does not provide any forum of appeal or revision against the order of confiscation regarding the seized vehicle passed by the District Magistrate. It is trite law that if any judicial or quasi judicial order is passed against a party, then he must have a forum to vindicate his grievances. A party cannot be left in lurch in case any such order is passed against him. From the perusal of the order passed in Criminal Misc. Writ Petition No. 9028 of 2021, it is evident that the said order was passed on 26.4.2024 when no such forum was available for a party to challenge the confiscation order passed by the District Magistrate in U.P. Prevention of Cow Slaughter Act, 1955. It appears that the said lacuna which occurred due to oversight of the legislature was rectified later on by issuing a notification dated 15.10.2024.

13. I have also perused the above notification which is reproduced herein below:-

UTTAR PRADESH SHASAN

\
Grih (Police) Anubhag-9

In pursuance of the provisions of clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of Notification no. U.O./77/VI-P-9-2024 dated 15 October, 2024.

NOTIFICATION

No. U.O./77 U.O.-VI-P-9-2024
Lucknow: Dated 15 October, 2024

In exercise of the powers under sub-section (5) of section 5-A of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (U.P. Act no. 1 of 1956) read with section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act no. 1 of 1904), the Governor is pleased to authorise the Divisional Commissioner to satisfy himself at any time as to the legality or propriety of the action taken under the section 5-A of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (U.P. Act no. 1 of 1956), call for and examine the record of any case and pass such order thereon as he may deem fit.

The aforesaid power shall be exercised within the limit of the respective districts of the Divisional Commissioners.

It is further Clarified that aforesaid authority Conferred to Division Commissioner may be know as Revisional Jurisdiction.

By Order,
(Rajesh kumar)
Secretary.
Signed by

Rajesh Kumar

Date: 15-10-2024 14:44:39

14. In light of the aforesaid notification, it is very much clear that a criminal revision before Divisional Commissioner alone will lie against the confiscation order passed by the District Magistrate in U.P. Prevention of Cow Slaughter Act, 1955. Hence, the criminal revision against the impugned order passed by the District Magistrate, after the said Notification in the court of Sessions Judge, is not maintainable as the applicant has equal and efficacious remedy to ventilate his grievances before Divisional Commissioner concerned. However, this Court is of the view that the above Notification which was issued on 15.10.2024 would not have come to the notice of the applicant and she filed a criminal revision in view of law laid down by the Division Bench of this Court in the case of **Mustakeem Begum (supra)**. But once the order was passed on 26.04.2024 in the case of **Mustakeem Begum (supra)**, the Government has issued Notification on 15.10.2024 and remedy has been provided. Therefore, criminal revision in the Court of District Judge would not lie against the confiscation order passed by the District Magistrate. The proper remedy is to file revision before Divisional Commissioner concerned

15. Therefore I find it appropriate to dispose of this application with a liberty to the applicant to approach the proper forum by filing a revision before Divisional Commissioner concerned within a month from the date of order and if applicant approaches the forum as directed by this Court, the concerned Divisional Commissioner will entertain her revision without going into the question of limitation.

16. If the revision is filed by the applicant before the Divisional Commissioner concerned challenging the order dated 19.10.2024 passed by District Magistrate, Chandauli, within a period prescribed here, the execution of order dated 19.10.2024 passed by the District Magistrate, Chandauli, shall not be given effect to, till final judgment of Revisional Court.

17. With the aforesaid observations, the present application is **disposed of**.

(2026) 1 ILRA 346
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD-28.01.2026

BEFORE

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

Jail Appeal No. 311 of 2018

Jagannath

State of U.P.

...Appellant

Versus

...Respondent

Issue for consideration

The matter pertains to a dispute arose over a trivial issue. The appellant was filling water from a hand pump in the house of the first informant's sister, which caused the area to become muddy. When the sister objected, an argument ensued. when a man intervened, the appellant stabbed him to death.

Headnotes

Indian Penal Code,1860-Section 302,323-Criminal Procedure Code,1973-Section 378-Sudden fight-Exception 4 to section 300 IPC-Trivial dispute-Incident occurring over a hand pump becoming muddy-Absence of Premeditation-Act done in the heat of passion-Accused wielding a weapon handy at the time-No previous enmity established-Nature of Injury-Single blow on the Chest-Cruelty and Undue advantage-Accused not inflicting further injuries after the victim fell-Conduct indicative of lack of cruelty-Death caused by Shock and haemorrhage resulting from an incised wound-Thirteen year custody period- Appellant entitled to the benefit of Exception 4 to section 300 IPC- Hence, Sentence is modified from life imprisonment to eight years rigorous imprisonment.(Para 31 to 36) (E-6)

Held

The court held that the Present case fulfilled the four requirements of Exception 4 of Section 300 IPC i.e. sudden fight, absence of premeditation, heat of passion, did not act in a cruel and unusual manner. The appellant was entitled to the benefit of Exception 4.

Case law Cited

Jagtar Singh Vs State of Punjab (1983) 2 SCC 342, K. Ramakoteswara Rao Vs State of A.P., 1986 C.r.L.J 680, Surinder Kumar Vs Union Territory Chandigarh (1989) 2 SCC 217, V. Sreedharan Vs State of Kerala , AIR 1992 SC 754, Bhera Vs State of Rajasthan, 2000 SCC (Cri) 1230, Mochi Raju Vs State of Gujarat JT 2001 (10) SC 398, Sukbhir Singh Vs State of Haryana (2002 3 SCC 327, Sukbhir Singh Vs State of Haryana (2002 3 SCC 327, Shanmugam Vs State of Tamil Nadu, AIR 2003 SC 200, Ghapoo Yadav Vs State of M.P. (2003) 3 SCC, Pulicheria Nagaraju @ Nagaraju Reddy Vs State of A.P (2006) 11 SCC 444, Sudhakar Vs State of U.P. (2012 8 SC 289-referred to.

List of Acts

Indian Penal Code,1860, Criminal Procedure Code,1973.

List of Keywords

Murder, culpable homicide, Exception 4, section 300 IPC, Voluntarily Causing hurt, sudden fight, absence of premeditation, heat of passion, cruel and unusual manner, Single Blow, Knowledge Intention, Post-mortem report, Site plan, recovery, Expert opinion, Jail Appeal, Conversion of Sentence, Modification, Undue advantage, Eye witness testimony.

Case Arising from

CRIMINAL JURISDICTION- JAIL APPEAL No. – 313 of 2018

Jagannath Vs. State of U.P.

From the Judgment and order dated 28.01.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Adv. for Appellant(s):-

Devendra Pratap Singh, From Jail

Adv.for Respondent(s):-

A.G.A.

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

1. This Criminal appeal has been filed against the judgement and order dated 25.02.2017 passed by the Additional Sessions Judge, Court No. 3, Mathura in ST No. 24 of 2013, under Section 302, 307 IPC, police station Goverdhan, district Mathura whereby the learned Judge convicted and sentenced the appellant to life imprisonment and a fine of Rs. 5,000/- under Section 302 IPC and in default of payment of fine, the appellant was further directed to undergo additional simple imprisonment of two years. He was further convicted and sentenced to one year simple imprisonment and a fine of Rs. 1000/- under Section 323 IPC and in default of payment of fine, he was to undergo one month's additional imprisonment.

2. However, both the sentences were directed to run concurrently.

Brief Facts

3. In short compass, the facts of the case are that a written report was given by Krishna Das, son of Madhusudan, resident of Barsana, district Barsana, district Mathura (hereinafter referred to as the "first informant") to the Station House Officer, police station Goverdhan that there is a hand pump in the house of his sister Meera. Jagannath, disciple of Anant Das, was filling water from that hand pump, due to which it has become muddy. On the objection of her sister as to why he has got the hand pump muddy, he started abusing her. When Ashok Pal, who was working in the house of Arvind Haldhar, tried to intervene in the matter, accused with an intention to kill, inflicted knife blow on Ashok Pal on his chest. He also assaulted the first informant with an intention to kill, on his hand. After the assault, accused fled away along with his disciple. Ashok Pal was taken to the hospital, where doctor declared him dead. This incident occurred at 10.00 hours on 09.08.2012.

4. On the basis of the aforesaid report, a Chik FIR was registered at Case Crime No. 469 of 2012, under Section 302 and 307 IPC, police station, Goverdhan, which was entered in the GD vide report No. 29 at 11:00 AM.

5. After the registration of the FIR, SI D.L. Pal, who was present at the police station, rushed to the spot and conducted inquest on the body of the deceased and prepared papers relating to postmortem examination. He also handed over the cadaver of the deceased to Constable Pushpal Singh and Constable Asharam for getting postmortem examination done.

6. PW-4, Dr. Sanjeev Gupta, conducted autopsy on the cadaver of the deceased and found the following injuries:

- 1. Incised wound of size 2 cm x 1 cm cavity deep just below the left nipple, oblique ward lower end in 5 cm from the mid line of chest, upper end in 6 cm from the mid line of chest.*
- 2. An incised wound of size 3 cm x 1 cm skin deep 2 cm anterior to left side of chest.*

In the opinion of the doctor, the cause of death was shock and haemorrhage as a result of ante-mortem injuries.

7. Injured Krishna Das was taken to Primary Health Centre by Constable 2192, Tehsildar Singh, where he was examined by PW-7, Dr. Rajendra Singhal, Medical Superintendent, who found the following injuries on the person of injured Krishna Das:

“Incised wound 1 cm x 2 cm x 3 cm deep on left side of hand. ”

In the opinion of the doctor, the injury was simple in nature and was caused by some sharp edged weapon.

8. Investigation of the case was taken up by PW-6, Raghvendra Singh, who was posted as Station House Officer, Goverdan. He inspected the spot and prepared site plan. After the arrest of the accused he recovered knife which was used in the commission of the crime on the pointing out of the accused. He also collected bloodstained clothes of the accused, plain and bloodstained earth and prepared memos thereof. After culmination of investigation, the investigating officer submitted charge sheet against the appellant.

9. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, where case was registered as ST No. 24 of 2013. Learned Additional Sessions Judge, Court No. 3, Mathura framed the charges against the accused-appellant, which was read over and explained to him.

10. To bring home guilt of the appellant, the prosecution has examined as many as seven witnesses, out of which PW-1, Krishna, PW-2, Meera Dasi, PW-3, Pradeep Das are the witnesses of fact, whereas PW-4, Dr. Sanjeev Gupta, who conducted post-mortem examination on the cadaver of the deceased, PW-5, Satish Chandra, who prepared Chik FIR, PW-6, Raghvendra Singh, the investigating officer of the case and PW-7, Dr. Rajendra Singhal, who examined the injured, are the formal witnesses.

11. After the closure of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. who pleaded not guilty and claimed to be tried.

12. Learned Additional Sessions Judge, Court No. 3, Mathura after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellant as indicated herein above.

13. Hence, this appeal.

Submission on behalf of the appellant

14. Learned counsel for appellant-accused at the very outset submits that he restricts his argument only to the extent for conversion of the sentence from Section 302 to Section 304 IPC and submits that keeping in view the injuries received by the deceased-Ashok Pal and the injured Krishna Das, caused by the appellant, the case shall not traverse beyond the purview of Section 304 Part-II IPC.

Submissions on behalf of the State

15. On the other hand, Shri Niraj Kumar Tiwari, learned Additional Government Advocate representing the State submitted that the accused caused injury by knife on the chest of the deceased, which resulted in his death and there was no grave or sudden provocation, the learned Trial Court on appreciation of the entire evidence on record, has rightly convicted and sentenced the appellant. for the offence punishable under Section 302 IPC.

Analysis and conclusion

16. Heard learned counsel for the appellant and learned Additional Government Advocate and gone through the entire evidence of the case.

17. There is no absolute proposition of law laid down by the Hon'ble Supreme Court in any of the decisions that in a case of a single blow Section 302 IPC shall not be attracted. Hon'ble Supreme Court in a catena of judgements has held that number of injuries is not the determining factor for ascertaining the intention.

18. For better appreciation of the contention of learned counsel for the appellants, we would like to refer certain pronouncement of Hon'ble Supreme Court on the point in question insofar as the appellant is concerned.

19. In **Jagtar Singh Vs. State of Punjab** (1983) 2 SCC 342, accused on the spur of moment inflicted a knife blow on the chest of the deceased. The injury proved fatal. The doctor opined that the injury was sufficient in the ordinary course of nature to cause death. The Apex Court observed that quarrel was of a trivial nature and even in such a trivial quarrel appellant wielded a weapon like a knife and landed a blow on the chest. In these circumstances, it is permissible to infer that the accused at least could be imputed with the knowledge that he was likely to cause an injury which was likely to cause death. The Court altered the conviction of the appellant from Section 302 IPC to Section 304 Part II IPC and sentenced the accused to suffer rigorous imprisonment for five years.

20. In **K. Ramakoteswara Rao Vs. State of A.P.**, 1986 Cr.L.J. 680, a sudden quarrel arose between the accused and the deceased and the deceased threatened the accused with dire consequences. The accused stabbed the deceased with knife. The Court convicted the accused under Section 304 Part-I IPC.

21. In **Surinder Kumar Vs. Union Territory, Chandigarh**, (1989)2 SCC 217, Hon'ble Apex Court held that if on a sudden quarrel a person in the heat of the moment picks up a weapon which is handy and causes injuries out of which only one proves fatal, he would be entitled to the benefit of the Exception provided he has not acted cruelly. Hon'ble Supreme Court held that the number of wounds caused during the occurrence in such a situation was not the decisive factor. What was important was that the occurrence had taken place on account of a sudden and unpremeditated fight and the offender must have acted in a fit of anger. Dealing with the provision of Exception 4 to Section 300, Hon'ble Supreme Court held thus:

"..... To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly."

22. In **V. Sreedharan Vs. State of Kerala**, AIR 1992 SC 754, the accused, as a result of provocation caused in the heat of passion upon a sudden quarrel, chased the deceased to some distance and then gave the single fatal blow, it was held that the whole incident was a continuous sequence. Hence the conviction of the accused was shifted from Section 302 to Section 304 Part-I IPC.

23. In **Bhera Vs. State of Rajasthan**, 2000 SCC (Cri) 1230, accused and the deceased quarrelled and while quarrelling the accused in anger suddenly took out the knife and gave knife blow on the chest of the deceased which resulted in his death. The Apex Court set aside the conviction of the appellant under Section 302 IPC, instead convicted him under Section 304 Part II IPC and sentenced him to 5 years imprisonment.

24. In **Mochi Raju Vs. State of Gujarat**, JT 2001 (10) SC 398, accused appellant and the deceased started fighting and during the quarrel appellant took out the knife from the pocket and gave one blow to the deceased on his chest. The Apex Court while convicting the appellant for an offence under Section 304 Part II, sentenced him to five years rigorous imprisonment.

25. In **Sukhbir Singh v. State of Haryana** (2002) 3 SCC 327, the appellant caused two Bhala blows on the vital part of the body of the deceased that was sufficient in the ordinary course of nature to cause death. The High Court held that the appellant had acted in a cruel and unusual manner. Reversing the view taken by the High Court, Hon'ble Supreme Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 of Section 300 IPC. In cases where after the injured had fallen down, the appellant did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. The Court observed:

26. In **Sukhbir Singh Vs. State of Haryana**, (2002) 3 SCC 327, the appellant caused two Bhala blows on the vital part of the body of the deceased that was sufficient in the ordinary course of nature to cause death. The High Court held that the appellant had acted in a cruel and unusual manner. Reversing the view taken by the High Court this Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 of Section 300 IPC. In cases where after the injured had fallen down, the appellant did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. The Court observed:

"...All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with Bhala caused injuries at random and thus did not act in a cruel or unusual manner.

27. In **Shanmugam Vs. State of Tamil Nadu**, AIR 2003 SC 200, the accused stabbed the deceased over a petty quarrel with a spear in the abdomen and chest. The victim died after a week of septicaemia. The accused was punished under Part-I of Section 304 IPC.

28. In **Ghapoo Yadav Vs. State of M.P.** (2003) 3 SCC 528, Hon'ble Supreme Court held that in a heat of passion there must be no time for the passions to cool down and that the parties had in that case before the Court worked themselves into a fury on account of the verbal altercation in the beginning. Apart from the incident being the result of a sudden quarrel without premeditation, the law requires that the offender should not have taken undue advantage or acted in a cruel or unusual manner to be able to claim the benefit of Exception 4 to Section 300 IPC. Whether or not the fight was sudden, was declared by the Court to be decided in the facts and circumstances of each case."

29. In **Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh** (2006) 11 SCC 444, the Hon'ble Court held thus:

"Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. "

30. In **Sudhakar Vs. State of U.P.**, (2012)8 SC 289, Hon'ble Supreme Court held as under:

"Going by the narration of the facts disclosed, there was nothing to suggest that there was any premeditation in the mind of the appellant to cause the death of the deceased. Taking into account the statement of P.W.1 that the deceased was under the influence of liquor and that whenever he was under the influence of liquor he used to throw the household articles and create a ruckus in the house was a factor which created a heat of passion in the appellant who as a father was not in a position to tolerate the behaviour of his son whose misbehaviour under the influence of liquor was the torment. Therefore, unmindful of the consequences, though not in a cruel manner the appellant inflicted a single blow which unfortunately caused severe damage to the vital organs resulting into the death of the deceased. In such circumstances, as rightly contended by learned counsel for the appellant, we are convinced that the offence alleged and as found proved against the appellant can be brought under the First Part of Section 304 of IPC. Accordingly, while affirming the conviction of the appellant, we are only altering the same as falling under Section 304 Part I of IPC in place of Section 302 of IPC. As far as the sentence imposed on the appellant in

as much as we reached at the conclusion that the conviction should fall under Section 304 Part I of IPC, taking note of the sentence already undergone, we find from the Imprisonment Certificate that the appellant is in jail from 12.07.2004 and he is 60 year old, P.W.1, who is the wife of the appellant, is left all alone and the appellant having suffered imprisonment for more than eight years, we hold that the sentence already undergone would be sufficient punishment apart from the fine imposed with the default sentence as per the judgment of the Trial Court and as affirmed by the High Court. The appeal stands partly allowed with the above modifications of the charge and the sentence imposed on the appellant."

31. In the light of the above pronouncements of Hon'ble Apex Court, we shall now proceed to consider whether case against the accused-appellants falls within the ambit of Section 302 IPC or Section 304 IPC.

32. PW-1, who is the first informant of the case, in his deposition, has stated that along with the accused, his disciple was also with him, whom he recognizes, but does not know his name. He further stated that his sister did not try to save him. There was no hand pump in the locality. This witness has further stated that he received injuries while saving the deceased. From the perusal of the statement of PW-1, Krishna, who is the first informant and injured in this case, it appears that accused-appellant had tried to inflict him knife blow, which missed and hit the deceased on his chest resulting in his death. The blow was not aimed at vital part of the body. Further, from the perusal of the first information report as well as the deposition of the witnesses, it is clear that the incident has occurred over a very trivial issue of filling of water from the hand pump and getting the hand pump muddy. There was no premeditation and act was done in a heat of passion. Further none of the witnesses, in their deposition have stated that accused-appellant after the injured had fallen down, had inflicted any further injury when the victim was in a helpless position, which is indicative of the fact that accused had not acted in a cruel or unusual manner. PW-1, Krishna, who is the first informant of the case has also mentioned in the FIR, that Ashok was working in the house of Haldhar, who himself came to the spot and became a party to the dispute. PW-2, Smt Meera Dasi, in her deposition has even went on to state that accused has come to the village a week ago and living in a rented house. Moreover, in the statements of witnesses, there is no whisper of any previous enmity of the deceased with the appellant.

33. The cumulative effect of all these circumstances, in our opinion, should entitle the appellants to the benefit of Exception 4 to Section 300 IPC.

34. In view of the aforesaid legal proposition enunciated by Hon'ble Supreme Court and looking at the nature of injuries sustained by the deceased and the injured person and the circumstances as enumerated above, the conclusion is irresistible that the death was caused by the acts of the accused-appellant done with the intention of causing such bodily injury as would likely to cause death and, therefore, the offence would squarely come within the ambit of Section 304 part-I IPC, instead of Section 302 IPC.

35. In view of the above conspectus, the conviction of the appellant Jagannath under Section 302 IPC cannot be sustained. This Court is reluctant in endorsing the life imprisonment. Accordingly, the conviction of the appellant under Section 302 IPC is set aside, instead, he is

convicted under Section 304 Part-I IPC and sentenced to rigorous imprisonment of eight years. Conviction of the appellant under Section 323 IPC is affirmed. Appellant is stated to be in jail since 10.08.2012. He shall be released forthwith unless wanted in any other case provided he has completed the modified sentence of eight year.

36. Resultantly, the appeal is partly allowed with the aforesaid modification in the impugned judgement and order dated 25.02.2016 passed by the Additional Sessions Judge, Court No. 03, Mathura.

37. Office is directed to transmit the lower court record along with a copy of this order to the court concerned for compliance.

(2026) 1 ILRA 354
APPELLATE JURISDICTION
CRIMINAL SIDE
ALLAHABAD-DATED: 29.01.2026

BEFORE

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

Criminal Appeal No. 450 of 1987

Madho & Anr.

...Appellant

Versus

State of U.P.

...Respondent

Issue for consideration

The case originated from an incident on 09.07.1982 involving a dispute over the placement of bricks and stones that hindered construction work.

Headnotes

Indian Penal Code,1860-Sections 302/34-Criminal Procedure Code,1973-Section 374(2)-Murder-Common intention-Exhortation-Dispute over shifting of bricks and stones-Allegation that appellant exhorted principal accused to shoot deceased-Principal accused fired from roof and later chased victim to deliver fatal shot-Abatement of appeal regarding co-accused due to death-Discrepancy between PW-1(Informant) and PW-3(Witness)-Possibility of false implication-Witness named in FIR filed an affidavit denying presence at the scene of occurrence-Prosecution failed to prove guilt beyond reasonable doubt-Conviction and life sentence set aside-Appeal allowed.(Para 28 to 39) (E-6)

Held

The court held that there is quite often a tendency to implicate some person in addition to the actual assailant, by attributing to that person an exhortation to the assailant to assault the victim. Unless the evidence in this respect be clear, cogent and reliable, no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant. The evidence adduced at the trial in respect of the part alleged to have been played by the appellant is contradictory and far from convincing.

Case law Cited

State ret'd. by Inspector of Police Vs Saravanam & Anr., State of Rajasthan Vs Rajendra Singh, (2009) 11 SCC 106, Mahendra Pratap Singh Vs State of U.P (2009) 11 SCC 334, Jainul Haque Vs State of Bihar (1974) AIR SC 45-referred to.

List of Acts

Indian Penal Code, 1860, Criminal Procedure Code, 1973.

List of Keywords

Murder, Common intention, Exhortation, Contradiction of witnesses, Credibility of prosecution, Abatement of appeal, False implication, Eye witness testimony, Acquittal.

Case Arising From

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 450 of 1987

Madho & Anr. Vs. State of U.P.

From the Judgment and order dated 29.01.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Adv. for Appellant(s):-

Anurag Yadav, Mahendra Pratap

Adv. for Respondent(s):-

A.G.A.,

(Delivered by Hon'ble Chandra Dhari Singh, J.
& Hon'ble Devendra Singh-I, J.)

1. This criminal appeal has been filed by the appellants namely Madho alias Mewa Lal and Ram Deo against the judgement and order dated 10.02.1987 passed by the Additional Sessions Judge, Gyanpur, Varanasi in Sessions Trial No. 6 of 1983, whereby the learned Judge convicted and sentenced the appellants Mithai Lal to life imprisonment under Section 302 IPC. Accused Ramdeo and Madho alias Mewa Lal were convicted and sentenced to imprisonment for life under Section 302 read with Section 34 IPC.

2. Accused Mithai Lal has not filed criminal appeal against his conviction.

3. Since appeallant-Ramdeo has died, the appeal filed on his behalf abated vide order dated 19.11.2025.

4. Now, this Court is deciding the appeal filed on behalf of Madho alias Mewa Lal.

5. The facts that formed the bedrock of the present criminal appeal, in short compass, are that a written report was handed over by the first informant Panna Lal Yadav to the Station House Officer, police station Bhadohi that Tipkari (filling the gap between bricks by cement) of his house was to be done. The bricks and stones (Patiya) of Madho alias Mewa Lal were kept besides the eastern wall of the informant, which causes hindrance in the work. The informant asked Mewa Lal and his father Ramdeo to shift the brick and stones (Patiya) to another place, whereupon they started abusing him. In the meantime, Kanhaiya Lal reached there and asked them to refrain from abusing. At this Juncture Madho Lal and Ramdeo exhorted for the killing of Kanhaiya Lal,

whereupon Mithai Lal had fired at Kanhaiya Lal from his licensed gun from his roof. The FIR further alleges that on hearing the sound of fire, Raja Ram, first informant's mother, his brother and sister-in-law and several persons of the vicinity rushed to the spot. The accused-Mithai Lal again fired at Kanhaiya Lal, because of which, he became injured and tried to hide below the staircase of the house of Ram Saran. Thereafter accused Madho Lal and Ramdeo again exhorted to eliminate Kanhaiya. Thereupon, accused Mithai Lal jumped from his roof to the roof of Ram Saran, went down the stairs and again fired at the injured Kanhaiya Lal, who was hiding himself below the stairs of Ram Saran. The injured Kanhaiya (hereinafter referred to as 'the deceased') fell down and succumbed to the injuries at the spot. On being challenged by the witnesses and others, the accused fled away extending threats.

6. On the basis of the aforesaid report, a Chik FIR No. 89 was written by Head Moharrir Tej Narain Singh for the offence punishable under Section 302/34 IPC, which was marked as Ext. Ka-3.

7. After the registration of the first information report, PW-6, Station House Officer Raj Narain Tiwari started investigation of the case. He reached the place of occurrence and recorded the statement of the first informant and got the inquest on the body of the deceased conducted, Ext. Ka-5. Thereafter, he got the dead body sealed and sent it for postmortem examination through Constables Suresh Chandra Tiwari and Rameshwar Ram. He also prepared required documents and inspected the spot and prepared site plan. On the information of the informer, he arrested the accused Mithai Lal and Ramdeo. From the possession of the accused Mithai Lal, one double barrel gun No. 22531 A-9, which was built in Indian Head Factor was recovered. In the gun, cartridges were loaded. After removal, it was noticed that on the cartridge B.P. was written. Three live cartridges were also recovered and memo was prepared and was signed by the witnesses Prem Shanker Dubey and Vansh Narain Singh. After the recovery of fire arm and cartridges, a case was also registered against the accused Mithai Lal (who is not before us) under Section 25/27 of the Arms Act. He also collected plain and bloodstained earth and made memos thereof.

8. After culmination of investigation, the charge sheet was submitted against the accused by PW-6 Raj Narain Tiwari.

9. Charge sheet under Section 25/27 of the Arms Act was filed by SI Kawal Nath Singh.

10. As the case was exclusively triable by the Court of Sessions, learned Magistrate vide order dated 23.12.1982 committed the case to the Court of Sessions, where case was registered as ST No 6 of 1983 against all the accused persons and ST No. 7 of 1983 against accused Mithai Lal. Learned Additional Sessions Judge, Gyanpur, Varanasi framed the charges against the accused persons vide order dated 04.6.1983, which were read over and explained to the accused in Hindi, who pleaded not guilty and claimed to be tried.

11. To bring home guilt of the appellant beyond the hilt, the prosecution has examined as many as six witnesses, out of whom PW-1, Panna Lal was the first informant and eyewitness of the case, PW-2 Nand Lal was also eye-witness of the case, PW-3 was the witness of arrest of accused Mithai Lal Yadav and Ramdeo as well as recovery of firearm and other articles from their

possession. PW-4, Constable Parmeshwar Ram took the dead body for postmortem examination, PW-5, Dr. R.S. Shukla, conducted autopsy on the cadaver of the deceased, PW-6, SHO, Raj Narain Tiwari is the investigating officer of the case.

12. PW-1, Panna Lal, who is the first informant of the case, in his deposition has more or less reiterated the versions given in the first information report.

13. PW-2, Nand Lal in his examination-in-chief has stated that on the date of occurrence at about 8:00 AM, when he has having breakfast in his house, on hearing the noise, when he came out of the house, he saw that accused Ramdeo and Madho alias Mewa Lal were exhorting to kill and on their exhortation, Mithai Lal fired from the roof, which hit the deceased on his hand. On being injured, he ran towards the staircase of Bade Lal. Thereafter accused Madho Lal and Ramdeo again exhorted to eliminate Kanhaiya. Thereupon, accused Mithai Lal jumped from his roof to the roof of Bade Lal, went down the staircase and again fired at the injured Kanhaiya Lal, who was hiding himself below the staircase of Bade Lal. Mithai Lal was having a licesed gun, from which he made fire, due to which deceased died. On being challenged, accused fled away towards east extending threats.

14. PW-3, Prem Shanker Dubey is the witness of arrest of Mithai Lal and Ramdeo. He is also the witness of recovery of weapon of assault.

15. PW-4, Constable Parmeshwar Ram, in his examination-in-chief deposed that on 09.07.1982, he was posted as Constable at police station Bhadohi. On that date, he took the dead body of Kanhaiya Lal for postmortem examination along with Constable Suresh Chandra Tiwari in a sealed condition.

16. PW-5, Dr. R.S. Shukla, in his examination-in-chief deposed that on 07.09.1982, he was posted at Government Hospital Maharaja Chet Singh at Gyanpur. He found the following antemortem injuries on the person of the deceased"

1. Bullet entry wound 2 cm x 2 cm on the back of the neck. Several irregular bullet fragments were present around the wound. The edges of the wound showed entry marks. Each mark was approximately 0.2 cm in diameter. The wound edges were inverted. There was blackening around the wound.

2. Bullet exit wound 4 cm x 3 cm on the lower left side of the chest, 10 cm below the nipple. Omentum was protruding from the wound. The wound edges were everted.

3. Lacerated wound: 2 cm x 1 cm x bone depth. There was blackening around the injury on the back of the right index finger.

4. A lacerated wound 2 cm. x 1 cm. deep on the back of the right middle finger. There was blackening around the injury.

5. An abrasion 6 cm. x 2 cm. on the front of the right foot above the ankle joint.

17. PW-6, SHO Raj Narain Tiwari was the investigating office of the case. His evidence has already been discussed above.

18. After the closure of prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C., who denied the charges leveled against them. Accused-Mithai Lal further stated that on the date of occurrence, when he was sitting on his door, Kanhaiya and others came there and asked for removing the stones, which were lying alongside his wall. When he asked them that he will shift the stones after sometimes, Kanhaiya and others started abusing and throwing bricks and stones. When he tried to specify them, they started beating him. On the exhortation of Panna Lal, Kanhaiya brought country made pistol from his house and fired at him, which missed and hit the wall. Thereafter he ran to save himself shouting for help (Bachao bachao). However, he was surrounded by Panna Lal, who was armed with lathi and Kanhaiya, who was armed with country made pistol and when Kanhaiya Lal pointed pistol towards him, his father (Ramdeo) fired at Kanhaiya from the roof of Bade Lal.

19. Dr. R.S. Shukla was examined in this case as DW-1. In his deposition, he has stated that on 15.07.1982, he was posted as Surgeon at Maharaja Chet Singh. He was also Medical Officer of the Gyanpur Jail. On that date at 07:15 PM on 15.07.1982, he has examined Ramdeo and found the following injuries:

- 1. Lacerated wound 4 cm x 1.5 cm x skin deep on the back of the head, 9 cm above the ear. The wound was healing and infected.*
- 2. Bluish mark on the nail.*
- 3. Abrasion 2 cm x 1 cm on the back of the left elbow. There was a black scab over the injury.*

At the time of examination, the injuries were approximately 6 days old.

20. He also examined Mithai Lal, son of Ramdeo at 09:20 PM on 15.07.1982 and found the following injuries on his person:

- 1. Abrasion 2 cm x 1 cm on the posterior aspect of the right elbow. A hard, dark scab was present over the wound. The wound was healing from the edges.*
- 2. Abrasion 1 cm x 0.5 cm on the right palm near the wrist joint. A hard scab was present over the wound.*
- 3. Bruise 2 cm x 1 cm on the left hand. The bruise was greenish in colour. There was swelling around the bruise, approximately 4 cm x 4 cm in size. Tenderness was present.*

21. Learned Additional Sessions Judge, Gyanpur at Bhadohi after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellant as indicated herein above.

22. Hence, this appeal.

Submissions on behalf of the appellant

23. It is contended by the learned counsel for the appellant that there are material contradictions in the statement of PW-1, who is the first informant and eye-witness of the case and PW-3, who is the witness of arrest of Ramdeo and also witness of recovery.

24. It is also pointed out by the learned counsel for the appellant that the co-accused Ramdeo has not been arrested from the place as alleged by the witnesses, which makes the entire prosecution story doubtful. The Trial Court has convicted and sentenced the appellant only on the basis of conjecture and surmises without there being no evidence.

Submissions on behalf of the State

25. On the other hand, Shri S.K. Ojha, learned Additional Government Advocate submits that there are no major contradictions in the statement of the witnesses and that the trial court has convicted the appellant after evaluating the evidence on record.

26. Learned Additional Government Advocate further submits that the prosecution has successfully proved its case beyond reasonable doubt.

27. Heard Shri Mahendra Pratap, learned Senior Advocate assisted by Shri Anurag Yadav, learned counsel for the appellant and Shri S.K. Ojha, learned Additional Government Advocate-Ist, representing the State and gone through the record of the case.

Analysis and Conclusions

28. The allegations against the appellant-Madho alias Mewa Lal was that he along with Ramdeo exhorted Mithai Lal to eliminate Kanhaiya and thereby Mithai Lal fired at Kanhaiya from his licensed gun from the roof of his house. On hearing the sound of fire family members of the deceased and several persons of the vicinity rushed to the spot. The accused-Mithai Lal again fired at Kanhaiya Lal, because of which, he became injured and tried to hide below the staircase of the house of Ram Saran. Thereafter accused Madho Lal and Ramdeo again exhorted to eliminate Kanhaiya. Thereupon, accused Mithai Lal jumped from his roof to the roof of Ram Saran, went down the staircase and again fired the injured Kanhaiya Lal, who was hiding himself below the staircase of Ram Saran. The injured Kanhaiya fell down and succumbed to the injuries at the spot.

29. Now coming to the contention of learned counsel for the appellant that there was contradictions in the statements of the witnesses. Before appreciating the point that there are material contradictions in the statements of the witnesses, it would be useful to refer certain pronouncements of Hon'ble Supreme Court:

30. In **State represented by Inspector of Police Vs. Saravanam and another**, , Hon'ble Supreme held that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons.

31. In **State of Rajasthan Vs. Rajendra Singh, (2009) 11 SCC 106** held as under:

“Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence.”

32. In **Mahendra Pratap Singh Vs. State of Uttar Pradesh, (2009) 11 SCC 334** held as under:

“The discrepancies in the evidence of eye-witnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that prosecution proved its case beyond reasonable doubt.”

33. In the light of the aforesaid observations of Hon'ble Supreme Court, we will now consider whether the contradictions/omissions had been of such magnitude that they may have materially affected the trial.

34. PW-1- Panna Lal, who is the first informant of the case, in his cross-examination, which was recorded on 26.04.1984, has specifically stated that on hearing the sound of fire, Raja Ram, son of Phoola Yadav, first informant's mother, his brother and sister-in-law and several persons of the vicinity rushed to the spot. Further PW-2, Nand Lal, in his cross examination, which was recorded on 03.07.1985 deposed that after the death of the deceased, he along with Raja Ram brought the deceased downstairs. However, Raja Ram has filed an affidavit before the Additional Sessions Judge, Gyanpur denying his presence at the scene of occurrence. He further stated that he came to know that he has been made witness in this case when he received the notice, but the facts are that that he has neither witnessed the occurrence nor brought the deceased downstairs.

35. Further PW-1, Panna Lal, in his cross-examination, which was recorded on 26.04.1985 deposed that the persons present at the place of occurrence as well as witnesses apprehended the accused Ramdeo at the spot. “रामदेव वही घाटना स्थल पर ही पकड़ लिया गया। माधव भाग गया। In this case PW-3, Prem Shanker Dubey has been examined as witness of arrest of Mithai Lal Yadav and Ramdeo. In his examination-in-chief, which was recorded on 01.11.1085, he deposed that about 3-3-1/2 months ago when he was sitting on the Roadways Bus Station, SHO Raj Narain Tiwari along with three police personnel came there and enquired about the accused. Thereafter, SHO took him along with him and on Umri-Piyari road two persons were seen and on noticing the police party, they started running. They were chased and apprehended by the police near the Mazar of Ghazi Miya. On interrogation they disclosed their names as Mithai Lal and Ramdeo. Weapon of assault along with cartridges were also recovered from Mithai Lal. The aforesaid statement of PW-3, Prem Shanker Dubey belies the deposition of PW-1, Panna Lal, the first informant of the case that accused-Ramdeo was apprehended by the witnesses at the spot.

36. From the above deposition of the first informant, PW-1, Panna Lal and PW-3, Prem Shankar Dubey, false implication of the accused-appellant cannot be ruled out. Further the appellant has only been convicted with the aid of Section 34 IPC and the role assigned to the

appellant was only of exhortation, which is a weak type of evidence as held by Hon'ble Supreme Court in **Jainul Haque Vs. State of Bihar**, AIR 1974 SC 45, in which Hon'ble Supreme Court observed as under:

“The evidence of exhortation is, in the very nature of thing, as weak piece of evidence. There is quite often a tendency to implicate some person in addition to the actual assailant, by attributing to that person an exhortation to the assailant to assault the victim. Unless the evidence in this respect be clear, cogent and reliable, no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant. The evidence adduced at the trial in respect of the part alleged to have been played by the appellant is contradictory and far from convincing. We would, therefore, accept the appeal, set aside the conviction of the appellant and acquit him.

37. In view of of the above, this Court is of the view that the evidence produced by the prosecution has neither quality nor credibility and it would be unsafe to rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in this case is not sufficient to bring home guilt of the appellant under Section 302/34 IPC beyond reasonable doubt.

38. Accordingly, the order dated 10.02.1987 passed by the Additional Sessions Judge, Gyanpur, Varanasi in Sessions Trial No. 6 of 1983, convicting and sentencing the appellant under Section 302/34 is set aside.

39. Consequently, the appeal is allowed.

40. The appellant Madhav alias Mewa Lal is on bail. His bail bond is cancelled and sureties are discharged.

41. Office is directed to transmit a copy of this order along with trial court record to the court concerned for compliance and compliance report be submitted to this Court within two months.

(2026) 1 ILRA 361
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.01.2026

BEFORE

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

Jail Appeal No. 787 of 2016

Naresh Chaudhary
State of U.P.

...Appellant
Versus
...Respondent(s)

Issue for Consideration

The appellant was convicted under section 302 IPC for the strangulation murder of his wife on 2/3 September 2009 .

Headnotes

Indian Penal Code,1860-Section 302-Criminal Procedure Code,1973-Section 378-Murder-Circumstantial evidence-Prosecution case rested on last seen theory and recovery of the murder weapon(Lungi) belonging to the appellant-Testimony of daughter and son established a history of matrimonial disputes and an altercation on the night of the incident-Appellant was found missing for six days-Later surrendered without offering any explanation in his Section 313 CrPc statement regarding the circumstances of the death or the use of his Lungi in the crime-Appeal dismissed.(Para 32 to 43) (E-6)

Held

The court held that the circumstances must be fully established and consistent only with the hypothesis of the guilt of the accused. In the present case the chain was held to be complete as the date and time of the death were confirmed by medical evidence. the appellant was present in the house on the night of the incident and the victim was strangled with the appellant's clothing and the appellant absconded immediately after the crime.

Case law Cited

Sharad Birdhichand Sarda Vs State of Maharashtra, (1984) 4 SCC 116, State of U.P. Vs Ashok Kumar Srivastava, (1992) 2 SCC 86, Padala Veera Reddy Vs State of A.P. 1989 Supp (2) SCC 706, C.Chenga Reddy & Ors Vs State of A.P. (1996) 10 SCC 193, State of Goa Vs Pandurang Mohite, (2008) 16 SCC 714, Laxman Prasad alias Laxman Vs State of M.P. 2023(3) SCC (Cri) 27 & R. Sreenivasa Vs State of Karnataka (2024) 17 SCC 426, State represented by inspector of Police Vs Saravanam & Anr. (2008) 17 SC 587, State of U.P. Vs M.K. Anthony, (1985) 1 SCC 505-referred to.

List of Acts

Indian Penal Code,1860, Criminal Procedure Code,1973.

List of Keywords

Section 302 IPC, Circumstantial evidence, Strangulation, Last seen theory, Sharad Birdhichand Sarda, Uxoricide, Chain of Evidence, Absconding, Minor Contradictions, Section 313 CrPc, Motive.

Case Arising from

CRIMINAL JURISDICTION: JAIL APPEAL No. – 787 of 2016

Naresh Chaudhary Vs. State of U.P.

From the Judgment and order dated 13.01.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-

Dharmendra Kumar Chaubey, From jail, Himansu Rai A.c., Pravin Kumar Tiwari

Adv. for Respondent(s):-

A.G.A.,

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

1. The instant Criminal Appeal has been sent from jail by the accused-appellant, Naresh Chaudhary against a judgment dated 27.07.2015 and order dated 30.07.2015 passed by the Additional Sessions Judge, Court No. 2, Ghaziabad in Sessions Trial No. 1999 of 2009 arising out

of Case Crime No. 971 of 2009, under Section 302 I.P.C., Police Station Vijaynagar, district Ghaziabad, whereby the learned Judge convicted and sentenced the appellant to imprisonment for life and a fine of Rs. 25,000/- and in default of payment of fine, the appellant was further directed to undergo imprisonment of two years.

Brief Facts

2. In nutshell, the case of the prosecution as set up in the first information report is that a written report was filed by Preeti Chaudhary, daughter of Naresh Chaudhary, resident of Lane No. 1, 36/4 Krishna Nagar Bagu, Ghaziabad that in the night intervening 2/3.09.2009 her mother-Meera Chaudhary (herein after referred to as "the deceased") has been strangled to death by her father-Naresh Chaudhary (hereinafter referred to as "the accused-appellant") by *Lungi*. It is mentioned in the report that at about 9:30 PM, when her mother came to house after finishing her duties, an altercation took place between the deceased and the accused-appellant. Thereafter, the deceased cooked food and after having dinner, she went to the roof for sleeping, whereas the accused-appellant stayed with the children at downstairs. The F.I.R. further alleged that when the informant suddenly woke up in the midnight, she found the accused-appellant missing. She thought that he (accused-appellant) went to upstairs, where deceased was sleeping. The F.I.R. further alleges that in the next morning, when her brother, namely, Amit went to the roof in search of her mother (deceased), he saw that the deceased was lying dead. On an alarm being raised by her brother, she went upstairs and saw that her mother (deceased) was strangled to death by the same *Lungi*, which was worn by her father last night. She also saw that some bangles and *mangalsutra* of her mother were also broken and scattered.

3. On the basis of the aforesaid report, the First Information Report was lodged at Case Crime No. 971 of 2009, under Section 302 I.P.C., Police Station Vijay Nagar, District Ghaziabad, which was marked as Ext. Ka-5.

4. After registration of the aforesaid case, the law set into motion and investigation of the case was entrusted to S.I. Dalchand Tiwari, PW-7, who copied the F.I.R. and GD in the case diary and recorded the statement of the first informant. He also inspected the spot along with the first informant and collected *Lungi*, broken bangles, one hair clip and prepared recovery memo thereof, which was marked as Ext.Ka-5. He also recorded the statement of Chik writer of the F.I.R. Constable Rameshwar Tyagi, PW-6 and made a search of the accused-appellant. On 09.09.2009, he recorded the statement of the accused in Kutchery, who confessed to his crime. He also copied the post-mortem report in the case diary, recorded the statement of the first informant and witnesses of inquest. He also recorded the statement of Ankit Chaudhary. He also prepared site plan, which was marked as Ext.Ka-6. Thereafter, this witness has been transferred and investigation of the case was entrusted to Station House Officer Sudhir Kumar Tyagi, PW-8.

5. S.O. Sudhir Kumar Tyagi, PW-8, in his examination-in-chief, which was recorded on 06.11.2012, deposed that on 02.10.2009, he was entrusted the investigation of pending case crime No. 971 of 2009, under Section 302 I.P.C. On 09.10.2009, he started the investigation and recorded the statement of brothers of the deceased, namely, Virendra Kumar and Vinod Kumar. On 13.10.2009, he recorded the statement of Dr. Rajpal Singh, who conducted post-mortem

examination on the cadaver of the deceased. After culmination of investigation, he submitted charge sheet No. 996 of 2009, dated 13.10.2009 against the appellant under Section 302 I.P.C., which has been marked as Ext.Ka-7.

6. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, where case was registered as ST No. 1999 of 2009. Learned Additional District and Sessions Judge, Court No. 8, Ghaziabad framed the charges against the accused under Section 302 I.P.C., which was read over and explained to the accused, who pleaded not guilty and claimed to be tried.

7. To bring home guilt of the appellant beyond the hilt, the prosecution has examined as many as nine witnesses, out of whom PW-1 Hari Om Gautam, PW-2 Kumari Preeti Chaudhary and PW-4 Amit are witnesses of facts, whereas, PW-5 Vinod Kumar is the witness of inquest. Remaining witnesses namely PW-3 Dr. Raj Pal Singh, PW-6 Constable Rameshwar Tyagi, PW-7 S.I. Dalchand Tiwari, PW-8 S.H.O. Sudhir Kumar Tyagi and PW-9 S.I. Rajendra Kumar Verma are formal one.

8. After the closure of prosecution evidence, the statement of the accused-Naresh Chaudhary has been recorded under Section 313 Cr.P.C., who denied the charges levelled against him. However, he produced two witnesses in his defence namely DW-1 Smt. Kanti Devi and DW-2 Jagveer Singh.

9. DW-1, Smt Kanti Devi deposed that the relation between the accused and the deceased was very much cordial. Whenever she visited their house, they used to discuss the family affairs with her. About four years ago, she received an information from the house of Naresh that Smt. Meera, the deceased, who was sleeping over the roof, has been killed by some unknown person. When she went to the house of Naresh, she was told that the dead body has been taken away to Hathras, the maternal house of the deceased. Children of the deceased told her that the deceased was strangled to death by some unknown person.

10. DW-2, Jagveer Singh deposed that he is employed in Gurugram Haripal from where he used to visit to his cousin-the appellant. On 01.09.2009, he visited the house of the accused and the deceased and stayed there in the night. He never seen any quarrel between them. Both accused and the deceased were happy with their children. On 03.09.2009, he received an information that Meera, the deceased has been done to death by some unknown person while sleeping over the roof.

11. Learned Additional Sessions Judge, Court No. Ghaziabad after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellant as indicated herein above.

12. Hence, this appeal.

Submissions of learned counsel for the appellant

13. Mr. Dharmendra Kumar Chaubey, learned counsel appearing on behalf of accused-appellant vehemently submitted that the entire prosecution case is based upon circumstantial evidence and there is no eye-witness in this case. It is next submitted that after plain reading of deposition of Hariom Gautam (PW-1); Km. Preeti Chaudhary (PW-2) and Amit (PW-4), there are several contradictions in their statement. Learned counsel for the appellant, while reading the deposition of Hariom Gautam (PW-1), pointed out that in examination-in-chief of PW-1, it is stated that he had informed the police about the death of the deceased, whereas he, in his cross-examination, has stated that his neighbours had informed the police about the incident. It is further stated that Km. Preeti Chaudhary (PW-2) in her examination-in-chief as well as cross-examination has also not established the motive behind the incident. As per the deposition of PW-2, a quarrel took place between the deceased and accused-appellant due to a reason that the accused-appellant had taken money from the groom's side as her marriage was fixed in their family, therefore, her mother (deceased) was upset from the aforesaid conduct of the accused-appellant. It is also vehemently submitted that Amit (PW-4), in his examination-in-chief, has given some other reason to establish the motive behind the murder of the deceased. PW-4, in his deposition, has stated that as the accused-appellant did not want his wife (deceased) to work in Sahara and due to that reason, they regularly quarrel with each other.

14. Learned counsel appearing on behalf of the accused-appellant next contended that after reading the depositions of all the aforesaid three prosecution witnesses of the facts, motive to the accused-appellant has not been assigned by any of them which supports the prosecution story that the accused-appellant had committed the murder of the deceased. In support of his submission, he has also referred the depositions of Smt. Kanti Devi (DW-1) & Jagveer Singh (DW-2) and submitted that Km. Preeti Chaudhary (PW-2) had informed them that someone else had committed the murder of the deceased by entering into the house from the stairs which can be accessed from outside.

15. Learned counsel for the appellant has also placed reliance upon the site plan (Ext.Ka.6) and submitted that there are stairs from the outside of the house, by which anyone can easily access into the house, therefore, there is high chance that someone else might have committed the murder of the deceased.

16. Learned counsel for the appellant next submitted that the entire case of the prosecution is based upon circumstantial evidence. After perusing the entire evidence on record, the prosecution has miserably failed to complete the chain of circumstantial evidence. The trial court, while passing the impugned judgment and order, had mechanically appreciated the evidence and convicted the accused-appellant for the offence punishable under Section 302 I.P.C. without appreciating all the contradictions, as pointed above.

17. Learned counsel for the appellant next submitted that if the case of the prosecution is based upon the circumstantial evidence, the entire chain of circumstantial evidence must be completed and if the chain breaks, in any manner, the benefit of doubt will go to the accused. In support of this submission, he has placed reliance upon the judgment of the Supreme Court in the case of *Sharad Birdhichand Sarda vs. State of Maharashtra*, (1984) 4 SCC 116.

18. Learned counsel for the accused-appellant lastly submitted that in view of the aforesaid facts and circumstances and law laid down by Hon'ble Supreme Court, the prosecution has miserably failed to make out any case against the accused-appellant, therefore, the instant criminal appeal may be allowed by setting aside the order of the trial court.

Submissions of learned counsel for the A.G.A.

19. Mr. S.K. Ojha, learned Additional Government Advocate, appearing on behalf of the State vehemently opposed the instant criminal appeal and submitted that the learned trial court, while convicting and sentencing the appellant for the offence punishable under Section 302 I.P.C., has not committed any error or illegality. The learned trial court after considering the deposition of the ocular evidences and other documentary evidences, reached on a conclusion that there are no major contradictions in the statement of the prosecution witnesses. It is further submitted that the ocular evidences and the documentary evidences support each other. It is further submitted that at the time of incident, accused-appellant was in the house and after having dinner, he went downstairs whereas the deceased went to upstairs to sleep. Km. Preeti Chaudhary (PW-2), in her deposition, has categorically deposed that when she awake in the mid-night, she did not find her father, however in the morning, when her brother had raised an alarm, she reached upstairs and saw that her mother was strangled by the same lungi, which was worn by her father last night.

20. It is also submitted by learned A.G.A. that the stairs, which was shown in the site-plan (Ext.Ka.6) to reach at the first floor of the house, was situated from outside of the house and there is a separate entry for the landlord, who lives at the ground floor of the house. However, there were no stairs from the outside of the house to reach to the roof of the house, where the deceased was murdered.

21. Learned A.G.A. next submits that there is no force in the argument of learned counsel for the appellant that some outsider might have committed the murder of the deceased by accessing the outside stairs. It is also submitted that the lungi which was worn by the accused-appellant by which the deceased was strangled, there is no suggestion available on record not even in the statement under Section 313 Cr.P.C. of the accused-appellant that how the same lungi which was worn by him in the night, the deceased was strangled. It is also submitted that it is an admitted fact that the accused-appellant was present at the night and fled away from the house after committing the murder of his own wife and surrendered before the Court on 09.09.2009, after six days of the alleged incident.

22. Learned counsel appearing on behalf of State further submitted that the trial court while passing the judgment has also noted that there are minor contradictions in the statement of the prosecution witnesses, but it has also given the explanation for that reason as the witnesses were examined after a gap of more than 2-1/2 years from the date of occurrence. Accordingly, such kind of minor contradictions, which have been pointed out by the learned counsel for the appellant, cannot be fatal to the prosecution story to be disbelieved. Learned A.G.A. further submitted that after taking into consideration the ocular evidence and documentary evidence, the prosecution has successfully completed the entire chain of circumstantial evidence. There is no illegality in the impugned order, the instant appeal is devoid of merit, and deserves to be dismissed.

Analysis and Conclusion

23. Heard Mr. Dharmendra Kumar Chaubey, learned counsel for the accused-appellant and Mr. S.K. Ojha, learned Additional Government Advocate appearing on behalf of the State of U.P.

24. The case of the prosecution is entirely based on the circumstantial evidence. In a case based on circumstantial evidence, settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete forming a chain and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused totally in consistent with his evidence. It has been consistently laid down by the Hon'ble Apex Court that where a case rests on circumstantial evidence, the inference of the guilt can be justified only when all the incriminating facts and circumstances are found to be in compatible with the innocence of the accused or guilt of any other person.

25. In ***Sharad Birdhichand Sarda Vs. State of Maharashtra, Supra***, (relied upon by the learned counsel for the appellant), the Hon'ble Apex Court has framed five golden principles for the circumstantial evidence, which are as under:

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

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

(iii) *The circumstances should be of conclusive nature and tendency*

(iv) *They should exclude every possible hypothesis except the one to be proved and,*

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

26. In ***State of U.P. Vs. Ashok Kumar Srivastava***, (1992) 2 SCC 86., it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in the favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have fully established and cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

27. In the case of ***Padala Veera Reddy v. State of A.P.***, 1989 Supp (2) SCC 706, Hon'ble Apex Court opined as under:

"10. Before advertng to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

*(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See **Gambhir v. State of Maharashtra**, (1982) 2 SCC 351)"*

28. In the case of **C. Chenga Reddy & Ors. v. State of A.P.**, (1996) 10 SCC 193, Hon'ble Apex Court while considering a case of conviction based on the circumstantial evidence, held as under:

"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence."

29. In the case of **State of Goa v. Pandurang Mohite**, (2008) 16 SCC 714, Hon'ble Apex Court reiterated the settled law that where a conviction rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

30. The decision in **Sharad Birdichand Sarda (Supra)** has recently been followed by Hon'ble Supreme Court in catena of judgments including **Laxman Prasad alias Laxman vs. State of Madhya Pradesh**, 2023 (3) SCC (Cri) 27 and **R. Sreenivasa vs. State of Karnataka (2024)** 17 SCC 426.

31. In the light of the above pronouncements of Hon'ble Apex Court, we shall not consider whether in the present case, the prosecution succeeded in establishing the chain of the circumstances leading to an inescapable conclusion that the accused-appellant has committed the crime.

32. We have perused the entire evidence on record i.e. ocular evidence as well as documentary evidence for proper adjudication of the case. The relevant portion of deposition of the prosecution witnesses of Hariom Gautam (PW-1), Km. Preeti Chaudhary (PW-2) and Amit (PW-4) are extracted herein below :-

PW-1, who is the landlord of the house in question, in his examination-in-chief, which was recorded on 24.12.2010, deposed that he has two storied house. He lives in the lower portion of the house, whereas in the upper portion of the house Naresh Chaudhary (accused-appellant) live on rent along with his wife and three children. At 5:30 AM on 03.09.2009, on the shriek of children of Naresh Chaudhary (accused-appellant) when he along with other persons of the vicinity went on the upper portion of house, he saw Meera Devi lying dead, whereas accused Naresh Chaudhary fled away. Thereafter, he informed the police by dialling 100. Police on reaching the spot to sealed the dead body and conducted inquest. He also put his signature on the inquest report.

PW-2, Kumari Preeti Chaudhary is the first informant and daughter of the deceased, in her examination-in-chief, deposed that she lives in Vijaynagar along with his family. In the night intervening 02.3.2009, she along her brother was sleeping in the lower portion of the house, whereas her mother and father were on the upper portion of the house. Her father Naresh Chaudhary strangled her mother to death by Lungi. She she woke up in the morning and went upstairs, she found her mother lying beneath the cot on the roof and Lungi was stuck in her neck, which her father was wearing. Her mother has been done to death by her father. This witness further deposed that her father used to quarrel with her mother. Her father has arranged her marriage with some person and took certain money from him, but her mother did not like this, due to which her father used to quarrel with her mother, due to that reason he strangled her mother to death by Lungi and fled away. Handkerchief was stuffed in the mouth of her mother, bangles and Mangalsutra were broken. This witness also deposed that report of the incident was lodged by her, which she proved as Ext. Ka-2.

PW-4 Amit, who is the son of the deceased and appellant. As he was minor on the date of his deposition, the Court, in order to ascertained his mental condition, asked certain questions and on being satisfied about is mental conditions, allowed the ADGC to get his statement recorded. PW-4, Amit in his examination-in-chief deposed that the incident in question took place on 02.9.2029. On that date, her mother, who was working in a company, return home at 09:30 PM. Altercation took place between his mother and father. Thereafter, his mother went on the roof to sleep. His father also went on the roof. Thereafter, what happened, he does not know. In the morning when he went on the roof, he did not find his mother. Thereafter, when he went on the roof along with his sister, his mother was lying besides the cot and her neck was tied with Lungi of his father. She was dead. On his shrieks, neighbours arrived. Police also arrived thereafter. This witness further deposed that his father used to quarrel with his mother every day. He was a drunkard. Earlier he was employed, but later on he left the job. After his father, left the job, her mother started working. After the death of his mother, his father fled away.

33. PW-3, Dr. Rajpal Singh, in his examination-in-chief deposed that on 03.09.2009 he was posted at M.M.G. Hospital Ghaziabad as Physician. He was assigned the duty of post mortem. He conducted the autopsy on the cadaver of the deceased and found the following ante mortem injuries:

“Abrasion, contusion and ligature mark 30 cm x 3.5 cm all over neck. Traverse position 8 cm below right ear, 8 cm below left ear and 7 cm below chin. Under the skin, blood was present. Trachea rings and hyoid bone were also fractured.”

On internal examination, doctor noted that both the lungs were congested, gall bladder congested and ^{1/2} full, spleen and kidneys were congested.

34. In the opinion of the doctor, the cause of death of the deceased was asphyxia as a result of ante-mortem injuries (strangulation). He proved his post mortem report as Ext. Ka-3.

35. In the post-mortem report, time of strangulation (between 2/3.09.2009) has also been stated by the Dr. Rajpal Singh, therefore, the first chain of circumstantial evidence is completed that there is no dispute in date and time of the alleged incident.

36. Secondly, after going through the deposition of Hariom Gautam (PW-1), who is a landlord of the accused-appellant as well as deceased, it is established that he lives on the ground floor of the house and on the alarm raised by the daughter and son of the deceased, he went upstairs on the roof and saw the dead body of the deceased lying behind the cot. Thereafter, he informed the police. The police reached the place of incident and considering the written report (Ext. Ka-2) of Km. Preeti Chaudhary (PW-2), F.I.R. was lodged on 03.09.2009 against the accused-appellant, as such, there is no delay in lodging the F.I.R. The second chain has also been completed.

37. Thirdly, Km. Preeti Chaudhary (PW-2), in her deposition, has clearly stated that after having dinner, her mother went upstairs for sleeping, whereas her father stayed back on the first floor with the children. When she woke up in the midnight, she did not find her father and in the next morning, when her brother reached to the roof of house, he raised the alarm whereby she also went to the roof of the house and saw that her mother was lying dead and strangulated by the same lungi which was worn by her father last night. There was no explanation with regard to the aforesaid facts, not even in the statement of the accused-appellant under Section 313 Cr.P.C., therefore, the third chain of circumstances is also completed.

38. It is an admitted fact and not denied by the accused-appellant that on 02.09.2009 at 09:30 pm, the accused-appellant had dinner with his wife and children and thereafter, he fled away and only surrendered on 09.09.2009 in the Court. If he was not guilty for committing the aforesaid offence, why he fled away from the house and in this regard, no explanation has been tendered by the accused-appellant even in his statement under Section 313 Cr.P.C., therefore, this chain has also been completed.

39. It is also an admitted fact that there are certain minor contradictions in the statement of the prosecution witnesses but such kind of minor contradictions cannot negate the prosecution story. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the Court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basis version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses.

40. In **State represented by Inspector of Police Vs. Saravanam and another** (2008) 17 SCC 587, Hon'ble Supreme Court held that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons.

41. In **State of U.P. Vs. M.K. Anthony**, (1985)1 SCC 505, Hon'ble Supreme Court held as under:

“While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the : root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned Counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible.”

42. Taking into consideration the aforesaid reasons and after going through the entire records, we do not find any reason to interfere with the judgment of the trial court as the learned trial court has not committed any error or illegality in the impugned order convicting the accused-appellant for the offence under Section 302 I.P.C. and sentencing him, as stated above.

43. The instant criminal appeal from jail is devoid of merit, and is accordingly, **dismissed**.

44. The appellant-Naresh Chaudhary is on bail. His bail bond is cancelled and sureties are discharged. He is directed to surrender before the court concerned forthwith to serve out the remaining sentence awarded by the Trial Court.

45. Office is directed to send a copy of this judgment along with record of this case to the court concerned/learned Sessions Judge, Ghaziabad forthwith for immediate compliance and compliance report be submitted to this Court.

(2026) 1 ILRA 372
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED:ALLAHABAD- 27.01.2026

BEFORE

THE HON'BLE ANIL KUMAR-X, J.

Criminal Appeal No. 10956 of 2025

Vishal Tyagi & Anr.

**...Appellant
Versus**

State of U.P. & Anr.

...Respondents

Issue for consideration

The appeal involves the conviction of two school staff members for allegedly abusing and threatening their Principal. The trial court convicted them based on the Principal's initial testimony despite all witnesses turning hostile.

Headnotes

Indian Penal Code,1860-Section 504, 506, Criminal Procedure Code,1973-Section 161, Evidence Act,1872-Section 145-Scheduled Caste and Scheduled Tribes(Prevention of Atrocities) Act,1989-Section 3(1)(da)d-Testimony of hostile witness-legality of-Abuse and threatening to the Principal over a salary dispute-During trial, all prosecution witnesses including the informant, turned hostile-Pw-1 supported the case in examination –in-chief but resiled during cross-examination-The trial court committed error by treating the Investigating officers testimony as primary evidence to establish the truth of the oral evidence- A witness stated under section 161 CrPC cannot be treated as substantive evidence-Appellants acquitted.(Para 13 to 18) (E-6)

Held

The court held that Testimony of Investigating officer is not substantive evidence; it is only corroborative in nature. testimony of eyewitnesses and victim constitutes substantive evidence. Law mandates that corroboration is required to support substantive evidence and not that substantive evidence is to be proved by seeking support from corroborative evidence. Trial court convicted the appellants solely on the basis of partial testimony of hostile witness, without lawful corroboration and without confronting the witness with his previous statement. The findings recorded by the learned trial court are perverse and contrary to law. Appeal allowed.

Case law Cited

Vinod Kumar Vs State of Punjab (2015) 3 SCC 220, State of U.P. Vs Ramesh Prasad & Ors., AIR 1996 SC 2766, Ram Swaroop Vs State of Rajasthan , AIR 2004 SC 2243, Neeraj Dutta Vs State (Govt. of N.C.T. of Delhi), AIR Online 2022 SC 1160, V.K. Mishra Vs State of Uttarakhand (2015) 9 SCC 588, Renuka Prasad Vs State of (2025 INSC 657)-referred to.

List of Acts

Indian Penal Code, 1860, Criminal Procedure Code, 1973, Evidence Act, 1872, Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

List of Keywords

Hostile witness, Corroboration, Substantive Evidence, Investigating Officer Testimony, Confrontation of witness, Perverse finding.

Case Arising From

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 10956 of 2025

Vishal Tyagi & Anr. Vs. State of U.P. & Anr.

From the Judgment and order dated 27.01.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Adv. for Appellant(s):-

Vivek Sharma

Adv. for Respondent(s):-

G.A.,

(Delivered by Hon'ble Anil Kumar-X, J.)

1. Heard Shri Vivek Sharma, learned counsel for the appellants, and Shri K.K. Gupta, learned AGA for the State. None has appeared on behalf of the respondent/informant to oppose the appeal despite notice, as per office report, has been duly served on him.

2. This criminal appeal under Section 14-A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SC/ST Act') has been preferred by the appellants - Vishal Tyagi and Samod Kumar @ Samod Kumar Tyagi with a prayer to allow the appeal and set aside the judgment and order dated 01.10.2025 passed by the Additional District and Sessions Judge/Special Judge (SC/ST Act), Amroha, in S.S.T. No. 462 of 2020 (State vs. Vishal Tyagi and another), arising out of Case Crime No. 08 of 2020, under Sections 504, 506 Part-I IPC and Section 3(1)(da) of the SC/ST Act, Police Station Adampur, District Amroha.

3. By the impugned judgment dated 01.10.2025, the accused Vishal Tyagi and Samod Kumar Tyagi were convicted under Sections 504 and 506 Part-I IPC and acquitted of the charge under Section 3(1)(da) of the SC/ST Act. Instead of sentencing, the learned trial court extended the benefit of probation to the accused persons and directed their release on furnishing a bond in an amount to be determined by the office, with or without surety, before the District Probation Officer for maintaining peace and good behaviour for a period of one year, with a stipulation that in case of default, the question of punishment may be considered. Further, under Section 5 of the Probation of Offenders Act, the accused were directed to pay compensation of ₹25,000/- to the victim/informant.

Factual matrix of case

4. First information report (Ex. Ka-1) was lodged by PW-1 Chhotey Lal, In-charge Principal, Gramodyay Inter College, Gangeswari, District Amroha, at Police Station Adampur. The informant

alleged that the accused Vishal Tyagi, Clerk, and Samod Kumar Tyagi, Assistant Teacher, abused him and used caste-based slurs when he asked them to produce the salary slip of the month of November. It was further alleged that other teachers present in the office intervened and took the accused persons out of the office. On the basis of the written report, an FIR in Case Crime No. 008 of 2020 under Sections 504 and 506 IPC was registered against the accused persons. During investigation, PW-6, Circle Officer Satyendra Singh, conducted the investigation and submitted a charge-sheet against the accused persons under Sections 504, 506 IPC and Section 3(1)(da) of the SC/ST Act.

5. The prosecution examined six witnesses to substantiate its case. PW-1 Chhotey Lal stated that he was posted as In-charge Principal of Gramodyay Inter College Gangeswari on 27.11.2019. On the said date, accused Vishal Tyagi came to his office and requested him to pass the salary bill for the month of December. When PW-1 asked him to place the pay bill of November 2019 first, the accused refused. Thereafter, accused Vishal Tyagi arrived along with his uncle, accused Samod Tyagi, and both started abusing and threatening him. On hearing the commotion, other teachers came to the office and intervened, thereby taking the accused persons out. PW-1 further stated that both accused abused him and used caste-based slurs in the presence of other teachers.

6. PW-2 Mahendra Singh stated that on the alleged date he was teaching in his class and around 2:00 p.m. he heard noises from the Principal's office. He stated that both accused were posted in the same college and that they were not involved in the alleged offence. PW-3 Harendra Singh and PW-4 Suraj Kumar Sharma, who were also teachers in the same institution, denied the prosecution allegations. PW-5 Vivek Kumar, Constable Clerk, proved the chik FIR (Ex. Ka-2) and the relevant GD entry (Ex. Ka-3). PW-6 Circle Officer Satyendra Singh stated that he recorded the statements of the witnesses and submitted the charge-sheet (Ex. Ka-4) before the court.

Findings of Trial Court

7. The learned trial court observed that the informant PW-1 supported the prosecution case during examination-in-chief but resiled from his statement during cross-examination. The remaining witnesses also turned hostile. Relying upon settled principles of law, the trial court held that the testimony of a hostile witness cannot be discarded in toto and that the portion of testimony supporting the prosecution case can be relied upon. The learned trial court placed reliance upon the judgment of the Supreme Court in **Vinod Kumar vs. State of Punjab** reported in **(2015) 3 SCC 220**, wherein it was held that undue delay in cross-examination may result in witnesses turning hostile due to influence or intimidation, and in such circumstances, their testimony cannot be outrightly discarded.

8. The learned trial court further relied upon the judgment in *State of U.P. vs. Ramesh Prasad & Ors.*, AIR 1996 SC 2766, wherein the Hon'ble Supreme Court held that when hostile witnesses have corroborated the prosecution version during investigation and such fact is deposed by the Investigating Officer, their testimony cannot be discarded merely on account of their denial during trial.

9. On the basis of the aforesaid judgments of the Supreme Court, the learned trial court concluded that although PW-1 turned hostile during cross-examination, he had supported the prosecution version in his examination-in-chief, and therefore, his testimony could not be disbelieved. The learned trial court further observed that staff members working in the same institution are susceptible to influence over time. The corroboration by the Investigating Officer regarding the statements of witnesses during investigation was treated as a supporting circumstance. The learned trial court also observed that there was no reason to disbelieve the Investigating Officer, a gazetted officer, who had no motive to falsely implicate the accused persons. Accordingly, the learned trial court held that the prosecution had proved its case beyond reasonable doubt for offences under Sections 504 and 506 IPC. However, the accused were acquitted under Section 3(1)(da) of the SC/ST Act on the ground that the alleged occurrence arose out of a dispute between the Principal and staff members and it could not be inferred that the offence was committed on account of the informant's caste. The benefit of probation was extended in lieu of sentence.

Arguments on behalf of appellants

10. Learned counsel for the appellants submitted that the FIR was lodged after a delay of nine days and the prosecution failed to satisfactorily explain the same. It was further argued that the site plan was prepared by S.I. Dharmendra Kumar on 29.01.2020 but was not proved during trial, which casts serious doubt on the prosecution case. It was contended that PW-1 did not support the prosecution version during cross-examination and that PW-2, PW-3 PW-4 were declared hostile and did not corroborate the prosecution story. Learned counsel submitted that reliance upon hostile witnesses without independent corroboration is contrary to settled principles of law. While it is true that testimony of a hostile witness cannot be discarded entirely, its credibility must be tested in light of surrounding circumstances. Reliance was placed upon **Ram Swaroop vs. State of Rajasthan, AIR 2004 SC 2243**, wherein the Supreme Court held that accepting the testimony of a hostile witness without satisfactory corroboration is impermissible. It was argued that reliance upon the examination-in-chief of PW-1 alone, without corroboration, is perverse and illegal, rendering the impugned judgment unsustainable.

Arguments on behalf of State

11. Per contra, learned AGA Shri K.K. Gupta submitted that it is well settled that the testimony of a hostile witness is not to be discarded in its entirety and that the prosecution is entitled to rely upon those portions of testimony which support its case. It was contended that the statement of PW-1 sufficiently establishes the occurrence dated 27.12.2019 and that there was no reason for the Principal to falsely implicate his staff members. PW-1 supported the prosecution case during investigation and independent witnesses also corroborated the prosecution version before the Investigating Officer. PW-6, the Investigating Officer, categorically stated that all witnesses corroborated the FIR during investigation, which itself constitutes corroborative evidence. As regards the site plan, it was submitted that although it was not proved, there is no dispute regarding the place of occurrence. Therefore, the findings recorded by the learned trial court do not suffer from any infirmity and the conviction does not warrant interference.

Conclusion

12. I have considered the submissions advanced by learned counsel for the parties and perused the entire record including the impugned judgment.

13. It is evident that all prosecution witnesses turned hostile during trial. P.W.-1 though supported prosecution during examination in chief, but turned hostile in his cross examination. Relying solely upon his examination-in-chief, learned Trial Court concluded that prosecution story stands proved. It is true that there is no legal prohibition against convicting an accused on the basis of testimony of a hostile witness, but it cannot be accepted blindly. In **Neeraj Dutta vs State (Govt. of N.C.T. of Delhi)**, AIR Online 2022 SC 1160, Hon'ble Supreme Court held that merely because a witness is declared hostile, his entire testimony does not become useless. If the part of his evidence is supported by other facts or reliable evidence on record, it can still be considered by the Court. Therefore, there is no legal prohibition against convicting an accused on the basis of testimony of a hostile witness, provided it is corroborated by other trustworthy evidence. Similarly in **Ram Swaroop** (supra), the Hon'ble Supreme Court held that conviction cannot be based upon the testimony of a hostile witness in the absence of reliable corroboration. Hence, approach of Trial Court in placing reliance upon uncorroborated testimony of P.W.-1 is untenable.

14. Similarly, learned trial court committed a manifest error in placing reliance upon the statement of the Investigating Officer to the effect that the witnesses had supported the prosecution version during the course of investigation. The Hon'ble Supreme Court has consistently held that the statement of an Investigating Officer regarding what a witness stated under Section 161 Cr.P.C. cannot be treated as substantive evidence. Unless the witness himself is confronted with his previous statement in accordance with Section 145 of the Evidence Act, such statements cannot be used either for corroboration or contradiction. Mere deposition of the Investigating Officer does not cure this defect. In the case of **V.K. Mishra vs. State of Uttarakhand (2015) 9 SCC 588**, it has been held by Hon'ble Supreme Court that previous statements under Section 161 Cr.P.C. can be used only after due confrontation of the witness and not otherwise. It has further been reiterated that the Investigating Officer's testimony cannot substitute such confrontation.

15. In the present case, PW-1 was never confronted with his alleged statement recorded under Section 161 Cr.P.C. Learned Trial Court has further observed that Investigating Officer, in his deposition, stated that witnesses of fact had supported prosecution case during investigation. Such an approach is contrary to settled principles governing appreciation of evidence. Testimony of Investigating Officer is not substantive evidence; it is only corroborative in nature. In the present case, testimony of eyewitnesses and victim constitutes substantive evidence. Law mandates that corroboration is required to support substantive evidence and not that substantive evidence is to be proved by seeking support from corroborative evidence. Oral testimony of witnesses may be corroborated or contradicted by testimony of Investigating Officer, but testimony of Investigating Officer cannot be treated as primary evidence to establish truthfulness of oral evidence.

16. It will be relevant to refer to the judgment of **Renuka Prasad v. State (2025 INSC 657)** where it was confronted with similar issue, i.e. witnesses turning hostile but Investigating Officer deposing before Court that witnesses have supported prosecution version during investigation.

Supreme Court herein held that conviction cannot be sustained merely on suspicion or on statements recorded during investigation. In that case, the trial court had acquitted the accused in a murder case because most prosecution witnesses turned hostile and the alleged eyewitness failed to identify the accused. However, the High Court reversed the acquittal and convicted the accused mainly by relying on the testimony of the Investigating Officer, who stated that witnesses had supported the prosecution case during investigation under Section 161 Cr.P.C. The Supreme Court set aside the High Court judgment and restored the acquittal, holding that statements under Section 161 Cr.P.C. are not substantive evidence and cannot be used to convict unless the witness affirms them in court.

17. Therefore, the corroboration drawn from the testimony of the Investigating Officer is not permissible in law. Reliance placed by the learned trial court on such inadmissible material makes the finding legally unsustainable. In view of the above settled legal position, the approach adopted by the learned trial court in convicting the appellants solely on the basis of partial testimony of a hostile witness, without lawful corroboration and without confronting the witness with his previous statement, is clearly erroneous. The findings recorded by the learned trial court are therefore perverse, contrary to law, and unsustainable in the eyes of law, and the impugned judgment warrants interference by this Court.

18. Accordingly, the impugned judgment and order dated 01.10.2025 passed by the Additional District and Sessions Judge/Special Judge (SC/ST Act), Amroha, in S.S.T. No. 462 of 2020 (State vs. Vishal Tyagi and another), arising out of Case Crime No. 08 of 2020, under Sections 504, 506 Part-I IPC and Section 3(1)(da) of the SC/ST Act is hereby set aside, and this criminal appeal is **allowed**.

(2026) 1 ILRA 377
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.01.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal From Order No. 7 of 2026

Lal Ji Yadav

...Appellant
Versus

National Insurance Co. Ltd. & Anr. ...Respondents

Issue for Consideration

Matter pertains to whether, in the absence of a transport endorsement and permit, the owner of the offending vehicle can be fastened with liability to pay compensation, or whether the insurer remains liable, when the vehicle falls within the category of a light motor vehicle (LMV) and the driver possessed a valid LMV (Private) driving licence.

Headnotes

Motor Vehicles Act, 1988 - ss. 2(21), 66, 173 - UP Motor Vehicle Rules, 1998 - R. 220-A - Liability of Insurer - Compensation - The appellant - owner preferred an appeal u/s 173 of Motor Vehicles Act, 1988, assailing the judgment and award passed by the Motor Accident Claims Tribunal, Kaushambi, whereby compensation of ₹3,89,000/- along with interest was awarded to the claimants on account of death of deceased in a road accident dated 09.04.2009, and though the insurer was directed to initially satisfy the award, a right of recovery was granted against the owner - It was the contention of the appellant that the offending vehicle, being a light motor vehicle (LMV) with a laden weight of 975 kg i.e. gross vehicle weight was below 3000 kg, neither required a permit u/s 66 of Act nor necessitated a transport endorsement on the driver's licence, as the driver possessed a valid LMV (Private) licence - It was further urged that the Tribunal erred in holding otherwise - The insurer, while opposing, fairly conceded the legal position regarding permit and licence - Additionally, a cross-objection was filed by claimants seeking enhancement of compensation on the grounds of non-grant of future prospects, excessive deduction towards personal expenses, inadequate award under non-pecuniary heads, and lower rate of interest with a delay of 1625 days. (E-11)

Held: Upon perusal of s. 66(3)(i) of Motor Vehicles Act, 1988, it is evident that no permit is required where the gross vehicle weight of a goods vehicle does not exceed 3000 kg - The registration certificate of offending vehicle, duly placed on record and undisputed by insurer, establishes that its laden weight was 975 kg and vehicle was goods vehicle - Consequently, no permit was required for its operation, and the Tribunal erred in holding otherwise - It is evident that the offending vehicle, having a laden weight below 7,500 kg, qualified as a light motor vehicle u/s 2(21) of Motor Vehicles Act, 1988, and could be lawfully driven with an endorsement of LMV (Private) licence without any transport endorsement - The driver admittedly possessed a valid LMV licence for the relevant period, thus, the Tribunal erred in holding otherwise and in requiring a permit for plying the offending vehicle - The claimants are entitled to total compensation of Rs.11,63,100/- alongwith interest @ 7% per annum from the date of filing the claim petition, till the date of actual payment of compensation, which is to be indemnified by the insurer of offending vehicle - The owner of offending vehicle is not required to pay any compensation either to claimants or Insurance Company - Accordingly, the appeal filed by owner and cross-objection filed by claimants are allowed. [Paras 7, 8, 18, 20]

Case Law Cited

Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi and others **(2025) 3 SCC 95**; *Sushil Kumar & Another v. M/S Sampark Logistic Pvt. Ltd. & Another*, **FAFO No. 2581 of 2011, decided on 26.04.2017 - referred to**

National Insurance Co. Ltd. v. Pranay Sethi & Ors. **(2017) 16 SCC 680**; *Magma General Insurance Company Ltd. v. Nanu Ram @ Chuhru Ram & others*, **(2018) 18 SCC 130**; *Rahul Ganpatrao Sable v. Laxman Maruti Jadhav (Dead) through LRS and Others* **(2023) 13 SCC 334 - followed**

List of Acts

Motor Vehicles Act, 1988; UP Motor Vehicle Rules, 1998

List of Keywords

First Appeal u/s 173 of Motor Vehicles Act, 1988; Motor Accident Claims Tribunal; Compensation; Indemnify; Right of recovery; Offending vehicle; Valid and effective driving licence; LMV (Light Motor Vehicle), LMV (Private) vehicle; Transport vehicle; Commercial Vehicle; Endorsement; Laden weight; Gross vehicle weight; Permit u/s 66, Registration certificate; Goods vehicle; Public place; Liability to pay compensation; Cross-objection; Delay condonation; Enhanced compensation; Future prospects; Deduction towards personal expenses; Dependency of claimants; Multiplier; Loss of consortium; Loss of estate; Funeral expenses; Non-pecuniary heads; Rate of interest; Date of filing of claim petition; Actual payment; Redetermination of compensation; Apportionment of compensation; Statutory deposit; Refund with accrued interest.

Case Arising From

APPELLATE JURISDICTION: First Appeal From Order No. - 7 of 2026

From the Judgment and Award dated 21.07.2009, subsequently corrected on 29.07.2009, passed by the Motor Accident Claims Tribunal/District Judge, Kaushambi in M.A.C.P. No.70 of 2006.

Appearances for Parties

Advs. for the Appellant:

Amit Kuma Sinha, Amit Kumar Sinha, Deepali Srivastava Sinha

Advs. for the Respondent:

Mohd. Asim Zulfiquar, Radhey Shyam

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

1. Ms. Deepali Srivastava Sinha, learned counsel for the owner appellant, learned counsel for the respondent Insurance Company and Sri Abhishek Tripathi, Advocate holding brief of Mohd. Asim Zulfiquar, learned counsel for the claimants-respondents are present.

2. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the owner of the offending three wheeler No.UP-70-AT-3092 against the impugned judgment and award dated 21.07.2009, subsequently corrected on 29.07.2009, passed by the Motor Accident Claims Tribunal/District Judge, Kaushambi in M.A.C.P. No.70 of 2006 (Smt. Naghama Begam vs. Lal Ji Yadav and another) whereby, for the untimely death of Khaliq Ahmad @ Achchhe in a road accident that occurred on 09.04.2009, a compensation of Rs.3,89,000/- alongwith interest @ 6% per annum has been awarded to the claimant, which was ordered to be indemnified initially by the insurer of the offending vehicle but later on a right of recovery was given to it from the owner of the offending vehicle.

3. Learned counsel for the appellant submitted that since the offending vehicle was not having a valid permit and the offending driver had a valid and effective driving license to drive LMV(Private) on the date of the accident, hence, the liability to pay compensation was imposed on the owner of the tempo, which is erroneous. Learned counsel submitted that since the laden weight of the offending vehicle was only 975 kg, which was below 3000 kg, as such, no permit was required under Section 66 of the Motor Vehicles Act, 1988. It was further submitted that the offending driver Bablu Yadav possessed a driving license, which was valid and effective for driving LMV(Private) vehicle but the Tribunal has erred in concluding that the driving license having an endorsement to drive commercial vehicle was required. Learned counsel submitted that since the laden weight of the vehicle was below 3000 kg., as such, driver having a valid LMV(Private) license could have legally driven the offending vehicle for which no endorsement for driving transport vehicle was required, but this was not considered by the Tribunal. Learned counsel submitted that in view of the judgment of the Apex Court in the case of **Bajaj Alliance General Insurance Co. Ltd. vs Rambha Devi and others (2025) 3 SCC 95**, the offending driver was having a valid and effective driving license to drive the vehicle. With these submissions, it was prayed that the appeal be allowed and the liability to pay compensation be imposed on the insurer of the offending vehicle.

4. Per contra, learned counsel for the respondent-Insurance Company has very fairly conceded that since the weight of the offending goods vehicle was below 3000 kg., as per Section 66 of the Motor Vehicles Act, 1988, a permit was not required for plying it. He further conceded that since the driver was having a license to drive LMV(Private) vehicle, as such, an endorsement for driving transport vehicle was not required at the time of the accident, as held by the Constitution Bench of the Apex Court in the case of **Bajaj Alliance General Insurance Company Limited** (supra).

5. I have heard learned counsel for the parties and perused the impugned judgment and documents submitted with the appeal.

6. The Constitution Bench of the Apex Court in the case of **Bajaj Alliance General Insurance Company Limited** (supra), after analyzing whether a holder of LMV license can drive all the vehicles below the weight of 7,500 kg, held as under:-

"181.1. A driver holding a licence for light motor vehicle (LMV) class, under Section 10(2)(d) for vehicles with a gross vehicle weight under 7500 kg, is permitted to operate a "transport vehicle" without needing additional authorisation under Section 10(2)(e) of the MV Act specifically for the "transport vehicle" class. For licensing purposes, LMVs and transport vehicles are not entirely separate classes. An overlap exists between the two. The special eligibility requirements will however continue to apply for, inter alia, e-carts, e-rickshaws, and vehicles carrying hazardous goods.

181.2. The second part of Section 3(1), which emphasises the necessity of a specific requirement to drive a "transport vehicle", does not supersede the definition of LMV provided in Section 2(21) of the MV Act.

181.3. The additional eligibility criteria specified in the MV Act and the MV Rules generally for driving ?transport vehicles? would apply only to those intending to operate vehicles with gross vehicle weight exceeding 7500 kg i.e. "medium goods vehicle", "medium passenger vehicle", "heavy goods vehicle" and "heavy passenger vehicle".

181.4. The decision in Mukund Dewangan (2017) [Mukund Dewangan v. Oriental Insurance Co. Ltd., (2017) 14 SCC 663] is upheld but for reasons as explained by us in this judgment. In the absence of any obtrusive omission, the decision is not per incuriam, even if certain provisions of the MV Act and the MV Rules were not considered in the said judgment."

7. It is apparent from the perusal of Section 66 (3)(i) of the Motor Vehicles Act, 1988, that a permit is not required where the gross vehicle weight of a goods vehicle does not exceed 3000 kg. The appellant has annexed the copy of the registration certificate of the offending vehicle, which has not been disputed by learned counsel for the respondent-Insurance Company, which discloses that the laden weight of the offending vehicle was only 975 kg and further the vehicle was, a goods vehicle. In view of the fact that the laden weight of the vehicle was below 3000 kg., a permit was not required for plying it, but unfortunately, the Tribunal has held otherwise. Accordingly, it is held that no permit was required for plying the offending tempo No.UP-70AT-3092 in public place.

8. It is further evident that since laden weight of the offending auto was below 7,500 kg, and it was a light motor vehicle (LMV), as per Section 2 (21) of the Motor Vehicles Act, 1988, hence, for driving it, only license having an endorsement of LMV(Private) was sufficient. The driver was not

required to possess the driving license for driving transport vehicle or commercial vehicle, in the light of the law laid down by the Constitution Bench of the Apex Court in **Bajaj Alliance General Insurance Company Limited** (supra). It is not disputed that the offending driver Bablu Yadav was possessing a driving license, which was valid for driving LMV private vehicle from 17.01.2004 till 16.01.2024. In view of this, the Tribunal has certainly erred in concluding that the offending driver was not having a valid and effective driving license on the date of the accident and further permit was required for plying the offending vehicle. Accordingly, this appeal has merit and deserves to be allowed.

9. Accordingly, the appeal is allowed.

Order on Cross Objection No. 52 of 2021:-

1. Heard learned counsel for the claimants-cross objector and learned counsel for the respondent-Insurance Company.

2. As per office report, there is a delay of 1625 days in filing the instant cross objection.

3. Learned counsel for the claimants-cross objector submitted that since the claimants were illiterate and were not aware that for enhancement of compensation, a cross objection was required to be filed, as such, the cross objection could not be filed within time.

4. Learned counsel further submitted that since a cross appeal of the owner is pending, as such, the delay in filing the cross-objection, be condoned.

5. Per contra, learned counsel for the respondent-Insurance Company submitted that if this Court is of the opinion that the delay in filing the cross objection is liable to be condoned, then this Court may not award interest on the enhanced compensation, if any, awarded by this Court, for the period of delay.

6. I have heard learned counsel for the parties and perused the impugned judgment.

7. Since, the cross appeal of the owner was pending, which has been decided only today, as such, the delay in filing the cross objection is liable to be condoned and is accordingly, condoned but certainly the claimants are not entitled for interest on the period of delay.

8. Learned counsel for the claimants-cross objector submitted that the deceased Khaliq Ahmad @ Achchhe was aged about 35 years at the time of the accident, who was supporting his family of 10 persons, including himself, who was in the occupation of selling Chicken and eggs, who was earning Rs.6,000/- per month but still the Tribunal has not awarded any compensation towards the future prospects of the deceased, whereas the claimants are entitled to get it @50%, as per **Rule 220-A of the UP Motor Vehicle Rules,1998**. It was further submitted that since there were nine dependents of the deceased, only 1/5th amount was required to be deducted towards the personal expenses of the deceased but the Tribunal has deducted 1/3rd amount, which requires reduction. It is further submitted that the Tribunal has awarded less amount of compensation towards non-

pecuniary heads and has also awarded less interest on compensation @ 6% per annum whereas, as per **Rule 220-A** of the above Rules, interest @ at-least 7% per annum should have been awarded to the claimants. With these submissions, it was prayed that the cross-objection preferred by the claimants be allowed and enhanced compensation be paid to them.

9. Per contra, learned counsel for the respondent-Insurance Company submitted that the Tribunal has awarded right amount of compensation to the claimants, which does not warrant any enhancement from this Court in exercise of its appellate jurisdiction. It was further submitted that the claimants should not be awarded any interest on the enhanced amount of compensation awarded by this Court, since, cross-objection was filed belatedly.

10. I have heard learned counsel for the parties and perused the impugned judgment and documents submitted with the appeal.

11. **Rule 220-A of the UP Motor Vehicle Rules, 1998** w.e.f. 26.09.2011, mandates that when the deceased was aged below 40 years on the date of accident, the claimants are also entitled to compensation on future prospects @50% of his income.

12. The Constitution Bench of the Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi & Ors.**(2017) 16 SCC 680 has awarded loss of consortium of Rs.40,000/- and Rs.15,000/- each towards loss of estate and funeral expenses, which is to be enhanced at the rate of 10% after every three years.

13. The Apex Court in the case of **Magma General Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram & others**, (2018) 18 SCC 130, has awarded Rs.40,000/- each towards spousal consortium, parental consortium and filial consortium.

14. Further, the Apex Court in the case of **Rahul Ganpatrao Sable vs Laxman Maruti Jadhav (Dead) through LRS and Others** (2023) 13 SCC 334, held as under:-

32. In the present case, MACT had granted a meagre amount of Rs 5000 towards loss of consortium. However, the High Court granted a total amount of Rs 70,000 as consolidated amount under all conventional heads, which included loss of consortium, loss of estate and funeral expenses. In Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , the Constitution Bench of this Court had provided that all dependents should be separately awarded towards loss of consortium and had actually awarded Rs 40,000 to each of the dependents. Considering the same, an amount of Rs 40,000 each is awarded to each of the four dependents towards loss of consortium.

(emphasis supplied)

15. A Division Bench of this Court in **FAFO No.2581 of 2011, Sushil Kumar & Another vs. M/S Sampark Lojastic Pvt. Ltd. & Another**, decided on 26.04.2017 has held that even if the accident occurred prior to 26.09.2011, the claimants are entitled to compensation on future

prospects as per amended Rule 220-A of the UP Motor Vehicle Rules, 1998, since it is a beneficial legislation.

16. As per decision of the Apex Court in the case of **Pranay Sethi** (supra) read with **Rule 220-A of the U.P. Motor Vehicle Rules, 1998**, the claimants were entitled to get compensation towards future prospects of the deceased @ 50% of his income, but the Tribunal has not awarded any amount towards it, which is erroneous. It is further evident that since there are nine dependents of the deceased, which included his wife, six minor children and parents, only a deduction of 1/5th was required to be made towards the personal expenses of the deceased, keeping in view the judgment of the Apex Court in the case of **Pranay Sethi** (supra) but the Tribunal has deducted 1/3rd amount, which requires reduction. It is further apparent that the claimants are entitled to enhanced amount of compensation under non-pecuniary heads, keeping in view the judgment of the Apex Court in the case of **Pranay Sethi** (supra), **Magma General Insurance Co. Ltd.**(supra) and **Rahul Ganpatrao Sable** (supra). It is further evident that the Tribunal has awarded interest @ 6% per annum on the compensation whereas, as per **Rule 220-A of the U.P. Motor Vehicle Rules, 1998**, the claimants were entitled to get it @ 7% per annum.

17. In view of the above legal position, the claimants are entitled to the following compensation, which is redetermined as under:-

S.No.	Compensation Heads	Amount Awarded in Rs.	In Accordance with.
1.	Monthly income of deceased	3,000/-	As determined by tribunal
2.	Annual Income of deceased	3,000X12=36,000/-	As determined by tribunal
3.	Less 1/5 deduction towards self expenses (since there were nine dependents)	7,200/-	Pranay Sethi(supra)
4.	Net annual income on which claimants were dependent	28,800/-	Pranay Sethi (supra)
5.	Add future prospects @50% since deceased was aged about 35 years	14,400/-	Rule 220-A of UP Motor Vehicle Rules,1998
6.	Total annual dependency of claimants on deceased	43,200/-	Rule 220-A of UP Motor Vehicle Rules,1998
7.	Multiplier applied since age of deceased was about 35 years	16	Pranay Sethi(supra)
8.	Total loss of dependency to the claimants	43,200 x 16 =6,91,200/-	Pranay Sethi(supra)
9.	Loss of consortium @Rs.40,000/-each, increased by 10% after every 3 years (9 claimants)	48,400X9=4,35,600/-	Pranay Sethi(supra), Magma General Insurance Co. Ltd. (supra) and Rahul Ganpatrao Sable (supra)
10.	Loss of estate @ Rs.15,000/- increased by 10% after every 3 years.	18,150/-	Pranay Sethi(supra)
11.	Funeral Expenses @ Rs.15,000/- increased by 10% after every 3 years.	18,150/-	Pranay Sethi(supra)

12.	Total compensation	11,63,100/-	

18. In this way, the claimants are entitled to total compensation of Rs.11,63,100/- alongwith interest @ 7% per annum from the date of filing the claim petition, till the date of actual payment of compensation, which is to be indemnified by the insurer of offending three wheeler No.UP-70-AT-3092. The owner of the above offending vehicle is not required to pay any compensation either to the claimants or the Insurance Company.

19. Since the cross-objection was filed with delay of 1625 days, the claimants are not entitled to any interest on the enhanced amount of compensation awarded by this Court for the period of delay i.e. from 13.10.2016 to 25.03.2021.

20. Accordingly, the appeal preferred by the owner i.e. F.A.F.O. No.7 of 2026 and cross-objection preferred by the claimants are allowed. The impugned judgment and award of the tribunal dated 21.07.2009 and 29.07.2009 is modified to the above extent.

21. The insurance company is directed to deposit the enhanced amount of compensation alongwith interest within a period of two months in the concerned tribunal. The tribunal is at liberty to apportion the enhanced amount of compensation proportionately among the claimants, keeping in view their age and dependency.

22. Office is directed to remit back the statutory deposit made by the owner at the time of filing of the appeal to the concerned Tribunal, forthwith. The Tribunal is directed to refund this amount along with accrued interest to the owner of the offending vehicle, without any delay.

(2026) 1 ILRA 384
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.01.2026

BEFORE
THE HON'BLE SANDEEP JAIN, J.

First Appeal From Order No. 892 of 2015

Sangam Lal **...Appellant**
The New India Assurance Co. Ltd. & Anr. ...Respondents
Versus

Issue for Consideration

Matter pertains to whether the compensation awarded by the Motor Accident Claims Tribunal for the injuries resulting in permanent disability suffered by the claimant was just, fair, and in accordance with settled principles governing assessment of functional disability, loss of earning capacity, future prospects, application of multiplier, and award under non-pecuniary heads and whether the Tribunal erred either in assessing the percentage of functional disability and income or in declining enhancement, thereby warranting interference in appellate jurisdiction by High Court.

Headnotes

Motor Vehicles Act, 1988 - s. 173 - UP Motor Vehicle Rules, 1998 - R. 220 - A - Compensation - Enhancement of - The instant appeals arise out of a judgment and award dated 15.01.2015 passed by the Motor Accident Claims Tribunal, Allahabad, whereby compensation of ₹5,03,310/- with interest at 7% per annum was awarded to the claimant for injuries sustained in a motor accident that occurred on 29.03.2009 by the offending Truck - At the time of the accident, the claimant, aged about 16 years, suffered grievous injuries resulting in amputation of his right leg above the knee and amputation of two toes of the left foot, leading to permanent disability. The Tribunal assessed the functional disability at 80% and computed compensation accordingly, directing the insurer, The New India Assurance Co. Ltd., to indemnify the award. Aggrieved thereby, the insurer preferred an appeal seeking reduction of compensation on the ground of erroneous assessment of disability and income, while the claimant filed a cross-appeal seeking enhancement on the plea that he had suffered 100% functional disability, was entitled to compensation based on minimum wages of a skilled workman, addition towards future prospects, application of a higher multiplier, and enhancement under non-pecuniary heads. (E-11)

Held: Even if, it is assumed that the claimant was only 16 years old and was not in any gainful employment at the time of the accident even then, he is entitled to get compensation on the basis that he was a skilled workman - Since, the accident occurred on 29.03.2009 and at the time of the accident the minimum wages of a skilled workman prevailing in the State of U.P. was about Rs.4,500/- per month, the claimant is entitled to get compensation on this basis - The claimant is also entitled to get compensation for future prospect at the rate of 50% of his income keeping in view of law laid down by Apex Court in the case of Pappu Deo Yadav (infra) and Sidram (infra) as well as R. 220-A of UP Motor Vehicle Rules, 1998 - It is apparent that since it is a case of permanent disability no deduction towards personal expenses of the claimant is to be made while assessing compensation, in view of judgment of Apex Court in the case of Rahul Ganpatrao Sable (infra) - Keeping in view the nature of injuries and the amputation suffered by the claimant, compensation towards non pecuniary heads also requires enhancement, since the tribunal has only awarded an amount of Rs.15,000/- towards pain and suffering and Rs.1,000/- towards special diet, which is grossly inadequate. The claimant is also entitled to compensation for loss of marriage prospects, due to permanent disability - The claimant has not led any evidence as to whether he is using artificial leg or not and the future medical expenses, as such, no compensation can be awarded to the claimant under these heads - Thus, the claimant is entitled to total compensation of Rs.16,59,510/- alongwith interest @ 7% per annum (as awarded by tribunal) from the date of filing of claim petition till it's actual payment, which is to be indemnified by insurer of offending Truck - Accordingly, appeal filed by insurance company is dismissed, and appeal filed by claimant for enhancement of compensation is allowed. [Paras 14, 21, 22, 24]

Case Law Cited

Sarnam Singh v. Sriram General Insurance Co. Ltd. & Ors. (2023) 8 SCC 193; *Raj Kumar v. Ajay Kumar & Another* (2011) 1 SCC 343; *Kajal v. Jagdish Chand & Ors.* (2020) 4 SCC 413; *Master Ayush v. Branch Manager, Reliance General Insurance Co. Ltd. & Anr.* (2022) 7 SCC 738; *Baby Sakshi Greola v. Manzoor Ahmad Simon & Anr.* 2024 SCC OnLine SC 3692; *Hitesh Nagjibhai Patel v. Bababhai Nagjibhai Rabari & Another* 2025 INSC 1070; *Sushil Kumar & Another v. M/S Sampark Lojastic Pvt. Ltd. & Another*, FAFO No.2581 of 2011 decided on 26.04.2017 - referred to

Pappu Deo Yadav v. Naresh Kumar (2022) 13 SCC 790 (By Three Judges); *Sidram v. Divisional Manager, United India Insurance Co. Ltd. & Another* (2023) 3 SCC 439; *Rahul Ganpatrao Sable v. Laxman Maruti Jadhav (Dead) through LRS. and others*, (2023) 13 SCC 334; *National Insurance Co. Ltd. v. Pranay Sethi & Ors.* (2017) 16 SCC 680 - followed

List of Acts

Motor Vehicles Act, 1988; UP Motor Vehicle Rules, 1998

List of Keywords

First Appeal; s. 173 of Motor Vehicles Act, 1988; Motor Accident Claims Tribunal; Permanent disability; Functional disability; Loss of earning capacity; Assessment of compensation; Minimum wages; Multiplier; Future prospects; Non-pecuniary heads; Pain and suffering; Special diet; Medical expenses; Interest awarded; Indemnified by insurer; Enhancement of compensation; Deduction towards personal expenses; Physiotherapist; Disability certificate; Percentage of disability; Appellate interference; Award affirmed/modified; R. 220-A of the U.P. Motor Vehicle Rules, 1998,

Case Arising From

APPELLATE JURISDICTION: First Appeal From Order No. - 892 of 2015
Connected with First Appeal From Order No. - 697 of 2015

From the Judgment and Award dated 15.01.2015 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.1. Allahabad, in MACP No. 521 of 2011.

Appearances for Parties

Advs. for the Appellant:

Amit Kumar Sinha, Deepali Srivastava Sinha

Adv. for the Respondent:

Anubhav Sinha

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

1. FAFO No. 697 of 2015 under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the insurer of the offending Truck No.MH-04-DK-4585 against the impugned judgment and award dated 15.01.2015 passed by the Motor Accident Claims Tribunal/Additional District Judge, court no.1, Allahabad, in MACP No. 521 of 2011, Sangam Lal Vs. Jitendra Pal Singh & another, whereby, for the injuries sustained in a motor accident which occurred on 29.03.2009, the claimant has been awarded a compensation of Rs.5,03,310/-, alongwith interest at the rate of 7% per annum, which has been ordered to be indemnified by the insurer of the offending Truck No.MH-04-DK-4585.

2. FAFO No.892 of 2015 under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the claimant for enhancement of compensation against the impugned judgment and award dated 15.01.2015 passed by the Motor Accident Claims Tribunal/Additional District Judge, court no.1, Allahabad, in MACP No. 521 of 2011, Sangam Lal Vs. Jitendra Pal Singh & another, whereby, for the injuries sustained in a motor accident which occurred on 29.03.2009, the claimant has been awarded a compensation of Rs.5,03,310/-, alongwith interest at the rate of 7% per annum, which has been ordered to be indemnified by the insurer of the offending Truck No.MH-04-DK-4585.

3. FAFO No.892 of 2015 is admitted.

4. Since, both the appeals arise from the same judgment and award as such, they are being heard and decided by the common judgment.

5. Learned counsel for the appellant-insurance company in FAFO No.697 of 2015 submitted that the claimant allegedly suffered only 60% permanent disability due to the injuries sustained in the accident but it was considered to be 80% by the tribunal only on the basis of certificate issued by the Physiotherapist, which was not at all admissible in evidence. It is further submitted that the claimant was a minor who was not earning, but still the tribunal has assessed compensation by taking his monthly income at Rs.3,000/- which is erroneous. With these submission, it was prayed that the appeal be allowed and the compensation paid to the claimant be reduced.

6. Per contra, learned counsel for the claimant-respondent submitted that due to the injuries suffered in the accident, the right leg of the claimant was amputated from the knee and his two little toes of left foot were also amputated due to which he suffered 100% functional disability but the tribunal has only assessed the disability of the claimant at only 80% which requires enhancement. She further submitted that due to the amputation, the claimant was unable to do any manual labour, as such, it was a fit case where the tribunal should have awarded compensation by taking functional disability of the claimant at 100%. She further submitted that the claimant was also entitled to compensation for future prospects at the rate of 50% in accordance with **Rule 220-A of the UP Motor Vehicle Rules, 1998**, but the tribunal has not awarded any compensation towards it. It was further submitted that since the deceased was about 16 years old, a multiplier of 18 was to be applied for assessing compensation, but the tribunal has applied a multiplier of 16, which requires enhancement. It was further submitted that the tribunal has awarded inadequate amount of compensation towards non pecuniary heads which require substantial enhancement keeping in view of the various precedents of the Apex Court. With these submissions, it was prayed that the appeal preferred by the insurance company be dismissed and the appeal preferred by the claimant for enhancement of compensation be allowed.

7. I have learned counsel for the parties and perused the documents submitted with the appeal.

8. The Apex Court in the case of **Raj Kumar Vs. Ajay Kumar & Another (2011) 1 SCC 343** has held that the tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity and in each case, the tribunal has to independently assess the earning capacity loss of the claimant by ascertaining what activities the claimant could carry on inspite of the permanent disability and what he could not do as a result of his injuries. It was further held that where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates.

9. The Apex Court in the case of **Sarnam Singh vs. Sriram General Insurance Co. Ltd. & Ors. (2023) 8 SCC 193**, while analysing when partial disability will amount to 100% earning capacity loss, held as under:-

10. As to how compensation, in case where permanent disability of an injured affects his functional disability, is to be assessed has been considered by this Court, repeatedly. Reference can be made to the judgment of this Court in Mohan Soni v. Ram Avtar Tomar [Mohan Soni v. Ram Avtar Tomar, (2012) 2 SCC 267 : (2012) 1 SCC (Civ) 747 : (2012) 1 SCC (Cri) 641] . In the aforesaid case the injured was working as a cart puller. As a result of the accident, his left leg was

amputated. His permanent disability was assessed at 60%. The Tribunal assessed the compensation taking the loss of earning at 50% on the theory that he can still do some other work while sitting. The High Court did not disturb the finding regarding loss of income on account of disability. This Court found that the Tribunal was in error in taking the loss of earning at 50% as the injured was 55 years of age and it may be difficult for him to find a job at that stage. In fact, any physical disability resulting from an accident has to be judged with reference to the nature of the work being performed by the person who suffered disability. The same injury suffered by two different persons may affect them in different ways. Loss of leg by a farmer or a rickshaw puller may be end of the road as far as his earning capacity is concerned. Whereas, in case of the persons engaged in some kind of desk work in office, loss of leg may have lesser effect. This Court enhanced the loss of earning capacity from 50% to 90%.

11. Applying the same principle to the case in hand, we find that the appellant herein was working as a gunman with Bharat Hotel Limited. On account of amputation of his right leg above the knee, he was terminated from service w.e.f. 31-5-2015. It is not a matter of dispute that a person with his right leg amputated cannot perform the duty of a gunman. This is his functional disability. He was 50 years & 5 months old at the time of accident. Considering the aforesaid facts, in our view, the Tribunal was right in assessing the loss of earning capacity of the appellant at 100% and assessing the compensation accordingly. The High Court was in error in reducing the loss of earning capacity to 80%, relying upon the judgment [Shri Ram General Insurance Co. Ltd. v. Sarnam Singh, 2017 SCC OnLine Del 13011] of the High Court, despite there being a judgment of this Court available on the issue.

10. In the instant case, due to the injuries suffered by the claimant his right leg has been amputated through knee and he has also suffered amputation of his two small toes in left foot due to which as per the certificate issued by the CMO, Pratapgarh, he has suffered 60% permanent disability. The certificate has been issued by the duly constituted medical board whose authenticity has not been challenged by the appellant-insurance company by filing any contra evidence.

11. The claimant has also filed certificate issued by Department of Physiotherapy, B.Y.L. Nair Charitable Hospital & T.N.M. College, Bombay, which discloses that he has suffered 75% permanent disability in right lower limb due to right knee disarticulation and 5% permanent disability in left lower limb due to 4th-5th ray amputation, due to which the claimant has suffered total disability of 80%.

12. The tribunal has noted that the right leg of the claimant has been amputated from the knee and his fourth and fifth toe of left leg have also been amputated and on this basis the tribunal has assessed functional disability of the claimant at 80%. From the written statement filed by vehicle owner, it is evident that the claimant was working as a Khalasi on his truck which involves physical labour. It is apparent that due to the amputation suffered by the claimant he is unable to do any job involving physical labour in future and, as such, there was 100% functional disability. The tribunal has only assessed the functional disability at 80%, which requires enhancement.

13. The Apex Court in the case of **Kajal vs. Jagdish Chand & Ors. (2020) 4 SCC 413** , **Master Ayush vs. Branch Manager, Reliance General Insurance Co. Ltd. & Anr. (2022) 7 SCC 738** , **Baby Sakshi Greola vs. Manzoor Ahmad Simon & Anr. 2024 SCC OnLine SC**

3692 and Hitesh Nagjibhai Patel vs. Bababhai Nagjibhai Rabari & Another 2025 INSC 1070 has held that where a claimant has suffered 100% permanent functional disability due to an accident, the compensation under the head of loss of income must be awarded on the basis of the minimum wages of a skilled workman prevailing at the time of the accident in that region and should not be assumed on a notional basis.

14. In view of this, even if, it is assumed that the claimant was only 16 years old and was not in any gainful employment at the time of the accident even then, he is entitled to get compensation on the basis that he was a skilled workman. Since, the accident occurred on 29.03.2009 and at the time of the accident the minimum wages of a skilled workman prevailing in the State of U.P. was about Rs.4,500/- per month, the claimant is entitled to get compensation on this basis.

15. The Apex Court in the case of **Pappu Deo Yadav vs. Naresh Kumar (2022) 13 SCC 790 (By Three Judges)** while considering the issue of awarding future prospects in cases of permanent disablement from motor accident, held as under:-

7. Two questions arise for consideration : one, whether in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects too; and two, the extent of disability. On the first question, the High Court no doubt, is technically correct in holding that Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] involved assessment of compensation in a case where the victim died. However, it went wrong in saying that later, the three-Judge Bench decision in Jagdish [Jagdish v. Mohan, (2018) 4 SCC 571 : (2018) 3 SCC (Civ) 102 : (2018) 2 SCC (Cri) 572] was not binding, but rather that the subsequent decision in Anant [Anant v. Pratap, (2018) 9 SCC 450 : (2018) 4 SCC (Civ) 378 : (2018) 3 SCC (Cri) 756] to the extent that it did not award compensation for future prospects, was binding. This Court is of the opinion that there was no justification for the High Court to have read the previous rulings of this Court, to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading of Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] is illogical, because it denies altogether the possibility of the living victim progressing further in life in accident cases - and admits such possibility of future prospects, in case of the victim's death.

16. The Apex Court in the case of **Sidram vs. Divisional Manager, United India Insurance Co. Ltd. & Another (2023) 3 SCC 439**, while directing that in cases of serious permanent disability, compensation for future prospects should also be awarded, held as under:-

31. It is now a well-settled position of law that even in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects as well. We have come across many orders of different tribunals and unfortunately affirmed by different High Courts, taking the view that the claimant is not entitled to compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. That is not a correct position of law. There is no justification to exclude the possibility of compensation for future prospects in accident cases involving serious

injuries resulting in permanent disablement. Such a narrow reading is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases-and admits such possibility of future prospects, in case of the victim's death.

17. The Apex Court in the case of **Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav (Dead) through LRS. and others, (2023) 13 SCC 334** while directing that in cases of permanent disability, there should not be any deduction for personal expenses, held as under:-

15. The High Court deducted 50% of compensation towards personal expenses. The present case being not of death and the claim not being made by the dependents, but the same being by a survivor in the accident with severe injuries resulting into permanent disability, there could not be any justification for deduction of personal expenses. We do not approve the said deduction in view of the judgment of this Court in Lalan D. [Lalan D. v. Oriental Insurance Co. Ltd., (2020) 9 SCC 805 : (2021) 1 SCC (Civ) 253 : (2021) 1 SCC (Cri) 238]

18. As per **Rule 220-A of the UP Motor Vehicle Rules, 1998**, if the claimant was below 40 years at the time of accident, he is entitled to compensation for loss of future prospects @50% in cases of serious permanent disability.

19. A Division Bench of this Court in **FAFO No.2581 of 2011, Sushil Kumar & Another vs. M/S Sampark Lojastic Pvt. Ltd. & Another**, decided on 26.04.2017 has held that even if the accident occurred prior to 26.09.2011, the claimants are entitled to compensation on future prospects as per amended Rule 220-A of the UP Motor Vehicle Rules, 1998, since it is a beneficial legislation.

20. The claimant is also entitled to get compensation for future prospect at the rate of 50% of his income keeping in view of the above law laid down by the Apex Court in the case of **Pappu Deo Yadav** (supra) and **Sidram** (supra) as well as **Rule 220-A of the UP Motor Vehicle Rules, 1998**. The tribunal has not awarded any compensation on this account. It is further apparent that since it is a case of permanent disability no deduction towards personal expenses of the claimant is to be made while assessing compensation, in view of the judgment of the Apex Court in the case of **Rahul Ganpatrao Sable** (supra). It is further apparent that since the claimant was only about 16 years old at the time of the accident, a multiplier of 18 is to be applied for assessing compensation, but the tribunal has applied a multiplier of 16 which requires enhancement, keeping in view the judgment of the Apex Court in the case of **National Insurance Co. Ltd. vs Pranay Sethi & Ors. (2017) 16 SCC 680**.

21. Keeping in view the nature of injuries and the amputation suffered by the claimant, compensation towards non pecuniary heads also requires enhancement, since the tribunal has only awarded an amount of Rs.15,000/- towards pain and suffering and Rs.1,000/- towards special diet, which is grossly inadequate. The claimant is also entitled to compensation for loss of marriage prospects, due to permanent disability.

22. It is pertinent to mention here that the claimant has not led any evidence as to whether he is using artificial leg or not and the future medical expenses, as such, no compensation can be awarded to the claimant under these heads.

23. In view of the above statutory law and precedents of the Apex Court, the compensation payable to the claimant is redetermined as under:-

S.No.	Compensation Head	Amount Awarded (in Rs.)	In accordance with
1.	Monthly Income of the claimant on the basis of minimum wages of skilled workman	4,500/-	Kajal (supra), Master Ayush (supra), Baby Sakshi Greola (supra) and Hitesh Nagjibhai Patel (supra)
2.	Annual income of the claimant	4,500X12=54,000/-	Kajal (supra), Master Ayush (supra), Baby Sakshi Greola (supra) and Hitesh Nagjibhai Patel (supra)
3.	Add future prospects @50% since claimant was about 16 years old on the date of the accident.	27,000/-	UP Motor Vehicle Rules,1998, Pappu Deo Yadav(supra) and Sidram(supra)
4.	Total annual loss of future income	81,000/-	UP Motor Vehicle Rules,1998, Pappu Deo Yadav(supra) and Sidram(supra)
5.	Multiplier applied since age of claimant was about 16 years	18	Pranay Sethi (supra)
6.	Total future loss of income due to 100% functional disability	81,000X18=14,58,000/-	Pranay Sethi (supra)
7.	Medical Expenses	26,510/-	As awarded by the tribunal
8.	Compensation towards pain,suffering and loss of amenities	1,00,000/-	-
9.	Special diet expenses	25,000/-	-
10.	Loss of future marriage prospects	50,000/-	-
11.	Total compensation	16,59,510/-	

24. In this way, the claimant is entitled to total compensation of Rs.16,59,510/- alongwith interest @ 7% per annum (as awarded by the tribunal) from the date of filing of the claim petition till it's actual payment, which is to be indemnified by the insurer of the offending Truck No.MH-04-DK-4585.

25. Accordingly, FAFO No.697 of 2015 preferred by the insurance company is dismissed.

26. FAFO No.892 of 2015 preferred by the claimant for enhancement of compensation is allowed. The award of the tribunal dated 15.01.2015 is modified to the above extent.

27. If any amount has been paid by the insurance company previously, then the insurance company is entitled to adjust it accordingly. The insurance company is directed to deposit the enhanced amount of compensation before the concerned tribunal within two months.

28. Office is directed to remit the statutory deposit made by the appellant insurance company in FAFO No.697 of 2015 to the concerned tribunal, forthwith.

29. Interim order, if any, in FAFO No. 697 of 2015, stands vacated.

(2026) 1 ILRA 392
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.01.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal From Order No. 1642 of 2011

The New India Insurance Co. Ltd.	...Appellant
	Versus
Smt. Luxmi Devi Dubey & Ors.	...Respondents

Issue for Consideration

Matter pertains to whether the Motor Accident Claims Tribunal was justified in holding that the accident occurred due to the rash and negligent driving of the offending car and that there existed a proximate and legally sustainable nexus between the injuries sustained by the deceased in the accident and his subsequent death due to tetanus, thereby fastening liability upon the insurer to indemnify the awarded compensation.

Headnotes

Motor Vehicles Act, 1988 - s. 173 - Liability of Insurance - Compensation of - In a claim arising out of a motor accident dated 21.01.2008, the deceased sustained grievous injuries when his motorcycle was hit from behind by the offending car, allegedly driven in a rash and negligent manner - He was initially treated and discharged, but subsequently developed complications, including tetanus, during continued medical treatment, and ultimately succumbed on 12.02.2008 - The claimants, being the legal heirs, instituted proceedings seeking compensation, which was awarded by the Tribunal holding the driver negligent and fastening liability upon the insurer - Aggrieved by the order, the insurer preferred an instant appeal before the High Court disputing both the finding of negligence and the causal connection between the injuries sustained in the accident and the subsequent death of the deceased. (E-11)

Held: It is well-settled that where there is a nexus between the injuries caused and the cause of death of deceased, then certainly compensation can be awarded for the death of a person, who suffered injuries in a motor accident - It is apparent that in the instant case, due to the accidental injuries suffered on 21.01.2008, the deceased developed tetanus, which is incurable, and he died subsequently during treatment on 12-2-2008 - Had the deceased not suffered injuries in the accident for which he was operated upon, he certainly would not have been infected with tetanus and would also not have died, due to it - As such, the contention of appellant that there was no nexus between the injuries suffered in the accident and the cause of death of deceased, is rejected - The tribunal has rightly held that the deceased died due to the injuries suffered in the accident, and the accident was due to sole negligence of offending car driver - The contention of claimants-respondents that the tribunal has awarded inadequate compensation cannot be examined in this appeal since no cross-appeal or cross-objection has been filed by the claimants - Accordingly, the appeal has no merit, thus, dismissed - Award of Tribunal is affirmed - Direction to pay remaining amount of compensation to surviving legal heir. [Paras 16, 18 to 20]

Case Law Cited

Jayarathnamma and others v. Mukhtiar Singh and another **2005 SCC OnLine Kar 639**; *The New India Assurance Co. Ltd. v. Malliga and others* **CMA No. 2835 of 2002 decided on 01.02.2008**; *Oriental Insurance Co. Ltd. v. Sukhyarin and others* **2024 SCC OnLine Chh 7750**; *National Insurance Co. Ltd. v. Anthony @ Rakesh and others* **2014 SCC OnLine Mad 48** - referred to

List of Acts

Motor Vehicles Act, 1988

List of Keywords

Rash and negligent driving; Valid and effective driving licence; Offending vehicle; Motor accident; Grievous injuries; Eye-witness testimony; Sole negligence; Contributory negligence; Burden of proof; Indemnify by insurer; Compensation; Nexus between cause of death and accidental injuries; Treatment papers; Documentary evidence; Discharge; Medical treatment; Tetanus; Proximity to date of accident and date of death; Chain of causation; Written statement; Cross-examination; Statutory deposit; Surviving Legal heir; Remaining amount of Compensation; Interim order vacated; Appeal dismissed.

Case Arising From

APPELLATE JURISDICTION: First Appeal From Order No. - 1642 of 2011

From Judgment and Award dated 25.01.2011 passed by Motor Accidents Claims Tribunal/ District Judge, Etawah, in Motor Accident Claim Petition No. 403/2008

Appearances for Parties

Adv. for the Appellant:

Rahul Sahai

Adv. for the Respondent:

Rakesh Kumar Porwal

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

Order on Civil Misc. Application No. Nil of 2025

1. Learned counsel for the appellant-insurance company submitted that respondent no. 3- Gaurav Dubey, has died on 25-4-2024, and his legal heirs are already on record, as such, an endorsement to this effect be recorded in the memo of appeal in the array of parties after his name.

2. Learned counsel for the claimants-respondents has not opposed the above application.

3. In view of this, the application is **allowed**.

4. Learned counsel for the appellant-insurance company is directed to incorporate the required endorsement in the memo of appeal today.

Order on Appeal :-

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the Insurer of the offending car no. UP-78-Q-9280 against the impugned Judgment and Award dated 25.01.2011 passed by Motor Accidents Claims Tribunal/ District Judge, Etawah, in Motor Accident Claim Petition No. 403/2008 (Smt. Luxmi Devi Dubey and three others v. Smt. Anwari Begum and another), whereby for the untimely death of Ramakant Dubey on 12.02.2008 due to the injuries suffered in a road accident which occurred on 21.01.2008, a compensation of Rs.

13,57,000/- along with interest at the rate of 6% per annum has been awarded to the claimants which has been ordered to be indemnified by the Insurer of the aforesaid offending vehicle.

2. Learned counsel for the appellant- Insurance Company submitted that there was no negligence of the offending driver in the alleged accident, but the Tribunal has held otherwise. Learned counsel submitted that at the time of accident, an ox suddenly crossed the road, and in order avoid collision with it, the driver swerved his car and hit the deceased, in which, there was no negligence on the part of the offending car driver. It was further submitted that the deceased did not suffer any fatal injury in the accident. In fact, after treatment, he was discharged from the hospital on 3-2-2008, but due to tetanus, he was again admitted to the hospital on 4-2-2008, where he died during treatment on 12-2-2008. He further submitted that there was no nexus between the injuries suffered by the deceased and his cause of death, which was tetanus, as such, the Tribunal has erred in concluding that the deceased died due to the injuries suffered in the accident. With these submissions, it was prayed that the appeal be allowed and the impugned judgment and award of the Tribunal be set aside.

3. Per contra, learned counsel for the claimants-respondents submitted that the deceased suffered grievous injuries in the accident, due to which, he developed tetanus and died subsequently, as such, there was close nexus between the injuries suffered by the deceased and his cause of death, which was duly proved by documentary evidence on record. As such, the Tribunal has not erred in ordering the appellant to indemnify the compensation payable to the claimants. It was further submitted that the Tribunal has, in fact, awarded less compensation to the claimants, which be enhanced in accordance with law.

4. I have heard the learned counsel of both the sides and perused the record of the lower court.

5. From the perusal of the record of the lower court, it is evident that the owner of the offending car- Smt. Anwari Begum, in her written statement, has accepted the factum of the accident and has stated that it occurred due to divine intervention, since a stray animal suddenly came on the road. She further averred that the accident occurred due to the sole negligence of the deceased, who was driving his motorcycle in a rash and negligent manner. It was further averred that the car driver- Raghvendra Pal Singh, was having a valid and effective driving licence at the time of the accident and further, the car was insured with The New India Assurance Company Ltd, as such, if any liability is imposed on her, it will be indemnified by the insurer of the offending car. It was further averred that the deceased died due to the sole negligence of the doctors, for which the owner, driver, and insurer are not responsible.

6. Before the Tribunal, the wife of the deceased- Smt. Luxmi Devi, examined herself as PW-1, Jagdish Prasad as PW-2 and Ramakant as PW-3, whereas no oral evidence was led by the owner, driver, and insurer of the offending car. PW-3 is not an eyewitness of the accident.

7. PW-1 very fairly accepted that she was not an eye witness of the accident. Jagdish Prasad, PW-2, deposed that on 21-1-2008, at about 6.00 pm, he was coming by bicycle from Jaswant Nagar to his village Barra, and when he reached near petrol pump at Kantihar, he saw a motorcycle no. UP-75-F-5736 coming from Saifai and going towards Etawah. At the same time, a car no. UP-78-

Q-9280, which was being driven in a rash and negligent manner, swerved towards the left side in order to avoid an ox which was passing from the right, collided with the above motorcycle from behind, due to which, the motorcycle driver suffered grievous injuries. He further deposed that at the spot, the police personnel of police station- Vaidpura were also present, who took the injured-Ramakant to the Etawah district hospital, and his motorcycle was taken to the police station. He further deposed that the accident occurred due to the sole negligence of the car driver because had he driven his car at a normal speed, then the accident would not have occurred. In the cross-examination, he deposed that the accident occurred after the motorcycle of the deceased and the car had crossed his cycle. He further deposed that prior to the arrival of the ox on the road, the motorcycle of the deceased had crossed, and the car hit the motorcycle from behind.

8. From the testimony of eye-witness PW-2, it is evident that the accident occurred when the offending car hit the motorcycle of the deceased from behind, as such, there was no contributory negligence of the deceased in the accident. It is further evident that had the offending driver been driving his car at a controlled speed, then the accident could have been averted. The driver of the offending car has not been examined to prove he was not negligent in driving the offending car at the time of the accident.

9. In view of this, the contention of the learned counsel for the appellant that there was no negligence of the offending car driver in the accident is **rejected**.

10. From the perusal of the treatment papers of the deceased on record, it is evident that the deceased was admitted to Jai Devi Hospital and Research Centre, Agra, from 23-1-2008 to 3-2-2008, where he was treated for a commuted fracture of the right patella, for which he was operated upon. The deceased was examined by Dr. A.N. Tiwari on 04-2-2008, 06-2-2008, 08-2-2008 and 10-2-2008, who continuously diagnosed high fever and prescribed appropriate treatment, as per his wisdom. On 12-2-2008, due to tremor and jerks in the whole body, which was bending like bow, he diagnosed that the deceased was suffering from tetanus with fever, and referred him to the I.D.H. Department, GSVM Medical College, Kanpur but he died on 12-2-2008 at his house. It is apparent that the deceased remained under treatment from 4-2-2008 till his death on 12-2-2008 and he ultimately died due to tetanus.

11. This Court has to examine whether there was a nexus between the cause of death of the deceased and the injuries suffered by him in the accident.

12. The High Court of Karnataka in the case of **Jayarathnamma and others vs Mukhtiar Singh and another 2005 SCC OnLine Kar 639**, where the deceased died due to tetanus as a result of the injuries suffered in a accident, held as under:-

6. The evidence of PW 2 discloses that the deceased was admitted to Government Hospital, Chitradurga on the date of the accident, i.e., on 3.11.1992 and he was in the said hospital as an inpatient for three days. Thereafter, he was discharged from Government Hospital, Chitradurga, and was admitted to Government Medical College and Hospital at Bellary. No doubt, the discharge certificate shows that deceased was discharged against medical advice. From that, it cannot be inferred that there was any negligence on the part of the persons who discharged the

deceased from the Government Hospital at Chitradurga. The deceased is from Sriramaseththihalli village, Sandur Taluk, Bellary District. The fact that the discharge was against the medical advice indicates that the nature of injuries sustained by the deceased was of serious nature. Under these circumstances, it is not possible to take a view that there was negligence in giving treatment to the deceased and the death of deceased took place on account of such negligence. Therefore, the fact that the deceased was shifted from smaller hospital at Chitradurga to Medical College and Hospital at Bellary indicates that all efforts were made to give the best treatment to the deceased. It may be that the deceased being a resident of Sriramaseththihalli village, Sandur Taluk, Bellary District which is nearer to Medical College and Hospital, Bellary, he was shifted to Medical College and Hospital at Bellary. Further, it cannot be disputed that Medical College and Hospital at Bellary had better facilities for treatment than the Government Hospital at Chitradurga. Exh. P24 shows that the deceased died on account of tetanus. The term 'tetanus' is described in Webster's Dictionary as follows:

"Tetanus is an infectious, often a fatal disease, due to a specific bacterium, *Clostridium tetani*, which has gained entrance to the body through wounds, characterized by more or less violent tonic spasm and rigidity of many or all the voluntary muscles."

In the instant case, there cannot be any dispute that the deceased had developed tetanus as a result of the injuries sustained by him in the accident in question. It is not the case of the insurance company that the deceased was not admitted to the Government Medical College and Hospital, Bellary and that he did not die in the hospital. The averments made in the petition is supported by evidence of PW 2 who is the widow of the deceased. There is proximity to the date of the accident and the date of death. It cannot be disputed that but for the injuries sustained by the deceased in the accident in question, there was no occasion to admit him to hospital for treatment. There is no material placed on behalf of the respondent to show that the death of the victim of accident has taken place on account of negligence of Shanmukhappa or his legal heirs who were attending on him. When the evidence on record shows that the deceased was admitted to Government Hospital, Chitradurga and thereafter from the said hospital, he was removed to Government Medical College and Hospital, Bellary and he died in the hospital, the only inference that can be drawn in the absence of any other evidence is that the deceased had died as a result of the injuries sustained by him in the accident in question. It is necessary to point out that when the victim of the accident is admitted to a hospital neither he nor his close relatives including his legal heirs will not have direct control or the capacity to assess or review the nature of treatment given to the victim of the accident in the hospital. In such situations, even if there is any lapse on the part of the doctors treating the victim of the accident, that cannot be a ground to deprive either the victim of the accident and in case of his death, his legal heirs the compensation to which they are entitled to in law. The entire matter will have to be viewed keeping in view that the provisions under the Act are made for award of compensation to relieve the hardship either of the victim of the accident or the legal heirs that are likely to be put in case of death of the victim of the accident and the object of the legislation being beneficial intended to protect the victim of the accident. But for the injuries sustained by the deceased Shanmukhappa, in the normal course, there was no scope for him to develop tetanus which is stated to have been the cause for his death. If the matter is so viewed, we have no hesitation to take a view on the basis of evidence on the record that Shanmukhappa had died as a result of injuries sustained by him in the accident. Under these circumstances, we have no reason to disbelieve the evidence of PW 2 that the deceased was admitted to the Government Medical

College and Hospital, Bellary and he died in the hospital. Therefore, we are of the view that the learned Tribunal was not justified in holding that death was not as a result of the injuries sustained by the deceased.

(emphasis supplied)

13. The High Court of Madras in the case of **The New India Assurance Co. Ltd. vs Malliga and others CMA No. 2835 of 2002** decided on 01.02.2008, while examining the nexus between the cause of death of deceased and the injuries suffered by him in the accident, held as under:-

7. Deceased Muthumathi sustained injuries in the accident on 19.11.1998 when he was driving lorry. In her evidence, first claimant [AW-1] has deposed that deceased Muthumathi was admitted in Government Hospital, Krishnagiri on 19.11.1998 and after initial treatment, he was admitted in Government Hospital, Chennai on 22.11.1998 for further treatment. Deceased was discharged from Hospital on 14.05.1999 and the deceased died on 23.09.1999 at his residence. In her evidence, PW-1 has stated that even after discharge, the deceased had taken private treatment. While he was in the hospital, he was twice operated upon and only thereafter, discharged on 14.05.1999.

8. In his evidence, AW-2 Dr. Gopalan, Surgeon in Stanley Medical College Hospital has stated that he has examined the deceased one day prior to his death on 22.07.1999 and during his examination, he has found that the deceased had stiff jaw and the cell muscles of the body of the deceased was also found to be stiff. PW-2 further deposed that the deceased developed "Latent Tetanus" and probably due to this cause, the deceased died. Ex.A-2 is the Discharge Summary from which it is seen that left leg was partially amputated and deceased was advised to come for SSG after two weeks.

9. Concededly the deceased Muthumathi sustained injuries on the lateral aspect of left leg on 19.11.1998 while he was on duty in the course of his employment. He was also given treatment for septicemia. During cross examination AW-2 admitted that while deceased was being treated, he was administered Anti Tetanus Toxicide injection to prevent Tetanus at any later point of time. Based on the evidence of PW-2, the learned Counsel for the Appellant contended that the deceased Muthumathi had been injected for anti-tetanus and therefore, it is improbable that the deceased would have developed tetanus. On that score, it was submitted that a doubt must be entertained as to whether Muthumathi's death was due to tetanus resulting from the injury sustained by him in the accident.

10. This doubt sought to be raised by the learned Counsel for the Appellant does not merit acceptance. In his evidence AW-2 has categorically stated that while he examined the deceased on 22.07.1999, he found that the deceased had developed Latent Tetanus. It may be that anti-tetanus injection administered might have effect for more than a year. Since the deceased sustained crush injury over the entire left leg, tetanus attack cannot be ruled out. Contention of the appellant that there was no nexus between the injuries and the death of deceased is unsustainable. In the light of the evidence of PW-2 there is no difficulty in reaching the conclusion that tetanus infection brought about death must be directly attributed to the injury sustained by Muthumathi in the accident. Cause of death is not remote or unconnected one with the injury sustained by the deceased in the course of his employment. Needless to say

that if cause of death is integrally connected with the injury sustained in the accident, cause of death must be attributed to the injury sustained in the accident.

11. It is futile to contend whether at all deceased died due to tetanus. In similar case in 1975 ACJ 215 [Madras] Govind Singh and ors. v. Kailasam and another, deceased sustained injury in the course of his employment. In that case arising under Motor Vehicles Act, the injured developed tetanus during treatment and he succumbed to the disease. Observing that autopsy is not indispensable to determine cause of death and holding that cause of death is not a remote or unconnected one with the injury sustained by the deceased. the Court has held:

"11. ... Having regard to the fact that the setting in of tetanus is a foreseeable and likely consequence of any bleeding injury and in the absence of evidence to show that any other supervening cause brought about the tetanus infection there is absolutely no possibility of Heera Bai's death being caused by novus actus interveniens."

The above observation is squarely applicable to the present case.

(emphasis supplied)

14. The High Court of Chattisgarh in the case of **Oriental Insurance Co. Ltd. vs Sukhyarin and others 2024 SCC OnLine Chh 7750**, where the death occurred due to infection in the amputated injured area as a result of accident, held as under:-

15. In the present case, the deceased sustained injuries in the accident because of rash and negligent driving of the vehicle by respondent No. 4 as a result of which left leg of the deceased was amputated and when he was in the house, it was infected which has caused his death, therefore, it cannot be said that the death was not caused because of rash and negligent driving of the vehicle and if the accident would have not taken place, his left leg would have not been amputated and probability of infection in the body cannot be ruled out. Thus, there is nexus between cause of death and accident. Claimant witness PW/I Sukhiyarin Bain in her deposition has categorically stated that in the operated place of the deceased body there was bad smell of thick fluid containing dead tissue, cells, and bacteria, which was neither rebutted through cross-examination nor examined any witnesses by the Insurance Company, as such probability of infection in the body of the deceased cannot be ruled out.

16. The issue with regard to nexus between cause of death and accident has come up for consideration before the Hon'ble High Court of Madras in Govind Singh v. A.S. Kailasram, decided on 1-8-1974 wherein it has been held in para 11 as under.

"11. Injury sustained in one accident may be the cause of a subsequent injury. The injury sustained by accident by victims on the operation table is an example of such a situation. So too are cases of suicide resulting from a mental condition produced by an accident (Pigney v. Pointera Transport Service Ltd., [1957] 2 All ER 807). Smith v. Leech Brain and Co. Ltd., [1961] 3 All ER 1159, was a case where the plaintiff had been injured by a splash of molten metal which burnt his lip. He later contracted cancer, underwent operation and died. The defendants were found to be negligent, in causing the burn and the burn was the promoting agency which promoted cancer in the tissues which already had a pre-malignant condition. Lord Parker, C.J., attributed the death to the original accident and found the defendants liable to in respect of that death. Wieland v. Cyril Lord Carpets Ltd., [1969] 3 All ER 1006 was a case where the plaintiff suffered an injury caused by the admitted negligence of the defendants. After attending the hospital, she felt shaken and the

movement of her head was constricted by a collar which had been fitted to her neck. In consequence, she was unable to use her bifocal spectacles with her usual skill and she fell while descending stairs, sustaining further injuries. It was held that the injuries and damage suffered because of the second fall were attributable to the original negligence of the defendants so as to attract compensation from them. *Bloor v. Liverpool Darricking & Co. Ltd.*, [1936] 3 All ER 399 was a case where the deceased employed as a derrickman, volunteered to act temporarily as a shipper on another barge, stumbled? and fell into the hole and sustained minor injuries. He was removed to the hospital and given an anaesthetic under which he collapsed and died. The post-mortem examination revealed that he had a diseased heart. Three learned Judges of the Court of Appeal held that the administration of anaesthesia cannot be deemed to be *novus-actus interveniens* such as to break the chain of causation between the accident and the death and consequently the death must be attributed to the injuries sustained in the accident. A Bench of this Court had to consider in *Mrs. C.P. Francis v. K.S. Shivaji & Co.*, C.M.A. No. 96 of 1970 of this Court judgment dated 11-2-1974 (Mad.), whether an accident victim who sustained a hit on the right part of his stomach, but did not sustain any visible injury on the abdomen could be deemed to have died as a result of the injury sustained in the accident when, a few days later, his abdomen had to be opened for surgical treatment of his stomach-pain and it was then found that the greater omentum was covering up the loops of intestines going down to pelvis causing an obstruction, a membrane was covering the jejuno-ilial junction and further exploration revealed pelycabeess and lacerated appendix. The victim was operated, but he died of peritonitis. This court held that, in the absence of independent evidence to show that the victim was suffering from appendicitis earlier, the court was justified in presuming that the death of the deceased was the result of appendicitis caused by the rash and negligent act of the driver of the motor vehicle at the time of the accident. The principle in cases of this kind can best be described in the words of Lord Denning, M.R. in *Statment v. West African Terminals Ltd.*, (1954) 2 Lloyds Rep 371 (at page 375):

“..... it is not necessary that the precise contention of circumstances should be envisaged. If the consequence was one which was within the general range, which any reasonable man might foresee (and was not of an entirely different kind which no one would anticipate) then it is within the rule that a person who had been guilty of negligence is liable for the consequences”.

19. From the above legal position and also considering the evidence brought on record and the opinion given by the Doctor that there was infection in the body of the deceased and his left leg was amputated, which is not in dispute and Infection of the body is consequent to the amputation. **Thus, it is quite vivid that the death was caused due to rash and negligent driving of the tractor by respondent No. 4, as such there is nexus regarding cause of death. Also considering the fact that insurance company has not adduced any evidence to rebut the statement of Smt. Sukhiyarin Bai (PW-01), who in clear terms has stated that the left leg of her husband was amputated because of rash and negligent driving of tractor by respondent No. 4 and thereafter he died. Thus, it is clearly established that death was taken place due to rash and negligent driving of the vehicle causing amputation of the left leg of the deceased. Thus, the submission made by the learned counsel for the appellant, that it was natural death and the claimants have not examined any Doctor to prove that death was caused due to amputation deserves to be rejected.**

(emphasis supplied)

15. In similar facts and circumstances where the death occurred due to septicemia because of infection in the injured area as a result of accident, the High Court of Madras in the case of **National Insurance Co. Ltd. vs Anthony @ Rakesh and others 2014 SCC OnLine Mad 480**, held as under:-

9. The ratio in the Judgments reported in Vatsala v. Meenakshi, 2005 (1) TN MAC 62 (DB) : 2005 (1) LW 560; Maricar Motors Ltd. v. Neelambal Ramaswamy, 1982 ACJ (Supp) 570, and the Judgment in C.M.A. No. 1305/2012 are that when factually it is established that the death was not unconnected to the injury, when sufficient materials are placed before the Tribunal to show that the deceased was taking continuous treatment and when no contra evidence is produced, the claim must be allowed.

*10. *****

11. The next contention of the Counsel for 2nd Respondent is that the death of Anthony alias Anthony Rakesh was not due to the injuries suffered by him. According to the Counsel for the 2nd Respondent unless a Post-mortem report was produced, it could not be said that the death had a nexus with the injury. The Counsel for the Claimants has relied upon the following Judgments to contend that Post-Mortem Report is not necessary to prove that the death was caused by the after effects of the injury.

12. In the Judgment reported in Govind Singh v. A.S. Kailasam, 1975 ACJ 215, this Court has held as follows:

“9. ... In a case where the patient had been clinically diagnosed as suffering from tetanus or lock-jaw and had succumbed to the disease despite treatment, an autopsy is not an indispensable test to determine the cause of death. ...

10. ... It is needless to say that if the cause of death is integrally connected with the injury sustained in the accident and is one in the chain of causa causens the cause of death must be attributed to the injury sustained in the accident, however trivial or minor the injury, by itself, may be.”

13. In the Judgment reported in Khairullah v. Anita, 1994 ACJ 1017, the Andhra Pradesh High Court has held as follows:

“4. It is vehemently contended by Mr. P. Rama Rao, learned Counsel appearing for the Appellants, that no autopsy was conducted over the dead body of the deceased to arrive at the cause of death. It may be remembered that the deceased died during the course of Medical treatment after about 25 days after the accident and he succumbed to the injuries. As already stated, Exh. A-10, the in-patient discharge ticket of the Hyderabad Nursing Home, where the deceased was undergoing treatment at the time of his death, shows that due to cardio-respiratory failure the deceased had died which is a consequence and secondary to head injury. The head injury was sustained by the deceased at the time of the accident. It is not a case under Section 302, Penal Code, 1860, wherein the conducting of Post-Mortem examination to know the cause of death may be necessary. In this case, the cause of death is known from the documentary evidence, especially Exh. A-10 and also from the evidence of PW 2. The evidence of PW 2 is convincing. In the light of both oral and documentary evidence available in this case, the failure to conduct Post-

Mortem examination over the dead body of the deceased cannot be taken as a circumstance against the Claimants, who are claiming Compensation for the death of the deceased.”

14. The ratio in the Judgments are squarely applicable to the present facts of the case. As stated above, the deceased was under continuous Medical treatment. Exhibits P-4 to P-10 also reveal the presence of infection which is also corroborated by the evidence of PW 3. No contradictory evidence has been let in by the 2nd Respondent. Applying the ratio in the above cases, I hold that the production of Post-Mortem Report is not compulsory as the reason for the death can be inferred from other documents namely P-4 to P-10.

16. From the above law laid down by the various High Courts, it is well-settled that where there is a nexus between the injuries caused and the cause of death of the deceased, then certainly compensation can be awarded for the death of a person, who suffered injuries in a motor accident. It is apparent that in the instant case, due to the accidental injuries suffered on 21.01.2008, the deceased developed tetanus, which is incurable, and he died subsequently during treatment on 12-2-2008. Had the deceased not suffered injuries in the accident for which he was operated upon, he certainly would not have been infected with tetanus and would also not have died, due to it. As such, the contention of the appellant that there was no nexus between the injuries suffered in the accident and the cause of death of the deceased, is **rejected**. The tribunal has rightly held that the deceased died due to the injuries suffered in the accident, and the accident was due to the sole negligence of the offending car driver.

17. No other issue was pressed by the learned counsel for the appellant-insurance company.

18. The contention of the claimants-respondents that the tribunal has awarded inadequate compensation cannot be examined in this appeal since no cross-appeal or cross-objection has been filed by the claimants.

19. Accordingly, this appeal has got no merit and is liable to be dismissed.

20. **The appeal is dismissed.** The impugned judgment and award of the Tribunal dated 25-1-2011 is affirmed.

21. Office is directed to remit back the statutory deposit made by the appellant-insurance company to the tribunal concerned, forthwith.

22. Interim order, if any, stands vacated.

23. It was submitted by the learned counsel for the claimants-respondents that during the pendency of the appeal, respondents no. 2, 3, and 4 have died, as such, Smt. Luxmi Devi-respondent no. 1, is entitled to receive the remaining amount of compensation along with interest, which has not been deposited by the appellant-insurance company due to the stay order of this Court dated 13-5-2011.

24. Since the respondents no. 2, 3, and 4 have died, as such, the Tribunal is directed to pay the remaining amount of compensation to the surviving legal heir, i.e., respondent no. 1, Smt. Luxmi Devi, in accordance with law.

25. Office is directed to send back the lower court record, forthwith.

(2026) 1 ILRA 402
REVISIONAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.01.2026

BEFORE

THE HON'BLE MANISH KUMAR, J.

SCC Revision No. 4 of 2016

Arun Kumar Verma (Arun Kumar Mishra) & Anr. ...Revisionist
Versus
Ramakant Verma
...Respondents

Issue for Consideration

Whether the District Judge has rejected the recall application by placing reliance upon the Section 17 of the Provincial Small Cause Courts Act, 1887 without considering that the revisionists on the very same date had moved an application for providing time for giving the security, so the order is bad in the eyes of law and deprived the revisionists from getting justice on the technical ground.

Head Notes

The Code of Civil Procedure, 1908-Order IX Rule 13; The Provincial Small Cause Courts Act, 1887- Sections 17 & 25- The proviso of Section 17 (1) of the Act, 1887 is very clear that application seeking setting aside of decree passed ex-parte or for a review of judgment must be accompanied with either depositing in the Court the amount due from him under the decree or in pursuance of the judgment, or giving such security for the performance of the decree or compliance with the judgment as the Court had directed on a previous application made by revisionists in this regard.

Held- It is admitted as well as pleaded case of the revisionists that they had moved an application for providing time for giving security on 06.12.2025 i.e. on the date when their application under Order IX Rule 13 CPC was rejected meaning thereby, it is an admitted and undisputed case that at the time of presentation of the application for recall under Order IX Rule 13 CPC on 25.07.2025, the revisionists had neither deposited the amount nor had moved any application for submitting the security, hence, there is no illegality or infirmity in the order impugned - Petition dismissed. (E-15)

Case Law Cited

Kedarnath Vs. Mohan Lal Kesarwari and others reported in AIR 2002 Supreme Court 582

List of Acts

The Code of Civil Procedure, 1908; The Provincial Small Cause Courts Act, 1887.

List of Keywords

Section 17(1); PSCC Act; Application U/O IX R 13; Must be accompanied with either depositing in the Court the amount due; Under the decree or in pursuance of the judgment; or giving such security for the performance of the decree or compliance with the judgment as the Court had directed

Case Arising From

Against the judgment and order dated 06.12.2025 and the formal order dated 11.12.2025 passed by the District Judge, Barabanki in S.C.C. Suit No. 1 of 2024 whereby the application under Order IX Rule 13 C.P.C. filed by the revisionists was dismissed.

Appearances for Parties

Counsel for Revisionist(s) : Shujat Kidwai, Mohammad Asad Mahmood

Counsel for Opposite Party(s) : Ghufra Hussain

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

1. Heard Shri Shujat Kidwai, learned counsel for the revisionists and Shri Ghufra Hussain, learned counsel for the respondent/caveator.

2. With the consent of respective parties, the present revision is being decided at the admission stage itself.

3. The present S.C.C. Revision has been preferred against the judgment and order dated 06.12.2025 and the formal order dated 11.12.2025 passed by the District Judge, Barabanki in S.C.C. Suit No. 1 of 2024 whereby the application under Order IX Rule 13 C.P.C. filed by the revisionists was dismissed.

4. Learned counsel for the revisionists has submitted that an ex-parte decree/order was passed on 20.01.2025 in S.C.C. Suit No. 1 of 2024. Against which, the revisionists had preferred a recall application on 25.07.2025 under Order IX Rule 13 C.P.C.. The said application was accepted by Additional District Judge by order dated 17.10.2025 but on 06.12.2025, the District Judge has rejected the recall application by placing reliance upon the Section 17 of the Provincial Small Cause Courts Act, 1887 (hereinafter referred to as, the Act, 1887) without considering that the revisionists on the very same date had moved an application for providing time for giving the security, so the order is bad in the eyes of law and deprived the revisionists from getting justice on the technical ground.

5. On the other hand, learned counsel for the respondent has submitted that as per Section 17 of the Act, 1887, the revisionists had to move an application for recall/review etc accompanied therewith the amount due under the decree or in pursuance of the judgment. In case to dispense with the same, the application for recall must be accompanied with an application seeking direction of the Court for leave to furnish security but the application for recall preferred by the revisionists was neither accompanied with the decretal amount nor any application to furnish the security despite the fact that the said condition is mandatory in nature as per the judgment of Hon'ble Supreme Court in the case of **Kedarnath Vs. Mohan Lal Kesarwari and others reported in AIR 2002 Supreme Court 582**, hence, there is no illegality in the order impugned herein passed by the District Judge, Barabanki.

6. After hearing learned counsel for the respective parties, going through the record of the case, the relevant provisions and the judgment relied by learned counsel for the respondent, the position which emerges out as in the present case is that it is an undisputed fact between the parties that against the decree dated 20.01.2025, the revisionists had preferred a recall application on 25.07.2025 without accompanying therewith the decretal amount and as per proviso to the Section 17 (1), the revisionists has also not filed any application to dispense with the deposit at the time of filing of the recall application. For convenience, Section 17 (1) of the Act 1887 is being reproduced hereinbelow:-

"17. Application of the Code of Civil Procedure- (1) [the procedure prescribed in the Code of Civil Procedure, 1908 (5 of 1908), shall save in so far as is otherwise provided by that Code or by this Act] be the procedure followed in a Court of Small Causes, in all suits cognizable by it and in all proceedings arising out of such suits:

Provided that an applicant for an order to set aside a decree passed ex parte or for a review of judgment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give [such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in this behalf, have directed].

(2) Where a person has become liable as surety under the proviso to sub section (1), the security may be realised in manner provided by section of the Code of Civil Procedure.

7. The proviso of Section 17 (1) of the Act, 1887 is very clear that application seeking setting aside of decree passed ex-parte or for a review of judgment must be accompanied with either depositing in the Court the amount due from him under the decree or in pursuance of the judgment, or giving such security for the performance of the decree or compliance with the judgment as the Court had directed on a previous application made by revisionists in this regard. The said condition is mandatory in nature as held by Hon'ble Supreme Court in the case of Kedarnath (supra) relied by learned counsel for the respondent/caveator. The relevant paras of the said judgment and order is being quoted hereinbelow :-

"8. A bare reading of the provision shows that the Legislature have chosen to couch the language of the proviso in a mandatory form and we see no reason to interpret, construe and hold the nature of the proviso as directory. An application seeking to set aside an ex parte decree passed by a Court of Small Causes or for a review of its judgment must be accompanied by a deposit in the Court of the amount due from the applicant under the decree or in pursuance of the judgment. The provision as to deposit can be dispensed with by the Court in its discretion subject to a previous application by the applicant seeking direction of the Court for leave to furnish security and the nature thereof. The proviso does not provide for the extent of time by which such application for dispensation may be filed. We think that it may be filed at any time up to the time of presentation of application for setting aside ex parte decree or for review and the Court may treat it as a previous application. The obligation of the applicant is to move a previous application for dispensation. It is then for the Court to make a prompt order. The delay on the part of the Court in passing an appropriate order would not be held against the applicant because none can be made to suffer for the fault of the Court.

9. In the case at hand, the application for setting aside ex parte decree was not accompanied by deposit in the Court of the amount due and payable by the applicant under the decree. The applicant also did not move any application for dispensing with deposit and seeking leave of the Court for furnishing such security for the performance of the decree as the Court may have directed. The application for setting aside the decree was therefore incompetent. It could not have been entertained and allowed"

8. It is admitted as well as pleaded case of the revisionists that they had moved an application for providing time for giving security on 06.12.2025 i.e. on the date when their application under Order IX Rule 13 CPC was rejected meaning thereby, it is an admitted and undisputed case that at the time of presentation of the application for recall under Order IX Rule 13 CPC on 25.07.2025, the revisionists had neither deposited the amount nor had moved any application for submitting the security, hence, there is no illegality or infirmity in the order impugned dated 06.12.2025 and formal order dated 11.12.2025 passed by the District Judge, Barbanki passed in S.C.C. Suit No. 1 of 2024, thus, no interference is called for.

9. In view of the aforesaid facts, circumstances and discussion made hereinabove, the present S.C.C. Revision is devoid of merits, hence, dismissed.

(2026) 1 ILRA 405
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 30.01.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Transfer Application (Civil) No. 1027 of 2023

Smt. Arju @ Vimal

...Applicant

Versus

Umakant Parasar

...Opposite Party

Issue for Consideration

Whether the Transfer application filed deserves to be allowed on the ground of categorical "No Objection" expressed on behalf of the Opposite Party

Head Notes

The Code of Civil Procedure, 1908-Section 24; The Hindu Marriage Act,1955-Section 13- When transfer is sought and is not opposed, and the Court finds no legal impediment, such transfer would clearly subserve the ends of justice. The requirement of recording reasons is sufficiently met by noting the consent of parties coupled with the Court's satisfaction regarding the propriety of transfer- In matrimonial proceedings, Courts have observed that the convenience of the wife deserves due consideration, and that the cardinal principle governing exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should be subserved.

Held- In view of the hardship that has been pleaded by the applicant and the categorical "No Objection" expressed on behalf of the Opposite Party, this Court is of the considered opinion that the present case is a fit

one for exercise of power under Section 24 CPC. The transfer sought, being by consent of the parties and in furtherance of justice, deserves to be allowed. (E-15)

(Para 12, 14 & 15)

Case Law Cited

List of Acts

The Code of Civil Procedure, 1908; The Hindu Marriage Act, 1955

List of Keywords

Transfer Application; No objection by the Opposite Party; Matrimonial Proceedings; Wife deserves due consideration; Section 24 CPC.

Case Arising From

Case No. 925 of 2023 (Umakant vs. Arju), instituted under Section 13 of the Hindu Marriage Act, 1955. The Applicant seeks transfer of the said proceedings from the Court of the Principal Judge, Family Court, Meerut, to the Court of competent jurisdiction at District Baghpat.

Appearances for Parties

Counsel for Applicant(s) : Sandeep Kumar Singh
Counsel for Opposite Party(s) : Awadh Narain Rai

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Sandeep Kumar Singh, learned counsel for the applicant and Sri Awadh Narain Rai, learned counsel for the opposite party.

2. The present application has been preferred by the Applicant-wife under Section 24 of the Code of Civil Procedure, 1908, seeking transfer of Case No. 925 of 2023 (Umakant vs. Arju), instituted under Section 13 of the Hindu Marriage Act, 1955. The Applicant seeks transfer of the said proceedings from the Court of the Principal Judge, Family Court, Meerut, to the Court of competent jurisdiction at District Baghpat.

3. The order-sheet of the case indicates that on 16.1.2024, when the case was taken up as fresh case, this Court, upon considering the submissions made on behalf of the applicant that a complaint case registered as Complaint Case No. 4275 of 2022 was pending in the Baghpat Judgeship and that as per the applicant, this divorce petition had been filed by the respondent in the Family Court at Meerut with a view to harass the applicant, and also taking note of the fact that the applicant is a deserted wife, having no source of income, directed issuance of notice and stayed the further proceedings of the divorce suit.

4. Today, upon the case being taken up, counsel appearing for the opposite party states that he has instructions from the opposite party, not to oppose the present application for transfer.

5. The facts as pleaded on behalf of the applicant-wife indicate that, the opposite party filed the petition under Section 13 of the Hindu Marriage Act 1955, on 20.04.2023, before the Court of Principal Judge, Family Court, Meerut, seeking a declaration that the marriage dated 21.02.2020 be dissolved. The said petition was registered as Case No. 925 of 2023 (Umakant v. Arju). Notice of

the said proceedings has been served upon the applicant and the matter is pending before the Family Court, Meerut.

6. The applicant is stated to be presently residing at her parental home along with her minor daughter. According to the applicant, attending the proceedings at Meerut would cause inconvenience and hardship. In these circumstances, the present application under Section 24 of the Code of Civil Procedure has been filed seeking transfer of the divorce case pending before the Family Court, Meerut.

7. This Court has considered the pleadings on record, the submissions made, and the statutory scheme of Section 24 of the Code of Civil Procedure.

8. Section 24 CPC confers a wide and discretionary jurisdiction upon the High Court and the District Court to transfer or withdraw any suit, appeal or other proceeding at any stage, either on the application of any of the parties or even suo motu. The provision is intended to ensure fair trial, avoid hardship, and secure proper administration of justice.

9. It is a settled principle that ordinarily the plaintiff, being dominus litis, has the right to choose the forum of institution, and such choice should not be lightly interfered with. However, this right is not absolute. Section 24 CPC constitutes an exception to the general rule and empowers the Court to override such choice where the ends of justice so demand.

10. In the present case, it is significant to note that the respondent has expressly stated that he does not wish to oppose the transfer application. The fact that the transfer is not contested and is, in effect, by consent of the parties is a relevant and material consideration. Though Section 24 CPC does not expressly use the expression "transfer by consent", nothing in the provision prohibits the Court from ordering transfer where both parties agree or where the opposite party raises no objection.

11. Where the parties are ad idem on the question of transfer, the need for a detailed comparative examination of balance of convenience stands considerably diluted. The plaintiff's right as dominus litis is deemed to have been voluntarily waived, and no prejudice can be said to be caused to either side. A consensual transfer, in such circumstances, ordinarily advances the interest of justice, avoids procedural contest, and facilitates expeditious adjudication.

12. When transfer is sought and is not opposed, and the Court finds no legal impediment, such transfer would clearly subserve the ends of justice. The requirement of recording reasons is sufficiently met by noting the consent of parties coupled with the Court's satisfaction regarding the propriety of transfer.

13. The power of transfer under Section 24 CPC is discretionary but must be exercised to subserve the ends of justice. In matrimonial disputes, the "balance of convenience" is the primary yardstick. The courts have consistently held that while "convenience" is a relative term, in the Indian socio-economic context, the convenience of the wife must be afforded priority while considering transfer.

14. In matrimonial proceedings, Courts have observed that the convenience of the wife deserves due consideration, and that the cardinal principle governing exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should be subserved.

15. In view of the aforesaid discussion, and particularly in view of the hardship that has been pleaded by the applicant and the categorical "No Objection" expressed on behalf of the Opposite Party, this Court is of the considered opinion that the present case is a fit one for exercise of power under Section 24 CPC. The transfer sought, being by consent of the parties and in furtherance of justice, deserves to be allowed.

16. Accordingly, the **Civil Misc. Transfer Application is allowed** with the following directions :

(i) The proceedings of Case No. 925 of 2023 (Umakant vs. Arju), instituted under Section 13 of the Hindu Marriage Act, 1955, are hereby withdrawn from the Court of the Principal Judge, Family Court, Meerut, and transferred to the Court of the Principle Judge, Family Court, Baghpat.

*(ii) The Principal Judge, Family Court, Meerut, is directed to transmit the entire case record to the Transferee Court at District Baghpat **within fifteen days** from the date of receipt of a certified copy of this order.*

(iii) The Transferee Court shall proceed with the matter from the stage at which it was transferred and shall endeavor to conclude the proceedings expeditiously.

17. Parties would, also, be at liberty to seek expedition of the case before the Transferee Court.

(2026) 1 ILRA 408
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 16.01.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Matters Under Article 227 No. 24 of 2026

M/S Tandon & Company & Ors.	...Petitioners
	Versus
Debt Recovery Tribunal & Anr.	...Respondents

Issue for Consideration

Whether the District Magistrate has reviewed his earlier order whereas the statute does not confer the power of review upon him and, therefore, the District Magistrate has not acted in accordance with the provisions of the enactment in question and whether the DRT wrongly rejected the petitioner's application for interim relief for staying the impugned order passed by the District Magistrate, without assigning any reason.

Head Notes

The Constitution of India, 1950-Article 227; The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002- Sections 13(4), 14 & 18- The correction of a typographical error regarding the date of possession notice under Section 13(4) of the SARFAESI Act is not a review, more particularly when at another place in the order dated 08.05.2025, the correct date of possession notice under Section 13(4) of the SARFAESI Act was mentioned as 14.11.2024. The correction of typographical error of date of possession notice under Section 13 (4) of the SARFAESI Act cannot be said to be a review of the order passed under Section 14 of the SARFAESI Act. There is no provision in any statute prohibiting exercise of powers for correction of typographical errors in the orders passed under Section 14 of the SARFAESI Act and the order regarding correction of typographical error cannot be said to be passed without jurisdiction.

Held- The DRT has recorded in the impugned order that it has been specifically recorded in the order dated 26.08.2025 that a typing error was being rectified. The Magistrate has not modified / reviewed or recalled the earlier order dated 08.05.2025. The District Magistrate has corrected a typing error, which could have been done even without moving any application. This is the reason assigned for passing of the impugned order dated 10.11.2025 passed by the DRT and, therefore, it cannot be said that the order has been passed without assigning any reason and that the order is bad for this reason. The reasons assigned in the order dated 10.11.2025 are sufficient- Petition dismissed. **(Para 15, 21 & 26)** (E-15)

Case Law Cited

Varimadugu Obi Reddy Vs. B. Sreenivasulu and others: (2023) 2 SCC 168, PHR Invent Educational Society Vs. UCO Bank and others: (2024) 6 SCC 579; Balkrishna Rama Tarle v. Phoenix ARC (P) Ltd.: (2023) 1 SCC 662; S. N. Mukherjee Vs. Union of India: (1990) 4 SCC 594 and M/s Kranti Associates Pvt. Ltd. and another Vs. Sh. Masood Ahmed Khan and others: (2010) 9 SCC 496; Kotak Mahindra Bank Ltd. Vs. State of U.P.: 2016 SCC Online All 3854; P. S. Sathappan v. Andhra Bank Ltd.: (2004) 11 SCC 672;

List of Acts

The Constitution of India, 1950; The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002

List of Keywords

Section 13(4); 14 & 18; SARFAESI Act; no provision prohibiting for correction of typographical errors; date mentioned correctly; in the factual narration of order

Case Arising From

Order dated 10.11.2025, passed by the Debts Recovery Tribunal in Securitisation Application No.936 of 2024, whereby the DRT has rejected the contention of the petitioner about illegality of an order dated 28.06.2025, passed by the District Magistrate Lucknow in Case No.1414 of 2025, under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 correcting a typographical error in the previous order dated 08.05.2025 regarding the date of possession notice.

Appearances for Parties

Counsel for Petitioner(s) : Gautam Sadana, Devesh Srivastava

Counsel for Respondent(s) : Manu Dixit

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Devesh Srivastava and Sri Gautam Sadana, the learned counsel for the petitioners, Sri Manu Dixit, the learned counsel for the opposite party no.2 - HDFC Bank Ltd. and perused the records.

2. The learned counsel for the petitioners have stated that they have erroneously impleaded the DRT as opposite party no.1 to the petition. On their oral request they are permitted to strike out the name of Tribunal from the array of opposite parties in the memo of petition forthwith.

3. By means of the instant petition filed under Article 227 of the Constitution of India the petitioners have challenged the validity of an order dated 10.11.2025, passed by the Debts Recovery Tribunal (hereinafter referred to as 'the DRT') in Securitisation Application No.936 of 2024, whereby the DRT has rejected the contention of the petitioner about illegality of an order dated 28.06.2025, passed by the District Magistrate, Lucknow in Case No.1414 of 2025, under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as the SARFAESI Act) correcting a typographical error in the previous order dated 08.05.2025 regarding the date of possession notice.

4. The learned counsel for the opposite party no.2 has raised a preliminary objection that the petition filed under Article 227 of the Constitution of India challenging the order passed by the DRT is not maintainable in view of availability of the statutory remedy of appeal under Section 18 of the SARFAESI Act. The learned counsel for the opposite party-Bank has relied upon judgments of Hon'ble Supreme Court in the cases of **Varimadugu Obi Reddy Vs. B. Sreenivasulu and others:** (2023) 2 SCC 168, **PHR Invent Educational Society Vs. UCO Bank and others:** (2024) 6 SCC 579 and **Balkrishna Rama Tarle v. Phoenix ARC (P) Ltd.:** (2023) 1 SCC 662.

5. Per contra, the learned counsel for the petitioner has placed reliance upon the decisions of Hon'ble Supreme Court in the cases of **S. N. Mukherjee Vs. Union of India:** (1990) 4 SCC 594 and **M/s Kranti Associates Pvt. Ltd. and another Vs. Sh. Masood Ahmed Khan and others:** (2010) 9 SCC 496.

6. In **Varimadugu Obi Reddy v. B. Sreenivasulu:** (2023) 2 SCC 168 the securitisation application had been dismissed by the DRT, the dismissal order was not challenged and it became final. After taking possession of the mortgaged property, the Bank issued a notice to the borrowers calling upon them to repay the outstanding amount and thereafter it issued e-auction sale notice dated 25.02.2015 fixing the date of auction of the scheduled property on 28.03.2015. That borrowers challenged the e-auction sale notice before the DRT. The DRT passed an interim order dated 26.03.2015, directing the Bank to proceed with the auction-sale of the secured asset with a further direction not to issue the sale certificate provided the borrowers deposit Rs 6 lakhs within 15 days from the date of the said order, i.e., by 09.04.2015. It was made clear that in the event of the respondent borrowers fail to deposit the said amount, the respondent Bank will be at liberty to issue the sale certificate in favour of the highest bidder. The borrowers failed to deposit Rs 6 lakhs by 09.04.2015 and they filed an application on 09.04.2015 seeking extension of further 15 days' time from 10.04.2015 to deposit the amount and the Tribunal passed an order dated 17.04.2015 granting extension of 15 days' time to deposit Rs 6 lakhs and directed the Bank and the borrowers to maintain status quo. Since the dispute was ongoing before the Tribunal and the borrowers had failed to comply with the interim order dated 26.03.2015 to deposit Rs 6 lakhs within 15 days from the date of passing of the order by 10.04.2015, the Bank proceeded with the auction-sale in terms of liberty granted by the Tribunal. The auction purchaser had deposited Rs.5,54,000/- as the earnest money and he further deposited 25% amount after being declared the highest bidder. The purchaser

deposited the balance 75% amount on 15.04.2015 and a sale certificate was issued in his favour. The auction sale had already been finalised and the sale certificate had already been issued when the Tribunal passed the order dated 17.04.2015 granting extension of 15 days' time to the borrowers to deposit Rs 6 lakhs.

7. The borrowers had raised two preliminary objections before the DRT. The first was that there was an error in the description of mortgaged property in the e-auction sale notice dated 25.02.2015 as the secured asset was property bearing "Door No. 12-3-39, 3rd Cross, Sai Nagar, Ananthapuramu" while in the e-auction sale notice, the property was described as Door No. "12-3-393" instead of "12-3-39" and this, according to the borrowers was the manifest error committed by the respondent Bank and because of which the property could not fetch the value which it ought to have fetched in the course of business. The DRT held that in the given facts and circumstances, the typographical inadvertent human error in reference to door number of the property may not leave ambiguity with regard to mortgaged property put to auction and this typographical error is inconsequential and does not vitiate the e-auction sale proceedings.

8. The other objection was that in terms of Rule 9(4) of the 2002 Rules, the auction price was to be deposited by the auction-purchaser within 15 days which expired on 10.04.2015 but it was deposited on 15.04.2015 which is in clear breach of Rule 9(4) of the 2002 Rules, in consequence thereof, the e-auction sale notice and all further proceedings initiated pursuant thereto deserve to be declared null and void. The DRT held that since the borrowers had failed to deposit Rs 6 lakhs in the extended period granted by the order dated 17.04.2015, the Tribunal granted further time to the borrowers till 10.05.2015, but by that time the auction proceedings had been finalised, the sale certificate had been duly registered. The Debts Recovery Tribunal dismissed the application by an order dated 01.08.2019. The Order of the DRT was set aside by the High Court. Setting aside the order of the High Court, the Hon'ble Supreme Court held that: -

"36. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the Sarfaesi Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of pre-deposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of pre-deposit contemplated under 2nd proviso to Section 18 of the 2002 Act."

9. In **PHR Invent Educational Society v. UCO Bank**: (2024) 6 SCC 579, the Hon'ble Supreme Court followed the law laid down in **Varimadugu Obi Reddy v. B. Sreenivasulu** (Supra) and also followed some other judgments. The relevant passage from the aforesaid judgment is being quoted below: -

"29. Recently, in Celir LLP [Celir LLP v. Bafna Motors (Mumbai) (P) Ltd.: (2024) 2 SCC 1], after surveying various judgments of this Court, the Court observed thus:

“101. More than a decade back, this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the RDBFI Act and the SARFAESI Act and exercise of jurisdiction under Article 226 of the Constitution. Even after the decision of this Court in Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110], it appears that the High Courts have continued to exercise its writ jurisdiction under Article 226 ignoring the statutory remedies under the RDBFI Act and the SARFAESI Act.”

30. It can thus be seen that it is more than a settled legal position of law that in such matters, the High Court should not entertain a petition under Article 226 of the Constitution particularly when an alternative statutory remedy is available.

* * *

34. In our view, the High Court ought to have taken into consideration that the confirmed auction-sale could have been interfered with only when there was a fraud or collusion. The present case was not a case of fraud or collusion. The effect of the order of the High Court would be again reopening the issues which have achieved finality.

* * *

*37. It could thus clearly be seen that **the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:***

- (i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;*
- (ii) it has acted in defiance of the fundamental principles of judicial procedure;*
- (iii) it has resorted to invoke the provisions which are repealed; and*
- (iv) when an order has been passed in total violation of the principles of natural justice.*

38. It has however been clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.”

(Emphasis added)

10. It has clearly been held in the aforesaid judgment that although the High Court should not ordinarily entertain a petition when the petitioner has got an alternative remedy of filing appeal under Section 18 of the SARFAESI Act, the bar of alternative remedy will not be there in case there has been a violation of the principles of natural justice.

11. The learned Counsel for the petitioners has submitted that the District Magistrate has reviewed his earlier order whereas the statute does not confer the power of review upon him and, therefore, the District Magistrate has not acted in accordance with the provisions of the enactment in question. The DRT has rejected the petitioner's application for interim relief for staying the

impugned order passed by the District Magistrate, without assigning any reason. He has submitted that an order passed without assigning any reason is violates of principles of natural justice.

12. The learned counsel for the petitioners has relied upon a decision rendered by a Division Bench of this Court in the case of **Kotak Mahindra Bank Ltd. Vs. State of U.P.**: 2016 SCC OnLine All 3854, wherein it has been held that the District Magistrate has no power to review an order passed under Section 14 of the SARFAESI Act. He has submitted that the order dated 28.06.2025 which changes the date of possession notice in the earlier order dated 08.05.2025, has caused substantial effect on the rights and interests of the petitioners and, therefore, it amounts to a review of the order.

13. In the order dated 08.05.2025, the District Magistrate has recorded in the opening paragraph that the HDFC Bank Ltd. had sent a demand notice to the petitioners under Section 13 (2) of the SARFAESI Act on 15.07.2024. After expiry of the notice period a possession notice dated 14.11.2024 was sent. Information was published in a daily newspaper also but the borrower did not pay the due amount to the bank and did not hand over possession of the property also. However, at another place it has been mentioned that that demand notice under Section 13 (2) the SARFAESI Act was issued on 15.07.2024 and the possession notice under Section 13 (4) of the SARFAESI Act was issued on 13.09.2024.

14. The respondent bank filed an application for correction of the aforesaid typographical error. The District Magistrate has allowed the application for correction of the error by means of the impugned order dated 28.06.2025 stating that the correction of typographical error is necessary in the interest of justice.

15. The correction of a typographical error regarding the date of possession notice under Section 13(4) of the SARFAESI Act is not a review, more particularly when at another place in the order dated 08.05.2025, the correct date of possession notice under Section 13(4) of the SARFAESI Act was mentioned as 14.11.2024. The correction of typographical error of date of possession notice under Section 13 (4) of the SARFAESI Act cannot be said to be a review of the order passed under Section 14 of the SARFAESI Act. There is no provision in any statute prohibiting exercise of powers for correction of typographical errors in the orders passed under Section 14 of the SARFAESI Act and the order regarding correction of typographical error cannot be said to be passed without jurisdiction.

16. The learned Counsel for the petitioner has placed before this Court only a part of a sentence from the judgment in the case of **Kotak Mahindra Bank Ltd. v. State of U.P.** (Supra), which says "the District Magistrate has absolutely no jurisdiction to review his order", without reading the entire judgment. In that case, M/s. Chopra Fabricators and Manufacturers Pvt. Ltd. had taken a loan from the State Bank of India and had committed default in its re-payment. State Bank of India instituted recovery proceedings, which were decided by the DRT, Allahabad in favour of the bank vide order dated 12.05.2006. Appeal filed by the borrowers against the said order of the DRT was also dismissed. State Bank of India assigned the loan in favour of Kotak Mahindra Bank Ltd., which initiated recovery proceedings under the Act, 2002. The borrowers in the meantime after getting free-hold rights over the secured asset, transferred some portion of the assets to some

private persons. Kotak Mahindra Bank Ltd. filed an application under section 14 of the before the District Magistrate, which was allowed by means of an order dated 24.06.2013 and the Bank took possession of the secured asset on 30.12.2013. After possession of the property was taken, a notice for auction sale of the secured assets was published in various newspapers on 11.01.2014. The borrower and guarantor filed Securitisation Application No. 218 of 2013 before the DRT, Allahabad on 30.01.2014. This application was dismissed by the DRT on 30.01.2014 after recording that the borrowers had not approached the Tribunal with clean hands and they had sold the mortgaged property fraudulently. Instead of challenging the order of DRT by filing an appeal before the DRAT, the borrower filed a recall application before the District Magistrate. The District Magistrate re-appreciated the contention of the parties and recalled the order dated 24.06.2013 vide his order dated 30.06.2016. Taking benefit of the order of the District Magistrate, the borrower forcefully broke open the locks of the Bank put over the secured assets. It was in the aforesaid factual background, that this Court held that: -

“13. Be that as it may, we are of the considered opinion that the District Magistrate has absolutely no jurisdiction to review his order dated 24.6.2013 passed under the Act, 2002 specifically when the order was subjected to challenge before the Debt Recovery Tribunal and such application was dismissed by a reasoned order holding therein that the borrower had not approached the Tribunal with clean hands. If they were not satisfied they had the remedy of approaching the Appellate Tribunal under section 18 of the Act, 2002.”

17. This judgment was passed keeping in view the aforesaid peculiar facts and circumstances of the case and it does not lay down the principle of law that the District Magistrate has no power to correct a typographical error in his order passed under Section 14 of the SARFAESI Act.

18. In **P. S. Sathappan v. Andhra Bank Ltd.**: (2004) 11 SCC 672, a Constitution Bench of the Hon'ble Supreme Court consisting of five Hon'ble Judges held that: -

“145. A decision is an authority for the questions of law determined by it. While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. A judgment, as is well known, must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it. [See Haryana Financial Corpn. v. Jagdamba Oil Mills (2002) 3 SCC 496, Union of India v. Dhanwanti Devi (1996) 6 SCC 44, Nalini Mahajan (Dr.) v. Director of Income Tax (Investigation) (2002) 257 ITR 123 (Del), State of U.P. v. Synthetics and Chemicals Ltd. (1991) 4 SCC 139, A-One Granites v. State of U.P. (2001) 3 SCC 537 and Bhavnagar University v. Palitana Sugar Mill (P) Ltd. (2003) 2 SCC 111.

146. Although decisions are galore on this point, we may refer to a recent one in State of Gujarat v. Akhil Gujarat Pravasi V.S. Mahamandal (2004) 5 SCC 155 wherein this Court held:

“It is trite that any observation made during the course of reasoning in a judgment should not be read divorced from the context in which it was used.”

(Emphasis added)

19. Therefore, the ratio laid down in the judgment in the case of **Kotak Mahindra Bank Ltd. v. State of U.P.** (Supra) will not apply to the facts present case.

20. In **Balkrishna Rama Tarle v. Phoenix ARC (P) Ltd.**: (Supra), the Hon'ble Supreme Court held that: -

“18. Thus, the powers exercisable by CMM/DM under Section 14 of the Sarfaesi Act are ministerial steps and Section 14 does not involve any adjudicatory process qua points raised by the borrowers against the secured creditor taking possession of the secured assets. In that view of the matter once all the requirements under Section 14 of the Sarfaesi Act are complied with/satisfied by the secured creditor, it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession as well as the documents related to the secured assets even with the help of any officer subordinate to him and/or with the help of an advocate appointed as Advocate Commissioner. At that stage, the CMM/DM is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceedings under Section 17 of the Sarfaesi Act, before the Debts Recovery Tribunal.”

21. As the order under Section 14 of the Act is passed in exercise of powers of ministerial nature and the order dated 28.06.2025 has not been passed by the District Magistrate in exercise judicial powers, the District Magistrate certainly has the power to correct ministerial and typographical errors in the order passed in exercise of ministerial powers and correction of such an error cannot be said to be a review of the order dated 08.05.2025 since it doesn't change the substance of the order. Therefore, the order dated 28.06.2025 passed by the District Magistrate cannot be said to have been passed without jurisdiction.

22. The learned Counsel for the petitioner has submitted that alteration of the date of possession notice from 13.09.2024 to 14.11.2024 substantially affects the rights of the petitioner and it can't be said that this correction does not alter the order dated 08.05.2025 substantially. This argument also has no force, as a mere correction of a typographical error regarding the date of possession notice in an order, more particularly, when this date is mentioned correctly in the factual narration made in the earlier part of the same order, does not effect any substantial alteration in the order dated 08.05.2025 and it does not amount to a review of the order. This correction does not affect any valuable legal rights of the petitioner. Even assuming that the correction affects valuable rights of the petitioner, since the correction does not alter the order dated 08.05.2025 substantially, its mere effect on the petitioner would not be decisive of the nature of the order so as to make the correction order an order of review.

23. The learned Counsel for the petitioner has submitted that impugned order dated 10.11.2025 passed by the DRT rejecting the petitioner's challenge made to the order dated 28.06.2025, does not contain any reason and, therefore, it has been passed in violation of the principles of natural justice.

24. In **S.N. Mukherjee v. Union of India**: (1990) 4 SCC 594, the Hon'ble Supreme Court held that: -

“39. The object underlying the rules of natural justice “is to prevent miscarriage of justice” and secure “fair play in action”. As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. **Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities.** The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

40. For the reasons aforesaid, it must be concluded that **except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.**”

25. In **Kranti Associates (P) Ltd. v. Masood Ahmed Khan**, (Supra) the Hon’ble Supreme Court examined various precedents on the point and summarised the law as follows: -

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)], wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

(Emphasis added)

26. The DRT has recorded in the impugned order that it has been specifically recorded in the order dated 26.08.2025 that a typing error was being rectified. The Magistrate has not modified / reviewed or recalled the earlier order dated 08.05.2025. The District Magistrate has corrected a typing error, which could have been done even without moving any application. This is the reason assigned for passing of the impugned order dated 10.11.2025 passed by the DRT and, therefore, it cannot be said that the order has been passed without assigning any reason and that the order is bad for this reason. The reasons assigned in the order dated 10.11.2025 are sufficient and those have already been affirmed in the earlier part of this order.

27. The learned counsel for the petitioners has further submitted that although the DRT has referred to the decisions relied upon by the petitioners in the impugned order, no reasoning has been given for non-applicability of the ratio laid down in those judgments. However, the learned Counsel for the petitioner has not placed those judgments before this Court. The judgments referred in the order dated 10.11.2025 passed by the DRT are Asset Reconstruction Co. (India) Ltd. v. State

of U.P., 2018 SCC OnLine All 6494, so as to enable this Court to examine the applicability of those judgments.

28. Therefore, I find no force in the submissions of the learned Counsel for the petitioner that the Petition is maintainable in spite of the availability of statutory remedy of appeal as the order dated 28.06.2025 has been passed by the District Magistrate without jurisdiction and the DRT has rejected the challenge made to the order dated 28.06.2025 without assigning any reason. However, as while examining the merits of the aforesaid submission of the petitioner, this Court has already examined the merits of all the contentions of the learned Counsel for the petitioner, nothing is left to be decided by the Appellate Tribunal and no purpose will be served by relitigating the petitioner to the remedy of appeal.

29. Accordingly, I find no error in the order dated 28.06.2025, passed by the District Magistrate correcting the typographical error in the order dated 08.05.2025, passed under Section 14 of the SARFAESI Act. The Debts Recovery Tribunal has not committed any error or illegality in declining to interfere in the order dated 28.06.2025, passed by the District Magistrate.

30. The petition lacks merit and the same is dismissed at the admission stage.

(2026) 1 ILRA 418
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 13.01.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Matters Under Article 227 No. 71 of 2026 & other connected cases

Ar Landcraft Llp Ltd. Liability Partnership ...Petitioner
Versus
U.P. RERA & Ors. ...Respondents

Issue for Consideration

Whether the impugned judgment is *coram non judice* as the impugned judgment has been passed in violation of the principles of natural justice as Mr. Rameshwar Singh, Administrative Member of the Appellate Tribunal, who has decided the appeals, has not heard the submissions of the parties in appeal and he was not in a position to adjudicate upon the same

Head Notes

The Constitution of India, 1950-Article 227; The Real Estate (Regulation and Development) Act, 2016-Sections 43, 44 & 55- The purpose of constituting multi-member Benches is that more than one person applies his/her mind to the lis to be adjudicated and it is not contemplated that only the Chairman of the Tribunal decides the matters and the other member/members remain mute spectators during the hearing and they merely put their signatures on the judgment without any independent application of their minds. When a matter is heard and decided by a multi-member Bench, the views of all members constituting the Bench are reflected by the judgment delivered by the Bench. In case the members concur, a single judgment is delivered which is signed and

authenticated by all the members who may expressly state that they concur with the view of the author of the judgment or who may simply sign the judgment expressing their implied concurrence with the views of the author of the judgment.

Held- The judgment dated 12.12.2025 authored and delivered by a Bench consisting of the Chairman and Mr. Rameshwar Singh, Administrative Member, in appeals which were heard by a three member Bench consisting of the Chairman, Mr. Sanjai Khare, Judicial Member and Mr. Devindar Singh Chaudhary Technical Member, is unsustainable in law. Further, the order dated 12.01.2026 whereby the review applications have been disposed off by a Bench consisting of the Chairman and Mr. Rameshwar Singh, Administrative Member by directing that the judgment sought to be reviewed be placed with the records of the connected appeals before the Bench comprising of Mr. Sanjai Khare, Judicial Member and Mr. Devindar Singh Chaudhary, Technical Member, to express their views/opinion on the judgment and order dated 12.12.2025, is also unsustainable in law- Petition allowed. **(Para 27, 28 & 31)** (E-15)

Case Law Cited

Shashank Gupta v. Vatika Nirman (P) Ltd.: 2025 SCC OnLine All 6449; Savitri Devi v. District Judge, Gorakhpur, (1992) 2 SCC 577; Jogendrasinhji Vijaysinghji v. State of Gujarat & Ors., (2015) 9 SCC 1

List of Acts

The Constitution of India; The Real Estate (Regulation and Development) Act, 2016

List of Keywords

Coram non judice; section 55; delivery of judgement by member; who has not heard submissions in the appeals; violation of principles of natural justice

Case Arising From

Judgment and order dated 12.12.2025 passed by the U. P. Real Estate Appellate Tribunal, Lucknow dismissing the Appeal Nos.196 of 2024, 48 of 2024, 49 of 2024, 195 of 2024, 197 of 2024 and 394 of 2024 under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (filed by the petitioner against the respondent No.3 in all the petitions.

Appearances for Parties

Counsel for Petitioner(s) : Utkarsh Srivastava, Abhinav Kumar Mathur, Prashast Puri, Shreyash Shukla, Varun Singh

Counsel for Respondent(s) :

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Shri Jaideep Narayan Mathur Senior Advocate assisted by Shri Utkarsh Srivastava, Shri Prashast Puri, Shri Abhinav Mathur, Shri Vinit Trehan, Shri Ashir Rohan Malik, Shri Shantanu Parashar and Shri Yash Srivastava Advocates, the learned Counsel for the petitioner in all the connected petitions and Shri Javed-ur-Rahman Advocate holding brief of Shri Prashant Singh Gaur Advocate, the learned counsel for the respondent No.3 in Petition Nos.72 of 2026 and 74 of 2026, who states that he has instructions to appear in all the petition Nos.71 of 2026, 73 of 2026, 76 of 2026 and 77 of 2026, as he is appearing for the respondent No.3 in all the appeals before the U.P. Real Estate Appellate Tribunal, from which these petitions arise.

2. As all the petitions arise from one judgment and order passed by the Real Estate Appellate Tribunal, all the petitions are being decided together. The learned Counsel for the petitioners have filed supplementary affidavits in all the connected petitions and the same are taken on record.

3. By means of all these petitions filed under Article 227 of the Constitution of India, the petitioner has challenged the validity of a judgment and order dated 12.12.2025 passed by the U. P. Real Estate Appellate Tribunal, Lucknow (hereinafter referred to as the Appellate Tribunal) dismissing the Appeal Nos.196 of 2024, 48 of 2024, 49 of 2024, 195 of 2024, 197 of 2024 and 394 of 2024 under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (which will hereinafter be referred to as "the RERA Act") filed by the petitioner against the respondent No.3 in all the petitions.

4. At the outset, the learned counsel for the petitioner has submitted that the petitioner has impleaded the U.P. Real Estate Appellate Tribunal and its Registrar as an opposite party Nos.1 and 2 after much deliberation keeping in view the peculiar facts and circumstances of the case, in spite of the law laid down by the Hon'ble Supreme Court in the cases of **Savitri Devi v. District Judge, Gorakhpur**, (1992) 2 SCC 577 and **Jogendrasinhji Vijaysinghji v. State of Gujarat & Ors.**, (2015) 9 SCC 1.

5. Briefly stated, the facts giving rise to these petitions are that six appeal Nos.196 of 2024, 48 of 2024, 49 of 2024, 195 of 2024, 197 of 2024 and 394 of 2024 were heard by a Bench of the Appellate Tribunal consisting of three members - (i) Hon'ble Mr. Justice Suneet Kumar, Chairman, (ii) Mr. Sanjai Khare, Judicial Member and (iii) Mr. Devindar Singh Chaudhary, Technical Member, on 07.11.2025 and judgment was reserved by the Bench consisting of the aforesaid three members. However, the appeals have been dismissed on 12.12.2025 by a judgment authored and delivered by a Bench consisting of the Chairman and Mr. Rameshwar Singh, Administrative Member, who was not a member of the Bench which had heard the appeals.

6. The petitioner has filed supplementary affidavits in all the petitions stating that subsequent to filing of the petitions, the opposite party no. 3 filed applications for review of the judgment dated 12.12.2025, which were listed on and were disposed off on 12.01.2026 by a Bench consisting of the Chairman and Mr. Rameshwar Singh, Administrative Member, directing that the records of the connected cases be placed before a Bench comprising of Mr. Sanjai Khare, Judicial Member and Mr. Devindar Singh Chaudhary, Technical Member, for the purpose of expressing their views / opinion on the judgment and order dated 12.12.2025 and / or passing appropriate orders thereon.

7. The learned Counsel for the petitioner has submitted that the impugned judgment has been passed in stark violation of the fundamental principles of judicial procedure, which require the Bench hearing a matter to decide the same. This fundamental deviation from judicial procedure goes to the root of the matter and vitiates the entire adjudication, as the judgment is coram non judice. The judgment has been passed in violation of the principles of natural justice as Mr. Rameshwar Singh, Administrative Member of the Appellate Tribunal, who has decided the appeals, has not heard the submissions of the parties in appeal and he was not in a position to adjudicate upon the same.

8. The learned Counsel for the petitioner has further submitted that the Bench of the Appellate Tribunal has committed another error apparent on the face of the record while disposing off the review petitions by the order dated 12.01.2026 requiring the other members who had heard the appeals on 07.11.2025, to express their views / opinion on the judgment and order dated

12.12.2025 and / or pass appropriate orders thereon, as the direction requiring the other two members to express an opinion or view on a void and non-est order is unknown to law and dehors the statutory scheme.

9. Relying upon the provision contained in Section 55 of the R.E.R.A, Act, the learned counsel for the respondent No.3 has submitted that any defect in the constitution of the Appellate Tribunal will not invalidate the judgment of the tribunal.

10. Although the learned counsel for the respondent No.3 has opposed the petitions, the respondent No.3 in all the petitions have themselves filed the review applications before the Appellate Tribunal stating that the judgment dated 12.12.2025 suffers from an error which is apparent on the face of the record as the appeals were heard by a Bench of the Appellate Tribunal consisting of three members - (i) Hon'ble Mr. Justice Suneet Kumar, Chairman, (ii) Mr. Sanjai Khare, Judicial Member and (iii) Mr. Devindar Singh Chaudhary, Technical Member, on 07.11.2025 and judgment was reserved by the Bench consisting of the aforesaid three members, but the appeals have been dismissed by a judgment delivered on 12.12.2025 by a Bench consisting of the Chairman and Mr. Rameshwar Singh, Administrative Member, who was not a member of the Bench which had heard the appeals.

11. Section 55 of the R.E.R.A. Act is as follows: -

“55. Vacancies, etc., not to invalidate proceeding of Appellate Tribunal.- No act or proceeding of the Appellate Tribunal shall be invalid merely by reason of-

(a) any vacancy in, or any defect in the constitution of, the Appellate Tribunal; or

(b) any defect in the appointment of a person acting as a Member of the Appellate Tribunal; or

(c) any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case.”

12. In the present case, the six appeals were heard by a Bench of the Appellate Tribunal consisting of three members - (i) The Chairman, (ii) Mr. Sanjai Khare, Judicial Member and (iii) Mr. Devindar Singh Chaudhary, Technical Member, on 07.11.2025 and judgment was reserved by the Bench consisting of the aforesaid three members. The appeals have been dismissed on 12.12.2025 by a judgment authored and delivered by a Bench consisting of the Chairman and Mr. Rameshwar Singh, Administrative Member, who was not a member of the Bench which had heard the appeals. This Court fails to understand as to how has Mr. Rameshwar Singh referred to and dealt with the submissions of the learned Counsel for the appellant and the learned Counsel for the respondent, when he had not heard the submissions and how did he reject the submissions of the learned Counsel for the appellant.

13. Clause (c) of Section 55 of the Act provides that no act or proceeding of the Appellate Tribunal shall be invalid merely by reason of any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case. Delivery of judgment by a member who has not heard submissions in the appeals is not a mere irregularity in the procedure adopted by the Appellate Tribunal which does not affect the merits of the case, rather such a judgment is nullity in the eyes

of law as it has been passed in violation of the fundamental principles of judicial procedure, which require the Bench hearing a matter to decide the same. The judgment has been passed in violation of the principles of natural justice as Mr. Rameshwar Singh, Administrative Member of the Appellate Tribunal has not given any opportunity to the appellant to advance submissions in support of the appeal and he has referred to and rejected the submissions of the appellant without hearing the same. This defect vitiates the judgment dated 12.12.2025.

14. Apparently, in the present case, neither there was any vacancy in the Appellate Tribunal nor is this a case of a mere defect in constitution of the Tribunal while authoring and delivering the judgment dated 12.12.2025 not affecting the merits of the case. Decision of appeals on merits by a Bench which has not heard the submissions in appeal and yet referring to the submissions advanced by the learned Counsel for the appellant and the learned Counsel for the respondent and thereafter rejecting the submissions of the learned Counsel for the appellant and dismissing the appeal on merits, cannot be said to be merely an irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case.

15. Therefore, Section 55 of the Act does not protect the validity of the impugned judgment dated 12.12.2025. Further, Section 55 of the Act does not support or protect the order dated 12.01.2026 disposing off the review application by ordering that the judgment delivered by the Chairman and an Administrative Member be placed before the other two members who were a part of the Bench which had heard the appeals on 07.11.2025 when the judgment was reserved, for obtaining their views.

16. Sections 43 of the Act is also relevant to understand the true scope and effect of Section 55 of the Act and it is being reproduced below: -

*“43. **Establishment of Real Estate Appellate Tribunal.** - (1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the (name of the State/Union Territory) Real Estate Appellate Tribunal.*

(2) The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union Territory, as the case may be.

*(3) **Every Bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.***

(4) The appropriate Government of two or more States or Union Territories may, if it deems fit, establish one single Appellate Tribunal:

Provided that, until the establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act:

Provided further that after the Appellate Tribunal under this section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.

(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

Explanation.-For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force."

17. In **Shashank Gupta v. Vatika Nirman (P) Ltd.**: 2025 SCC OnLine All 6449, a coordinate Bench of this Court has dealt with the effect of Section 55 of the RERA Act in the following manner: -

"19. On a plain reading of the prescriptions as extracted herein-above, it is clear that there is a distinction between the Appellate Tribunal, which has to be established in terms of Chapter-VII and the Bench which is to be established for hearing in the Appellate Tribunal. The use word 'Bench' in Section 43(3) of the Act, clearly marks out a distinction between the phrases used in Section 43(3) and Section 45 of the Act. Section 55 of the Act is an enabling provision, which has been incorporated to protect any orders, which can be challenged in case any appointment to the Appellate Tribunal or any defect pertaining to the Appellate Tribunal surfaces subsequent thereto. Much emphasis is placed on Section 55(c) of the Act.

20. I am of the firm view that Section 55(c) of the Act would also not rectify the defect of constitution of a Bench as prescribed under Section 43(3) of the Act as it has been incorporated only to save any irregularity in the procedure of the Appellate Tribunal and cannot be read to mean to cure the irregularities in the constitution of the Bench."

18. I am in complete agreement with the above quoted view taken by the coordinate Bench of this Court. Therefore, the impugned judgment is not protected by the provision contained in Section 55 of the RERA Act, more particularly, when the respondents in all the appeals, in whose favour the appeals have been decided, have themselves filed applications for review of the judgment and order dated 12.12.2025 stating that the appeals were heard extensively by a Bench consisting of the Chairman of the Appellate Tribunal along with Mr. Sanjai Khare, Judicial Member and Mr. Devindar Singh Chaudhary, Technical Member, but the judgment has been delivered by a Bench consisting of the Chairman and Mr. Rameshwar Singh, Administrative Member.

19. On 12.01.2026, a Bench of the Appellate Tribunal consisting of the Chairman and Mr. Rameshwar Singh Administrative Member, has disposed off the review applications by the following order: -

"1. Heard learned counsel for the parties and perused the record.

2. *The respondent-applicant has filed the present review petition, seeking review of the order dated 12.12.2025, it is submitted that the matter was heard by a larger Bench and the judgment came to be reserved on 07.11.2025, however, the judgment has been delivered by a Bench other than the Bench that had heard the matter.*

3. *The Registry informs that due to inadvertent human error/administrative lapse, the case was wrongly placed for delivery of judgment before the present Bench that had not heard the matter while reserving the judgment. The mistake is not willful or deliberate but due to human error.*

4. *It has been informed that the matter was proceeding before the Bench, comprising of Chairman and Technical Member, however, on the date of final hearing, the matter was heard by the Larger Bench.*

5. *The learned counsel for the applicant submits that though the error is human error, and does not go to the root of the matter, in the circumstances, since the judgment has been authored by Hon'ble the Chairman, it would be appropriate to place the judgement/order under review before the Bench comprising of other two Members, namely, Judicial Member and Technical Member for passing appropriate order/opinion thereon.*

6. *Learned counsel appearing for the appellant-promoter submits that the affidavit to the review petition has been sworn prior to filing of application; it is further submitted that against the judgment and order under review, the appellant has filed a petition under the supervisory jurisdiction of Hon'ble High Court, under Article 227 of the Constitution of India; and finally it is submitted that malicious allegation has been made against the Registry for placing the matter before a Bench for delivery of the judgment that had not heard the matter. Learned counsel for the appellant-promoter supplied a written note dated 12.01.2026 on the review application after duly being served to the applicant-respondent raising the aforementioned objections. Learned counsel for the applicant-respondent does not propose to file any objection.*

7. *In rebuttal, learned counsel appearing for the applicant-respondent submits that the averments made in para-6 has not been properly worded, accordingly, it is submitted that the applicant would not press the petition to that extent. It is further submitted that submissions of learned counsel for the appellant is incorrect. The affidavit of review petition was sworn on 04.01.2026, whereas, the date of the application is 08.01.2026 duly filed, with the Registry of the Tribunal on 09.01.2026. It is urged there is no deficiency in the review petition. He further submits that the application may be taken only to the extent of informing the Court of the technical/human error, committed by the Registry in placing the matter for delivery of judgment before the wrong Bench.*

8. *Be that as it may, without entering into the rival contentions, since the error that is being pointed out is of the Registry of this Tribunal, which requires to be set in order.*

9. *In view, thereof, it is proposed that the judgment under review shall be placed along with the records of the connected appeals before the Bench, comprising of Judicial Member (Hon'ble Sanjai Khare) and Technical Member (Hon'ble Devindar Singh Chaudhry) to express their view/opinion on the judgment and order dated 12.12.2025, and/or pass appropriate orders thereon.*

10. *Review application is, accordingly, disposed of.*

11. *The Registrar shall call for an explanation from the concerned officials as to how case was listed before the wrong Bench for delivery of judgment and submit a report.*

20. It is apparent from a bare reading of the order dated 12.01.2026 disposing off the review application that it was informed to the Appellate Tribunal that against the judgment and order under review, the appellant has filed a petition under the supervisory jurisdiction of Hon'ble High Court, under Article 227 of the Constitution of India and yet the review application has been disposed off.

21. In this regard it is relevant to note that Section 53 of the RERA Act provides as follows: -

“53. Powers of Tribunal.-(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.

(2) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.

(3) The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872 (1 of 1872).

(4) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examinations of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or directing it ex parte; and

(g) any other matter which may be prescribed.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 for the purposes of Section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).”

22. Thus, RERA Act has conferred the same powers of review of decisions on the Appellate Tribunal as are vested in a Civil Court under the Code of Civil Procedure, 1908. Order XLVII Rule 1 (1) of the Civil Procedure Code, 1908 provides that an application for review may be filed against an order from which an appeal is allowed, but from which no appeal has been preferred.

23. Although strictly speaking, a petition under Article 227 of the Constitution of India is not an appeal, but the purpose of an appeal is scrutiny of an order passed by any Court or Tribunal by a superior Court or Tribunal and so is the purpose of a petition under Article 227 of the Constitution of India filed before this Court. Therefore, the principle barring maintainability of review applications after filing of appeals would apply to review of order of the Appellate Tribunal after its validity has been challenged before the High Court by filing a petition under Article 227 of the Constitution of India. When the Appellate Tribunal was apprised about filing of the petition under Article 227 of the Constitution of India challenging the validity of the judgment dated 12.12.2025, the Appellate Tribunal ought to have refrained from entertaining the review application and the interference made by the Appellate Tribunal in the review application is unsustainable in law.

24. Delivery of judgment is an essential judicial function of the Appellate Tribunal, which is performed by its Benches. A Bench of the Appellate Tribunal consisting of the Chairman, Mr. Sanjai Khare, Judicial Member and Mr. Devindar Singh Chaudhary, Technical Member had heard submissions and reserved the judgment in the appeals and the same Bench ought to have authored and delivered the judgment. The judgment has been delivered by a Bench consisting of the Chairman and Mr. Rameshwar Singh, Administrative Member whereas Mr. Rameshwar Singh Administrative Member had not heard the submissions in the appeal and yet he has dealt with the submissions in detail and has rejected the submissions of the learned Counsel for the appellant. This error apparent on the face of the record has been committed by the Bench consisting of the Chairman and Mr. Rameshwar Singh, Administrative Member of the Appellate Tribunal. However, in the order dated 12.01.2026 passed in review applications, the Tribunal has attributed the error to the Registry of the Appellate Tribunal,

25. The order dated 12.01.2026 has directed the Registrar of the Appellate Tribunal to call for an explanation from the concerned officials as to how the case was listed before the wrong Bench for delivery of judgment and submit a report. Even if the registry had committed an error in listing the matter for delivery of judgment before a wrong Bench, it was for the members of the Bench to apply their minds before signing and delivering the judgment. The error committed by the Bench of the Tribunal in signing and delivering a judgment when one of the members of the Bench had not heard the appeals, cannot be attributed to the Registry of the Appellate Tribunal.

26. By means of the order 12.01.2026 passed in the review applications, the Bench consisting of the Chairman and Mr. Rameshwar Singh, Administrative Member has proposed that the judgment under review shall be placed along with the records of the connected appeals before the Bench, comprising of Mr. Sanjai Khare, Judicial Member and Mr. Devindar Singh Chaudhary, Technical Member to express their view/opinion on the judgment and order dated 12.12.2025, and/or pass appropriate orders thereon. The judgment dated 12.12.2025 having been authored and delivered by a Bench which had not heard the submissions, has been passed without jurisdiction and it is unsustainable in law. This illegality cannot be cured by committing another illegality of obtaining the views / opinion of the other two members, as this procedure is unknown to law. A judgment cannot be delivered by a two member Bench, one of whom had not heard the submission in the appeal and views of the other two members be obtained thereon subsequently.

27. The purpose of constituting multi-member Benches is that more than one person applies his/her mind to the lis to be adjudicated and it is not contemplated that only the Chairman of the Tribunal decides the matters and the other member/members remain mute spectators during the hearing and they merely put their signatures on the judgment without any independent application of their minds. When a matter is heard and decided by a multi-member Bench, the views of all members constituting the Bench are reflected by the judgment delivered by the Bench. In case the members concur, a single judgment is delivered which is signed and authenticated by all the members who may expressly state that they concur with the view of the author of the judgment or who may simply sign the judgment expressing their implied concurrence with the views of the author of the judgment.

28. A judgment in a matter heard by a three member Bench cannot be authored and delivered by a two member Bench, one member of which had not heard the submissions in the matter. Views of the other members who had heard submissions in the matter cannot be taken after the judgment has been signed and delivered by another Bench.

29. The learned counsel for the respondent No.3 could not dispute the fact that while deciding the review application, when an error apparent on the face of the record has been made out, the order should have been recalled in toto and the matter should have been placed before any Bench for re-adjudication. However, the learned counsel for the respondent No.3 has submitted that this prayer could have been made before the Appellate Tribunal itself.

30. While exercising its power of superintendence conferred by Article 227 of the Constitution of India, this Court can certainly interfere in the orders passed by the Real Estate Appellate Tribunal when the orders have been passed in a manner unknown to law more particularly, when the Appellate Tribunal has committed another error on the face of record by shifting the responsibility of the error committed by the Bench upon the registry of the Appellate Tribunal and ordering to place the erroneously delivered judgment before another Bench for obtaining its views.

31. In view of the foregoing discussion, I am of the considered view that the judgment dated 12.12.2025 authored and delivered by a Bench consisting of the Chairman and Mr. Rameshwar Singh, Administrative Member, in appeals which were heard by a three member Bench consisting of the Chairman, Mr. Sanjai Khare, Judicial Member and Mr. Devindar Singh Chaudhary Technical Member, is unsustainable in law. Further, the order dated 12.01.2026 whereby the review applications have been disposed off by a Bench consisting of the Chairman and Mr. Rameshwar Singh, Administrative Member by directing that the judgment sought to be reviewed be placed with the records of the connected appeals before the Bench comprising of Mr. Sanjai Khare, Judicial Member and Mr. Devindar Singh Chaudhary, Technical Member, to express their views/opinion on the judgment and order dated 12.12.2025, is also unsustainable in law.

32. Accordingly, all the petitions are allowed. The judgment dated 12.12.2025 passed in appeal Nos.196 of 2024, 48 of 2024, 49 of 2024, 195 of 2024, 197 of 2024 and 394 of 2024 and the orders dated 12.01.2026 passed in review applications are hereby **set aside**.

33. The appeals are remanded to U.P. Real Estate Appellate Tribunal for being decided afresh. Since the Hon'ble Chairman of the Appellate Tribunal has already delivered his judgment sitting with another member who had not heard the appeals, which judgment has been set aside by this order, keeping in view the peculiar facts and circumstances of the case, it is directed that the appeals will be placed before a Bench consisting of members other than the members constituting the Bench which has delivered the judgment and order dated 12.12.2025. The appeals will be heard and decided expeditiously, without granting any unnecessary adjournment to any of the parties, after giving adequate opportunity of hearing to the parties concerned and after taking into consideration their submissions and keeping in view the statutory mandate contained in Section 44 (5) of the R.E.R.A. Act.

(2026) 1 ILRA 428
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 21.01.2026

BEFORE

THE HON'BLE JASPREET SINGH, J.

Matters Under Article 227 No. 3886 of 2024

M/s Genebio Healthcare Pvt. Ltd. ...Petitioner
Paradigm Enterprises & Ors . Versus
...Respondents

Issue for Consideration

Whether the Commercial Court while passing the order impugned has completely misdirected itself in rejecting the preliminary objections regarding limitation as the award passed by the Facilitation Council on 27.09.2023 and the said award was challenged by filing a petition before the Commercial Court under Section 34 of the Act of 1996 on 16.01.2024 (beyond the period of three months) without any application seeking condonation of delay

Head Notes

The Constitution of India, 1950-Article 227; The Arbitration & Conciliation Act, 1996-Section 19, 34 & 36; The Limitation Act, 1963- Section 5 & 14- The contesting respondent had made no prayer for condonation of delay nor any separate application for seeking condonation of delay was moved moreover, there was no pleadings for seeking benefit of Section 14 of the Limitation Act nor there was any pleadings to show as to how the contesting respondent was entitled to get the benefit of condonation of delay or Section 14 of the Limitation Act and yet the Commercial Court rejected the objection on limitation as not maintainable which is patently perverse and it suffers from the vice of being non reasoned and arbitrary exercise of jurisdiction and the said order is liable to be set aside.

Held- Petition No.3886 of 2024, M/s Genebio Healthcare Pvt. Ltd. through Director Arun Kumar Srivastava v. Paradigm Enterprises through Director Ritika Pandey and others is partly allowed, whereas Petition No.5145 of 2024, Paradigm Enterprises v. Micro, Small and others shall stand dismissed. **(Para 70, 71 & 90)** (E-15)

Case Law Cited

Chintal (India) Ltd. v. Bhayana Builders (P) Ltd; (2021) 4 SCC 602; Rakesh Kumar Jain v. Zulfkar Ali; 2023 SCC OnLine All 2821; Faridabad Gurgaon Minerals v. Orissa Mining Corporation Ltd.; AIR 2007 Ori 179; State of Uttar Pradesh v. Karunesh Kumar and others; 2022 SCC OnLine SC 1705; Bhaven Construction v. Sardar Sarover Narmada Nigam Ltd.; (2022) 1 SCC 75; Shri Digant v. M/s P.D.T. Trading Co. and others; 2025 SCC OnLine SC 2524; Union of India v. Popular Construction Co.; (2001) 8 SCC 470; Simplex Infrastructure v. Union of India; (2019) 2 SCC 455; Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and others; (2008) 7 SCC 169; Shesh Nath Singh and another v. Baidyabati Sheoraphuli Cooperative Bank Ltd. and another; (2021) 7 SCC 313; Tirupati Steel v. Subh Industrial Component and other; (2022) 7 SCC 429; India Glycols Ltd. v. MSEFC, Telangana; (2025) 5 SCC 780; Lifestyle Equities C.V. v. Amazon Technologies, 2025 SCC OnLine SC 2153

List of Acts

The Constitution of India, 1950; The Arbitration & Conciliation Act, 1996; The Limitation Act, 1963

List of Keywords

Section 5 Limitation Act; Section 14 Limitation Act; No prayer for condonation of delay; Nor there was any pleadings; How respondent was entitled to get the benefit of condonation of delay; Section 34 & 36; Arbitration & Conciliation Act, 1996

Case Arising From

Orders dated 17.01.2024 and order dated 20.06.2024 passed by the Commercial Court No.2, Lucknow in Arbitration Case No.3 of 2024 whereby the preliminary objections raised by the petitioner have been turned down

Appearances for Parties

Counsel for Petitioners(s): Pritish Kumar, Amal Rastogi

Counsel for Respondent(s): Sarvesh Kumar Dubey, A.S.G.I., Ankit Kumar Pandey, Raj Kumar Singh

(Delivered by Hon'ble Jaspreet Singh, J.)

Introduction

1. An award dated 27.09.2023 passed by the Micro Small and Medium Enterprises, Facilitation Council, Lucknow (hereinafter referred to as the Facilitation Council) is in the legal vortex between the petitioner and the private respondent no.1. Both contesting parties are at logger heads. The present petitioner is at pains to get the said award executed whereas the private respondent no.1 is leaving no stone unturned in challenging the said award on all possible grounds.

2. In the aforesaid context, the petitioner filed petition No.3886 of 2024 assailing the orders dated 17.01.2024 and order dated 20.06.2024 passed by the Commercial Court No.2, Lucknow in Arbitration Case No.3 of 2024 whereby the preliminary objections raised by the petitioner have been turned down.

3. After the preliminary objections were turned down, the petitioner moved an application for releasing the amount deposited by the respondent no.1 which has been allowed vide order dated 27.09.2024 passed by the Commercial Court No.2, Lucknow in the aforesaid Arbitration Case No.3 of 2024 and being aggrieved, the private respondent no.1 herein, filed an independent petition assailing the said order by means of the connected Petition No.5145 of 2024.

4. Since the issue involved in these two petitions are between the same parties and interconnected, hence both the petitions are being decided by this common judgment.

5. For convenience, M/s Genebio Healthcare Pvt. Ltd. hereinafter, will be referred to as the "petitioner" whereas Paradigm Enterprises (who is the petitioner of the connected petition) will be referred to as the "contesting respondent".

Factual Matrix

6. Before proceedings further, it will be appropriate to notice the facts giving rise to the instant petition. The contesting respondent no.1 acting as an authorized distributor of the petitioner company had made a bid on GEM Portal and was successful in getting an order to supply 20 lakh Novel Coronavirus Sample Collection Kit. The aforesaid order was placed with the petitioner and it

was supplied directly to the U.P. Medical Supplies Corporation. Though the contesting respondent received the entire payment of Rs.1,27,12,739/- but it was not paid to the petitioner. In this factual background, the petitioner made a reference under section 18 of the Micro Small and Medium Enterprises Development Act 2006 (hereinafter referred to as the Act of 2006) before the Facilitation Council who after hearing the parties made its award on 27.09.2023.

7. The contesting respondent assailed the said award dated 27.09.2023 by filing a writ petition before a Division Bench of this Court bearing Writ-C No.8511 of 2023 which came to be dismissed vide order dated 17.10.2023, leaving it open for the contesting respondent to assail the said award in terms of Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the Act of 1996) before the appropriate court.

8. The contesting respondent then on 16.01.2024 filed a petition before the Commercial Court Lucknow under section 34 of the Act of 1996 which was registered as Arbitration Case No.3 of 2024.

9. The said case was registered on 17.01.2024 and notices were issued to the petitioner (who was the respondent in the petition under section 34 of the Act of 1996). The petitioner after having put in appearance before the Commercial Lucknow filed his preliminary objections regarding maintainability of the petition under section 34 of the Act of 1996 primarily on two grounds: (i) that the contesting respondent had not deposited 75% of the awarded amount in terms of Section 19 of the Act of 2006, hence the petition under section 34 could not be entertained; (ii) that the petition under section 34 of the Act of 1996 itself was barred by limitation and in absence of any application seeking condonation of delay, the petition could not have been registered as a regular petition, hence the petition under section 34 was liable to be dismissed on the aforesaid grounds.

10. In the interregnum, the petitioner had pressed for the recovery of the awarded sum and in furtherance thereof, a recovery notice had been issued to the State Authorities for recovery. The contesting respondent assailed the said recovery by filing another writ petition before a Division Bench of this Court bearing Writ-C No.3594 of 2024.

11. After hearing the parties the said writ petition was disposed of on 19.04.2024, noticing the contention of the contesting respondent that he was ready to deposit 75% of the awarded sum before the Commercial Court, with observation that the sum would be deposited within a week and in case if the said amount was deposited, then the Commercial Court would admit the petition as per the settled law and the district administration may not pursue the recovery proceedings. Later, by means of order dated 01.05.2024 the period of one week as granted in the order dated 19.04.2024 was extended by further three days.

12. Armed with the order of the Division Bench dated 19.04.2024 the contesting respondent filed an application depositing 75% of the award passed under the Act of 2006 and also raised objections to the preliminary objections filed by the petitioner before the Commercial Court. Another application was filed seeking stay on the recovery proceedings.

13. The Commercial Court No.2, Lucknow after hearing the parties turned down the preliminary objections raised by the petitioner by means of order dated 20.06.2024 which is the subject matter of challenge in Petition No.3886 of 2024.

14. The petitioner had moved an application for release of the amount deposited by the contesting respondent which was allowed by the Commercial Court initially on 19.07.2024. This order dated 19.07.2024 was challenged by the contesting respondent by filing a petition under Article 227 of the Constitution of India bearing No.3611 of 2024. A Co-ordinate Bench of this Court by means of judgment and order dated 02.08.2024 allowed the petition setting aside the order dated 19.07.2024 with a direction to the Commercial Court to consider the application filed by the contesting respondent for stay of the award, alongwith the application for release of the amount and decide the same expeditiously, by a reasoned order.

15. In furtherance of the order dated 12.08.2024 passed in Writ Petition No.3611 of 2024 the matter was reconsidered by the Commercial Court who vide its order dated 27.09.2024 allowed the application for release of the deposited sum subject to the condition that the petitioner would furnish an indemnity indicating that in case if any adverse order was passed in the petition under section 34 of the Act of 1996, then the petitioner would refund the aforesaid amount released alongwith 6% interest per annum, to the Court.

16. In so far as the application for stay of the recovery proceedings is concerned, the said application was also disposed of, directing the contesting respondent to furnish a security to the extent of remaining 25% of the awarded sum within a period of three weeks and subject to the aforesaid the recovery proceedings were stayed.

17. The contesting respondent being aggrieved against the said order dated 27.09.2024 assailed the same in the connected Petition No.5145 of 2024 and prayed that the order directing the contesting respondent to furnish a security towards 25% of the awarded sum be set aside as well as another part of the same order be also set aside whereby the amount has been released in favour of the petitioner and the amount so released may be directed to be refunded.

18. The record further indicates that by means of order dated 05.11.2024 passed by a Co-ordinate Bench in Writ Petition No.5145 of 2024 it was directed that the said petition be connected alongwith Petition No.3886 of 2024. The record further indicates that both the petition were heard by a Co-ordinate Bench and judgment was reserved on 12.11.2024. However, the Co-ordinate Bench while dictating the judgment found that certain clarifications were required and the matter was directed to be listed for rehearing. The Co-ordinate Bench on 19.03.2025 had directed the petitioner to file a copy of an affidavit indicating specifically the date on which the said application had been filed. In the meantime, the matter was placed before this Court. This Court had called for a report from the Registrar (Listing) which was placed before the Court on 27.10.2025 indicating that the matter was now cognizable by this Court. It is in the aforesaid backdrop that this Court being seized of the aforesaid two petitions, heard the learned counsel for the parties, finally.

Submissions on behalf of the parties

19. Shri Prithish Kumar, learned Senior Counsel assisted by Shri Amal Rastogi for the petitioner while assailing the order dated 20.06.2024 (which is under challenge in Petition No.3886 of 2024) has submitted that the Commercial Court No.2 while passing the order impugned has completely misdirected itself in rejecting the preliminary objections regarding limitation. It was urged that apparently the award passed by the Facilitation Council was dated 27.09.2023. The said award was challenged by filing a petition before the Commercial Court under Section 34 of the Act of 1996 on 16.01.2024 and the limitation for filing a petition under Section 34 of the Act of 1996 is provided in Section 34 (3) itself.

20. It was submitted that an award under Section 36 of the Act of 1996 could be challenged within a period of three months and only 30 days period thereafter was the period for which the delay could be condoned. Since the award was dated 27.09.2023 and the same was received by the contesting respondent on 06.10.2023, hence the Petition under Section 34 ought to have been filed within three months i.e. latest by 06.01.2024. Admittedly, the Petition was filed on 16.01.2024, however, there was no application filed by the contesting respondent seeking condonation of delay.

21. In absence of any application seeking condonation of delay, it was not open for the Commercial Court to have treated the Petition under Section 34 of the Act of 1996, within time. Moreover, in absence of any application seeking condonation of delay, the Court was not vested with jurisdiction to ignore or condone the delay. Filing an application seeking condonation of delay is mandatory and in absence of the application the Petition under Section 34 itself was defective. In the aforesaid circumstances, the Court did not consider the matter in the correct perspective and the finding recorded by the Court that the application was within time, is a perverse finding which cannot be sustained. In support of his submission, learned Senior Counsel has relied upon the decision of the Apex Court in **Chintal (India) Ltd. v. Bhayana Builders (P) Ltd; (2021) 4 SCC 602**.

22. Learned Senior Counsel for the petitioner has further urged that the issue of limitation goes to the roots of the matter. As soon as the petitioner received the notice of the Petition under Section 34 of the Act 1996 and put in appearance before the Court, preliminary objections were raised at the first instance. It was urged that there is no dispute between the parties in so far as the fact that the Petition under Section 34 of the Act of 1996 was filed by the contesting respondent beyond the period of three months. It is also not in dispute that the Petition under Section 34 of the Act of 1996 was not accompanied by an application seeking condonation of delay.

23. Learned Senior Counsel for the petitioner emphasized that the first order passed by the Commercial Court dated 17.01.2024 (which is under challenge in the Petition No.3886 of 2024) by which it registered the petition itself was bad. Attention of the Court was drawn to the order dated 17.01.2024 to state that as per the Munsarim report the Petition under Section 34 of the Act of 1996 was appropriately stamped with court fee and it was within the territorial jurisdiction of the Court. It also noticed that the petition was time barred but in view of the order passed by the High Court, which has been brought on record (of the petition under Section 34 of the Act of 1996) as Annexure-7 with the petition, it was not time barred. Considering the said report the case was registered and notices were issued to the petitioner.

24. It is submitted by the learned Senior Counsel that this reference to the order passed by the High Court and that the Petition was within time, is a complete misreading of the order of the High Court since the High Court did not condone the delay nor directed that the Petition to be treated within time, hence the basic registration of the case as a regular Petition, treating it to be within time, itself was bad.

25. Learned Senior Counsel has further urged that this fact came to the notice of the petitioner only when the summons from the Commercial Court was served on the petitioner and immediately, the preliminary objections were raised. The petitioner had raised a two fold objections: (i) related to the non compliance of Section 19 of the Act of 2006 which mandates deposit of 75% amount of the arbitral award. Since the Petition under Section 34 did not accompany the said pre-deposit, hence the petition could not be entertained; (ii) The petition under Section 34 of the Act was barred by limitation:

26. It is urged, that as far as the objections regarding non deposit of 75% of the awarded sum is concerned, the same may not have much bearing now as the same was made good by the contesting respondent in light of the order passed by the Division Bench of this Court in Writ-C No.3594 of 2024. However, the issue of limitation still survived for the reason that despite bringing it to the notice of the Court, in writing yet the contesting respondent did not file any application seeking condonation of delay. Even in the Petition filed under Section 34 of the Act of 1996, there was no prayer nor any averments were made to seek condonation of delay.

27. Significantly, while the petitioner had filed his preliminary objections in writing which was responded by the contesting respondent yet he did not make any application for seeking condonation of delay. In such circumstances where there was no application seeking condonation of delay despite notice to the contesting respondent who had the opportunity to avail but did not. Hence, in light of the clear mandate propounded by the Apex Court in **Chintal India (supra)** the Petition was beyond time and therefore neither the delay could have been condoned nor the petition itself could have been registered as a regular Petition.

28. It was submitted that the Court without giving any cogent reason, in a mechanical manner, has turned down the preliminary objection holding that they were not maintainable and this was apparently erroneous as the order suffers from non application of judicial mind apart from the fact that it is arbitrary and against the settled principle of law, hence it deserves to be set aside and as a consequence, the Petition under Section 34 of the Act of 1996 filed by the contesting respondent deserves to be dismissed as time barred.

29. **Per contra**, Shri Sarvesh Dubey, learned counsel for the contesting respondent has submitted that the issue of limitation as sought to be projected by the learned Senior Counsel for the petitioner is not correct. It is urged that the contesting respondent had assailed the award dated 27.09.2023 by filing writ petition before a Division Bench of this Court bearing Writ-C No.8511 of 2023. The said petition was disposed of on 17.10.2023 by permitting the contesting respondent to avail the alternate remedy to file objection under Section 34 of the Act of 1996 before the appropriate Court. On 16.10.2023 the contesting respondent had already filed the petition before the Commercial Court which was taken up on 17.10.2023 and noticing the order passed by the

Division Bench, the Petition was treated to be within time and in such circumstances the issue of delay did not arise at all. It is for the aforesaid reason that the Commercial Court has rightly rejected the preliminary objection relating to limitation as not maintainable since, the Petition itself was rightly filed within the time prescribed as per law.

30. Shri Dubey, has further pointed out that the contesting respondent had also filed his objections to the preliminary objections raised by the petitioner wherein it was clearly stated that the petition was filed on 16.01.2024 and considering the facts and circumstances the delay was condoned. The Petition was admitted and in any case the contesting respondent was entitled to the benefit of Section 14 of the Limitation Act, if required, hence the contention of the petitioner that the petition was time barred was not correct.

31. Shri Dubey has further urged that there is another aspect of the matter which requires consideration and i.e. the issue of approbate and reprobate. It is submitted that the petitioner had put in appearance in the Petition under Section 34 of the Act of 1996 and had also raised a contention that the Petition was not maintainable for want of predeposit of 75% of the awarded sum in terms of Section 19 of the Act of 2006. The contesting respondent had deposited 75% of the award and it was also got released by the petitioner in the proceedings pending before the Commercial Court. Once the Petition itself (if not maintainable for being time barred) then the petitioner could not have insisted for deposit of 75% of the amount. Now having contested the proceedings and having insisted for making the pre deposit and having participated in the proceedings to get the amount released, is all indicative of the fact that the petitioner by its own conduct had given up the plea of limitation. Moreover, by conduct the petitioner could not approbate and reprobate, hence the Commercial Court rightly rejected the preliminary objection and the petitioner is also not entitled to raise the issue of limitation before this Court, as it is misconceived and deserves to be dismissed.

32. Shri Dubey, in support of his submission has relied upon the decision of a Co-ordinate Bench of this Court in **Rakesh Kumar Jain v. Zulfkar Ali; 2023 SCC OnLine All 2821**. He has also relied upon a decision of the Orissa High Court in **Faridabad Gurgaon Minerals v. Orissa Mining Corporation Ltd.; AIR 2007 Ori 179** and he has further relied upon the decision of the Apex Court in **State of Uttar Pradesh v. Karunesh Kumar and others; 2022 SCC OnLine SC 1705**.

Writ Petition No.5145 of 2024

33. Shri Dubey while pressing the Petition bearing No.5145 of 2024 has urged that the order releasing the amount in favour of the petitioner is against the mandate of Section 19 of the Act of 2006. No reasons have been recorded despite the fact that on an earlier occasion a Co-ordinate Bench of this Court in Writ Petition No.3611 of 2024 had directed the Commercial Court to pass a reasoned order.

34. It was further urged that the Commercial Court did not record any reason as to what were the circumstances which prevailed and persuaded the Commercial Court to pass an order releasing the entire sum of 75% of deposited amount. There was no justification for the Commercial Court to

have directed the contesting respondent to furnish a security for the remaining 25% of the award and subject to it the recovery proceedings were to be stayed, and the said direction was apparently bad in the eyes of law.

35. It was also urged that even the High Court had noticed that the award was not valid and he relied upon para-17 of the order of the Division Bench of this Court dated 19.04.2024 passed in Writ Petition-C No.3594 of 2024 hence there was no reason to release any amount or require the contesting respondent to furnish a security.

36. Shri Dubey further submitted that in case if this Court found that the Petition under Section 34 of the Act of 1996 was barred by limitation then this Court would necessarily pass an appropriate direction directing the petitioner to return the amount received by him as the petitioner cannot be permitted to retain the benefits of an order and yet challenge the same. In such circumstances, it was urged that the petition filed by the petitioner bearing No.3886 of 2024 was liable to be dismissed and the Petition No.5141 of 2024 deserved to be allowed.

37. Responding to the submissions of Shri Dubey in so far as the Petition No.5451 of 2024 is concerned, Shri Prithish Kumar, learned Senior Counsel urged that the Act of 2006 is a special enactment which clearly indicates in Section 19 that making a pre deposit was mandatory. Once the amount was deposited, the Court was justified in releasing the same. In order to protect the rights of the parties, the Court had already put the petitioner on terms, to file an indemnity to the extent that in case if an order was passed adverse to the petitioner, in the petition under Section 34 of the Act of 1996, then the petitioner would refund the said released amount alongwith 6% interest per annum to the Court.

38. Learned Senior Counsel has further urged that it is now to well settled that a money decree is not stayed. In the given circumstances where the Act of 2006 provides for recovery through the State Authorities and it was resorted to then in order to get stay the proceedings, the contesting respondent deposited the amount on his own. The intention of the contesting respondent to deposit the said sum was also noticed by the Division Bench in its order dated 19.04.2024 passed in Writ-C No.3594 of 2024. The said amount was for the benefit of the petitioner. The petitioner has already submitted the indemnity as required by the Commercial Court and in such circumstances the order dated 27.09.2024 releasing the sum in favour of the petitioner and requiring the contesting respondent to furnish a security for the remaining 25% cannot be said to be bad rather its only in consonance with law, which requires no interference.

39. It was further urged by the learned Senior Counsel for the petitioner that even the pre deposit of 75% which has been made is only 75% of the amount as indicated in the award dated 27.09.2023 rather as per the Act of 2006 the pre deposit of 75% is to be computed on the total decretal amount, computed alongwith updated interest, till the date when the petition under Section 34 of the Act of 1996 was made. This compliance in the instant case was insufficient and in any case the Commercial Court has granted indulgence to the contesting respondent by accepting insufficient amount as compliance, which is not as per law and in the given circumstances, the Petition filed by the contesting respondent deserves to be dismissed.

Discussion and Analysis

40. The Court has heard the learned counsel for the parties at length and also perused the material on record.

41. At the outset, it will be appropriate to notice Section 5 of the Arbitration and Conciliation Act of 1996 vis-a-vis the scope of interference by this Court in exercise of power under Article 226/227 of the Constitution of India. In this regard, the decision of the Apex Court in **Bhaven Construction v. Sardar Sarover Narmada Nigam Ltd.; (2022) 1 SCC 75** gives guidance and the relevant observations of the Apex Court is as under:-

"18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In Nivedita Sharma v. COAI [Nivedita Sharma v. COAI, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , this Court referred to several judgments and held : (SCC p. 343, para 11)

"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation - L. Chandra Kumar v. Union of India [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] . However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

(emphasis supplied)

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith" shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.

19. In this context we may observe Deep Industries Ltd. v. ONGC [Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706] , wherein interplay of Section 5 of the Arbitration Act and Article 227 of the Constitution was analysed as under : (SCC p. 714, paras 16-17)

"16. Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others.

Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].

17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction."

(emphasis supplied)

20. In the instant case, Respondent 1 has not been able to show exceptional circumstance or "bad faith" on the part of the appellant, to invoke the remedy under Article 227 of the Constitution. No doubt the ambit of Article 227 is broad and pervasive, however, the High Court should not have used its inherent power to interject the arbitral process at this stage. It is brought to our notice that subsequent to the impugned order of the sole arbitrator, a final award was rendered by him on merits, which is challenged by Respondent 1 in a separate Section 34 application, which is pending.

21. Viewed from a different perspective, the arbitral process is strictly conditioned upon time limitation and modelled on the "principle of unbreakability". This Court in P. Radha Bai v. P. Ashok Kumar [P. Radha Bai v. P. Ashok Kumar, (2019) 13 SCC 445 : (2018) 5 SCC (Civ) 773] , observed : (SCC p. 459, paras 36-37)

36.3. Third, Section 34(3) reflects the principle of unbreakability. Dr Peter Binder in International Commercial Arbitration and Conciliation in Uncitral Model Law Jurisdictions, 2nd Edn., observed:

"An application for setting aside an award can only be made during the three months following the date on which the party making the application has received the award. Only if a party has made a request for correction or interpretation of the award under Article 33 does the time-limit of three months begin after the tribunal has disposed of the request. This exception from the three month time-limit was subject to criticism in the working group due to fears that it could be used as a delaying tactics. However, although "an unbreakable time-limit for applications for setting aside" was sought as being desirable for the sake of "certainty and expediency" the prevailing view was that the words ought to be retained "since they presented the reasonable consequence of Article 33." According to this "unbreakability" of time-limit and true to the "certainty and expediency" of the arbitral awards, any grounds for setting aside the award that emerge after the three month time-limit has expired cannot be raised.

37. Extending Section 17 of the Limitation Act would go contrary to the principle of "unbreakability" enshrined under Section 34(3) of the Arbitration Act. "

(emphasis in original)

If the courts are allowed to interfere with the arbitral process beyond the ambit of the enactment, then the efficiency of the process will be diminished."

42. In a recent decision, the Apex Court in **Shri Digant v. M/s P.D.T. Trading Co. and others; 2025 SCC OnLine SC 2524** considering the scope of Article 226 and 227 of the Constitution of India in context with order arising out of the District Courts the Apex Court has noticed as under:-

"22. The scope of High Court's jurisdiction under Articles 226/227 fell for consideration before a three-Judge Bench of this Court in Radhey Shyam v. Chhabi Nath1 This Court held that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226, though they may be questioned in the supervisory jurisdiction of the High Court under Article 227 of the Constitution. The power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

23. In the case on hand, the appellate court had considered in detail the issue as to whether the trial court was justified in proceeding with the case, without further notice to the defendants, after submission of pursis (Exh.42) by defendants' counsel, claiming no instructions. After a threadbare analysis and taking into consideration the surrounding circumstances, the appellate court held that the trial court committed no wrong in proceeding with the matter. The appellate court noticed that the advocate representing the defendants had claimed no instructions but not sought withdrawal of his Vakalatnama and the matter thereafter remained pending for over three months till it was decided in March 2015. In between no effort was made by the defendants to engage another lawyer. Moreover, the defendants did not come up with a case that their lawyer's notice was not served on them therefore, they could not engage another counsel. Besides that, the record also indicated that the intention of the defendants was to delay the proceedings because earlier also the suit had proceeded ex parte against them though, later, those orders were recalled. Therefore, in our view, once the appellate court took into consideration all relevant aspects including the fact that pursis (Exh.42) did not seek withdrawal of the Vakalatnama, and withdrawal was not even permitted, there was no such jurisdictional error which warranted exercise of powers under Article 227 of the Constitution of India. The High Court without any justification went on to consider the procedure prescribed for withdrawal of Vakalatnama when neither withdrawal of Vakalatnama was permitted by the Trial Court nor the pursis prayed for its withdrawal. In such circumstances, the entire exercise of the High Court was misconceived. More so, when the view taken by the appellate court that defendant cannot take advantage of his own wrong was a plausible view based on materials available on record. Hence, in our view, appellate court's order was not amenable to interference in exercise of jurisdiction under Articles 226/227 of the Constitution of India. The High Court clearly exceeded its jurisdiction under Article 227 of the Constitution in interfering with a well reasoned order of the appellate court."

43. Keeping the aforesaid parameters in mind, this Court proceeds to examine the contention of the respective parties. The issue of limitation definitely goes to the roots of the jurisdiction of the Court to entertain a matter, in the first place. It is now well settled that Section 5 of the Limitation Act is not applicable to the proceedings under Section 34 of the Act of 1996 (see **Union of India v. Popular Construction Co.; (2001) 8 SCC 470** which was followed by the Apex Court in **Simplex Infrastructure v. Union of India; (2019) 2 SCC 455** wherein in para 11 it was noticed as under:-

"11. Section 5 of the Limitation Act, 1963 deals with the extension of the prescribed period for any appeal or application subject to the satisfaction of the court that the appellant or applicant had sufficient cause for not preferring the appeal or making the application within the prescribed period. Section 5 of the Limitation Act, 1963 has no application to an application challenging an arbitral award under Section 34 of the 1996 Act. This has been settled by this Court in its decision in Union of India v. Popular Construction Company [Union of India v. Popular Construction Company, (2001) 8 SCC 470] , wherein it held as follows : (SCC pp. 474-75, paras 12 &14)

"12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.

14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendable by court under Section 5 of the Limitation Act. "

44. The facts in the instant case relating to the issue of limitation are not in dispute between the parties. It is not disputed that the contesting respondent assailed the award passed by the Facilitation Council by filing Writ-C No.8511 of 2023. The Division Bench of this Court on 05.10.2023 had passed the following order which reads as under:-

"Heard learned counsel for the petitioner and Shri S.B.Pandey, learned DSGI/Senior Advocate, assisted by Shri R.K. Singh, learned counsel for the respondent no.1 and 3.

Learned counsel for the respondent prays for and is granted three days' time to complete his instructions with regard to the status of award.

List this case on 10.10.2023."

45. Later on 17.10.2023 the Division Bench in the said petition passed the following order:-

"Case called out in the revised list.

Learned counsel for the petitioners is not present. Sri Rajesh Tewari , Advocate is present for respondent nos.2 & 3 and Sri S. B. Pandey, learned A.S.G.I. assisted by Sri R. K. Singh Advocate is present for respondent no.1.

Learned counsel for the respondent nos.1, 2 & 3 state that the award dated 27.09.2023 has been passed and against the same the petitioners have alternative remedy to file objections under Section 34 before the appropriate Court.

With the aforesaid liberty, the petition is consigned to record."

46. From the perusal of the order dated 17.10.2023 as quoted above, it would reveal that the counsel for the contesting respondent (herein) was not present before the Court. However, taking note of the fact that the contesting respondent had an alternate remedy of filing objection under Section 34 of the Act of 1996, the Court did not deem appropriate to entertain the petition and after granting the aforesaid liberty, consigned the petition to record.

47. The record further indicates that the contesting respondent filed the Petition under Section 34 of the Act of 1996 before the Commercial Court on 16.01.2024. This was taken up by the Court concerned on 17.01.2024. The Commercial Court on 17.01.2024 had passed an order, which is under challenge in this petition, and it is being reproduced hereinafter:-

"प्रार्थी/वादी के विद्वान अधिवक्ता द्वारा प्रार्थनापत्र ए-3 माध्यस्थम् एवं सुलह अधिनियम, 1996 की धारा-34 के अन्तर्गत प्रस्तुत किया गया है।

सुना तथा मुंसरिम आख्या का अवलोकन किया। मुंसरिम आख्यानुसार वाद सुनवाई का अधिकार अन्तर्गत न्यायालय है। पर्याप्त न्यायशुल्क लगा है। प्रार्थनापत्र कालबाधित है, परन्तु माननीय उच्च न्यायालय के आदेश एनेक्चर-7 जो प्रार्थनापत्र के साथ संलग्न है, के आधार पर कालबाधित नहीं है।

प्रस्तुत वाद आर्बीट्रेशन वाद के रूप में पंजीकृत हो। पत्रावली लन्च बाद पेश हो।"

"दिनांक- 17.01.2024

पत्रावली कम्प्यूटर द्वारा कमर्शियल कोर्ट न० 2 में प्रेषित की जाती है।"

"दिनांक- 17.01.2024

पत्रावली कम्प्यूटर द्वारा रैनडम मे कमर्शियल कोर्ट न० 1 से प्राप्त हुई। दर्ज रजिस्टर हो।"

"दिनांक- 17.01.2024

पत्रावली लंच बाद पेश हुई। वादी अधिवक्ता उपस्थित। प्रतिवादी अनुपस्थित। प्रार्थना-पत्र 6-ग पर वादी के विद्वान अधिवक्ता को सुना। वादी द्वारा प्रार्थना पत्र 6-ग अंतर्गत धारा 34, उपधारा 2 व 3, मध्यस्थम् एवं सुलह अधिनियम, 1996 वास्ते निषेधाज्ञा दिया गया है। मेरे मत से इस पत्रावली में प्रार्थना पत्र 6-ग पर आदेश पारित करने से पूर्व विपक्षी को भी सुना जाना आवश्यक व समीचीन है।

आदेश

विपक्षी को उभय प्रकार से नोटिस जारी हो। वादी इस संदर्भ में आवश्यक पैरवी अंदर सप्ताह करे। पत्रावली वास्ते सुनवाई दिनांक- 12.02.2024 को पेश हो।"

48. Another fact which needs to be seen at this stage is as to whether the High Court in its order had granted any indulgence to the contesting respondent by which the Petition which otherwise was barred by limitation could have been treated to be within time.

49. In order to examine this aspect, the contents of paragraphs 45 to 48 of the Petition filed by the contesting respondent under Section 34 of the Act of 1996 is being reproduced hereinafter for ready reference:-

"45. That the petitioner also filed a Writ Petition in High Court, Lucknow Bench having case No. (Writ-C No.8511 of 2023) on dated 27.09/2023 with a prayer to issue direction to the Arbitrator, MSME Facilitation Council, Lucknow to proceed with the matter strictly in accordance with the provision of the Arbitration and Conciliation Act, 1996 as mandated by the Micro, Small and Medium Enterprises Development Act, 2006.

46. That it is to be noted that the Arbitrator, MSME Facilitation Council, Lucknow passed an arbitral award on dated 27.09.2023 that very day when the petitioner filed a Writ Petition in the High Court, Lucknow Bench.

47. That during the proceedings of the above mentioned Writ Petition, the Counsel of the respondent filed a Counter-Affidavit and informed the Hon'ble High Court about the arbitral award passed dated 27.09.2023 by the Arbitrator, MSME Facilitation Council, Lucknow.

48. That the Hon'ble High Court, Lucknow Bench dismissed the above said Writ Petition on dated 17.10.2023 with direction to the petitioner to file a separate petition under Section 34 of the Arbitration and Conciliation Act, 1996 before the Appropriate Court. The Photocopy of the order dated 17.10.2023 is annexed with this petition as annexure no.7."

50. From the perusal of the aforesaid, it would be clear that annexure no.7 which has been referred to by the Commercial Court in its order dated 17.01.2024 it is the same order which was passed by the Division Bench of this Court in Writ-C No.8511 of 2023. The said order has already been reproduced hereinabove and it would be clear that the Court except for permitting the contesting respondent to take recourse to the alternate remedy did not provide any further liberty or any further indulgence so as to impact the merit or disability in the petition. The Division Bench clearly did not make any observation which could be construed as an observation that the delay, if any, would stand condoned or would be ignored whenever the contesting respondent choose to take recourse to the alternate remedy of filing objection under Section 34 of the Act of 1996.

51. In this background, the observations made by the Commercial Court in its order dated 17.01.2024 that though the Petition under Section 34 of the Act of 1996 was barred by limitation but because of the order passed by the High Court (order which was annexure no.7) the Petition was not time barred, is apparently a clear case of misreading and misconstruing the order passed by the High Court.

52. The petitioner having received the summon and had put in appearance before the Commercial Court and filed his preliminary objections on 12.02.2024 raising the issue of maintainability on two counts (i) the Petition under Section 34 was bad for non compliance of Section 19 of the Act of 2006 as it was not accompanied with a pre deposit of 75% of the decretal amount, (ii) the Petition was barred by limitation in terms of Section 34 (3) of the Act of 1996.

53. In its reply, the contesting respondent, insofar as the issue of limitation is concerned, pleaded its stance in paragraph 12 and 13 as under:-

"12. That the appellant/petitioner would like to inform this present Hon'ble Court that there is no delay in filing the present matter under Section 34 of the Arbitration and Conciliation Act, 1996, the petitioner/appellant filed the present matter on dated 16.01.2024 before this Hon'ble Court and the one day time has been wasted in sending the copy of the above matter to all the respondents via speed post.

13. That further, the present Hon'ble Court after seeking the facts and evidence already, condone the delay of 1 day on dated 12.02.2024 in filing the present matter under Section 34 of the Arbitration and Conciliation Act, 1996. Moreso, the petition has already been admitted and the benefit of Sec. 14 of the Limitation Act would be given to the petitioner, if required. Therefore, to say that the present matter is delayed is wrong and vehemently denied."

54. At this stage, it will also be relevant to notice the prayer made by the contesting respondent in its Petition under Section 34 of the Act of 1996 which reads as under:-

"Therefore, in view of the facts, reasons law, guidelines, circular, government order, grounds and circumstances as stated above the petitioners most respectfully prayed before this Hon'ble Court:-

(i) That in view of the facts, reasons and circumstances and grounds as mentioned above, it is most respectfully prayed before this Hon'ble Court to quash or set aside the order dated 27.09.2023 passed by the Arbitrator, Facilitation Council, Lucknow as such, the petitioner got no opportunity to present his case and the Arbitrator passed a one sided award or ex-parte award.

(ii) That it is also request before this Hon'ble Court to grant the stay on the operation of the said Arbitral award as per the Section 36(2) and (3) of the Arbitration and Conciliation Act, 1996.

(iii) That to allow any other relief which this Hon'ble Court deems fit and proper in the circumstances of the case detailed herein above in the interest of the justice."

55. The entire purpose of taking note of the aforesaid pleadings and response is to ascertain as to how the contesting respondent envisioned its own case. The stand of the contesting respondent was that the Petition was within time. Even if there was a delay, the same was condoned by the Court and in any case since the contesting respondent had filed Writ-C No.8511 of 2023 assailing the award dated 27.09.2023, hence the contesting respondent was entitled to the benefit of Section 14 of the Limitation Act. Thus, the Commercial Court did not err in rejecting the preliminary objection relating to the issue of limitation raised by the petitioner.

56. In this regard, this Court notices the settled proposition that Section 5 of the Limitation Act does not apply to proceeding under Section 34 of the Act of 1996, whereas Section 14 of the Act of 1963 is applicable. The difference in the two sections and its applicability to arbitration proceedings as aforesaid was noticed by the Apex Court in **Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and others; (2008) 7 SCC 169** and the relevant portion is reproduced as under:-

"20. Section 29(2) of the Limitation Act *inter alia* provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the Schedule, the provisions of Section 3 shall apply as if such period was the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only insofar as, and to the extent, they are not expressly excluded by such special or local law. When any special statute prescribes certain period of limitation as well as provision for extension up to specified time-limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting sub-section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act. However, merely because it is held that Section 5 of the Limitation Act is not applicable to an application filed under Section 34 of the Act for setting aside an award, one need not conclude that provisions of Section 14 of the Limitation Act would also not be applicable to an application submitted under Section 34 of the Act of 1996.

21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
- (5) Both the proceedings are in a court.

22 . The policy of the section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or

the application in the wrong court in consequence of bona fide mistake or (sic of) law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded.

23 . At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act. On review of the provisions of the Act of 1996 this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted under Section 34 of the said Act. On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings. The proceedings under Section 34 are for the purpose of challenging the award whereas the proceeding referred to under Section 43 are the original proceedings which can be equated with a suit in a court. Hence, Section 43 incorporating the Limitation Act will apply to the proceedings in the arbitration as it applies to the proceedings of a suit in the court. Sub-section (4) of Section 43, inter alia, provides that where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings with respect to the dispute so submitted. If the period between the commencement of the arbitration proceedings till the award is set aside by the court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the Act of 1996, more particularly where no provision is to be found in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act, to an application made under Section 34 of the Act. It is to be noticed that the powers under Section 34 of the Act can be exercised by the court only if the aggrieved party makes an application. The jurisdiction under Section 34 of the Act, cannot be exercised suo motu. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long. Section 34 of the Act of 1996 would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of four months. From the scheme and language of Section 34 of the Act of 1996, the intention of the legislature to exclude the applicability of Section 14 of the Limitation Act is not manifest. It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the Act of 1996 for setting aside an arbitral award.

* * *

28. Further, there is fundamental distinction between the discretion to be exercised under Section 5 of the Limitation Act and exclusion of the time provided in Section 14 of the said Act. The power to excuse delay and grant an extension of time under Section 5 is discretionary whereas under Section 14, exclusion of time is mandatory, if the requisite conditions are satisfied. Section 5 is broader in its sweep than Section 14 in the sense that a number of widely different reasons can

be advanced and established to show that there was sufficient cause in not filing the appeal or the application within time. The ingredients in respect of Sections 5 and 14 are different. The effect of Section 14 is that in order to ascertain what is the date of expiration of the "prescribed period", the days excluded from operating by way of limitation, have to be added to what is primarily the period of limitation prescribed. Having regard to all these principles, it is difficult to hold that the decision in Popular Construction Co. [(2001) 8 SCC 470] rules that the provisions of Section 14 of the Limitation Act would not apply to an application challenging an award under Section 34 of the Act."

57. In order to avail the benefit of Section 14 of the Limitation Act, the Court concerned (who was dealing with the issue as to whether the benefit of Section 14 of the Limitation Act is to be granted or not) was required to ascertain whether the following conditions were met or not.

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
- (5) Both the proceedings are in a court.

58. Now in order to ascertain whether the aforesaid mentioned conditions were applicable, the Court, necessarily was obliged to look at the pleading made by the respective parties before it. Even for the purposes of condoning the delay, the party seeking the indulgence of the Court must plead and demonstrate that it was prevented by a sufficient cause from filing the Petition/appeal/application before the Court within the prescribed period of limitation. Thus, whether a party claims the benefit of Section 5 or Section 14 of the Limitation Act, the pleadings in this regard assumes significance.

59. In the instant case, it is no doubt true that the Petition filed under Section 34 of the Act of 1996 was beyond three months from the date of the award but it was filed within 30 days thereafter. This period of additional 30 days is significant for the reason that the Court dealing with an application under Section 34 of the Act of 1996 has the power to condone the delay of this additional 30 days, which is in terms of Section 34(3) of the Act 1996 and not in terms of Section 5 of the Limitation Act.

60. In this context, if at all there is a delay, which is within the condonable period of 30 days as aforesaid, then, it has to be explained. It is not as if, despite the delay and there being no application seeking condonation of delay and not even a prayer made in this regard yet it would entitle the court to automatically condone the delay nor the Court would condone the delay merely because it is within the condonable period of 30 days in terms of Section 34(3) of the Act of 1996, irrespective of the explanation offered by the party seeking condonation of delay.

61. What the Court is required to do is to ascertain as to whether the ground shown for approaching the Court with delay and of course which is within the condonable period, constitutes a sufficient cause. Once, the Court is satisfied that the delay in approaching the Court, is within the condonable period of 30 days but beyond three months, as provided under Section 34(3) of the Act of 1996 and the explanation offered constitutes a sufficient cause then the delay can be condoned. This necessarily means applying the judicial mind to the cause shown, the contention of the opposing party and the reason recorded by the Court to reach its conclusion.

62. Now, if a party is seeking the benefit of Section 14 of the Limitation Act then in such a case the Court would be required to examine whether the conditions subsist for grant of the benefit of the Section 14 on the basis of pleading and then applying it to the facts of the given case, the Court will have to record its satisfaction that the pleadings set out by a party claiming the benefit of Section 14 of the Limitation Act has made out a case and only then the benefit of Section 14 can be granted.

63. At this stage, it will be appropriate to consider the decision of the Apex Court in **Chintal India (supra)** which has been made the pivot of the submission by the learned Senior Counsel for the petitioner. In **Chintal India (supra)** the issue before the Apex Court was whether an order passed by a Court refusing to condone the delay in filing an application under Section 34 of the Act of 1996 is an appealable order under Section 37(1)(c) of the Act. It is in this context that the Apex Court considered several decisions and taking aid of the "effect doctrine" held that by refusing to condone the delay, the effect is, that the Court refuses to set aside the award which in terms of Section 37(1)(c) of the Act of 1996 is appealable and such an appeal would be maintainable.

64. Needless to say that the Apex Court was not dealing with a situation as to what should be the content in a Petition under Section 34 of the Act of 1996 or as to how the said Petition is to be construed. It is also equally settled that the judgment is not to be construed like euclid theorem and an observation in a judgment torn out of its context cannot be said to conclude an issue. It is in this regard, the observations made by the Apex Court in **Chintal India (supra)** more particularly paragraph 11, which for the sake of clarity is being reproduced hereinafter:-

"8. A reading of section 34(1) would make it clear that an application made to set aside an award has to be in accordance with both sub-sections (2) and (3). This would mean that such application would not only have to be within the limitation period prescribed by sub-section (3), but would then have to set out grounds under sub-sections (2) and/or (2A) for setting aside such award. What follows from this is that the application itself must be within time, and if not within a period of three months, must be accompanied with an application for condonation of delay, provided it is within a further period of 30 days, this Court having made it clear that section 5 of the Limitation Act, 1963 does not apply and that any delay beyond 120 days cannot be condoned - see State of Himachal Pradesh v. Himachal Techno Engineers and Anr. (2010) 12 SCC 210 at paragraph 5. "

65. The aforesaid paragraph would reveal that the Apex Court was not dealing with such an issue so as to hold that a petition under Section 34 of the Act of 1992 must be accompanied by a separate application for condonation of delay. The observations made therein can be seen as a

prudent course which may be adopted by a person while filing its petition under Section 34 of the Act. However, merely because an application seeking condonation of delay has not been made separately will per se not make the Petition under Section 34 of the Act of 1996 not maintainable. There may be a situation where a Petition under Section 34 of the Act of 1996 may be barred by limitation and the petitioner in such a Petition itself may have made averments regarding sufficient cause and may have even sought a prayer in the petition itself without making a separate application for seeking condonation of delay. Hence, in such circumstances, it cannot be said that the observations made by the Apex Court in paragraph 11 above, indicates that a petition under Section 34 of the Act of 1996 in all circumstances must be accompanied with a separate application for seeking condonation of delay. It is for the aforesaid reason, that this Court finds that the submissions of the learned Senior Counsel for the petitioner is too technical and is an attempt to tear out the observations of the Apex Court out of context.

66. For the purposes of clarity it will be worthwhile to notice another decision of the Apex Court in **Shesh Nath Singh and another v. Baidyabati Sheoraphuli Cooperative Bank Ltd. and another; (2021) 7 SCC 313** wherein the issue of condonation of delay was considered by the Apex Court and in paragraphs 59 to 63, it held as under :-

"59. The condition precedent for condonation of the delay in filing an application or appeal, is the existence of sufficient cause. Whether the explanation furnished for the delay would constitute "sufficient cause" or not would be dependent upon facts of each case. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished by the appellant applicant for the delay in taking steps. Acceptance of explanation furnished should be the rule and refusal an exception, when no negligence or inaction or want of bona fides can be imputed to the defaulting party.

60. It is true that a valuable right may accrue to the other party by the law of limitation, which should not lightly be defeated by condoning delay in a routine manner. At the same time, when stakes are high, the explanation should not be rejected by taking a pedantic and hypertechnical view of the matter, causing thereby irreparable loss and injury to the party against whom the lis terminates. The courts are required to strike a balance between the legitimate rights and interests of the respective parties.

61. Section 5 of the Limitation Act, 1963 does not speak of any application. The section enables the court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the court or tribunal to weigh the sufficiency of the cause for the inability of the appellant applicant to approach the court/tribunal within the time prescribed by limitation, there is no bar to exercise by the court/tribunal of its discretion to condone delay, in the absence of a formal application.

62. A plain reading of Section 5 of the Limitation Act makes it amply clear that, it is not mandatory to file an application in writing before relief can be granted under the said section. Had such an application been mandatory, Section 5 of the Limitation Act would have expressly provided so. Section 5 would then have read that the court might condone delay beyond the time prescribed by limitation for filing an application or appeal, if on consideration of the application of the appellant or the applicant, as the case may be, for condonation of delay, the court is satisfied that

the appellant applicant had sufficient cause for not preferring the appeal or making the application within such period. Alternatively, a proviso or an Explanation would have been added to Section 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay. However, the court can always insist that an application or an affidavit showing cause for the delay be filed. No applicant or appellant can claim condonation of delay under Section 5 of the Limitation Act as of right, without making an application.

63. As observed above, Section 238-A makes the provisions of the Limitation Act applicable to proceedings under the IBC before the adjudicating authority and the appellate authority (Nclat) "as far as may be". Section 14(2) of the Limitation Act which provides for exclusion of time in computing the period of limitation in certain circumstances, provides as follows:

"14. Exclusion of time of proceeding bona fide in court without jurisdiction.-(1) ***

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

67. Thus having considered the decision of the Apex Court as noticed hereinabove, it can be safely be said, that it is not merely because the application under Section 34 of the Act of 1996 was not accompanied by a separate application seeking condonation of delay, per se would make the application under Section 34 of the Act of 1996 not maintainable without considering as to whether in the pleading any ground was set out for condonation of delay or for grant of benefit of Section 14 of the Limitation Act or any prayer was made to the aforesaid effect or not.

68. Insofar as the decision cited by Shri Dubey is concerned, suffice to state that the decision of a Co-ordinate Bench of this Court in **Rakesh Kumar Jain (supra)** in an a different fact situation and is in context with Section 5 of the Limitation Act as applicable to the civil proceedings and not in context with the Arbitration & Conciliation Act, 1996 as such may not be applicable to the instant case, hence it does not come to the aid of the contesting respondent. For the same reason, the decision of **Faridabad Gurgaon Minerals (supra)** also does not help the contesting respondent. Similarly, the decision of the Apex Court in **Karunesh Kumar (supra)** deals with the proposition of approbate and reprobate, which though as a proposition is not disputed but the said proposition of approbate and reprobate has no applicability in the instant case, hence the said judgment also does not help the contesting respondent.

69. Now applying the aforesaid principles to the facts of the instant case, it would reveal that the Commercial Court while dealing with the issue of limitation has merely referred to the contention of the respective parties and referred to the Munsarim report as furnished and in his report and in terms of the order passed by the High Court, the Petition was within time. The relevant portion relating to the finding recorded by the Commercial Court in its order dated 20.06.2024 is being reproduced hereinafter:-

"सुना व पत्रावली का अवलोकन किया। पत्रावली के अवलोकन के पश्चात विदित होता है कि याची/अपीलार्थी द्वारा माननीय उच्च न्यायालय के आदेश दिनांक 19.04.2024 व 01.05.2024 के अनुपालन में एवार्ड की 75% धनराशि न्यायालय में दिनांक 03.05.2024 को जमा की जा चुकी है। जहाँ तक विपक्षी सं०-4 द्वारा याचिका कालबाधित के संबंध में की गई आपति का प्रश्न है, उक्त के सम्बन्ध में मुंसरिम आख्या के अवलोकन से यह स्पष्ट होता है कि मुंसरिम द्वारा माननीय उच्च न्यायालय में योजित रिट सी नं०-8511/2023 में पारित आदेश दिनांकित 17.10.2023 के आधार पर कालबाधित न होने की आख्या दी गई है। यहाँ यह भी उल्लेखनीय है कि उक्त एवार्ड दिनांक 27.09.2023 को पारित किया गया है। उक्त एवार्ड पारित होने के 90 दिन पश्चात विस्तारित समयावधि 30 दिन अर्थात् कुल 120 दिन के भीतर याची अपीलार्थी द्वारा आर्बीट्रेशन वाद प्रस्तुत किया गया है एवं इस विलम्ब का समुचित कारण यह बताया गया है कि उसके द्वारा माननीय उच्च न्यायालय में याचिका रिट-सी नं०-8511/2023 योजित की गई थी, जिसे माननीय उच्च न्यायालय द्वारा दिनांक 17.10.2023 को निस्तारित किया गया है। जिसके आधार पर याचिका को समय सीमा में मानते हुए उक्त वाद दिनांक 17.01.2024 को आर्बीट्रेशन वाद के रूप में दर्ज किया जा चुका है एवं पत्रावली में आर्बीट्रेटर रिकॉर्ड भी तलब किया जा चुका है। ऐसी स्थिति में न्यायालय के मत में विपक्षी सं०-4 की ओर से प्रस्तुत प्रारंभिक आपति सी-9 पोषणीय न होने के कारण निरस्त किये जाने योग्य है।"

70. The reasoning of the Commercial Court that the Petition was filed beyond 90 days but within 30 days thereafter i.e. to say within 120 days and the ground indicated for such delay was the filing of the Writ Petition No.8511 of 2023 before the High Court which was disposed of on 17.10.2023, hence the Petition was registered, as being within time and that the record from the Arbitrator had been summoned, hence, in such circumstances, the preliminary objections are not maintainable, reflects poorly, for more than one reason: (i) First and foremost, the issue of limitation was a jurisdictional issue which was to be considered with most seriousness, which is not reflected from the above quoted, reasoning of the said Court. Merely because the Munsarim had given an incorrect report would not mean that substantive right of the party can be subsumed because of the Munsarim report or that the Court loses its jurisdiction to adjudicate the issue of limitation. The report of the Munsarim is subservient to the order of the Court and not vice versa; (ii) This Court is pained to notice that the Commercial Court failed to even read the order passed by the Division Bench of this Court dated 17.10.2023 passed in Writ-C No.8511 of 2023. It has already been noticed in the preceding paragraphs that the Division Bench in its order dated 17.10.2023 did not make any observation relating to condoning of delay or giving any indication or direction that whenever the contesting respondent filed objections under Section 34 of the Act of 1996, the same would be treated to be within time and be considered on merits, curtailing the right of the petitioner (opposite party before Commercial Court) to raise the issue of limitation; (iii) Even otherwise, if the Munsarim had given an incorrect report and at the first given opportunity, the petitioner had pointed out the said fact by filing his preliminary objection then it was the duty of the Commercial Court to have applied its judicial mind to the controversy and to have decided. However, without entering into the controversy, relating to limitation it has skirted the issue by holding that the Munsarim had given a report and the record had been summoned from the Arbitrator, hence the preliminary objections were not maintainable, make the order impugned

vulnerable; (iv) It appears that the Commercial Court was not aware of the difference between entertainability and maintainability. It is one thing to say that an objection relating to limitation may not be entertained but in the given circumstances, there can be no reason why an issue of limitation could be held to be not maintainable, merely because a Munsarim had given a report which was based on a clear misreading of the order passed by the High Court; (v) Another reason which reflects poorly on the Commercial Court is that even if at all, it was turning down the preliminary objection regarding limitation then the least that was required to be done was to have accorded some cogent reason to arrive at a conclusion, which would have some legal logic behind it.

71. Apparently, as already noticed above, the contesting respondent had made no prayer for condonation of delay nor any separate application for seeking condonation of delay was moved moreover, there was no pleadings for seeking benefit of Section 14 of the Limitation Act nor there was any pleadings to show as to how the contesting respondent was entitled to get the benefit of condonation of delay or Section 14 of the Limitation Act and yet the Commercial Court rejected the objection on limitation as not maintainable which is patently perverse and it suffers from the vice of being non reasoned and arbitrary exercise of jurisdiction and the said order is liable to be set aside.

72. In light of the aforesaid detailed discussions, this Court finds that the order dated 20.06.2024 passed by the Commercial Court is patently erroneous and cannot be sustained, in so far as it rejected the preliminary objection on the point of limitation. To that extent, the order dated 20.06.2024 is set aside. The Commercial Court shall decide the issue of limitation, a fresh, by taking note of the clear pleadings of the parties and decide as to whether it is a case for condonation of delay or it is a case for seeking exclusion of time in terms of Section 14 of the Limitation Act, by a reasoned and a speaking order, taking into consideration the observations made by this Court. An endeavour would be made to decide the issue of limitation as aforesaid as expeditiously as possible, preferably within a period of four weeks, from the date a copy of this order is placed before the Court concerned.

73. It is made clear that this Court has not entered into the veracity of the pleadings and has not made any observations as to whether a case for condonation or case for exclusion of time is made out or not, which will be for the Commercial Court to do, of course, in light of the observations made hereinabove and in accordance with law. The fresh order to be passed as aforesaid, would govern the fate of the order dated 17.01.2024. Thus, the Petition No.3886 of 2024 is partly allowed in the aforesaid terms.

Discussion in respect of Writ Petition No.5145 of 2024

74. In order to appreciate the controversy in the connected petition bearing No.5145 of 2024, it will be appropriate to notice the reliefs prayed by the contesting respondent (who is the petitioner of Writ Petition No.5145) as under:-

"(i) To issue appropriate, order or direction to set aside the order dated 27.09.2024 passed by the learned Commercial Court No.2, Lucknow passed in Application No.C06 to the

extent for depositing the security towards the 25% of awarded amount in Arbitration Case No.3 of 2024 in re Paradigm Enterprises Vs. Union of India through the Secretary, Micro, Small and Medium Enterprises.

(ii) To issue appropriate, order or direction to set aside the order dated 27.09.2024 passed by the learned Commercial Court No.2, Lucknow passed in Application No.C-30 (Application for releasing the amount) & Application No.C-53 (Supplementary Affidavit) to the extent for depositing the security towards the 25% of awarded amount in Arbitration Case No.3 of 2024 in re: Paradigm Enterprises Vs. Union of India through the Secretary, Micro, Small and Medium Enterprises.

(iii) To issue appropriate, order or direction to the learned Commercial Court to issue necessary direction to the respondent no.3 to refund the amount which has been taken in pursuance to the order dated 19.07.2024.

(iv) To issue appropriate, order or direction to the learned Commercial Court No.2, Lucknow to en-cash the indemnity bond deposited by the respondent no.3 in pursuance to the order dated 19.07.2024 passed in Application No.C-30 in Arbitration Case No.3 of 2024 in re: paradigm Enterprises Vs. Union of India through the Secretary, Micro, Small and Medium Enterprises, if it has been released in pursuance of the order dated 19.07.2024 to the respondent no.3 and further deposited in the fixed deposit and ensure to release after final adjudication of the Arbitration Case No.3 of 2024 in re: Paradigm Enterprises Vs. Union of India through the Secretary, Micro, Small and Medium Enterprises."

75. The thrust of the submission advanced by Shri Dubey is that the Division Bench of this Court in its order dated 19.04.2024 passed in Writ-C No.3594 of 2024 noticed that the award passed by the Facilitation Council was no award in the eyes of law. Once such an observation was made by the Division Bench of the High Court, and the very same award was under challenge in proceedings under Section 34 of the Act of 1996, in such circumstance, it was not just and appropriate for the Commercial Court to have released to deposit sum in favour of the petitioner i.e. M/s Genebio Healthcare Pvt. Ltd.

76. If this submission is considered, the record would reveal that the observations made by the Division Bench in the aforesaid order was in context with the submission advanced by the contesting respondent in his petition before the High Court. A copy of the order passed by the High Court is on record as annexure no.11 with Writ Petition No.5145 of 2024 and it would reveal that from paragraph 9 onwards the Court has considered the submissions of the learned counsel for the contesting respondent. The observations of the Court has been mentioned in paragraph 18 and 23 to 25 of the said order and the relevant portion thereof reads as under:-

"18. However, this Court is of the opinion that the petitioner cannot be permitted to simultaneously, argue the same ground in appeal that it has filed under Section 34 of the Act of 1996/Section 19 of the MSMED Act, 2020 and raise a challenge to the arbitral award before this Court.

** * **

23. Having gone through the pleadings on record and having heard learned counsel for the parties, we find that prayer nos.2 and 3 of the writ petition fail and cannot be granted by this

Court as the similar prayers had been made by the petitioner in Writ Petition (C) No.8511 of 2023 which was dismissed by this Court on 17.12.2023.

24. With regard to prayer nos.1 and prayer no.4 of this petition, regarding quashing of recovery notice dated 16.04.2024 issued by the Sub Divisional Magistrate, Sadar, Lucknow and the recovery notice dated 22.03.2024 issued by Tehsildar, Sadar Lucknow and for releasing the bank account of the Company, the petitioner's appeal under Section 19 has not yet been raised by the private respondent before the Commercial Court.

25. The Commercial Court shall look into the condition of pre-deposit of 76% of the arbitral award and pass an appropriate order. At this stage, the counsel for the petitioner on instructions from his client says that it is ready to deposit 75% of arbitral award in the appeal before the Commercial Court. This assurance has been given to the Court orally. However, if the petitioner complies with the condition of re-deposit of 75% of arbitral award within a week, and the Commercial Court admits the appeal as per the law settled in *Tirupati Steels (supra)* then the District administration may not pursue the recovery proceedings as impugned in this petition. "

77. The aforesaid order of the Division Bench would reveal that it had not expressed any opinion regarding the award passed by the Facilitation Council. The observation in paragraph-17 of the judgment, as relied upon by the counsel for the contesting respondent is being torn out of context. Thus, this Court is not inclined to accept this submission that the Division Bench had recorded any finding or observed that the award passed by the Facilitation Council was no award in the eyes of law and that was binding on the Commercial Court

78. Needless to say that the said award is under challenge before the Commercial Court in proceedings under Section 34 of the Act 1996 which is the appropriate forum where the validity of the award will be tested on the grounds mentioned in Section 34 of the Act of 1996 and the said court would deal with it in accordance with law.

79. The other submission of Shri Dubey that the Commercial Court has not given any cogent reason as to why the said amount should be released in favour of the petitioner, if examined in context with Section 19 of the Act of 2006, it would reveal that there is a legislative mandate for the Court to balance the equities between the parties. Section 19 of the Act of 2006 reads as under:-

"19.Application for setting aside decree, award or order.-No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose."

80. The aforesaid provision is clear that if any award passed under the Act of 2006 is challenged, it must be accompanied by a pre-deposit of 75% of the decretal amount which is

mandatory as also held by the Apex Court in **Tirupati Steel v. Subh Industrial Component and other; (2022) 7 SCC 429**. The proviso appended to Section 19 also clarifies that the Court can release such amount in favour of the supplier as it may deem reasonable and such release can be subjected to condition as the Court may deem necessary.

81. The Apex Court in **India Glycols Ltd. v. MSEFC, Telangana; (2025) 5 SCC 780** wherein Section 19 of the Act of 2006 was considered and in para 9 to 12 the Apex Court held as under:-

"9. In terms of Section 19, an application for setting aside an award of the Facilitation Council cannot be entertained by any court unless the appellant has deposited seventy-five per cent of the amount in terms of the award. In view of the provisions of Section 18(4), where the Facilitation Council proceeds to arbitrate upon a dispute, the provisions of the 1996 Act are to apply to the dispute as if it is in pursuance of an arbitration agreement under sub-section (1) of Section 7 of that Act. Hence, the remedy which is provided under Section 34 of the 1996 Act would govern an award of the Facilitation Council.

10. However, there is a super added condition which is imposed by Section 19 of the Msmed Act, 2006 to the effect that an application for setting aside an award can be entertained only upon the appellant depositing with the Council seventy-five per cent of the amount in terms of the award. Section 19 has been introduced as a measure of security for enterprises for whom a special provision is made in the Msmed Act by Parliament. In view of the provisions of Section 18(4), the appellant had a remedy under Section 34 of the 1996 Act to challenge the award which it failed to pursue.

11. In the judgment of this Court in Gujarat State Civil Supplies Corpn. [Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd., (2023) 6 SCC 401 : (2023) 3 SCC (Civ) 7] , a two-Judge Bench of the Court has observed, in the course of drawing its conclusions, that: (SCC p. 433, para 52)

"52. ... 52.4. The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/Arbitral Tribunal under Section 18(3) of the Msmed Act, 2006 would be governed by the Arbitration Act, 1996. "

12. The appellant failed to avail of the remedy under Section 34. If it were to do so, it would have been required to deposit seventy-five per cent of the decretal amount. This obligation under the statute was sought to be obviated by taking recourse to the jurisdiction under Articles 226/227 of the Constitution. This was clearly impermissible."

82. It is in exercise of this power, the Commercial Court considering the application made by the petitioner has taken note of the reasons given therein and has exercised its jurisdiction to release the deposited amount in favour of the petitioner, subject to the petitioner filing an undertaking that in case any adverse order is passed against the petitioner in proceedings under Section 34 of the Act of 1996, the petitioner would be bound to return the aforesaid amount to the Court alongwith interest at the rate of 6% per annum.

83. From the perusal of the order dated 27.09.2024, it reveals that the Commercial Court has taken note of the respective submissions advanced by the counsel for the parties, considered the averments made in the application for release and taking note of the provision of Section 19, and

then it has released the amount by recording reason. This exercise of jurisdiction, by the Commercial Court cannot be said to be inflicted with any error of law or jurisdiction nor it has been exercised with any illegality or material irregularity which may persuade this Court to interfere in the said order on the aforesaid premise.

84. It will also be relevant to notice that the Commercial Court had ordered release of the amount earlier and the said order was assailed by the contesting respondent by filing Writ Petition No.3611 of 2024 before a Co-ordinate Bench of this Court. The Co-ordinate Bench in its order dated noticed that the order impugned could not be sustained as it did not contain reasons. The Court had set aside the order and directed the Commercial Court No.2, Lucknow to pass fresh orders on the release application.

85. It is thereafter, the Commercial Court found that the supplier i.e. the petitioner herein was small scale industry and in case if the amount is not released it would cause grave hardship to the petitioner and by recording reasons, it released the amount. In order to protect the rights of the contesting respondent, it has also directed that in case of any order passed in favour of the contesting respondent and adverse to the petitioner in proceedings under Section 34 of the Act of 1999, then the petitioner would return the aforesaid released amount alongwith interest at the rate of 6% per annum. In this way the rights of the contesting parties have been protected and the mandate of the proviso appended to Section 19 has also been achieved. Thus, it cannot be said that the order suffers from any vice of error of jurisdiction or that it is non speaking or non reasoned.

86. It is now to well settled to be disputed that a money decree is not stayed. In case, if a patently erroneous judgment/award/decreed comes before a Court and is under challenge on the ground of egregious fraud which is patent on the face of the record. In such circumstances, the Court may stay a money decree. However, as a general rule money decree is not stayed. Even otherwise the Court has a jurisdiction to secure the decretal amount and it may also release such part of the decretal amount as Court may deem just and proper in the facts of the case. [**See Lifestyle Equities C.V. v. Amazon Technologies, 2025 SCC OnLine SC 2153**]. Thus, it cannot be gainfully urged that a money decree must as a matter of course be stayed.

87. The grounds which are raised by the learned counsel for the contesting respondent will have to be tested before the Commercial Court in proceedings under Section 34. Subject to the outcome of the said proceedings under Section 34, the order passed by the Commercial Court dated 27.09.2024 would follow suit.

88. It is also to be noticed that the Commercial Court has directed the contesting respondent to furnish a valuable security for the remaining 25% of the decretal amount, this direction issued in exercise of the jurisdiction to secure the decretal amount also cannot be said to be bad.

89. The entire crux of the contention of the learned counsel for the contesting respondent is that the award passed by the Facilitation Council was behind his back and without granting proper opportunity. This is something which has to be seen on the basis of the record by the Commercial Court. It is not a case of egregious fraud which is apparent from the record and in such circumstances, it cannot be said, that by directing the contesting respondent to furnish a security for

25% of the remaining sum subject to which the recovery proceedings against the contesting respondent shall remain stayed, also does not suffer from any error, rather it is an appropriate course of action which has been taken by the Commercial Court and it cannot be faulted. As a fortiori direction sought by the contesting respondent to refund the money which has been released in favour of the petitioner cannot be passed. Accordingly, this Court does not find that there is any merit in the petition filed by the contesting respondent.

Conclusion

90. For the detailed reasons recorded hereinabove **Petition No.3886 of 2024, M/s Genebio Healthcare Pvt. Ltd. through Director Arun Kumar Srivastava v. Paradigm Enterprises through Director Ritika Pandey and others** is partly allowed, whereas **Petition No.5145 of 2024, Paradigm Enterprises v. Micro, Small and others** shall stand dismissed. In the facts and circumstances, there shall be no order as to costs.

(2026) 1 ILRA 455
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.01.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Matters Under Article 227 No. 7466 of 2025

Dinesh Kumar Jindal	...Petitioner
	Versus
Debt Recovery Tribunal & Anr .	...Respondents

Issue for Consideration

Whether Registrar DRT has no power to order appearance of the opposite parties before him to show cause why the S.A. should not be allowed.

Head Notes

The Constitution of India, 1950-Article 227; The Debt Recovery Tribunal (Procedure) Rules, 1993- Rules -4, 5, 12, 22 & 23- A bare perusal of the DRT Rules makes it manifest that a Securitisation Application shall be presented by the applicant to the Registrar of DRT. Subject to the directions of the Presiding Officer, the Registrar has the power to fix the date of hearing of the application or other proceedings and issue notice thereof and he has the power to dispose of all matters relating to the service of notices or other processes, application for the issue of fresh notices or for extending the time or for ordering a particular method of service on a defendant, including a substituted service by publication of the notice by way of advertisements in the newspapers. The Registrar has the power to receive all applications and other documents and the defendant will file his reply to the application along with documents, with the registry.

Held- The Registrar DRT issued the impugned notice to the opposite parties on 11.11.2025, directing them to appear before him on 17.11.2025. On 17.11.2025 the Registrar listed the matter for 01.12.2025 before the Presiding Officer of the DRT. The present petition was presented before the Registrar Listing of this Court on 18.12.2025, i.e., after the S.A. had already been listed before the Presiding Officer of the DRT and the grievance of the petitioner that the matter ought to have been listed before the Presiding Officer of the DRT

and not before the Registrar, had already been redressed on 01.12.2025. Therefore, besides the fact that the petitioner's submission that the impugned notice has been issued without jurisdiction has been rejected, the notice has not caused a failure of justice or grave injustice to the petitioner, which is a sine qua non for maintaining a petition under Article 227 of the Constitution of India- Petition dismissed. **(Para 10 & 20)** (E-15)

Case Law Cited

B. S. Hari v. Union of India: (2023) 13 SCC 779; Surya Dev Rai v. Ram Chander Rai: (2003) 6 SCC 675; Estralla Rubber v. Dass Estate (P) Ltd.: (2001) 8 SCC 97

List of Acts

The Constitution of India, 1950; The Debt Recovery Tribunal (Procedure) Rules, 1993

List of Keywords

Subject to the directions of the Presiding Officer; the Registrar has the power; to fix the date of hearing of the application or other proceedings; and issue notice thereof; and Registrar has the power to dispose of all matters relating to the service of notices or other processes

Case Arising From

Notice dated 11.11.2025 issued by the Registrar, Debts Recovery Tribunal, Lucknow Securitisation Application No. 1144 of 2025

Appearances for Parties

Counsel for Petitioner(s) : Noel Victor
Counsel for Respondent(s) :

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Suryansh Kumar Arora Advocate, the learned counsel for the petitioner.

2. By means of the instant petition filed under Article 227 of the Constitution of India, the petitioner has challenged a notice dated 11.11.2025 issued by the Registrar, Debts Recovery Tribunal, Lucknow (which will hereinafter be referred to as 'the DRT') in Securitisation Application No. 1144 of 2025. The notice reads as follows: -

"Whereas, in the above said case, the applicant has filed an application under Section 17 SARFAESI Act, 2002, Copy of the S.A. is enclosed herewith.

Take notice that you are hereby required to appear before the learned Registrar of the Tribunal, on 17th Day of November, 2025 at 10:30 A.M. in the forenoon in person or by a pleader/ advocate to show-cause why the said S.A. should not be allowed. Failing which the said S.A. will be heard and determined ex parte.

Given under my hand and the seal of this Tribunal on 11th Day of November, 2025."

3. The learned Counsel for the petitioner has submitted that the Registrar, DRT has no power to order appearance of the opposite parties before him to show cause why the S.A. should not be allowed. He has submitted that the admission, hearing and disposal of S.As. falls within the jurisdiction of the DRT, and this function should be exercised by the Presiding Officer of the Debts Recovery Tribunal, not by its Registrar. Fixing of a date before the Registrar to show cause as to why the S.A. should not be admitted, would cause an undue delay in placing the matter before the

Presiding Officer of the DRT, which in turn would cause an undue delay in hearing and disposal of the interim relief application of the petitioner and this delay would cause a serious prejudice to the petitioner.

4. The petitioner has filed S.A. No. 1144 of 2025 before the DRT. On 11.11.2025, the Registrar DRT issued the impugned notice to the opposite parties directing them to appear on 17.11.2025. On 17.11.2025 the Registrar listed the matter for 01.12.2025 before the Presiding Officer of the DRT.

5. The present petition was presented before the Registrar Listing of this Court on 18.12.2025, i.e., after the S.A. had already been listed before the Presiding Officer of the DRT and the grievance of the petitioner that the matter ought to have been listed before the Presiding Officer of the DRT and not before the Registrar, had already been redressed on 01.12.2025.

6. Considering the aforesaid facts and circumstances of the case, the Court suggested that as the grievance of the petitioner is merely regarding a delay caused in listing of the S.A. before the Presiding Officer of the DRT whereas the S.A. has already been listed before the Presiding Officer of the DRT and there is no pleading that any legal injury has been caused to the petitioner because of this delay, the petitioner should contest the matter before the DRT and the question of jurisdiction of the Registrar has become merely academic, the learned Counsel for the petitioner insisted that the Registrar has no jurisdiction to issue the notice and an action taken without jurisdiction can very well be challenged before this Court even when it causes no prejudice to the petitioner.

7. The Court requested the learned Counsel for the petitioner to raise even this plea before the Presiding Officer of the DRT and to spare the time of this Court for being utilized for deciding the matters of those litigants who have no alternative remedy, but the learned Counsel for the petitioner submitted that he can approach the DRT only against an action of the bank under SARFAESI Act and he cannot raise the grievance regarding a notice issued by the Registrar before the Presiding Officer of the DRT.

8. The learned Counsel for the petitioner has submitted that since he is raising a question of jurisdiction, this Court should adjudicate upon the same. Therefore, the Court proceeds to examine whether the Registrar has no jurisdiction to issue a notice on a securitisation application filed before the DRT.

9. For deciding the aforesaid issue, it would be appropriate to have a look at the relevant provisions of the Debt Recovery Tribunal (Procedure) Rules, 1993, which are being reproduced below: -

"4. Procedure for filing applications

(1) An application shall be presented in Form annexed to these rules by the applicant in person or by his agent or by a duly authorised legal practitioner to the Registrar of the Bench within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar.

(2) *An application sent by post under sub-rule (1) shall be deemed to have been presented to the Registrar the day on which it was received in the office of the Registrar.*

(3) *The application under sub-rule (1) shall be presented in two sets in a paper book along with an empty file size envelope bearing full address of the defendants and where the number of defendant is more than one, then sufficient number of extra paper-books together with empty file size envelopes bearing full address of each of the respondents shall be furnished by the applicant.*

5. Presentation and scrutiny of applications

(1) *The Registrar, or, as the case may be, the officer authorised by him under rule 4, shall endorse on every application the date on which it is presented or deemed to have been presented under that rule and shall sign endorsement.*

(2) *If on scrutiny, the application is found to be in order, it shall be duly registered and given a serial number.*

(3) *If the application, on scrutiny, is found to be defective and the defect noticed is formal in nature, the Registrar may allow the party to rectify the same in his presence and if the said defect is not formal in nature, the Registrar, may allow the applicant such time to rectify the defect as he may deem fit.*

(4) *If the concerned applicant fails to rectify the defect within the time allowed in sub rule(3), the Registrar may by order and for reasons to be recorded in writing, decline to register the application.*

(5) *An appeal against the order of the Registrar under sub-rule (4) shall be made within 15 days of the making of such order to the Presiding Officer concerned in chamber whose decision thereon shall be final.*

12. Filing of reply and other documents by the respondent

(1) *The defendant may file two complete sets containing the reply to the application along with documents in a paper book form with the registry within one month of the service of the notice of the filing of the application on him.*

* * *

13. Date and place of hearing to be notified (1) *The Tribunal shall notify the parties the date and place of hearing of the application in such a manner as the Presiding Officer may by general or special order direct.*

22. Powers and functions of the Registrar

(1) *The Registrar shall have the custody of the records of the Tribunal and shall exercise such other functions as are assigned to him under these rules or by the Presiding Officer by a separate order in writing.*

(2) *The official seal shall be kept in the custody of the Registrar.*

(3) *Subject to any general or special direction by the Presiding Officer, the seal of the Tribunal shall not be affixed to any order, summons or other process save under the authority in writing from the Registrar.*

(4) *The seal of the Tribunal shall not affixed to any certified copy issued by the Tribunal save under the authority in writing of the Registrar.*

23. Additional powers and duties of Registrar

*In addition to the powers conferred elsewhere in these rules, **the Registrar shall have the following powers and duties** subject to any general or special order of the Presiding Officer, namely,-*

- (i) **to receive all applications and other documents including transferred applications,***
- (ii) **to decide all questions arising out of the scrutiny of the applications before they are registered;***
- (iii) **to require any application presented to the Tribunal to be amended in accordance with the rules;***
- (iv) **subject to the direction of the Presiding Officer, to fix date of hearing of the application or other proceedings and issue notice thereof;***
- (v) **direct any formal amendment of records;***
- (vi) **to order grant of copies of documents to parties to proceedings;***
- (vii) **to grant leave to inspect other records of Tribunal;***
- (viii) **dispose of all matters relying to the service of notices or other processes, application for the issue of fresh notices or for extending the time for or ordering a particular method of service on a defendant including a substituted service by publication of the notice by way of advertisements in the newspapers;***
- (ix) **to requisition records from the custody or any court or other authority.**”*

10. A bare perusal of the aforesaid Rules makes it manifest that a Securitisation Application shall be presented by the applicant to the Registrar of DRT. Subject to the directions of the Presiding Officer, the Registrar has the power to fix the date of hearing of the application or other proceedings and issue notice thereof and he has the power to dispose of all matters relating to the service of notices or other processes, application for the issue of fresh notices or for extending the time or for ordering a particular method of service on a defendant, including a substituted service by publication of the notice by way of advertisements in the newspapers. The Registrar has the power to receive all applications and other documents and the defendant will file his reply to the application along with documents, with the registry.

11. When power to issue notice to a defendant has specifically been conferred upon the Registrar of DRT, it cannot be said that the Registrar has no power to issue notice to a defendant to show-cause as to why the S.A. should not be allowed, and also to caution the defendant that in case he fails to file a reply, the S.A. will be heard and decided ex parte.

12. Further, as per Rule 12 of the Procedure Rules, the defendant has to file his reply to the application alongwith the documents with the registry of the DRT and, therefore, the Registrar has rightly directed the defendant to appear in person or by a pleader/ advocate to show-cause why the said S.A. should not be allowed.

13. Therefore, I find no force in the submission of the learned Counsel for the petitioner that the Registrar of DRT has no jurisdiction to issue notice to the opposite parties.

14. It has been pleaded in the petition that on 18.11.2025, the petitioner sent an email to the official email ID of the DRT stating that the Registrar has no authority to issue notice to the respondents to appear before him; that the issuance of notice before listing of the matter before the

Presiding Officer is in direct contravention of the DRT (Procedure) Rules, 1993 and that it defeats the very purpose of a caveat and / or urgent hearing as the Registrar has no power to adjudicate upon a Securitisation Application. The petitioner requested the Registrar to withdraw the notice forthwith. It has been pleaded in the petition that the Registrar has failed to reply to the email communication dated 18.11.2025 and / or withdraw the notice dated 11.11.2025. This Court fails to understand as to how withdrawal of the notice would have expedited the hearing of the S.A. Rather, the Securitisation Application cannot be heard without issuance and service of notice of the same upon the defendant. The objection raised by the petitioner appears to be self harming.

15. Although it is pleaded that the petitioner had filed an application for urgent hearing, a copy of the said application has not been brought on record of this petition.

16. The Court requested the learned Counsel for the petitioner to provide assistance with the help of any precedent so as to establish that the grievance being raised by the petitioner falls within the scope of interference under Article 227 of the Constitution of India, but he stated that he has not brought any precedent to be placed before the Court.

17. In **Estralla Rubber v. Dass Estate (P) Ltd.**: (2001) 8 SCC 97, the Hon^{ble} Supreme Court held that: -

*“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. **Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected.** It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”*

18. In **Surya Dev Rai v. Ram Chander Rai**: (2003) 6 SCC 675, the Hon^{ble} Supreme Court has summarised the scope of power under Article 227 of the Constitution of India in the following words: -

“38. ...We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

* * *

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

* * *

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

* * *”

19. In B. S. Hari v. Union of India: (2023) 13 SCC 779, the Hon’ble Supreme Court held that: -

50. ...we reiterate that the High Courts, under Articles 226 and/or 227, are to exercise their discretion “... solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge”, as highlighted in Surya Dev Rai v. Ram Chander Rai. This guiding principle still governs the field, and the 3-Judge Bench in Radhey Shyam v. Chhabi Nath [(2015) 5 SCC 423] had only partly overruled Surya Dev Rai in terms below:

29.1. Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.

29.2. Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.

29.3. Contrary view in Surya Dev Rai is overruled.”

20. The Registrar DRT issued the impugned notice to the opposite parties on 11.11.2025, directing them to appear before him on 17.11.2025. On 17.11.2025 the Registrar listed the matter for 01.12.2025

before the Presiding Officer of the DRT. The present petition was presented before the Registrar Listing of this Court on 18.12.2025, i.e., after the S.A. had already been listed before the Presiding Officer of the DRT and the grievance of the petitioner that the matter ought to have been listed before the Presiding Officer of the DRT and not before the Registrar, had already been redressed on 01.12.2025. Therefore, besides the fact that the petitioner's submission that the impugned notice has been issued without jurisdiction has been rejected, the notice has not caused a failure of justice or grave injustice to the petitioner, which is a sine qua non for maintaining a petition under Article 227 of the Constitution of India.

21. In view of the foregoing discussion, the petition lacks merits and the same is **dismissed** at the admission stage.

22. Before parting with the case, it is necessary to put it on record that there are 207 matters listed today in the list of fresh petitions, 128 matters are listed in the additional list and 51 matters are listed in the daily IA list. The Court repetitively requested the learned Counsel for the petitioner to refrain from wasting the time of the Court and to raise his pleas before the DRT where the SA is pending but due to his insistence, the Court had to decide the petition by this detailed judgment, which has resulted in unwarranted wastage of the precious time of the Court, which could have been utilized for deciding some other matter. Normally the Court would have imposed costs for wasting time of the Court but keeping in view that the learned Counsel for the petitioner is a young and inexperienced Counsel, who got enrolled with the Bar Council only in the year 2024, the Court is taking a lenient view and is desisting from imposing costs on the petitioner, but the learned Counsel should understand that although he represents his client before the Court, he is not a mere mouthpiece of his client. In case a client insists for filing a petition or advancing a submission which is frivolous, the Advocate should advise him not to do so and the Advocate should refrain from accepting such a frivolous brief.

23. Besides being a representative of his client, an Advocate is a responsible officer of the Court and he should assist the Court with his precise and concise submissions, wherever possible, with the assistance of the relevant Laws, including the Statutes, the Rules and the judicial precedents. It is said that the Bar and the Bench are the wheels of the same chariot. For fast and smooth running of the chariot, it is necessary that all the wheels should move forward at the same pace and one set of wheels should not try to put brakes on the other set of wheels of the chariot.

(2026) 1 ILRA 462
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 20.01.2026

BEFORE

THE HON'BLE INDRAJEET SHUKLA, J.

Writ A No. 6218 of 2004

Ramesh Chandra Singh

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

- (1) Permissibility of raising objection of availability of alternative remedy of approaching the Tribunal, after 21 years to the pendency of writ petition, particularly when the pleading between the parties were exchanged.
- (2) Significance of element of willful absence, when the charge of unauthorized absence was made.
- (3) Relevancy of the reference of past conduct in the impugned order or in the inquiry report.
- (4) Scope of interference in the punishment order, when it is disproportionate to the gravity of charges.

Headnotes

(A) Practice and procedure – Writ – Alternative remedy – Bar – Pleadings between the parties were exchanged and writ petition was pending since 21 years – Effect – Objection of availability of alternative remedy to approach Public Service Tribunal Act was raised – Permissibility. (E-1)

Held : Throwing a writ petition on the ground of alternative remedy after 21 years, particularly when parties have exchanged their pleadings is not justified, keeping in view the mandate of Hon'ble Supreme Court as propounded in case of M/s Utkal Highways, Engineering & Contractors v. Chief General Manager and others in SLP (Civil) No. 14350 of 2022. [Para 14]

(B) Service law – Punishment – Removal from service – Misconduct – Charge of unauthorized absence of 160 days – No medical report of 160 days was produced – Effect – Element of willful absence from duty – It's significance in proving the misconduct – Past conduct of the petitioner was referred in the removal order – Relevancy. (E-1)

Held : There may be compelling circumstances beyond his control like illness, accident, hospitalization, etc., and in such cases the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant. If allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in the absence of such finding, the absence will not amount to misconduct – The medical certificates are not for entire period of 160 days, for which the unauthorized absence has been sought to be condoned, as such the medical certificates so relied by the petitioner is of hardly any use particularly in backdrop of the analysis and reasoning given by inquiry officer that the petitioner did not appear to be ill on the date when firstly he sought extension of his leave. [Para 36 and 44]

Further held : Independently the inquiry officer had proved the charge of unauthorized absence of 160 days and the disciplinary authority has passed independently the order of removal from service solely on the charge of unauthorized absence of 160 days and the past conduct is not the foundation for passing the impugned order of removal – The order of removal from service is not based on the cumulative effect of charges of continued misconduct to be incorrigibility and complete unfitness for police service, therefore, mere reference of the past conduct would not amount to constitute foundation for removal from service. Thus, the reference of past conduct in the order impugned or in the inquiry report is hardly any relevance. [Para 52 and 55]

(C) Service law – Punishment – Removal from service – Scope of interference – Quantum of punishment – Principle of disproportionate to the gravity of charge – Applicability. (E-1)

Held : The Court or Tribunal cannot interfere with the discretion of punishing authority in imposing particular penalty but this rule has an exception, if the penalty is grossly disproportionate and does not commensurate with the misconduct committed then the Court can interfere – Writ petitioner has reached the age of superannuation and has served the department for 36 years and was promoted in interregnum and at present is drawing provisional pension, thus in view of aforesaid admitted factual position the order of removal from service is disapproved in the facts of this case and the matter is relegated back for fresh decision as no reply in relation to quantum of punishment could be received despite the mandate contained in Rule 14(2) of 1991 Rules. [Para 61 and 62]

Case Law Cited

SLP (Civil) No. 14350 of 2022, M/s Utkal Highways, Engineering & Contractors vs. Chief General Manager and others decided on 08.01.2025; Alexandar Pal Singh vs. Divisional Operating Superintendent, 1987 (ATC) 922 Supreme Court; Writ A No. 16983 of 2001, Vidya Ram vs. Deputy Inspector General of Police, Agra and others decided on 30.01.2019; Writ A No. 16983 of 2001, Vidya Ram vs. Deputy Inspector General of Police, Agra and others decided on 30.01.2019; Writ A No. 17878 of 2013, Manindar Kumar Singh vs. State of U.P. and others decided on 06.02.2019; Krushna Kant B. Parmar vs. Union of India and another, (2012) 3 SCC 178;

Chennai Metropolitan Water Supply & Sewerage Board vs. T.T. Murali Babu, (2014) 4 SCC 108; Railways vs. Rajendra Kumar Dubey, (2021) 14 SCC 735; Chhel Singh vs. M.G.B. Gramin Bank Pali & others, (2014) 13 SCC 166; State of Punjab vs. P.L. Singla, AIR 2009 SC 1149; W.P. No. 1192 (S/S) of 2019, Sanjay Misra vs. Director, Sanjay Gandhi Post Graduate Institute and another; Mohd. Yusuf Khan vs. State of Uttar Pradesh and others, (2010) 10 SCC 539 33; State of Punjab and Ors. vs. Ex. C. Satpal Singh, 2025 AIR SC 4011; Central Industrial Security Force and others vs. Abrar Ali, (2017) 4 SCC 507; Service Bench No. 6202 of 2016, State of U.P. vs. State Public Service Tribunal Indira & Ors. decided on 18.03.2016; State of U.P. vs. Singhara Singh and others, AIR 1964 SC 358; State of U.P. and others vs. Saroj Kumar Sinha, (2010) 2 SCC 772; Mirza Barkat Ali vs. Inspector General of Police Allahabad and others, (2002) 2 UPLBEC 1871; Civil Misc. Writ Petition No. 2316 of 1999, Ram Ujagar Yadav vs. The State of U.P. and others decided on 06.03.2006; Chennai Metroplitan Water Supply and Sewerage Board and others vs. T.T. Murali Baby, (2014) 4 SCC 108; Union of India and others vs. Datta Linga Toshatwad, 2006 SCC (L & S) 1504. – **referred to.**

List of Acts

U.P. Subordinate Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 – Rules 4, 5, 14, 20 and 23; UP Police Regulations – Regulation 381 and 382, U.P. Public Service (Tribunal) Act, 1976 – Section 4 (1).

List of Keywords

Unauthorized absence, Documentary evidence, Chargesheet, Opportunity of cross examination of witnesses, Willful absence, Enquiry report, Punishment, Departmental appeal, Alternative remedy, Double jeopardy, Deduction, Dilapidated condition, Medical certificate, Procedural lapses, Appreciation of defence evidence, Disciplinary proceeding, Compelling circumstances, Misconduct, Withholding of increment without cumulative effects, Illness, Delinquent employee, Consequential order, Accounting and administrative procedure, Forfeiting of salary, Major penalty, Habitual absenteeism, Gravity of charges, Length of service, Age of superannuation, Disproportionate.

Case Arising From

Impugned order dated 20.10.1999, 29.09.2000 and 22.05.2004 passed by the respondent.

Appearances for Parties

Advs. for the Appellant : H.G.S. Parihar, Sr. Adv.; Ajai Krishna Yadav; Anil Kumar Maurya; Mansha Shukla; Meenakshi Singh; Meenakshi Singh Parihar and Vivek Mishra.

Advs. for the Respondents : Dev Prakash Mishra, A.C.S.C.

(Delivered by Hon'ble Indrajeet Shukla, J.)

For the convenience of exposition, this judgment is divided into the following parts:-

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1. Heard Sri Ajai Krishna Yadav, learned counsel for the petitioner, Sri Dev Prakash Mishra, learned Additional Chief Standing Counsel representing the State respondents.

2. By means of present writ proceedings, the petitioner has set up challenge to the impugned order dated 14.04.2000 passed by 4th respondent removing the petitioner from service contained as Annexure-1 to this writ petition and impugned order of the same date forfeiting the salary of 160 days for unauthorized absence, from 14.05.1999 to 20.10.1999. The petitioner has further assailed the validity and correctness of order dated 29.09.2000 passed under appeal by 3rd respondent and the revisional order dated 22.05.2004 passed by 2nd respondent contained as Annexure-3 and 4 respectively to the writ petition.

A. FACTUAL MATRIX

3. Brief facts of present writ petition are that, the petitioner, who happened to be constable in disciplined force i.e. Provincial Arms Constabulary (PAC) was posted in 25th Battalion, Police Head Quarter, Raebareli proceeded for casual leave of 2 days on 12.05.1999 and as such he had to report the duties on 15.05.1999, but instead of reporting his duties on 15.05.1999 he became absent till 20.10.1999 i.e. almost 160 days and in this background a preliminary inquiry was directed and conducted, thereafter, regular inquiry was instituted by means of chargesheet dated 05.01.2000, primarily with the charge of unauthorized absenteeism. The relevant part of the chargesheet is extracted as under:-

"आपको एतद्द्वारा निम्नानुसार आरोपित किया जाता है:-

यह कि जब आप वर्ष 1999 में "ई" दल में नियुक्त थे, तब दिनांक 12.5.99 से स्वीकृत 02 दिवस आकस्मिक अवकाश पर प्रस्थान किया। बाद समाप्त अवकाश दिनांक 14.5.99 को वापस आना था, परन्तु आप समय से वापस न आकर दिनांक 20.11.99 को 160 दिवस मनमाने तौर पर अनुपस्थित रहकर आमद कराई।

इस प्रकार आप कर्तव्य के प्रति लापरवाही, उदासीनता एवं अनुशासनीयता के दोषी पाये गये।

साक्ष्य जिन पर आरोप के समर्थन में विचार किये जाने का प्रस्ताव है:-

1- श्री महेश प्रसाद दबू, शिविर पाल- प्रारम्भिक जाँच करना प्रस्तावित करेंगे।

2- पी०सी० श्री शिवराम कुशवाहा, जी दल- दि० 12.5.99 से 02 दिवस आकस्मिक अवकाश स्वीकृत करने की पुष्टि करेंगे।

3- नायक 31997 सरदारअली "ई" दल- अवकाश पर रवानगी करने की पुष्टि करेंगे।

4- आरक्षी 32087 मूलचन्द्र गौतम वाहिनी जी०डी० लेखक- अवकाश अनुपस्थिति से आमद करना प्रमाणित करेंगे।

5- आरक्षी 32168 मु० इसराइल अली "ई" दल- अवकाश से अनुपस्थिति की रपट अंकित करना प्रमाणित करेंगे।

अभिलेखीय साक्ष्य

1- स्वीकृत आकस्मिक अवकाश प्रार्थना पत्र

2- जी०डी० "ई" दल व मुख्यालय शाखा की नकल रपट

3- आवागमन रजिस्टर एल०पी० मेनगेट

इस प्रकार उपरोक्तानुसार आप दिनांक 12.5.99 से स्वीकृत 02 दिवस आकस्मिक अवकाश पर प्रस्थान करने, बाद समाप्त अवकाश दिनांक 14.5.99 को वापस न आकर दिनांक 20.10.99 को 160 दिवस मनमाने तौर पर अनुपस्थित रहकर आमद कराने तथा कर्तव्य के प्रति लापरवाही, उदासीनता एवं अनुशासनहीनता के दोषी हैं।

एतद्द्वारा आपसे आरोप के उत्तर में अपने बचाव का लिखित विवरण दिनांक 13.1.2000 को या उसके पूर्व प्रस्तुत करने की अपेक्षा की जाती है। आपको सचेत किया जाता है कि अधोहस्ताक्षरी द्वारा अनुमन्य समय के भीतर आपसे ऐसा कोई विवरण प्राप्त नहीं होता है तो यह अवधारणा की जायेगी कि आपको कुछ नहीं प्रस्तुत करना है, आपके मामलें में तदनुसार आदेश पारित कर दिया जाएगा।

साथ ही साथ आपसे अधोहस्ताक्षरी को लिखित रूप से यह सूचित करने की अपेक्षा की जाती है कि क्या आप व्यक्तिगत सुनवाई के लिए इच्छुक हैं और यदि आप किसी साक्ष्य या परीक्षण प्रति परीक्षा करना चाहते हैं तो अपने लिखित विवरण के साथ उसका नाम और पता और साक्ष्य का जिसे प्रत्येक ऐसे साक्षी से देने की प्रत्याशा की जायेगी, संक्षिप्त विवरण प्रस्तुत करने की अपेक्षा की जाती है।"

4. In the chargesheet as many as five witnesses were proposed to be orally examined and certain documentary evidence exhibiting unauthorized absence was also appended with the chargesheet.

5. After receiving the chargesheet, the petitioner submitted his reply on 17.01.2000 before inquiry officer mentioning therein that petitioner had to report on 15.05.1999 but he could not come back as such he sent an application for extension of leave. The inquiry officer in order to prove the charges of overstay/unauthorized absence examined the witnesses cited in the calendar of chargesheet and the record transpires that adequate opportunity of cross-examination of witnesses was afforded but same was not availed by the petitioner, as such the oral evidence/testimony of witnesses examined by inquiry officer remained unimpeached.

6. The petitioner, in order to prove his case examined two doctors viz Dr. Firoz Alam. Ansari, Medical Officer, New Primary Health Center, Sahson, District, Allahabad and Dr. Paras Nath Rai, Medical Officer, Primary Health Center, Kotwa, Allahabad. While taking plea of ill health, the petitioner had taken an alternate plea of collapse of his house, which was in dilapidated condition to

justify his absence and as such, petitioner claimed that he was busy in construction of his house and the absence cannot be said to be willful, rather due to compelling circumstances. Just to prove aforesaid plea of collapse of house, the petitioner got examined, **Jabar Singh**, the then Gram Pradhan.

7. The inquiry officer examined the defence witnesses viz Jabar Singh (Pradhan of the Village), Dr. Firoz Alam. Ansari and Dr. Paras Nath Rai in extenso.

8. After meticulous examination of the witnesses, the inquiry officer submitted the inquiry report on 21.03.2000, which is contained as Annexure-7 to the writ petition. To demonstrate the charge having been proved, the relevant portion of enquiry report is extracted hereunder:-

"अभियोजन पक्ष एवं बचाव पक्ष की कार्यवाही समाप्त हो जाने के बाद मैंने पत्रावली पर उपलब्ध समस्त साक्षियों के बयान, अभिलेखों एवं आरोपित पक्ष द्वारा बचाव पक्ष में प्रेषित स्पष्टीकरण एवं स्पष्टीकरण के साथ प्रेषित ग्राम प्रधान के द्वारा घर बनवाने व दूसरे घर में रहने व घर गिरने का प्रमाण-पत्र, बचाव पक्ष के गवाहानों के बयानों का गहनता से अध्ययन किया। उपरोक्त गवाहानों के बयानों से यह प्रमाणित होता है कि आरोपित आरक्षी 32091 रमेश चन्द्र सिंह दिनांक-11-5-99 को 02 दिवस आकस्मिक अवकाश पर 'जिला कारागार लखनऊ ई दल से रवाना हुआ। समय से न आकर दिनांक-20-10-99 को 159 दिवस 11 घंटा 10 मिनट अनुपस्थित रहकर अपनी इच्छानुसार वापस आकर वाहिनी मुख्यालय में आमद कराया जिसको पुष्टि सुबूत पक्ष के साक्षी दलनायक श्री अवधनारायण-तिवारी, पीसी श्री शिवरामकुशवाहा, कम्पनी जीडी लेखक नायक 31997 -सरदार अली, वाहिनी जीडी लेखक आरक्षी 32087 मूलचन्द्र गौतम के बयानों से होती है। आरक्षी के कम्पनी मुख्यालय 'ई'दल जिला कारागार लखनऊ में 02 दिवस अवकाश पर आमद की तिथि से अवगत होकर घर जाना तथा वापसी के दिन दिनांक-14-5-99 को सेनानायक के नाम रजिस्ट्री पत्र. 05-दिवस आकस्मिक अवकाश उसी क्रम में बढ़ाने के लिये यह अंकित कर देना कि उसका मकान दिनांक-12-5-99 को आँधी तूफान में गिर गया है बच्चों के रहने, लायक नहीं है तथा स्पष्टीकरण में दिनांक-12-5-99 से स्वयं को विमार होना अंकित करना दोनों में विरोधाभास है, जिससे यह सिद्ध होता है कि वह झूठ बोला है विमार नहीं था, वरना वह दिनांक-14-5-99 के मकान गिर-जाने के सम्बन्ध में दिये गये रजिस्ट्री में विमार होना अवश्य अंकित करता। यह मान लिया जाय कि उसका मकान दिनांक-12-5-99 को गिर गया 05 दिवस उसी क्रम में अवकाश बढ़ाने के लिये रजिस्ट्री दिया फिर भी वह 05 दिवस बाद वापस डियूटी पर नहीं आया न ही किसी प्रकार की विमारी या इलाजरत रहने की कोई सूचना ही दिया, न ही वाहिनी मुख्यालय आकर अवकाश ही स्वीकृत कराने का प्रयाप्त किया सिर्फ विमारी का बहाना बनाकर मनमाने तौर पर अनधिकृत रूप से अनुपस्थित रहा व डाक्टर से मिलकर विमारी का प्रमाण-पत्र बनवा कर मेडिकल अवकाश का उपभोग किया। अगर वह विमार था तो उसे नियमतः अपने जिले के पुलिस-अधीक्षक से मिलकर सिकबुक लेकर आमद रवानगी के साथ पुलिस अस्पताल जिला अस्पताल जाता तथा भर्ती होकर

अपना विधिवत स्वास्थ्य परीक्षण कराने के उपरान्त इलाज कराता व इस कार्यालय को सूचित करता तथा चिकित्सालय से मुक्त होने के उपरान्त चिकित्सक के द्वारा दिये गये रेस्ट प्रमाण-पत्र के साथ वाहिनी मुख्यालय आकर अवकाश स्वीकृत कराता, तदोपरान्त अवकाश का उपभोग करता परन्तु वह मनमाने तौर पर अपने इच्छित अस्पताल जाकर वाह्य रोगी के रूप में इलाज कराया और एक भी दिन चिकित्सालय में भर्ती नहीं रहा। इतनी लम्बी अवधि तक वाह्य रोगी के रूप में इलाज कराना संदेहास्पद है जो यह प्रमाणित करता है कि वह विमार नहीं था बल्कि अपनी अनुपस्थित अवधि को प्रमाणित करने के लिए चिकित्सकों से व्यक्तिगत रूप से स्वयं द्वारा विमारी बताकर उनसे दवा लिखाया व चिकित्सा प्रमाण-पत्र बनवाया, जो पुलिस रेगुलेशन के प्रस्तर 381 एवं 383 का स्पष्ट उल्लंघन है तथा विना किसी अधिकारी के संज्ञान में लाये कर्तव्य से विना स्वीकृति अवकाश अनुमति के अनुपस्थित हो जाना उसकी घोर लापरवाही एवं अनुशासनहीनता का परिचायक है।

बचाव पक्ष के साक्षी ग्राम प्रधान श्री जबर सिंह ग्राम बभनकुईयाँ थाना-सरायईनायत, जनपद-इलाहाबाद के वयानों से यह प्रमाणित है कि आरक्षी रमेश चन्द्र सिंह का मकान 2-3 साल पहले गिर गया था नये मकान में 2-3 साल से रह रहे हैं, लेकिन अपने दिनांक-4-2-2000 के मकान बनवाने के प्रमाण-पत्र में मकान गिरना मई सन्-1999 अंकित किये हैं, दोनों में विरोधाभास है जिससे यह स्पष्ट होता है कि आरक्षी रमेश चन्द्र सिंह ने मकान गिरने का प्रमाण-पत्र ग्राम प्रधान से कहकर अपने मन माफिक बनवाया है। ग्राम प्रधान ने विमारी के बारे में कुछ नहीं बताया। अगर आरोपी आरक्षी रमेश चन्द्र सिंह वास्तव में विमार होता तो ग्राम प्रधान को अवश्य-मालूम होता। मेरे द्वारा उक्त आरोपित आरक्षी के घर जाकर उसके मकान का भौतिक रूप से निरीक्षण भी किया गया। मकान तो गिरा था परन्तु काफी दिन का, दो कमरे का पक्का ईंट का मकान बनवाया है जिसकी सिर्फ दिवाल खड़ी है छत नहीं पड़ा है। जिस मकान में रह रहा है वह मकान कच्चा मिट्टी का बना हुआ है, मजबूत है, रहने की कोई परेशानी नहीं है। वह मकान बनवाने व विमार होने का सिर्फ नाटक किया है उसे ऐसी कोई परेशानी नहीं थी कि वह डियूटी पर नहीं आ सकता था। क्योंकि ग्राम-प्रधान के बयान से यह भी स्पष्ट है कि उसके पिता घर की खेती स्वयं करते हैं और जरूरत पड़ने पर मजदूर भी रख लेते हैं। उसके पिता खेती कर सकते हैं तो मकान भी अपनी देख-रेख में बनवा सकते थे। आरोपी ने मकान बनवाने में 30 दिवस लगना बताया है, ग्राम प्रधान ने चार-पाँच माह, जबकि मेरे द्वारा आरोपी के घर के भौतिक निरीक्षण में पाया गया कि वह जो पक्के ईंट का मकान बनवाया है दो छोटे-छोटे कमरे व एक छोटा बरामदा है सिर्फ दिवाल खड़ी है छत नहीं पड़ा है वैसा ढांचा खड़ा करने में सिर्फ 15 दिवस का समय लग सकता है लेकिन उसने 30 दिवस का समय लगना बताया है। यहाँ यह भी स्पष्ट है कि जब उक्त आरोपित आरक्षी विमार था डियूटी पर नहीं आ सकता था तो घर कैसे बनवाया, विमार होकर जब घर बनवा सकता है तो डियूटी पर वापस भी आ सकता है जिससे स्थिति स्वतः स्पष्ट हो जाती है कि वह विमार नहीं था सिर्फ विमारी का बहाना बनाया है। डा० फिरोज आलम नवीन प्रा० स्वा०-केन्द्र सहसो-इलाहाबाद के बयान से यह प्रमाणित होता है कि उक्त आरक्षी ने बुखार से पीड़ित होना बताया जिस पर डाक्टर ने उसे कुछ दवा दिया व कुछ बाजार से क्रय

करने को कहा व दिनांक-12-5-99 से 10-6-99 तक रेस्ट दिया लेकिन ओ. पी. डी. रजिस्टर में सिर्फ 3 सप्ताह ही अंकित किया था, पूछने पर डाक्टर ने बताया कि 2-4 दिवस और बढ़ा दिया था लिखने को भूल गया था। डाक्टर ने यह भी स्पष्ट किया है कि वह बीच-बीच में आते रहे मगर रजिस्टर में अंकित नहीं किया, जिससे स्पष्ट है कि वह विमार नहीं था सिर्फ डाक्टर से मिलकर मेडिकल प्रमाण-पत्र प्राप्त किया है क्योंकि अगर वह वास्तव में विमार रहता, बीच-बीच में डाक्टर को दिखाता तो वह ओ. पी. डी. रजिस्टर में अंकित होता मगर दवा लेना या बीच-बीच में दिखाना कहीं ओ. पी. डी. रजिस्टर में अंकित नहीं है जिसकी पष्टि डाक्टर फिरोज आलम ने स्वयं किया है। डाक्टर द्वारा रजिस्टर में 3 सप्ताह का रेस्ट देना तथा मेडिकल प्रमाण-पत्र में 30 दिवस अंकित करना व बयान में 28 दिवस का मेडिकल रेस्ट देना ही यह स्पष्ट करता है कि डाक्टर ने सिर्फ उक्त आरक्षी के कहने पर मेडिकल प्रमाण-पत्र दे दिया है विमार नहीं था। डाक्टर पारस नाथ राय प्रा० स्वा० केन्द्र कोटवा-इलाहाबाद के बयान से यह प्रमाणित होता है कि उसने अपनी अनुपस्थिति अवधि को प्रमाणित करने के लिये पेशाब में जलन व बुखार बताकर चिकित्सा प्रमाण-पत्र प्राप्त किया है। डाक्टर के कथनानुसार उसे अस्पताल से दवा भी नहीं दी गयी है पर्चे पर दवा लिखी गयी तथा अपने अधिकार क्षेत्र में सिर्फ चार सप्ताह का रेस्ट देने का अधिकार बताया है जबकि मेडिकल प्रमाण-पत्र में उसे दिनांक-11-6-99 से 27-7-99 तक 47 दिवस का मेडिकल अवकाश देना अंकित है। डाक्टर के कथनानुसार उसे 47 दिवस में कितने दिन दवा दी गयी या चेकअप कराया गया नहीं पता न ही कहीं ओ. पी. डी. रजिस्टर में ही अंकित है जिससे स्पष्ट है कि वह विमार नहीं था सिर्फ डाक्टर से मिलकर विमारी का प्रमाण-पत्र प्राप्त किया है फिर भी आरोपित आरक्षी ने दिनांक-12-5-99 से 10-6-99 तक डाक्टर फिरोज आलम अन्सारी नवीन प्राथमिक स्वास्थ्य केन्द्र सहसे-इलाहाबाद के यहाँ वाह्य रोगी के रूप में इलाजरत रहा। अपने स्पष्टीकरण में यह अंकित किया है कि डाक्टर के फिटनेस के बाद वह दिनांक-10-6-99 को फिर रात में विमार हो गया तथा दिनांक-11-6-99 से दूसरे डाक्टर श्री, पारसनाथ राय प्रा० स्वा० केन्द्र-कोटवा-इलाहाबाद को दिखाना अंकित किया तथा दिनांक-27-7-99 तक वाह्य रोगी के रूप में इलाजरत रहना अंकित किया है जो नियमानुकूल नहीं है क्योंकि जब डा० श्री फिरोज आलम अन्सारी ने दिनांक-10-6-99 को उक्त आरक्षी को फिटनेस दिया वह घर गया उसकी हालत पुनः उसी रात में खराब हो गयी उसने दूसरे डाक्टर श्री पारसनाथ राय प्रा० स्वा० केन्द्र-कोटवा-इलाहाबाद को दिखाया जबकि उसे उसी डाक्टर के पास जाना चाहिए था जिसने फिटनेस दिया था, परन्तु वह अनुपस्थित व कर्तव्य से दूर रहने के लिए दूसरे डाक्टर का सहारा लिया, उसे चाहिए था कि दिनांक-10-6-99 को डाक्टर फिरोज आलम अन्सारी से फिटनेस मिलने के बाद उसी दिन अपने कर्तव्य पर वापस आता परन्तु ऐसा नहीं किया जो कर्तव्य के प्रति घोर लापरवाही एवं अनुशासनहीनता का द्योतक है तथा उसके घर से प्राथमिक स्वास्थ्य केन्द्र सहसे-इलाहाबाद लगभग 2-3 किमी. है व प्रा० स्वा० केन्द्र कोटवा-इलाहाबाद लगभग 10-12 किमी. की दूरी पर है वहाँ जाने का औचित्य ही नहीं बनता। फिर भी डाक्टर श्री पारस-नाथ राय प्रा० स्वा० केन्द्र कोटवा-इलाहाबाद द्वारा उक्त आरक्षी-32091 रमेश चन्द्र सिंह को दिनांक-27-7-99 को फिट घोषित कर दिया, उसको तत्काल वाहिनी मुख्यालय आना चाहिए था परन्तु वापस डियूटी पर न, आकर विना सूचना,

विना अवकाश, विना मेडिकल ही मनमाने तौर पर घर ही रहा, जो इसके कर्तव्य के प्रति घोर लापरवाही व उदासीनता तथा अनुशासनहीनता का परिचायक है। आरोपित पक्ष द्वारा आरोप पत्र के उत्तर में प्रस्तुत स्पष्टीकरण एवं बचाव में प्रस्तुत स्पष्टीकरण में ऐसा कोई विन्दू नहीं रखा गया जिसपर विश्वास किया जा सके और जिसके आधार पर उसके विरुद्ध लगाये गये आरोप प्रमाणित न हो। उसके द्वारा दलनायक के नाम दिया गया आकस्मिक अवकाश का प्रार्थना-पत्र को पीसी के द्वारा ही स्वीकृत करके अवकाश छोड़े जाने का तर्क भी मान्य नहीं है क्योंकि दलनायक के कम्पनी भार पर न रहने पर कम्पनी के भार पर नियुक्त पीसी को 03 दिवस अवकाश देने का अधिकार है।"

9. After receipt of the inquiry report dated 21.03.2000 a show cause notice was issued to the petitioner on 21.03.2000 itself in relation to the punishment proposed. Thereafter, the reminder notices were also issued on 24.03.2000 and 29.03.2000 but admittedly, the petitioner did not file any reply despite repeated opportunities offered.

10. In place of filing a reply to the show cause notice, against proposed punishment, the petitioner knocked the doors of U.P. Public Service Tribunal, Lucknow by filing Claim Petition No.378 of 2000 and it has been averred in paragraph no.21 of the writ petition that the said claim petition was finally decided on 17.04.2000 directing the authorities to provide reasonable opportunity to submit reply of show cause notice (the order of tribunal has not been brought on record). Thus, before order of Tribunal could be brought to notice of departmental authorities, the impugned order of punishment was passed.

11. The impugned order of punishment removing the petitioner from service was passed on 17.04.2000, which was served upon the petitioner against which the petitioner preferred departmental appeal as contemplated under Rule 20 of U.P. Subordinate Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 (in short '1991 Rules') and the appeal so preferred was dismissed vide order dated 29.09.2000 against which revision was preferred by virtue of Rule 23 of 1991 Rules, which too met with same fate, vide impugned order dated 12.03.2004.

B. AVAILABILITY OF ALTERNATIVE REMEDY

12. Before examination of matter on merits, learned counsel for the State opposed the writ petition on the ground of availability of alternative remedy, stating that the efficacious remedy lies before U.P. Public Service Tribunal against the orders impugned under Section 4 (1) of U.P. Public Service Tribunal Act.

13. In response to the said objection, learned counsel for the petitioner submitted that this writ petition was entertained way back on 15.10.2004 and the pleadings are complete, as such the writ petition may not be thrown after lapse of 21 years.

14. Insofar as the plea of alternative remedy is concerned, this Court is of the firm view that throwing a writ petition on the ground of alternative remedy after 21 years, particularly when parties have exchanged their pleadings is not justified, keeping in view the mandate of Hon'ble

Supreme Court as propounded in case of **M/s Utkal Highways, Engineering & Contractors v. Chief General Manager and others in SLP (Civil) No.14350 of 2022**. Hence, the Court has proceeded to hear the matter on merits.

C. SUBMISSION ON BEHALF OF PETITIONER

15. The submissions advanced on behalf of the petitioner are precisely to the effect that the impugned order of punishment, appellate order and revisional order are absolutely illegal, arbitrary and without application of mind and all three authorities have failed to examine the material facts and grounds raised in its correct perspective, resulting confirmation of order of removal from service.

16. Further submission of learned counsel for the petitioner is that the inquiry officer failed to consider the medical certificates and the statement of doctors certifying the illness and as such the inquiry so conducted is erroneous.

17. Learned counsel for the petitioner alternatively submitted that in the factual backdrop of the present case the major punishment of removal ought not to have been awarded.

18. The further submission is, the punishment so awarded by disciplinary authority is based on recommendation of inquiry officer and inquiry officer erred in recommending punishment for removal from service and such recommendation is beyond the competence of inquiry officer.

19. Learned counsel for the petitioner also submits that from the date of reinstatement till attaining the age of superannuation nothing adverse was reported against the petitioner as such if this order is examined on the touchstone of reformatory theory equally applicable to service jurisprudence then also the petitioner deserves sympathetic consideration of this Court qua the quantum of punishment.

20. Lastly, the petitioner has strenuously urged that the petitioner was permitted to assume his duties in the month of October, 1999 and continued as such till March, 2000 and was paid salary for the said period as such there was no reason and prudence as why on one hand the order of withholding six month salary of the petitioner treating the said period as absence from duty has been passed and for the same conduct he has been removed from service. Thus, the punishment has been inflicted in twin folds for the same charges, which amounts to double jeopardy being violative of Article 20 of the Constitution of India. Thus, the punishment inflicted does not commensurate with the gravity of the charges and as such the award of major penalty is also disproportionate.

D. SUBMISSION ON BEHALF OF STATE RESPONDENTS

21. Per contra, learned Additional Chief Standing Counsel submitted that every procedural rigour as contemplated, under 1991 Rules have been followed and petitioner could not raise any ground pointing out any procedural flaw with respect to inquiry conducted including conduct of oral inquiry, grant of opportunity of hearing etc.

22. Learned Additional Chief Standing Counsel submitted that habitual absenteeism is the past track record of writ petitioner, and he made himself absent unauthorizedly for 10 times. He further points out that, since the recruitment of the petitioner as a Constable in 1984, he has made himself absent on 10 occasions, that is for a total period of 356 days and took medical leave four times, which is 97 days total till 1995. He was punished with 56 days pay deduction and in 1997-98 he was found guilty of unauthorized absence of 82 and 79 days respectively and he was punished with censure entry along with 8 other minor punishments. Thus, petitioner require no leniency in aforesaid factual background.

23. Learned Counsel for the State has invited the attention of this Court that the petitioner reported to the duties on 16.06.1999 as per G.D. No.21 at 17.00 and as such he was relieved for joining at Company Headquarter, Gonda, but instead of going to Gonda, he again went to his home and he remained unauthorizedly absent. The copy of G.D.No.21 dated 16.06.1999 is contained as Annexure C.A.3 to the counter affidavit. Thereafter, the petitioner reported to the duties on 20.10.1999.

24. It is further submitted, when preliminary inquiry was directed vide order dated 21.11.1999, then the petitioner submitted the medical certificates with respect to which the detailed discussions have been made not only in the inquiry report but here-in-before also.

25. Learned counsel for the State drew attention of this Court towards Annexure No.CA.1 and C.A.2 appended to the counter affidavit, which is application dated 14.05.1999 for extension of leave for 5 days and the reasons mentioned in the said application states that the house of the petitioner being in dilapidated condition collapsed in the storm and in the said application, no plea of 'illness' is mentioned, which is the first opportunity to justify the over-staying/ absenteeism, hence the plea of illness is cock and bull story having been cooked subsequently. The medical certificate relied upon by the petitioner was allegedly issued on 10.06.1999 contained as Annexure C.A.5 demonstrates that the doctors have certified that the petitioner was ill (suffering from typhoid fever) since 12.05.1999 to 10.06.1999. The said certificate appears to be ex-facie incorrect as in the application dated 14.05.1999 (Annexure C.A.2) petitioner has not mentioned that he was ill, meaning thereby, the lame excuse of illness has been discovered by the petitioner at some subsequent point of time. Secondly, the medical certificate contained as Annexure C.A.6 to the counter affidavit issued by different medical officers, i.e. Dr. Firoz Alam. Ansari and Dr. Paras Nath Rai demonstrate that they have certified the illness of the petitioner from 11.06.1999 to 27.07.1999 and issued the fitness certificate for resumption of duties on 27.07.1999. These certificates are again in continuation so far, the period of illness is concerned. The petitioner had to explain the over staying/unauthorized absence from 15.05.1999 till 20.10.1999 and petitioner had not submitted any medical certificate after the period of 27.07.1999. In such a background the medical certificates have rightly been discarded by the inquiry officer and in exercise of judicial review under Article 226 of Constitution of India, this Court may not embark upon the correctness of such certificates, which did not inspire confidence of the inquiry officer.

26. Learned Standing Counsel has further invited attention of this Court towards findings contained in the inquiry report, in which the inquiry officer had categorically found that the plea of

illness and collapse of house are contradicting each other as evident from the defence evidence/applications filed by none other than the petitioner.

27. The inquiry officer did not find that the petitioner was admitted in the Hospital even for a single day. The inquiry officer had further taken note of Regulation 381 and 382, which requires that officer and constable, who fell ill during leave must apprise to the Superintendent of Police in writing, but no such compliance of Regulation 381 and 382 has been made, which has been incorporated for the purpose of bonafide illness.

28. Learned counsel for the State lastly invited attention of this Court to the oral statements of the doctors certifying illness and the statements of Gram Pradhan, who had deposed with respect to collapse and reconstruction of the house but the statements of these witnesses did not find favour during inquiry for the detailed reasons recorded in the inquiry report and this Court would not embark on the truthfulness of their statements as this Court cannot function as an appellate authority to the disciplinary proceedings already conducted, except with a limited interference, which is permissible within the four corners of judicial review, that is with respect to procedural lapses but the appreciation of defence evidence by enquiry officer does not seem to be perverse on the basis of material available before this court.

E. RELEVANT RULES

29. It is apt to have glimpse of relevant rules under which disciplinary proceedings have been undertaken i.e. **the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991:-**

“4. Punishment:-(1) The following punishment may, for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely-

a) Major Penalties-

(i) Dismissal from service.

(ii) Removal from service.

(iii) Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.

(b) Minor Penalties-

(i) Withholding of promotion.

(ii) Fine not exceeding one months' pay.

(iii) Withholding of increment, including stoppage at an efficiency bar.

(iv) Censure.

Sub Rule (1) of Rule 5 of the Rules 1991 provides as under:-

5. Procedure for award of punishment.-(1) The cases in which major punishments enumerated in Clause (a) of sub-rule (1) of Rule 4 may be awarded, shall be dealt with in accordance with the procedure laid down in sub-rule (1) of Rule 14.

Sub-rule (1) of Rule 14 of the Rules 1991 postulates as under:-

14. *Procedure for conducting departmental proceedings-* (1) *Subject to the provisions contained in these Rules the departmental proceedings in the case referred to in sub-rule (1) of Rule 5 against the Police Officers, may be conducted in accordance with the procedure laid down in Appendix I. Appendix I of the Rules 1991 provides as under:-*

*"PROCEDURE RELATING TO THE CONDUCT OF DEPARTMENTAL PROCEEDINGS
AGAINST POLICE OFFICER
[See RULE 14(1)]*

Upon institution of a formal enquiry such police officer against whom the enquiry has been instituted shall be informed in writing of the grounds on which it is proposed to take action and shall be afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be used in the form of a definite charge or charges as in Form-1 appended to these Rules which shall be communicated to the charged police officer and which shall be so clear and precise as to give sufficient indication to the charged police officer of the facts and circumstances against him. He shall be required, within a reasonable time, to put in, in a written statement of his defence and to state whether he desires to be heard in person. If he so desires, or if the Inquiry officer so directs an oral enquiry shall be held in respect of such of the allegation as are not admitted. At that enquiry such oral evidence will be recorded as the Inquiry Officer considers necessary. The charged police officer shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish:

Provided that the Inquiry Officer may, for sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the ground thereof. The Inquiry Officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged police officer."

Sub Rule (2) of Rule 5 of the Rules 1991 provides as under:-

(2) The cases in which minor punishments enumerated in Clause (b) of sub-rule (1) of Rule 4 may be awarded, shall be dealt with in accordance with the procedure laid down in sub-rule (2) of Rule 14.

Sub-rule (2) of Rule 14 of the Rules 1991 postulates as under:-

(2) Notwithstanding anything contained in sub-rule (1) punishments in cases referred to in sub-rule (2) of Rule 5 may be imposed after informing the Police Officer in writing of the action proposed to be taken against him and of the imputations of act or omission on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal."

30. It is a peculiar case where the order of removal was stayed by this Court vide order dated 15.10.2024, which is extracted as under:-

"Learned standing counsel prays for and is granted four weeks' time to file a counter affidavit. Thereafter, the petitioner is granted another two week's time to file a rejoinder affidavit.

List this case after two months.

Till further orders of this Court, the operation of the impugned order dated 17.04.2000 Annexure -1 to the writ petition shall remain stayed. ”

31. In compliance of interim order dated 15.10.2024 admittedly the petitioner was reinstated in service since 19.11.2005 and discharged his duties till retirement on 31.07.2024 and as per counsel for the petitioner, the petitioner was promoted to the post of head constable in the year 2016, and also receiving the provisional pension, hence, the validity of impugned orders and its effects are to be examined keeping in view the subsequent developments after order of removal was passed.

F. ANALYSIS AND REASONING

32. The counsel for petitioner in order to buttress his submission that regulation 381 and 382 of UP Police Regulations are not mandatory has relied upon coordinate bench judgment of this court dated 30.01.2019 rendered in **Writ A No. 16983 of 2001 titled as Vidya Ram vs. Deputy Inspector General of Police, Agra and others** and judgment of this court dated 30.01.2019 rendered in **Writ A No. 16983 of 2001 titled as Vidya Ram vs. Deputy Inspector general of police, Agra and others** and coordinate bench judgement of this Court in **Writ-A No. 17878 of 2013 'Manindar Kumar Singh Versus State of U.P. and others** in which the judgement of **Vidya Ram** (supra) was taken note of. This court in **Vidya Ram** (supra) has observed in para 6 and 7:

“6. This Court in Yashwant Singh Vs. State of U.P. and others, 2012 (3) ADJ 108 had an occasion to deal with the provisions of Para-382 of U.P. Police Regulations. This Court, upon a plain reading of Paras 381 and 382 of the police Regulations has observed that a presumption is sought to be drawn by the respondents against the genuineness of medical certificate unless it is obtained from a District Government Hospital. Paras 16 to 19 of the judgment is apposite for the present purposes and is reproduced hereinafter:-

"16. Thus, from the findings of enquiry officer it is clear that the medical certificate submitted by the petitioner in respect of his illness during the period of his unauthorised absence from duty was neither doubted nor disputed by the enquiry officer, nevertheless inquiry officer and disciplinary authority have held the petitioner guilty of negligent in discharge of his duty merely on account of fact that while on unauthorized absence from duty he did not observe the provisions contained in para 381 and 382 of the U.P. Police Regulations, which reads as under:-

"381. It is incumbent on all applicants for medical leave or extension of leave on medical certificates to apprise the Superintendent of Police in writing of their intention to apply for a medical certificate. Any failure to do so may result in a decision that the medical certificate has been obtained by misrepresentation and may thereby entail serious consequences.

382. Under-officers and constables who fall ill when on duty or who are ill when due to return to duty, must apply for admission to the district police hospital or for treatment at the nearest dispensary, if the police hospital is out of easy reach. The fact of their admission or treatment must be reported to the local Superintendent of Police who unless they are his own subordinates will take immediate steps to communicate the fact to the Superintendent of Police whose subordinates they are. Officers of higher rank are not compelled to apply for admission to

police hospitals, but are not relieved of the responsibility, while on leave of intimating their intention of obtaining a medical certificate to the Superintendent of Police as prescribed above."

17. From a plain reading of para 381 of the U.P. Police Regulations, it is clear that any police personnel, who wants to take medical leave on medical certificate must apprise the Superintendent of Police in writing of his intention to apply for a medical certificate and any failure to do so entails serious consequence and raise presumption that the medical certificate obtained by such police personnel is based on misrepresentation and further para 382 of the said Regulations postulates that under-officers and constables who fall ill while on duty must apply for admission to the district hospital or for treatment at the nearest dispensary, if the district hospital is out of easy reach. The fact of their admission or treatment must be reported to the local Superintendent of Police who unless they are his own subordinates will take steps to communicate the fact to the Superintendent of Police whose subordinates they are. Officers of higher rank are not compelled to apply for such admission to police hospital, but they are not relieved of the responsibility of intimating their intention of obtaining a medical certificate to the Superintendent of Police as prescribed under para 381 of the Regulations. These police Regulations are administrative instructions compiled in the U.P. Police Regulations. They have no statutory force. Non-compliance/observance of aforesaid regulations by sub-ordinate police officers entails serious consequence by raising presumption of misrepresentation by them in obtaining medical certificate for grant of medical leave, such presumption appears to have been raised by deeming provisions in the Regulation 381 of Police Regulations.

18. A legal fiction is one which is not an actual reality but which the law requires the court to accept it as a reality, therefore, in case of legal fiction, the court believes something to exist which in reality does not exist. It is nothing but a presumption of the existence of a state of affairs, which in actual reality is non-existent. In this connection, it would be useful to refer statements of law contained in few passage of IV Edition of Legislation and Interpretation (By Late Jagadish Swarup) at page 307 and 308:

"A legal fiction is one which is not an actual reality but which the law requires the Court to accept it as a reality. Therefore, in case of legal fiction, the Court believes something to exist which, in reality, does not exist. In other words, it is nothing but a presumption of the existence of a state of affairs which in actual reality is non-existent. When viewed from this context there is not much difference between a legal fiction and a presumption. However, it cannot be said that legal fiction and a presumption are wholly identical in all respects. A presumption may be conclusive or it may be rebuttable. A presumption gives rise to a legal fiction. It is conclusive, if no evidence can be permitted to be led to deny it. In case of a presumption which is rebuttable, unless the contrary is established, fictitious state of affairs is presumed to exist as if it is an actual reality.

A deeming provision creates a legal fiction. The effect of such a legal fiction is that a position which otherwise would not obtain is deemed to obtain under certain circumstances.

A deeming fiction can not be introduced by construction and it is the exclusive privilege of the legislature to apply a deeming fiction in a given case."

19. Thus from the aforesaid statements of law, it is clear that such deeming provision creates legal fiction through the statute. A legal fiction through deeming provision can not be introduce by the interpretation and it is exclusive privilege of the legislature to apply a deeming fiction in a given case, therefore, such deeming provision, in my view, can not be created through administrative instructions. The aforesaid view also finds support from various decisions of Apex Court including a decision rendered in *V.C., Banaras Hindu University Vs. Shree Kant*, 2006 (11)

S.C.C. 42: AIR 2006 S.C.2304: 2006(4) ALJ 578 wherein it has been held that no legal fiction in law can be created by an administrative order. Thus the aforesaid presumption raised by the Regulation 381 of the Police Regulation is beyond the scope of authority under law, as such can not be sustained, therefore, the aforesaid presumption raised by said regulation is liable to be ignored and a substantial compliance thereof, in my opinion, would be sufficient.

7. I am in respectful agreement with the view taken by this Court that presumption can be drawn only on the basis of a legislative provision and the authorities would not be justified in relying upon administrative circular to draw such presumption."

33. Further, the counsel for the petitioner in order to buttress his submissions placed the reliance on judgment of the Hon'ble Supreme Court, in the case of **Krushna Kant B. Parmar Vs. Union of India and another, (2012) 3 SCC 178**, to contend that 'absence for a reason', cannot be said to be a willful absence.

34. It is also submitted that the absence was the result of compelling circumstances under which it was not possible to report or perform duty and thus his absence could not be held to be wilful. It is contended that the absence of the petitioner was not wilful and he was prevented on account of his health condition, and therefore his case is clearly covered under the exception carved out by the Hon'ble Supreme Court in **Krushna Kant B Parmar** (supra).

35. Reference may be had to the judgment of Hon'ble Supreme Court in **Krushna Kant B Parmar** (supra). The Hon'ble Supreme Court has held as under:

"16. In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a government servant. The question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct."

36. In **Krushna Kant B Parmar** (supra), Hon'ble Supreme Court has held that the question whether unauthorised absence from duty amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances. If the absence is the result of compelling circumstances, under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to

unauthorised absence, but it does not always mean willful. There may be compelling circumstances beyond his control like illness, accident, hospitalization, etc., and in such cases the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant. If allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in the absence of such finding, the absence will not amount to misconduct.

37. Reference may further be had to the Judgment of Hon'ble Supreme Court of India in **Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108**, wherein Hon'ble Supreme Court has explained **Krushna Kant B Parmar** (supra) and has held as under:

"19. In Jagdish Singh (supra) the Court took note of the fact that the appellant therein was a sweeper and had remained absent on four spells totalling to fifteen days in all in two months. In that context, the Court observed thus: -

"The instant case is not a case of habitual absenteeism. The appellant seems to have a good track record from the date he joined service as a sweeper. In his long career of service, he remained absent for fifteen days on four occasions in the months of February and March 2004. This was primarily to sort out the problem of his daughter with her in-laws. The filial bondage and the emotional attachment might have come in his way to apply and obtain leave from the employer. The misconduct that is alleged, in our view, would definitely amount to violation of discipline that is expected of an employee to maintain in the establishment, but may not fit into the category of gross violation of discipline. We hasten to add, if it were to be habitual absenteeism, we would not have ventured to entertain this appeal."

20. If both the decisions are appositely understood, two aspects clearly emerge. In Shri Bhagwan Lal Arya (supra), the Court took note of the fact, that is, production of proper medical certificate from a Government medical doctor and opined about the nature of misconduct and in Jagdish Singh (supra) the period of absence, status of the employee and his track record and the explanation offered by him. In the case at hand, the factual score being different, to which we shall later on advert, the aforesaid authorities do not really assist the respondent.

21. Learned counsel for the respondent has commended us to the decision in Krushnakant B. Parmar v. Union of India and another[10] to highlight that in the absence of a finding returned by the Inquiry Officer or determination by the disciplinary authority that the unauthorized absence was willful, the charge could not be treated to have been proved. To appreciate the said submission we have carefully perused the said authority. In the said case, the question arose whether "unauthorized absence from duty" did tantamount to "failure of devotion to duty" or "behavior unbecoming of a Government servant" inasmuch as the appellant therein was charge-sheeted for failure to maintain devotion to duty and his behavior was unbecoming of a Government servant. After adverting to the rule position the two-Judge Bench expressed thus: -

"16. In the case of the appellant referring to unauthorized absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behavior was unbecoming of a government servant. The question whether "unauthorized absence from duty" amounts to failure of devotion to duty or behavior unbecoming of a government servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances.

17. *If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behavior unbecoming of a government servant.*

18. *In a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in the absence of such finding, the absence will not amount to misconduct."*

22. *We have quoted in extenso as we are disposed to think that the Court has, while dealing with the charge of failure of devotion to duty or behavior unbecoming of a Government servant, expressed the aforesaid view and further the learned Judges have also opined that there may be compelling circumstances which are beyond the control of an employee. That apart, the facts in the said case were different as the appellant on certain occasions was prevented to sign the attendance register and the absence was intermittent. Quite apart from that, it has been stated therein that it is obligatory on the part of the disciplinary authority to come to a conclusion that the absence is willful. On an apposite understanding of the judgment we are of the opinion that the view expressed in the said case has to be restricted to the facts of the said case regard being had to the rule position, the nature of the charge levelled against the employee and the material that had come on record during the enquiry. It cannot be stated as an absolute proposition in law that whenever there is a long unauthorized absence, it is obligatory on the part of the disciplinary authority to record a finding that the said absence is willful even if the employee fails to show the compelling circumstances to remain absent.*

23. *We have quoted in extenso as we are disposed to think that the Court in Krushnakant B. Parmar case has, while dealing with the charge of failure of devotion to duty or behaviour unbecoming of a government servant, expressed the afore stated view and further the learned Judges have also opined that there may be compelling circumstances which are beyond the control of an employee. That apart, the facts in the said case were different as the appellant on certain occasions was prevented to sign the attendance register and the absence was intermittent. Quite apart from that, it has been stated therein that it is obligatory on the part of the disciplinary authority to come to a conclusion that the absence is wilful. On an apposite understanding of the judgment Krushnakant B. Parmar case we are of the opinion that the view expressed in the said case has to be restricted to the facts of the said case regard being had to the rule position, the nature of the charge levelled against the employee and the material that had come on record during the enquiry. It cannot be stated as an absolute proposition in law that whenever there is a long unauthorised absence, it is obligatory on the part of the disciplinary authority to record a finding that the said absence is wilful even if the employee fails to show the compelling circumstances to remain absent.*

24. *In this context, it is seemly to refer to certain other authorities relating to unauthorised absence and the view expressed by this Court. In State of Punjab v. P.L. Singla , (2008) 8 SCC 469 the Court, dealing with unauthorised absence, has stated thus :*

"11. Unauthorised absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorised absence by accepting the explanation and sanctioning leave for the

period of the unauthorised absence in which event the misconduct stood condoned. The second is to treat the unauthorised absence as a misconduct, hold an enquiry and impose a punishment for the misconduct."

25. Again, while dealing with the concept of punishment the Court ruled as follows :

"14. Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence."

26. In *Tushar D. Bhatt v. State of Gujarat* (2009) 11 SCC 678, the appellant therein had remained unauthorisedly absent for a period of six months and further had also written threatening letters and conducted some other acts of misconduct. Eventually, the employee was visited with order of dismissal and the High Court had given the stamp of approval to the same. Commenting on the conduct of the appellant the Court stated that he was not justified in remaining unauthorisedly absent from official duty for more than six months because in the interest of discipline of any institution or organisation such an approach and attitude of the employee cannot be countenanced.

27. Thus, the unauthorised absence by an employee, as a misconduct, cannot be put into a straitjacket formula for imposition of punishment. It will depend upon many a factor as has been laid down in *P.L. Singla*."

38. The Hon'ble Supreme Court in **Chennai Metropolitan Water Supply & Sewerage Board** (supra) after examining **Krushna Kant B Parmar** (supra) has held that the view expressed in **Krushna Kant B Parmar** (supra), that there may be compelling circumstances which are beyond the control of an employee and that it is obligatory on the part of the disciplinary authority to come to a conclusion that the absence is wilful, has to be restricted to the facts of the said case regard being had to the rule position, the nature of the charge levelled against the employee and the material that had come on record during the enquiry. It cannot be stated as an absolute proposition in law that whenever there is a long unauthorised absence, it is obligatory on the part of the disciplinary authority to record a finding that the said absence is wilful even if the employee fails to show the compelling circumstances to remain absent.

39. The Hon'ble Supreme Court thereafter referred to the Judgment in **P.L. Singla** (supra) wherein it is held that unauthorised absence (or overstaying leave), is an act of indiscipline and whenever there is an unauthorised absence by an employee, two courses are open to the employer. First is to condone the unauthorised absence by accepting the explanation and sanctioning leave for the period of the unauthorised absence in which event the misconduct stood condoned and the second is to treat the unauthorised absence as a misconduct, hold an enquiry and impose a punishment for the misconduct. Where the explanation offered by the employee is not satisfactory, the employer would take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without

cumulative effect. The extent of penalty would depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence.

40. The Hon'ble Supreme Court held that unauthorised absence by an employee, as a misconduct, cannot be put into a straitjacket formula for imposition of punishment. It will depend upon many factors as has been laid down in P.L. Singla (supra).

41. The Hon'ble Supreme Court has laid down the scope, extent and parameters of judicial review in disciplinary action. Hon'ble Supreme Court in **Railways v. Rajendra Kumar Dubey, (2021) 14 SCC 735** has held as under:

"21.1. We will first discuss the scope of interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings. It is well settled that the High Court must not act as an appellate authority, and reappreciate the evidence led before the enquiry officer. We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.

21.2. In State of A.P. v. S. Sree Rama Rao, AIR 1963 SC 1723] , a three-Judge Bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however, interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If, however, the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.

21.3. These principles were further reiterated in State of A.P. v. Chitra Venkata Rao, (1975) 2 SCC 557. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal.

21.4. In subsequent decisions of this Court, including *Union of India v. G. Ganayutham*, (1997) 7 SCC 463, *RPF v. Sai Babu*, (2003) 4 SCC 331, *Chennai Metropolitan Water Supply & Sewerage Board v. T.T. MuraliBabu*, (2014) 4 SCC 108, *Union of India v. Manab Kumar Guha*, (2011) 11 SCC 535, these principles have been consistently followed.

21.5. In a recent judgment delivered by this Court in *State of Rajasthan v. Heem Singh*, (2021) 12 SCC 569 this Court has summed up the law in following words:

“37. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy -- deference to the position of the disciplinary authority as a fact-finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognised it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to reappreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain.”

42. The Hon'ble Supreme Court in **Railways v. Rajendra Kumar Dubey** (supra) after referring to various decisions has laid down principles which can be summarized as follows:

- i. the jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction;
- ii. the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant;

- iii. *it is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence;*
- iv. *High Court may interfere with the proceedings:*
 - (a) *where principles of natural justice has not been complied with,*
 - (b) *where the findings are based on no evidence, which may reasonably support the conclusion of guilt, or*
 - (c) *there is violation of the statutory rules prescribing the mode of enquiry, or*
 - (d) *the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or*
 - (e) *allowed themselves to be influenced by irrelevant considerations, or*
 - (f) *where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion.;*
- v. *if, the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition;*
- vi. *findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings; and*
- vii. *an error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be.*

On careful reading of judgement of T.T Murlibabu (supra) Krushna kant B. Parmar (supra) coupled with finding contained in the enquiry report in this case, it comes out that Hon'ble Supreme Court had already taken note of judgement of Krushnakant B. Parmar in the case of T.T. Murlibabu (Supra) and has observed that the "It cannot be stated as an absolute proposition in law that whenever there is a long unauthorised absence, it is obligatory on the part of the disciplinary authority to record a finding that the said absence is wilful even if the employee fails to show the compelling circumstances to remain absent "

43. The contention of counsel for the petitioner so far it relates to medical certificates are not forged or fabricated and even inquiry officer did not held that the medical certificates relied upon by the petitioner are forged documents as such the cause for absence ought to have been considered a genuine one and in order to support such submissions, counsel for the petitioner relied upon the judgement of Hon'ble Supreme Court in the case of **Chhel Singh v. M.G.B. Gramin Bank Pali & others reported (2014) 13 SCC 166.**

44. Even if the medical certificates relied upon by the petitioner are not declared to be forged by inquiry officer, even then the medical certificates are not for entire period of 160 days, for which the unauthorized absence has been sought to be condoned, as such the medical certificates so relied by the petitioner is of hardly any use particularly in backdrop of the analysis and reasoning given by inquiry officer that the petitioner did not appear to be ill on the date when firstly he sought extension of his leave as the only ground was mentioned in the leave application that his house stood collapsed, as such the leave may be extended, hence, the plea of illness for the entire period of illness did not inspire confidence of inquiry officer for which no findings can be substituted by

this Court in jurisdiction of judicial review under Article 226 of the Constitution of India as such the judgement of Hon'ble Supreme Court is of hardly any assistance to the case of the petitioner.

45. Learned counsel for the petitioner further relied upon a coordinate bench judgement of this Court rendered in Writ-A No.17878 of 2013 '**Manindar Kumar Singh Versus State of U.P. and others**' and on the strength of said decision has submitted that the medical certificates relied by the delinquent employee should not be ignored only on the ground that the medical practitioner issuing such certificates was stationed at a distant place from the petitioner's place of posting but such is not the reasons/analysis mentioned in the inquiry report for discarding the medical certificates so submitted by the writ petitioner, hence, the said authority of law is of no help for the case of the petitioner.

46. The Regulation 381 as contained in Police Regulations even if are treated to be not mandatory and the explanation in that regard can be offered while submitting reply to the show cause notice even then the same is directory and such regulations needs to be adhered with. Even if Regulation 381 and 382 are not given much credence as non submitting information qua illness can be explained while filing medical certificates and seeking leave, even then in peculiar facts of this case what emerges is inquiry officer had found that even after having fitness certificate dated 27.07.1999, the petitioner did not report to the duties till 20.10.1999, which reflects indiscipline on the part of the petitioner.

47. The Hon'ble Supreme Court in the case of '**State of Punjab Vs. P.L. Singla reported in AIR 2009 SCC 1149**' has held that the extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence.

48. It is no more res integra that where the punishment is either dismissal or removal, it may not be necessary to pass any consequential orders relating to the period of unauthorized absence (unless the rules require otherwise). Where the punishment awarded for the unauthorized absence does not result in severance of employment and the employee continues in service, it will be necessary to pass some consequential order as to how the period of absence should be accounted for and dealt with in the service record. If the unauthorized absence remains unaccounted, it will result in break in service, thereby affecting the seniority, pension, pay etc., of the employee. Any consequential order directing how the period of absence should be accounted for is for an accounting and administrative procedure, which does not affect or supersede the order imposing punishment.

49. In view of the judgement of Hon'ble Supreme Court in the case of P.L. Singla (supra), since one of the punishment is removal from service and if that subsists there was absolutely no need for passing separate order qua relating to period of unauthorized absence, which is dated 17.04.2000 contained as Annexure 2 to this Writ Petition as the removal from service would definitely result in severance of employment, thus the order dated 17.04.2000 forfeiting salary of the petitioner was completely uncalled for and it is only if any other punishment except removal or dismissal is passed then the period of absence should be accounted for and dealt with.

50. In the case in hand, since the order of removal was passed as such it was not strictly required to pass the order of forfeiture of salary treating the period as 'dies non' but if order of removal is interfered with on a sympathetic consideration treating that petitioner had rendered long service then it would be justified to either maintain the order of forfeiture of salary or to pass a fresh order in relation to same.

51. The counsel for petitioner while assailing the validity of impugned orders of removal from service had strenuously urged that the past conducts of the petitioner had been considered for awarding major penalty but neither in the chargesheet nor in the show cause notice the past conduct of petitioner was made a charge, therefore the order of punishment stands vitiated on this count too and to buttress his submission he has relied upon the coordinate bench judgement rendered in **W.P. No.1192 (S/S) of 2019 'Sanjay Misra v. Director, Sanjay Gandhi Post Graduate Institute and another'** and the judgement of Hon'ble Supreme Court in the case of **Mohd. Yusuf Khan v. State of Uttar Pradesh and others reported in (2010) 10 SCC 539 33.**

52. It is trite law that the past conduct of the petitioner cannot be sole foundation for awarding the punishment unless such conduct is mentioned either in the chargesheet or in the show cause notice. But in the case in hand, record transpires that the past conduct of the petitioner has been taken into account by the inquiry officer as well as reference of the same has been made in the impugned order of punishment even then the past conduct is not the foundation for awarding the major penalty that is the removal from service, rather that may be one of the background, which has been reflected but independently the inquiry officer had proved the charge of unauthorized absence of 160 days and the disciplinary authority has passed independently the order of removal from service solely on the charge of unauthorized absence of 160 days and the past conduct is not the foundation for passing the impugned order of removal (emphasis supplied). Thus, the judgements of **Mohd. Yusuf Khan** (supra) and **Sanjay Misra** (supra) are hardly of any avail to the petitioner in the facts of this case.

53. The Hon'ble Supreme Court had an occasion to consider whether the reference of past conduct while imposing final punishment is relevant or not particularly when such past conduct has not been referred to in the chargesheet making a distinct charge or any show cause notice has been given. It is apposite and profitable to note paragraph nos.10, 11, 19 and 20 rendered in the judgment in **State of Punjab and Ors. Vs. Ex. C. Satpal Singh reported in 2025 AIR SC 4011** for the reference of past conduct and the same are extracted as under :-

"10.The learned counsel for the appellants has argued that as a matter of fact, the dismissal order of the respondent was not based on the previous misconduct but was solely based on the misconduct for which the disciplinary enquiry was initiated against him, which was for unauthorised absence of around 37 days from 04.04.1994 to 12.05.1994. The learned counsel for the appellants has submitted that the reference of the previous conduct of the respondent in the dismissal order was only for adding the weight to the decision of imposing the punishment of dismissal.

11.It is contended that this Court in K. Manche Gowda's case (supra) had ruled that a dismissal order based on the past conduct must precede a show cause notice detailing out the previous misconduct which is to be considered by the disciplinary authority while imposing the

*punishment. However, in the present case, the previous misconduct of the respondent was not the basis for imposing the punishment of dismissal and reference of the previous misconduct was only mentioned, apart from the indiscipline for which punishment was imposed. In support of the above argument, learned counsel for appellants has placed reliance on the decision of this Court rendered in *India Marine Service Private Ltd. v. Their Workmen and Union of India v. Bishamber Das Dogra*.*

19. This Court, in *K. Manche Gowda's case (supra)*, has held that if the past conduct of an employee is the basis for imposing punishment, the department is obliged to disclose that his past record will also be taken into consideration while inflicting punishment. Now, the question arises for consideration is whether the disciplinary authority had taken into consideration the past conduct of the respondent while passing the dismissal order. From careful reading of the dismissal order reproduced hereinabove, it appears that the disciplinary authority had clearly observed that it had perused the report of enquiry and conclusion thoroughly, whereby the respondent was held guilty for the unauthorized absence and agreed with the conclusion of the enquiry officer. The disciplinary authority had further mentioned regarding the issuance of show cause notice to the respondent and had observed that despite the receipt of the show cause notice, the respondent did not submit his reply, which shows that the respondent accepted the allegation against him. Thereafter, the disciplinary authority had noted that 17 years of service of the respondent were forfeited as a result of his absence for 224 days and for which he was punished accordingly.

20. To properly understand the controversy in the light of question framed, it is necessary to examine the relevant judicial precedents, as discussed below. This Court in the case of *India Marine Services Private Ltd. (supra)*, dealt with the case of punishment awarded to an employee in a similar situation, as follows:-

"7.It is true that the last sentence suggests that the past record of Bose has also been taken into consideration. But it does not follow from this that that was the effective reason for dismissing him. The Managing Director having arrived at the conclusion that Bose's services must be terminated in the interest of discipline, he added one sentence to give additional weight to the decision already arrived at. Upon this view it would follow that the Tribunal was not competent to go behind the finding of the Managing Director and consider for itself the evidence adduced before him. The order of the Tribunal quashing the dismissal of Bose and directing his re-instatement is, therefore, set aside as being contrary to law."

30. In view of the above, it is evident that it is desirable that the delinquent employee may be informed by the disciplinary authority that his past conduct would be taken into consideration while imposing the punishment. But in case of misconduct of grave nature or indiscipline, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the employee for adding the weight to the decision of imposing the punishment if the facts of the case so require."

54. The Hon'ble Supreme Court in the case of **Central Industrial Security Force and others Vs. Abrar Ali reported in (2017) 4 SCC 507** has held that order of dismissal from service after considering earlier punishment on account of his act of indiscipline and negligence does not amount to double jeopardy and the past conduct of delinquent employee can be taken into consideration and has further held as under:-

"13. Contrary to findings of the disciplinary authority, the High Court accepted the version of the respondent that he fell ill and was being treated by a local doctor without assigning any reasons. It was held by the disciplinary authority that the unit had better medical facilities which could have been availed by the respondent if he was really suffering from illness. It was further held that the delinquent did not produce any evidence of treatment by a local doctor. The High Court should not have entered into the arena of facts which tantamounts to reappreciation of evidence. It is settled law that reappreciation of" evidence is not permissible in the exercise of jurisdiction under Article 226 of Constitution of India.

55. Thus, it is crystal clear that as in the present case also the disciplinary authority while imposing the penalty had merely referred the previous/past conduct of habitual absenteeism. The order of removal from service is not based on the cumulative effect of charges of continued misconduct to be incorrigibility and complete unfitness for police service, therefore, mere reference of the past conduct would not amount to constitute foundation for removal from service. Thus, the reference of past conduct in the order impugned or in the inquiry report is hardly any relevance.

56. The counsel for the petitioner has invited attention of this Court towards the recommendation contained in the inquiry report to the effect that major penalty of 'removal from service' may be inflicted in view of the charges having been proved and further urged that such recommendation is beyond the competence of inquiry officer, as the same would make the disciplinary authority's mind biased while passing the final order. In order to substantiate the said submission, learned counsel for the petitioner has relied upon the judgement rendered by this Court in **Service Bench No.6202 of 2016 'State of U.P. Thru Secy. Home Department & Ors. v. State Public Service Tribunal Indira & Ors.'** and on the basis of said authority it has been submitted that the appendix I as referable to Rule 14 (1) of 1991 Rules provides that the inquiry officer can recommend for award of the punishment but such recommendation is not permissible along with inquiry report, rather the inquiry officer may also separately from these proceedings, makes his own recommendation regarding the punishment to be imposed on the charged police officer. Appendix-I as contemplated under Rule 14(1) of the Rules provides as under:

".....The proceedings shall contain a sufficient record of the evidence and statement of the finding and the ground thereof. The Inquiry Officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Police Officer."

57. The aforesaid provision itself goes to indicate that the word 'separately' connotes recommendation has to be made **distinctly/ separately**, but in the case in hand, recommendation has not been made separately, and it has been made along with the enquiry report. If the Appendix-1 contemplates making of recommendation separately, then it was incumbent upon the enquiry officer to make the recommendation separately. If the recommendation is composite, then the same is defective and the said recommendation will not fulfill the requirement of Appendix-1. If the law requires to do a particular thing in a particular manner, then it is to be done in that manner only. The Hon'ble Supreme Court in the case of State of U.P. vs. Singhara Singh and others AIR 1964 SC 358, has said so. Learned Additional Standing Counsel neither could point out nor put up a convincing argument that the punishment would be recommended by the enquiry officer in a

composite manner. Thus, the argument of counsel for petitioner that there should not be a composite enquiry report containing the recommendation rather ought to have been separately finds favour of this court and is decided in favour of petitioner.

58. The petitioner further relied upon the judgement of Hon'ble Supreme Court in the case of **'State of U.P. and others v. Saroj Kumar Sinha'** reported in (2010) 2 SCC 772 and pointed out paragraph no.22 in which it has been mentioned that an inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/government, his function is to examine the evidence presented by the department. There cannot be any quarrel on the settled position of law, but the authority in the case of **Saroj Kumar Singh** (supra) is of no assistance to the petitioner as no bias has been alleged against the inquiry officer and it has been pleaded nowhere that enquiry officer had not acted as an independent adjudicator.

59. Learned counsel for the petitioner has lastly relied upon the judgement of this Court passed by coordinate bench in the case of **Mirza Barkat Ali v. Inspector General of Police Allahabad and others** reported in (2002) 2 UPLBEC 1871 and **Ram Ujagar Yadav v. The State of U.P. and others (Civil Misc. Writ Petition No.2316 of 1999)** dated 06.03.2006 and submitted that the quantum of punishment is disproportionate with the gravity of charges but it is no more res-integra in the light of judgement of Hon'ble Supreme Court in the case of **Chennai Metropolitan Water Supply and Sewerage Board and others vs. T.T. Murali Baby** reported in (2014) 4 SCC 108 that unauthorized absence of an employee as a misconduct cannot be put in a straight-jacket formula for imposition of punishment, which depends on various factors and the order of dismissal was restored by Hon'ble Supreme Court, but at the same time keeping in view the length of service of petitioner, and admitted position of superannuation and promotion in interregnum are peculiar features of this case, impels this Court to take different view.

60. With respect to relief on punishment found disproportionate the Hon'ble Supreme Court in the case of **Union of India and others Vs. Datta Linga Toshatwad** reported in 2006 SCC (L & S) 1504 has held that the High Court is competent to remit the matter back to disciplinary authority to reconsider the matter as regard to punishment, thus, the matter is remitted back to the disciplinary authority for taking appropriate decision with respect to punishment in peculiar facts of this case as petitioner had rendered 36 years of service i.e. 16 years of service prior to removal and 20 years of service after his reinstatement in the light of interim protection granted by this court and was also promoted to the post of head constable in the year 2016 thus, excluding 4 years when petitioner was out of service the petitioner has completed 36 years of service and reached the age of superannuation and is receiving the provisional pension.

61. It is trite law that the Court or Tribunal cannot interfere with the discretion of punishing authority in imposing particular penalty but this rule has an exception, if the penalty is grossly disproportionate and does not commensurate with the misconduct committed then the Court can interfere as held in the case of **Alexandar Pal Singh Vs. Divisional Operating Superintendent** reported in 1987 (ATC) 922 Supreme Court.

G. CONCLUSION

62. This court is mindful that writ petitioner has reached the age of superannuation and has served the department for 36 years and was promoted in interregnum and at present is drawing provisional pension, thus in view of aforesaid admitted factual position the order of removal from service is disapproved in the facts of this case and the matter is relegated back for fresh decision as no reply in relation to quantum of punishment could be received despite the mandate contained in Rule 14(2) of 1991 Rules.

63. Accordingly, the impugned orders are **set-aside** and the disciplinary authority is directed to consider imposition of any other punishment, except dismissal or removal from service and pass necessary order in this regard including fresh order in relation to salary for the period of unauthorized absence after putting the petitioner under notice qua the quantum of punishment proposed having removal order been set-aside.

64. The fresh order in pursuance to remand by this court would be passed by the competent authority within a month after receipt of certified copy of this order and all the consequent post retiral dues shall be recalculated and be released within next one month.

65. Accordingly, the writ petition is **partly allowed** in above said terms.

66. The cost is made easy.

(2026) 1 ILRA 489
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 07.01.2026

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Writ A No. 15238 of 2025

Ramesh Chandra

...Petitioner

Versus

U.P. Co-Operative Federation Ltd. & Ors. ...Respondents

Issue for Consideration

(1) Permissibility of awarding two punishment under Reg. 84 of the U.P. Co-operative Societies Employees Service Regulations, 1975.

Headnotes

(A) Service law – Disciplinary proceeding – Award of two punishments – Reduction in rank as well as recovery of amount to compensate the pecuniary loss – Permissibility. (E-1)

Held : Regulation 84 of the Regulations 1975 provides regarding the penalties, i.e., the recovery from pay or security deposit to compensate pecuniary loss caused to the cooperative society provided in clause (d) of the Regulation 84(i), and reduction in rank has been provided in clause (e) of the Regulation 84(i). From the bare reading of the aforesaid provisions, it is apparent that out of the penalties in clauses (d) and (e) of Regulation 84 (i), only one punishment can be awarded – The impugned order dated 15.1.2024 reveals that two

punishments are awarded- first one is of recovery of amount provided therein as compensation for causing loss to the Co-operative Society and secondly, the reduction in rank, which is impermissible as per the provisions of Regulation 84 of the Regulations 1975, as well as the law laid down by the Full Bench of this Court. [Para 11 and 13]

List of Acts

U.P. Co-operative Societies Employees Service Regulations, 1975 – Regulation 84.

List of Keywords

Punishment, Recovery, Loss to Federation, Inquiry report, Reduction in rank.

Case Arising From

Impugned order dated 15.01.2024 passed by the disciplinary authority.

Appearances for Parties

Advs. for the Appellant : Shishir Chandra.

Advs. for the Respondents : Shireesh Kumar.

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Heard Mr. Shishir Chandra, learned counsel for the petitioner and Mr. Shireesh Kumar, learned for the respondents.

2. The present petition has been preferred challenging the impugned order dated 15.1.2024 passed by the Managing Director of the respondent Federation, whereby an amount of Rs.73,06,857.03 has been shown to be recovered to compensate the loss to the Federation, as well as he was also awarded another punishment of reduction in rank.

3. The contention of the learned counsel for the petitioner is that the petitioner, who was working as a Store In-charge in the respondent Department, was placed under suspension in the year 2021, and thereafter, an inquiry officer was appointed, who served the charge sheet with a delay of 7 months, on 23rd April 2022. Further submission is that the petitioner filed reply to the charge sheet, and since the inquiry officer did not proceed, he filed Writ-A No.6848 of 2022, challenging the suspension order and further prayed for reinstatement with all consequential benefits. He added that subsequently, the inquiry officer submitted the inquiry report, and thereafter, the disciplinary authority passed the order impugned dated 15.1.2024.

4. It is argued by the learned counsel for the petitioner that the disciplinary authority, while passing the order dated 15.1.2024, has awarded two punishments; one for recovery of certain amount as to compensate the pecuniary loss stated to have caused to the Federation and secondly reduction in rank. He added that Regulation 84 of the U.P. Co-operative Societies Employees Service Regulations, 1975 (hereinafter referred to as 'the Regulation 1975') provides the various penalties.

5. Regulation 84 of the Regulations, 1975 is extracted as under:-

"84. Penalties. (i) Without prejudice to the provisions contained in any other regulation, an employee who commits a breach of duty enjoined upon him or has been convicted for criminal offence or an offence under section 103 of the Act or does anything prohibited by these regulations shall be liable to be punished by any one of the following penalties: -

- (a) censure,*
- (b) with holding of increment.*
- (c) fine on an employee of Category IV (peon, chaukidar, etc.).*
- (d) recovery from pay or security deposit to compensate in whole or in part for any pecuniary loss caused to the co-operative society by the employee's conduct,*
- (e) reduction in rank or grades held substantively by the employee.*
- (f) removal from service, or*
- (g) dismissal from service.*

(ii) Copy of order of the punishment shall invariably be given to the employee concerned and entry to this effect shall be made in the service record of the employee.

(iii) No penalty except censure shall be imposed unless a show cause notice has been given to the employee and he has either failed to reply within the specified time or his reply has been found to be unsatisfactory by the punishing authority.

(iv)(a) The charge-sheeted employee shall be awarded punishment by the appropriate authority according to the seriousness of the offence:

Provided that no penalty under sub-clause (e), (f) or (g) of clause (i) shall be imposed without recourse to disciplinary proceedings.

(b) No employee shall be removed or dismissed by an authority other than by which he was appointed unless the appointing authority has made prior delegation of such authority to such other person or authority in writing.

(v) The appointing authority or person authorised by him while passing orders for stoppage of increments shall state the period for which it is stopped and whether it shall have effect of postponing future increments or promotion."

6. Referring the aforesaid provisions, he submitted that Regulation 84(i)(d) of the Regulations, 1975 provides the recovery from pay or security deposit to compensate in whole or in part for any pecuniary loss caused to the co-operative society by the employee's conduct and further Regulation 84(i)(e) is with respect to the penalty of reduction in rank or grade. The order impugned is evident that both penalties have been awarded.

7. He also submitted that this matter travelled upto the Full bench wherein the reference has been decided as follows:-

"42. We, therefore, answer the questions referred to us as under: (1) Since evident contradiction in the language of Regulation 84 of Regulations, 1975 and Rule 83 of Rules, 1980, the aforesaid provisions cannot be harmonized, hence Regulation 84 of Regulations, 1975 shall prevail over Rule 83 of Rules, 1980 and only one of the punishments prescribed can be imposed as specifically stated in Regulation 84 of Regulations, 1975. (2) The Division Bench judgment in Virendra Kumar Gupta's case (supra) lays down correct law and otherwise view expressed by

learned Single Judge in Satya Narain Mishra's case (supra) as also expressed in the Reference order is not correct position of law.

Since, as per Regulation 84 of 'Service Regulations of 1975 only one punishment can be awarded and in the instant case, petitioner has been awarded more than one punishment vide impugned order dated 15.01.2024 passed by the respondent No.2 in view of Rule-83 (1) of 'Service Rules of 1980', hence in view of aforesaid settled law, punishment order dated 15.01.2024 is not tenable & illegal."

8. He argued that while answering the question, the Full Bench had also held that two punishments cannot be awarded, as Regulation 84 of the Regulations 1975 provides for awarding only one punishment. He pointed out that from the order impugned itself, it is apparent that two punishments have been awarded; first one is recovery of the amount to compensate the loss and the second one is of reduction in rank, which not only goes against the provision of Regulation 84 of the Regulation 1975 but also against the settled proposition of law by the Full Bench of this Court. Therefore, the submission is that the order impugned, is liable to be quashed.

9. Per contra, Mr. Shireesh Kumar, learned counsel appearing for the respondent Federation, has opposed the contention aforesaid and submitted that only one punishment has been awarded, i.e., reduction in rank. He has drawn attention towards the third paragraph at page 34 of the paper book and submitted that the recovery of the amount mentioned in the impugned order dated 15.1.2024 is not, in fact, a punishment as defined in the penalty under Regulation 84 but merely the amount, which has been computed for recovery against the petitioner for adjustment of the loss occurred to the Federation. Therefore, submission is that no interference is warranted in the order dated 15.1.2024.

10. Upon considering the submissions of the learned counsel for the parties, it is apparent that vide the order dated 15.1.2024, the disciplinary authority, i.e., the Managing Director of the Federation has passed the order for recovery of amount to the tune of Rs.73,06,857.03 and further another punishment has been awarded, i.e., reduction in rank.

11. The operative portion of the impugned order reads as under:-

"अतः एतद् द्वारा उपरोक्त प्रकरण में संघ को हुयी कुल वित्तीय क्षति 73,06,857.03 (रुपये तिहत्तर लाख छः हजार आठ सौ सत्तावन रुपये तीन पैसा) की क्षतिपूर्ति श्री रमेश चन्द्र से किये जाने के आदेश के साथ उपरोक्त कृत्य/अनिमियतता हेतु श्री रमेश चन्द्र को सहायक / भण्डारनायक के मूल वेतन पर प्रत्यावर्तित किये जाने के दण्ड के साथ उनके विरुद्ध स्थापित अनुशासनिक कार्यवाही को समाप्त करते हुये सेवा में बहाल किया जाता है।

श्री रमेश चन्द्र को जिला जिला कार्यालय, ललितपुर में तैनात किया जाता है।"

12. While this Court examines the impugned order in facts and law, it is apparent that Regulation 84 of the Regulations 1975 provides regarding the penalties, i.e., the recovery from pay or security deposit to compensate pecuniary loss caused to the cooperative society provided in

clause (d) of the Regulation 84(i), and reduction in rank has been provided in clause (e) of the Regulation 84(i). From the bare reading of the aforesaid provisions, it is apparent that out of the penalties in clauses (d) and (e) of Regulation 84 (i), only one punishment can be awarded.

13. This Court has also noticed that the reference made to the Full Bench has also been answered, clarifying the contradiction in the language of Regulation 84 of Regulations 1975 wherein it has been held that, as per Regulation 84 of the Regulations 1975, only one punishment can be awarded.

14. The impugned order dated 15.1.2024 reveals that two punishments are awarded- first one is of recovery of amount provided therein as compensation for causing loss to the Co-operative Society and secondly, the reduction in rank, which is impermissible as per the provisions of Regulation 84 of the Regulations 1975, as well as the law laid down by the Full Bench of this Court.

15. After the aforesaid observations, learned counsel for the respondents submits that the matter may be relegated to respondent no.2 to pass a fresh order, to which the learned counsel for the petitioner has no objection.

16. In view of the aforesaid, the order impugned dated 15.1.2024 is hereby quashed.

17. The matter is relegated back to the respondent no.2, Managing Director of the Federation to pass a fresh order, on the inquiry report submitted by the inquiry officer, within a period of six weeks from the date a certified copy of this order is produced before him, after affording opportunity of hearing to the petitioner.

18. With the aforesaid observations, the present writ petition is hereby allowed.

(2026) 1 ILRA 493
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.01.2026

BEFORE

THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Writ B No. 1159 of 1982

Mohd. Haneef & Ors.

...Petitioner

Versus

D.D.C. Sultanpur

...Respondent

Issue(s) for consideration

(i) Whether the consolidation authorities have power to ignore the sale deed which was not challenged or objected by its executor?

(ii) Whether the sale deed executed earlier but registered subsequently to registration of second sale deed of the same property will be valid?

Headnotes

A. Land Reform Law – U.P. Consolidation of Holdings Act, 1953: Section 9; India's Registration Act, 1908: Section 47; Transfer of Property Act, 1882: Section 54 – Till any sale deed is registered, mere execution thereof has no value and no right would be transferred. (Para 12)

Any sale deed would be effective only after its registration, therefore, if a sale deed is executed regarding a land without registration then if second sale deed is executed and also registered then the title regarding immovable property will pass through the second sale deed. Therefore, the earlier unregistered sale deed would be void even though same is registered subsequently to registration of the second sale deed because on the date of registration of a sale deed, title was already transferred regarding the property by a sale deed, though, executed subsequently but registered prior to the registration of the earlier sale deed as the document regarding transfer of property having value more than one hundred will not have any effect unless it is registered. (Para 14, 24)

B. Jurisdiction of consolidation authority - The consolidation authorities had no jurisdiction to cancel or ignore a voidable document because in such cases, civil court is only a proper forum to determine the validity of document or sale deed. However, if a sale deed or any document is void then the consolidation authorities have jurisdiction to disregard the same while determining the title to the land. (Para 16)

If the sale deed is void that does not require any adjudication to decide its validity then same can be ignored by the consolidation authorities but if a sale deed is voidable on the ground that it was obtained by fraud or misrepresentation then such sale deed cannot be ignored by the consolidation authorities till the civil court decides its validity at the instance of person defrauded. (Para 19, 24)

Therefore, the sale deed dated 09.06.1969 regarding Khata No.237 executed by Smt. Amina in favour of Abid Ali which was registered on 11.06.1969 will be a valid sale deed and prevail over the sale deed executed by Smt. Amina regarding Khata No.237 on 25.04.1969 but registered on 18.06.1969. Similarly, sale deed executed by Bachchu regarding Khata No.236 on 25.04.1969 and registered on 10.06.1969 will prevail over the sale deed dated 09.06.1969 of respondents and registered on 11.06.1969. (Para 25)

Matter is remanded back to Consolidation Officer to pass fresh order regarding mutation of the parties. Writ petition partly allowed. (E-4)

Case Law Cited:

1. Kanwar Raj Singh (D) Through Legal Representatives Vs. GEJO (D) Through Legal Representatives and others, (2024) 2 SCC 416 (Para 4)
2. Hamda Ammal Vs. Avadiappa Pathar and 3 Others, (1991) 1 SCC 715 (Para 4)
3. Salik Ram And Others Vs. Deputy Director of Consolidation, Shravasti And Others, 2025 (1) ADJ 290 (LB) (Para 4)
4. Mithilesh and others Vs. Deputy Director of Consolidation and Others, 2017 (139) RD 488 (Para 4)
5. Matlub and others Vs. State of U.P. and others, 2017 (139) RD 491 (Para 4)
6. Milkha Singh and Another Vs. Tara Singh and others, AIR 1973 Punjab and Haryana 445 (V 60 C 125) (Para 4)
7. Jokhu Vs. Deputy Director, Consolidation, Pratapgarh and Others, 2018 (36) LCD 453 (Para 5)
8. Ram Padarath And Others Vs. IInd Addl. Distt. Judge, Sultanpur and others, WP No.1732 of 1982 (Para 5)
9. Ghanshyam Sarda Vs. Sashikant Jha, Director, M/s J.K. Jute Mills Company Limited And Others, (2017) 1 SCC 599 (Para 5)
10. Jaspal Singh Vs. State of Punjab, AIR 1979 SC 1708 (Para 5)
11. Asiatic Steam Navigation Co. Ltd. Vs. Sub-Lt, Arabinda Chakravarti, AIR 1959 SC 597 (V 46 C 83) (Para 5)

12. Kanwar Raj Singh (D) TH LRS Vs. GEJO (D) TH LRS & ORS. 2024 LawSuit (SC) 1 (Para 5)
13. Ram Nath Vs. Munna, 1976 RD 220 (Para 16)
14. Ningawwa Vs. Byrappa, (1968) 2 SCR 797 (Para 17)
15. Salik Ram And Others Vs. Deputy Director of Consolidation, Shravasti And Others, 2025 (1) ADJ 290 (LB) (Para 18)

List of Acts

India's Registration Act, 1908; U.P. Consolidation of Holdings Act, 1953; Transfer of Property Act, 1882.

List of Keywords

mutation, consolidation, sale, registration, immovable property, execution, void, voidable, deed.

Appearances for Parties

For Petitioner(s): M.A.Khan, Mohammad Aslam Khan, Mohiuddin Khan

For Respondent(s): R.K.Sinha, C.S.C, Ravindra Kumar Sinha

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

1. Heard Sri M.A. Khan, learned Senior Advocate assisted by Sri Sadab Khan, learned counsel for the petitioners, Sri Ravindra Kumar Sinha, learned counsel for the respondents and Sri Badrish Tripathi, learned Additional Chief Standing Counsel for the State.

2. Present petition has been filed for the following relief :

"A. That by a writ of certiorari the order dated 27.1.1982 Annexure No. 7 passed by opposite-party no.1 the order dated 14.4.1980 Annexure No. 6 passed by opposite party no. 2 and the order dated 17.1.1969 passed by opposite party no.3 may kindly be quashed."

3. Facts giving rise to the present controversy is that an application was filed by Mohd. Haneef before the Consolidation Officer u/s 9 of U.P. Consolidation of Holdings Act, 1953 seeking mutation of his name in Khata Nos.236 and 237 on the basis of two sale deeds, one was executed on 25.04.1969 by Bachchu regarding Khata No.236 which was registered on 10.06.1969 and second sale deed which was also executed on 25.04.1969 by Smt. Amina regarding Khata No.237 and same was registered on 18.06.1969. Another application was filed by the respondent-Abid Ali to mutate his name on the basis of two sale deeds, one was executed by Bachchu regarding Khata No.236 on 09.06.1969 which was also registered on 11.06.1969 and another sale deed executed by Smt. Amina on 09.06.1969 which was registered on 11.06.1969 regarding Khata No.237. The Consolidation Officer after hearing the case, observed that the thumb impression on the sale deed executed in favour of Mohd. Haneef appears to be vague. Therefore, he ignored the sale deed executed in favour of Mohd. Haneef on 25.04.1969 and directed to record the name of Abid Ali on the basis of two sale deeds both executed on 09.01.1969 but registered on 11.06.1969 regarding Khata Nos.236 and 237. The order of the Consolidation Officer was challenged by Mohd. Haneef before the Settlement Officer of Consolidation in appeal but the appeal was dismissed, thereafter, revision was filed before the Deputy Director of Consolidation. The Deputy Director of Consolidation also confirmed the finding of the Consolidation Officer as well as Settlement Officer Consolidation and dismissed the revision filed by Mohd. Haneef. Therefore, present writ petition has been filed challenging all the three above orders.

4. Learned counsel for the petitioners has submitted that the sale deed executed in his favour by the tenure holder of the land in question namely, Bachchu and Smt. Amina were earlier to the sale deed executed by Bachchu and Smt. Amina in favour of the private respondent, Abid Ali. It is further submitted that though the sale deed regarding Khata No.237 was registered on 18.06.1969 and the sale deed regarding Khata No.236 was registered on 10.06.1969 but in view of Section 47 of the India's Registration Act, 1908 (in short 'the Act, 1908'), the registration of sale deed relates back to the date of execution, therefore, the sale deeds executed in favour of the petitioners will deem to have transferred the right in his favour on 25.04.1969 and merely because subsequent sale deed dated 09.06.1969 regarding Khata No.237 executed in favour of respondent-Abid Ali registered prior to the registration of the sale deed of the petitioners will not have any effect, as moment the sale deed of the petitioners was registered on 18.06.1969, it will relate back to the date of execution i.e. 25.04.1969. It is also submitted by learned counsel for the petitioners that the consolidation authorities merely on the basis of report of a hand writing expert declared the valid sale deed in favour of the petitioners as void, though, the consolidation authority has no right to cancel the sale deed. In support of his contention, learned counsel for the petitioners has relied upon the judgements of the Apex Court in the case of **Kanwar Raj Singh (D) Through Legal Representatives Vs. GEJO (D) THROUGH LEGAL REPRESENTATIVES AND OTHERS** reported in (2024) 2 SCC 416 and **Hamda Ammal Vs Avadiappa Pathar and 3 Others** reported in (1991) 1 SCC 715 and judgements of this Court in **Salik Ram And Others Vs. Deputy Director of Consolidation, Shravasti And Others** reported in 2025 (1) ADJ 290 (LB), **Mithilesh and others Vs. Deputy Director of Consolidation and Others** reported in 2017 (139) RD 488 and **Matlub and others Vs. State of U.P. and others** reported in 2017 (139) RD 491 and judgements of Punjab and Haryana High Court in the cases of **Milkha Singh and Another Vs. Tara Singh and others** reported in AIR 1973 Punjab and Haryana 445 (V 60 C 125).

5. Per contra, learned counsel for the respondents has submitted that even though the sale deed regarding Khata Nos. 236 and 237 had been executed in their favour subsequent to the date of execution to the petitioners but the sale deed dated 09.01.1969 of respondents regarding Khata No.237 was registered on 11.06.1969. On that date, the sale deed dated 09.06.1969 regarding Khata No.237 has become absolute and the title has been transferred in favour of the respondents, even though an unregistered sale deed was executed on 25.04.1969 in favour of the petitioners but that does not transfer any title to petitioners in view of Section 54 of the Transfer of Property Act, 1882 (in short 'the Act, 1882') and merely because earlier registered sale deed dated 25.04.1969 regarding Khata No.237 has been subsequently registered on 18.06.1969 will not pass any title as the same has already been transferred in favour of the respondents on 09.06.1969 in view of registration of sale deed on 11.06.1969. It is further submitted by learned counsel for the respondents that the consolidation authorities ignored the sale deeds of petitioners being forged and in the present case also, there is concurrent finding that as per the report of hand writing expert, thumb impression of the vendor Bachchu was not found to be genuine, therefore, consolidation authority has rightly ignored the sale deed executed in favour of the petitioners. In support of his contention, learned counsel for the respondents has relied upon the judgement of this Court in **Jokhu Vs. Deputy Director, Consolidation, Pratapgarh and Others** reported in 2018 (36) LCD 453; **Ram Padarath And Others Vs. Ind Addl. Distt. Judge, Sultanpur and others** in Writ Petition No.1732 of 1982 and others; and the Apex Court in the cases of **Ghanshyam Sarda Vs. Sashikant Jha, Director, M/s J.K. Jute Mills Company Limited And Others**, reported in

(2017) 1 SCC 599; Jaspal Singh Vs. State of Punjab reported in **AIR 1979 Supreme Court 1708; Asiatic Steam Navigation Co. Ltd. Vs. Sub-Lt, Arabinda Chakravarti** reported in **AIR 1959 Supreme Court 597 (V 46 C 83)** and; **Kanwar Raj Singh (D) TH LRS Vs. GEJO (D) TH LRS & ORS** reported in **2024 LawSuit (SC) 1**.

6. After hearing the submission of learned counsel for the parties and on perusal of record, following questions arise for determination :

(i) Whether the consolidation authorities have power to ignore the sale deed which was not challenged or objected by its executor?

(ii) Whether the sale deed executed earlier but registered subsequently to registration of second sale deed of the same property will be valid?

7. Law regarding registration of sale deed has been prescribed u/s 54 of the Act, 1882, which is being quoted as under:

"54. "Sale" defined.-"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.-

Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.- A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property."

8. From perusal of the Section 54 of the Act, 1882, it is clear that the transfer in case of tangible immovable property of value one hundred and upward can be made only by registered instrument. Therefore, an immovable property will not be effected unless the instrument of transferring is registered. Therefore, even if a sale deed is executed regarding immovable property but it is not registered then this document will not have any effect as this will not pass any title to the vendee. However, Section 47 of the Act, 1908 provides that effective date of operation of a registered sale deed would be date of its execution not the date of registration. Therefore, till any sale deed of immovable property is registered, it will not have any effect and as soon as it is registered then the effective date of transfer of title would be the date of execution of sale deed. Section 47 of the Act, 1908 is being quoted as under :

"47. Time from which registered document operates.-A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."

9. The Hon'ble Apex Court in the case of **Kanwar Raj Singh (supra)** has observed that if a unilateral interpolation is made in the sale deed after its execution but before its registration then the original sale deed will be effected from the date of its execution. Paragraph nos.8, 9 and 11 of the said judgement are being quoted as under:

"8. The Constitution Bench held that Section 47 of the Registration Act does not deal with the issue when the sale is complete. The Constitution Bench held that Section 47 applies to a document only after it has been registered, and it has nothing to do with the completion of the sale when the instrument is one of sale. It was also held that once a document is registered, it will operate from an earlier date, as provided in Section 47 of the Registration Act.

9. Section 54 of the Transfer of Property Act, 1984 (the Transfer of Property Act) reads thus:

***"54. "Sale" defined.**- "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

***Sale how made.**- Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other Intangible thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered Instrument or by delivery of the property.*

Delivery of tangible Immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

***Contract for sale.**- A contract for the sale of immoveable property is a contract that a sale of such/property/shall take place on terms settled between the parties.*

It does not, of itself, create any interest in or charge on such property."

11. Now, coming to the facts of this case, the consideration was entirely paid on the date of the execution of the sale deed. The sale deed was registered with the interpolation made about the description/area of the property sold. The first defendant admittedly made the said Interpolation after it was executed but before it was registered. In terms of Section 47 of the Registration Act, a registered sale deed where entire consideration is paid would operate from the date of the date of its execution. Thus, the sale deed as originally executed will operate. The corrections unilaterally made by the first defendant after the execution of the sale deed without the knowledge and consent of the purchaser will have to be ignored. Only if such changes would have been made with the consent of the original plaintiff, the same could relate back to the date of the execution. It is not even the first defendant's case that the subsequent correction or interpolation was made before its registration with the consent of the original plaintiff. Therefore, in this case, what will operate is the sale deed as it existed when it was executed."

10. Hon'ble Apex Court in the case of **Hamda Ammal (supra)**, has observed that in view of Section 47 of the Act, 1908 as soon as the sale deed is registered then it will relate back to the date of execution of the sale deed. Therefore, if any attachment is made after the execution of sale deed but prior to its registration then as soon as the sale deed is registered, it will be effected from the date of execution of sale deed and attachment will not have any effect. Paragraph nos.4, 5 and 6 of the said judgement are being quoted as under:

"4. Section 54 of the Act defines sale as "a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised". Thus after the execution of the sale deed with consideration all the ingredients of sale are fulfilled except that in case of tangible immovable property of the value of Rs 100 and upwards it can be made only by registered instrument. Now, if we read Section 47 of the Registration Act, it clearly provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. This provision makes it clear that after the registration it will relate back to the date of execution of the sale deed. The act of registration is to be performed by the registering authority. According to Section 23 of the Registration Act a document of the nature of sale deed shall be accepted for registration within four months from the date of its execution. Thus a statutory period of four months has been provided for presenting the sale deed for registration from the date of its execution. In case of dispute regarding the execution of the document an enquiry is permitted under Section 74(a) of the Registration Act and that may also take some time. The legislature being alive to such situations has already provided in Section 47 of the Registration Act that it shall operate from the time from which it would commence to operate if no registration thereof had been required or made and not from the time of its registration. Thus in our view the vendee gets rights which will be related back on registration from the date of the execution of the sale deed and such rights are protected under Order XXXVIII Rule 10 CPC read together with Section 47 of the Registration Act.

5. We cannot accept the contention of learned counsel for the respondent that till registration, the execution of the sale deed does not confer any rights whatsoever on the vendee. Even Section 49 of the Registration Act in its proviso inserted by Section 10 of the Transfer of Property (Amendment) Supplementary Act, 1929, negatives the above contention of the learned counsel. The above provision lays down that an unregistered document affecting immovable property and required by this Act or by the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as an evidence of part performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument. Thus even an unregistered document can be received as evidence for purposes mentioned in the proviso to Section 49 of the Registration Act.

6. Learned counsel for the respondents also made the submission that even if the sale deed which is executed earlier to attachment before judgment and registered subsequently may be binding on the vendors but it would not affect the rights of such respondent who is a third party, in the sense that he was not a party to the sale deed and he got the right in the property in a court sale having taken place after the passing of final decree in the money suit filed by Avadiappa. In other words the contention is that respondent 5 Shri M.S.A. Kadar got rights in the property in the court sale made in his favour after the decree passed in favour of Avadiappa in the money suit filed on September 13, 1970. We do not find any force at all in the above submission. The property in question admittedly belonged to the defendant-judgment debtors (vendors) and once it is held that a sale deed had already been executed by them in favour of Hamda Ammal on September 9, 1970 and only its registration remained, then neither the attachment before judgment nor a subsequent attachment or court sale in favour of respondent 5 can confer any title in his favour by preventing the relation back. The fact that the document of sale had not been registered until after the attachment makes no difference."

11. The Division Bench of Punjab and Haryana High Court in the case of **Milkha Singh (supra)** has also observed that title in property passes from the date of execution of sale deed and not from the date of registration. Paragraph nos.13 and 14 of the said judgement are being quoted as under :

"13. Before I come to the authorities mentioned above. I may state that in Punjab when immovable property of the value of Rs. 100/- and upwards is sold, the sale-deed has to be registered. There is no quarrel About the proposition that such a sale-deed will be complete only when it is registered. It is undisputed that the registration will be complete only when the sale-deed is copied out in the records of the Registration Office as provided in Section 61 of the Registration Act. But the title in the property on registration will, however, pass to the vendees from the date when the said deed was executed. This is by virtue of the provisions of Section 47 of the Registration Act, which lay down:

"A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."

14. A bare reading of this provision will show that the registered document will operate from the time from which it would have commenced to operate, if no registration thereof was required by law and not from the time of its registration. Admitted-this document, as I have already said, was executed on 28th October, 1960. If under the law, it was not required to be registered, it would have operated from the time it was executed. But it had to be registered under the law and, therefore, under the pro-visions of Section 47 of the Registration Act, it would operate on the date when it was exe-cuted, but that would happen only if it was subsequently registered. If it was not registered, no title in the property would pass to the vendees under it. However, the moment It was registered the title in the property would pass to the transferees from the date f its execution."

12. The Apex Court in the case of **Ghanshyam Sarda (supra)** has observed that in view of section 54 of the Act, 1882 any tangible immovable property will become effective only after registration of instrument but effective date would be from the date of its execution not from the date of registration. Therefore, till any sale deed is registered, mere execution thereof has no value and no right would be transferred. Paragraph nos.18 and 19 of the said judgement are being quoted as under:

"18. The order of 8-5-2014 [Ghanshyam Sarda v. Shiv Shankar Trading Co., (2015) 1 SCC 298, 316 (footnote 14)] had directed that "? capital assets of the Company shall not be disposed of without taking permission of this Court". The expression "shall not be disposed" in the context connotes action or process of sale of assets. Going by Section 54 of the Transfer of Property Act, 1882, transfer of any tangible immovable property of the value of Rupees hundred and upwards can be made only by a registered instrument. The expression "only" in the section is significant. The transfer comes into effect and becomes valid and effective only by a registered instrument. It is true that the document was sought to be registered in April 2013 but the registration in question was duly effected only on 2-7-2014. In the eye of the law, it is this document registered on 2-7-2014 which alone effectuates transfer of interest in Katihar property in favour of the transferee. The transfer was thus effected on 2-7-2014 i.e. well after the order of 8-5-2014. In Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana [Suraj Lamp & Industries (P)

Ltd. (2) v. State of Haryana, (2012) 1 SCC 656 : (2012) 1 SCC (Civ) 351], this Court had observed as under : (SCC p. 666, para 19)

"19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.

" 19. The document dated 4-4-2013 did not by itself create any interest nor did the title pass upon execution of such document on 4-4-2013 but it was only after the registration on 2-7-2014 that the title in Katihar property passed from the Company in favour of the transferee. The submission of the contemnors however, is that by virtue of Section 47 of the Registration Act, the document in question would operate from 4-4-2013. In our view, the principle embodied in Section 47 of the Registration Act is completely for different purposes. Insofar as the issue of transfer is concerned, Section 54 of the Transfer of Property Act is the governing principle, which is quite clear. It is the date of registration of document which is crucial inasmuch as the transfer is effected and the title passes only upon registration. Viewed thus, it is clear that Katihar property was transferred in the teeth of the order of 8-5-2014 [Ghanshyam Sarda v. Shiv Shankar Trading Co., (2015) 1 SCC 298, 316 (footnote 14)] and ex facie there has been violation of the order passed by this Court. It is crucial to note that on 8-5-2014 [Ghanshyam Sarda v. Shiv Shankar Trading Co., (2015) 1 SCC 298, 316 (footnote 14)] , the Company had appeared on caveat before this Court and certainly had express knowledge about the order of 8-5-2014 [Ghanshyam Sarda v. Shiv Shankar Trading Co., (2015) 1 SCC 298, 316 (footnote 14)] . It was party to the proceedings and was bound by the order passed by this Court in every respect."

13. In the case of **Mithlesh (supra)**, the Single Judge of Allahabad High Court has observed that after execution of the sale deed of a land executant lost his title over the land in question and any subsequent sale deed though registered regarding the same land is void.

14. From the perusal of the above discussion, it is clear that any sale deed would be effective only after its registration, therefore, if a sale deed is executed regarding a land without registration then if second sale deed is executed and also registered then the title regarding immovable property will pass through the second sale deed. Therefore, the earlier unregistered sale deed would be void even though same is registered subsequently to registration of the second sale deed because on the date of registration of a sale deed, title was already transferred regarding the property by a sale deed, though, executed subsequently but registered prior to the registration of the earlier sale deed as the document regarding transfer of property having value more than one hundred will not have any effect unless it is registered.

15. So far as the question regarding jurisdiction of consolidation authority to ignore or cancel the sale deed is concerned, the law is summarized as follows.

16. The Full Bench of Allahabad High Court in the case of **Ram Nath Vs. Munna** reported in **1976 RD 220**, has observed that the consolidation authorities had no jurisdiction to cancel or ignore

avoidable document because in such cases, civil court is only a proper forum to determine the validity of document or sale deed. However, if a sale deed or any document is void then the consolidation authorities have jurisdiction to disregard the same while determining the title to the land. The relevant extract of **Ram Nath case (supra)** is being quoted as under:

"The Full Bench observed that the documents which are voidable can be cancelled by the Civil Court only and the consolidation authorities have no jurisdiction to ignore those documents, instead they are under a duty to give effect to these documents till they are cancelled by a competent Court of law. If a sale-deed or document of transfer is void the consolidation authorities have jurisdiction to disregard the same while determining title to the land but if the document is voidable then the consolidation authorities have no jurisdiction to disregard sale-deed in that even the Civil Court is the only proper forum to adjudicate upon the validity of the sale-deed and the consolidation authorities are bound to give effect to the sale-deed."

17. Hon'ble Apex Court in the case of **Ningawwa Vs. Byrappa** reported in (1968) 2 SCR 797 has observed that contract or transaction induced or tainted by fraud is not void but only voidable at the option of the party defrauded, therefore, unless the civil court cancels such document, it would be binding. Paragraph no.4 of the said judgement is being quoted as under:

"4..... It is well established that a contract or other transaction induced or tainted by fraud is not void, but only void-able at the at the option of the party defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and interests in the matter which they may enforce against the party defrauded. "The fact that the contract has been induced by fraud does not make the contract void or prevent the property from passing, but merely gives the party defrauded a right on discovering the fraud to elect whether he shall continue to treat the contract as binding or disaffirm the contract and resume the property. If it can be shown that 'the party defrauded' has at any time after knowledge of the fraud either by express words or by unequivocal acts affirmed the contract, 'his' election is determined for ever. The party defrauded may keep the question open so long as he does nothing to affirm the contract."

18. The Single Judge of Allahabad High Court in the case of **Salik Ram And Others Vs. Deputy Director of Consolidation, Shravasti And Others** reported in 2025 (1) ADJ 290 (LB) has also relied upon the judgement of the Full Bench as well as other judgements of Apex Court and observed that if there is allegation of fraud in execution of document then such document is voidable and that cannot be ignored by the consolidation authorities and only a civil court has jurisdiction to cancel such document.

19. In view of the above position, it is clear that if the sale deed is void that does not require any adjudication to decide its validity then same can be ignored by the consolidation authorities but if a sale deed is voidable on the ground that it was obtained by fraud or misrepresentation then such sale deed cannot be ignored by the consolidation authorities till the civil court decides its validity at the instance of person defrauded.

20. The Full bench of Allahabad High Court in the case of **Ram Padarath (supra)** has also observed that the consolidation court can ignore void document. Paragraph nos.22, 23 and 40 of the said judgement are being quoted as under:

"22. The jurisdiction of the consolidation authorities or courts is wider than that of civil or revenue court and adjudication by them is final and cannot be responded by any civil or revenue court in view of bar for the same contained in Section 49 of U. P. Consolidation of Holdings Act which even bars, the case which should have been raised before the consolidation authorities, but not raised. The decisions given under U. P. Consolidation of Holdings Act even in respect of void documents do not throw light conclusively regarding jurisdiction of civil court and revenue court with reference to Section 331 of U. P. Zamindari Abolition and Land Reforms Act. The provisions of Section 331 of the 'Act' cannot be interpreted with reference to the provisions of or language used in U. P. Consolidation of Holdings Act. It is sound principle of interpretation that provisions of another Act are not to be taken as guide for interpreting the provisions of another Act which are not in pari materia with the former Act. The cases under U. P. Consolidation of Holdings Act regarding the jurisdiction of consolidation authorities throw great light on the question of extent or exclusiveness of the jurisdiction of revenue and civil court but they do decide or resolve this controversy fully.

23. In support of the plea that relief for cancellation of void documents is uncalled for and the revenue court cannot grant the real and substantial relief, reference to certain decided cases was made.

24. The first case cited was of Rasool Ahmad v. Beni Prasad, 1965 ALJ 70. In the said case the plaintiff's suit claiming tenancy rights and for declaration that he was hereditary tenant was dismissed upto High Court. Subsequently, he filed a suit in revenue court that he was 'occupancy tenant, which too was dismissed. Thereafter he took third innings and filed a civil suit for cancellation of lease deed executed by the Zamindar which document also figured in the revenue court. In these circumstances it was held that the suit was not cognizable by the civil court."

21. The judgement of this Court in the case of **Jokhu (supra)** relied upon by learned counsel for the respondents is not applicable in the present case because in that case, the sale deed was void on the ground that it was not only executed by fraudulent misrepresentation as to its character but also to its content but in the present case, there is nothing on record which could establish that fraud has been committed by the petitioners to such extent that made the sale deed void as merely observation of consolidation authorities that the thumb impression of Bachchu on the sale deed could not be matched with the thumb impression found in the register for the reason that thumb impression was blurred will not make the sale deed void but voidable at the instance of the executor Bachchu, though Bachchu as well as his wife Smt. Amina never objected the sale deed executed in favour of the petitioner, Mohd. Haneef. On the contrary, during the mutation proceeding before the Tehsildar, they admitted the fact that they have executed the sale deed in favour of Mohd. Haneef & another.

22. But so far as the judgement in the case of **Jaspal Singh (supra)** is concerned, in that case, the Hon'ble Apex Court has observed that the report of expert regarding thumb impression is a scientific evidence that cannot be easily ignored by the court. But in the present case, there is no

specific report of the expert showing the thumb impression on the sale deed executed by Bachchu regarding Khata No.236 is forged and merely because comparable thumb impression is blurred cannot be a ground to declare a sale deed as a void document. Therefore, this judgement will also not help learned counsel for the respondents.

23. Argument of learned counsel for the respondents that Hon'ble Apex Court in the case of **Asiatic Steam Navigation (supra)** has observed that concurrent finding of the court should not be disturbed by higher court is concerned, there is no dispute about it but if the finding itself is against the law then same can be interfered with and can be set aside.

24. From the above discussion, issues framed are decided as follows:

(i) The consolidation court can ignore void document while deciding the title dispute but it cannot decide the validity of a document which is voidable on the ground of fraud or misrepresentation and the validity of the same can be decided by the civil court;

(ii) any sale deed does not transfer any title unless it is registered and if before its registration another sale deed is executed and registered then the title is transferred on the basis of subsequent sale deed and thereafter, registration of earlier sale deed would be void as on the date of registration the executor does not have any title, same has already been passed to the vendee to subsequent sale deed immediately on registration of the same.

Conclusion:

25. Therefore the sale deed dated 09.06.1969 regarding Khata No.237 executed by Smt. Amina in favour of Abid Ali which was registered on 11.06.1969 will be a valid sale deed and prevail over the sale deed executed by Smt. Amina regarding Khata No.237 on 25.04.1969 but registered on 18.06.1969. Similarly, sale deed executed by Bachchu regarding Khata No.236 on 25.04.1969 and registered on 10.06.1969 will prevail over the sale deed dated 09.06.1969 of respondents and registered on 11.06.1969.

26. In view of the above, present petition is **partly allowed** and impugned judgement of Deputy Director of Consolidation, Mustafabad, Sarriya, Sultanpur and Consolidation Officer, Mustafabad, Sarriya, Sultanpur are hereby set aside, so far as their finding regarding sale deed dated 25.04.1969 of petitioners regarding Khata No.236 registered on 10.06.1969 as well as sale deed dated 09.06.1969 registered on 11.06.1969 executed in favour of Abid Ali. As the sale deed executed in favour of Abid Ali by Smt. Amina was registered subsequent to the registration of sale deed dated 25.04.1969 in favour of Mohd. Haneef and another, hence will not pass any title as same has already been transferred in favour of Mohd. Haneef.

27. Matter is remanded back to the Consolidation Officer to pass fresh order regarding mutation of the parties regarding Khata No.236 in the light of the observation made hereinabove.

(2026) 1 ILRA 505
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.01.2026

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 4204 of 2025

Ramashray

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

(a) Whether Deputy Director of Consolidation can change the allotment made by Settlement Officer of Consolidation after being in operation for more than a decade, without affording proper opportunity of hearing to the petitioner?

(b) Whether after a long period, further remand to the Deputy Director of Consolidation to decide the chak revision afresh against the allotment made by Settlement Officer of Consolidation in the year 2008, is in the interest of justice?

Headnotes

A. Service Law – U.P. Consolidation of Holdings Act, 1953: Section 9-A(2), 19, 48 - It is material to mention that u/s 19 of U.P.C.H. Act, it has been provided that as far as possible tenure holder should be allotted chak on their original plot, as such it is not necessary that each and every tenure holder should be allotted every chak on their original plots. In the instant matter the allotment which was made by Settlement Officer of Consolidation about 16 years ago that remained in operation for about 16 years as such the further change made by Deputy Director of Consolidation after 16 years is not in the interest of justice. (Para 10)

In chak appeal filed by petitioner, petitioner was adjusted on plot No.15M, 16M, 17M and respondent No.5 was adjusted on plot No.288, 289, 233 but under the impugned revisional order passed after about more than 16 years, the petitioner has been allotted chak on plot Nos.289, 233, 288 and respondent No.5 has been allotted chak on plot No.15M, 16M and 17M. (Para 9)

B. Allotment made by Settlement Officer of Consolidation about 16 years before has been changed by the Deputy Director of Consolidation without affording proper opportunity of hearing to petitioner which is essential criteria for deciding the revision u/s 48 of U .P.C.H. Act. (Para 11)

C. After such a long period, further remand to the Deputy Director of Consolidation to decide the chak revision afresh against the allotment made by Settlement Officer of Consolidation in the year 2008, is also not in the interest of justice rather to finalize the allotment of one stage in the matter. (Para 11)

The impugned revisional order dated 15.07.2025 passed by respondent No.2/Deputy Director of Consolidation is hereby set aside. The order passed by Settlement Officer of Consolidation dated 28.05.2008 is maintained. (Para 12, 13)

Writ petition allowed.(E-4)

List of Acts

U.P. Consolidation of Holdings Act, 1953.

List of Keywords

allotment, consolidation, settlement, plot, long period, justice, tenure holder.

Appearances for Parties

For Petitioner(s): Ajay Shankar, Triveni Shanker

For Respondent(s): C.S.C., R S Dubey, Rameshwar Prasad Shukla, Savita Dubey, Umesh Kumar Prasad

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Mr. Triveni Shanker, learned Senior Counsel assisted by Ms. Garima Jaiswal, learned counsel for the petitioner, Mr. R.S. Dubey, learned counsel for respondent no.5, Mr. Ashutosh Kumar Rai, learned Additional Chief Standing Counsel for the State-respondents and Mr. Rameshwar Prasad Shukla, learned counsel for respondent no.4/ Gram Panchayat.

2. Brief facts of the case are that petitioner is chak holder no.227-ba of the plots situated in Village-Shahpur, Pargana-Khareed, Tehsil-Bansdeh, District-Ballia. Original holding of the petitioner are plot No.16/2 area 0.170 hectare, 169 area 0.125 hectare, 233/1 area 0.261 hectare, 233/2 area 0.010 hectare, 286 area 0.134 hectare, 289 area 0.198 hectare total 6 plots area 0.898 hectare as mentioned in paragraph No.5 of the writ petition. Consolidation Officer under Section 9-A (2) of U.P. Consolidation of Holdings Act, 1953 (herein after referred to as the U.P.C.H. Act) divided share of Ram Suresh as 1/4, Ramashray, 1/4, Shiv Shankar 1/4, Rajaram 1/4. Petitioner was proposed two chaks by Assistant Consolidation Officer. First chak was proposed to petitioner on plot No.288 M, 289 M and second chak was proposed to petitioner on plot No.233 M, 233M, 233 M total 5 plots area 0.203 hectare. Against the proposal of the Assistant Consolidation Officer, chak objection was filed by respondent No.5-Rajaram, which was decided by Consolidation officer vide order dated 10.03.2008 disturbing the petitioner's chak. Against the order of Consolidation Officer dated 10.3.2008, petitioner filed an appeal under Section 21 (2) of the U.P.C.H. Act before Settlement Officer of Consolidation stating that he should be allotted chak at plot No.386 and 389. Settlement Officer of Consolidation vide order dated 28.5.2008 allowed the appeal filed by petitioner and allotted chak to petitioner on plot No.15M, 16M, 17 M and respondent No.5-Rajaram was allotted chak on plot No.288 M, 289, 233M. Against the appellate order dated 28.5.2008, respondent No.5-Rajaram filed chak revision claiming the allotment of chak on his original plot no.16/2 area 0.42 decimal. The aforementioned chak revision filed by respondent No.5-Rajaram, remained pending for about 16 years. During pendency of the aforementioned chak revision, Ram Suresh has expired and legal heirs of deceased Ram Suresh have also expired as well as certain other person in the revision have also expired, but no substitution application has been filed in the pending chak revision. Deputy Director of Consolidation vide order dated 15.7.2025 allowed the revision and disturbed the petitioner's chak by taking out the plot No.15M, 16M and 17 M from the chak of the petitioner and allotted the same to the respondent No.5-Rajaram. Hence this writ petition for the following relief:-

"(a) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 15.7.2025 (Annexure No.1) passed by Deputy Director of Consolidation, Ballia."

3. This Court entertained the matter on 17.10.2025 and stayed the effect and operation of the impugned revisional order dated 15.7.2025. The order dated 17.10.2025 runs as under:-

"1. Counsel for the petitioner is permitted to make necessary corrections in the prayer clause of the writ petition during the course of the day.

2. Heard Sri Triveni Shankar, learned counsel for the petitioner, Sri R.S. Dubey, learned counsel for respondent no.5, learned standing counsel for the state-respondents and Sri Rameshwar Prasad Shukla, learned counsel for the respondent-gaon sabha.

3. Counsel for the petitioner submitted that at the revisional stage, the chak of the petitioner has been disturbed without considering the comparative hardship of the petitioner in proper manner. He further submitted that proper opportunity of hearing has also not been afforded to the petitioner by the revisional court.

4. On the other hand, learned counsel for private respondent no.5 submitted that there is no illegality in the impugned order, passed by the Deputy Director of Consolidation, adjusting both the parties in proper manner. He further submitted that the matter be decided finally as under the impugned order, chak of respondent no.5 has been affected only and chak of other private respondents not been affected under the impugned order.

5. Matter requires consideration.

6. Respondent no.5 is the contesting respondent whose chak has been disturbed under the impugned order, as such, issuance of notices to the remaining private respondents shall be considered on the next date of hearing.

7. Respondent No.5 shall file counter affidavit within a week. Petitioner will file rejoinder affidavit within a week thereafter.

8. Put up this matter as fresh on 4.11.2025 at 12.00 P.M.

9. Until further orders of this Court, the effect and operation of the impugned revisional order dated 15.7.2025, passed by the Deputy Director of Consolidation, shall remain stayed as well as the parties to the writ petition shall maintain status quo with respect to nature and possession of the plot in dispute."

4. In pursuance of the order dated 17.10.2025, counter affidavit has been filed on behalf of respondent No.5 and petitioner has filed his rejoinder affidavit.

5. Notice has not been issued to other private respondents as chak of petitioner and respondent no.5 have been adjusted under the impugned orders which is very much demonstrated from the schedule prepared in support of impugned orders.

6. Learned counsel for the petitioner submitted that Settlement Officer of Consolidation has rightly decided the chak appeal filed by petitioner in the year 2008. He submitted that chak revision filed by respondent No.5 in the year 2008 remained pending for more than 16 years and several purpose have expired but without substituting the legal heirs of deceased party, the Deputy Director of Consolidation has passed the impugned order. He further submitted that without affording opportunity of hearing to the petitioner, chak revision filed by respondent No.5 has been allowed

disturbing the chak allotment made by appellate court in the year 2008. He further submitted that in pursuance of the allotment made by Settlement officer of Consolidation in the year 2008 respondent No.5-Rajaram had changed the nature of the land allotted to him by Settlement officer of Consolidation taking out the earth for construction of brick which has been resulted into making the plot unfit for cultivation. He submitted that in any case, the petitioner cannot be allotted the chak on plot which has been made un-cultivable by respondent No.5-Rajaram. He submitted that allotment made by Settlement Officer of Consolidation should be maintained and the impugned revisional order should be set aside.

7. On the other hand, learned counsel appearing for respondent No.5 submitted that chak appeal filed by petitioner was allowed in illegal and arbitrary manner accordingly in chak revision, the Deputy Director of Consolidation has rightly adjusted the chak to the parties as prescribed under Section 19 of U.P.C.H. Act. He further submitted that respondent No.5-Rajaram has never sold the earth as submitted by learned counsel for the petitioner. He submitted that delay has been caused in deciding the revision as consolidation proceeding was cancelled by Consolidation Commissioner vide order dated 22.12.2008, but the order of cancellation was stayed by this Court vide order dated 21.5.2009. He further submitted that respondent No.5 is original chak holder of plot No.16M as such respondent No.5 has been adjusted over the same. He submitted that there is no illegality in the impugned revisional order passed by Deputy Director of Consolidation, adjusting petitioner No.1 and respondent No.5 to their original plots as far as possible as provided under Section-19 of U.P.C.H. Act. He further submitted that no interference is required against the impugned revisional order and writ petition filed by petitioner should be dismissed.

8. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

9. There is no dispute about the fact that in chak appeal filed by petitioner, petitioner was adjusted on plot No.15M, 16M, 17M and respondent No.5 was adjusted on plot No.288, 289, 233 but under the impugned revisional order passed after about more than 16 years, the petitioner has been allotted chak on plot Nos.289, 233, 288 and respondent No.5 has been allotted chak on plot No.15M, 16M and 17 M.

10. It is material to mention that under Section 19 of U.P.C.H. Act, it has been provided that as far as possible tenure holder should be allotted chak on their original plot, as such it is not necessary that each and every tenure holder should be allotted every chak on their original plots. In the instant matter the allotment which was made by Settlement Officer of Consolidation about 16 years before that was remained in operation for about 16 years as such the further change made by Deputy Director of Consolidation after 16 years is not in the interest of justice.

11. It is also material to mention that argument has been advanced by learned counsel for the petitioner that respondent No.5 has made plot No.233, 288 and 289 un-cultivable although counsel for the respondent has objected the argument advanced by learned counsel for the petitioner for making the plot unfit for cultivation. but the fact remains that allotment made by Settlement Officer of Consolidation about 16 years before has been changed by the Deputy Director of Consolidation

without affording proper opportunity of hearing to petitioner which is essential criteria for deciding the revision under Section 48 of U.P.C.H. Act.

11. It is also material to mention that after such a long period, further remand to the Deputy Director of Consolidation to decide the chak revision afresh against the allotment made by Settlement Officer of Consolidation in the year 2008, is also not in the interest of justice rather to finalize the allotment of one stage in the matter.

12. Considering the entire facts and circumstances of the case, the impugned revisional order dated 15.7.2025 passed by respondent No.2/Deputy Director of Consolidation is liable to be set aside and the same is hereby set aside.

13. The writ petition stands allowed and the order passed by Settlement Officer of Consolidation dated 28.5.2008 is hereby maintained.

14. No order as to costs.

(2026) 1 ILRA 509
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.01.2026

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 21333 of 2013

Shanti Devi

...Petitioner
Versus

Addl. Collector Admn./D.D.C.

...Respondent

Issue for consideration

Whether Deputy Director of Consolidation can exercise his jurisdiction against any order passed by the consolidation authority subordinate to him in view of the provisions contained u/s 44- A of U.P.C.H. Act. to examine in proper manner, the issue of the disputed plots being same or different in the earlier proceeding and in the subsequent proceeding?

Headnotes

A. Service Law – U.P. Consolidation of Holdings Acts 1953: Section 9-A(2), 12, 44-A; U.P. Zamindari Abolition & Land Reforms Act, 1950: Section 176 - Deputy Director of Consolidation can exercise the jurisdiction against any order passed by the consolidation authority subordinate to him in view of the provisions contained u/s 44- A of U.P.C.H. Act. Respondent no.2 /Chaina Devi has filed two restoration applications, one before Consolidation Officer and another before Deputy Director of Consolidation along with prayer for condonation of delay. The Deputy Director of Consolidation has rightly exercised the jurisdiction in setting aside the order allowing the revisions dated 03.09.2012 as well as order dated 07.11.2012 passed by Consolidation Officer, allowing the application filed u/s 12 of U.P.C.H. Act. (Para 11)

In the earlier consolidation proceeding, Chaina Devi was party but in the subsequent proceeding u/s 12 of U.P.C.H. Act, Chaina Devi was not impleaded and order for recording the name of Chhavinath (petitioner's husband) on the basis of alleged sale deed dated 08.06.2001 has been allowed which is not proper exercise of jurisdiction by consolidation authorities. (Para 10)

The Deputy Director of Consolidation/revisional court can decide the entire dispute after impleading the respondent no.2/Chaina Devi as party in both the revisions in proper manner, considering the earlier orders passed by the consolidation authorities u/s 9-A(2) of U.P.C.H. Act and Section 12 of U.P. C.H. Act. (Para 12)

No interference is required against the impugned order dated 14.03.2013.

Writ petition dismissed. (E-4)

List of Acts

U.P. Consolidation of Holdings Acts 1953; U.P. Zamindari Abolition & Land Reforms Act, 1950.

List of Keywords

consolidation, subordinate, plot, revision, Condonation, jurisdiction.

Appearances for Parties

For Petitioner(s): Mr. Shashi Kant Shukla, Senior Counsel, Mr. Abrar Ahmad Siddiqui

For Respondent(s): Mr. Ashok Kumar Singh, Mr. B.N. Pathak, Standing Counsel

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Mr. Shashi Kant Shukla learned Senior Counsel assisted by Mr. Abrar Ahamad Siddiqui, learned Counsel for petitioner, Mr. Ashok Kumar Singh learned Counsel for respondent no. 2 and Mr. B. N. Pathak learned standing counsel for state-respondents.

2. Brief facts of the case are that dispute relates to plot no. 661 situated in Village - Bithri Chainpur, Pargana, Tehasil & District - Bareilly. According to petitioner, her husband, namely, Chhavinath purchased some area of plot no. 661 from Ram Bharosey through registered sale-deed dated 8.6.2001 and respondent nos. 3 to 5 also purchased some area of plot no. 661 from Ram Bharosey through registered sale deed dated 21-12-1999. In the proceeding under Section 9- A (2) of U.P. Consolidation of Holdings Acts 1953 (hereinafter referred to as "U.P.C.H. Act") it has been held that Sohan Lal (father of Ram Bharosey) cannot be recorded over Khata No-99 Aa in view of judgment & decree dated 30.8.1982 passed by revenue court under Section 176 of UP. Zamindari Abolition & Land Reforms Act, 1950 (hereinafter referred to as "U.P.Z.A. & L.R. Act"), accordingly, Consolidation Officer vide order dated 17.1.1990 expunged the name of Sohan Lal from Khata No- 99Aa and entries of Chaina Devi as well as Chuno Devi were affirmed. The order of Consolidation Officer dated 17.1.1990 was maintained in appeal by Settlement Officer of Consolidation vide order dated 23.8.1991 as well as by Deputy Director of Consolidation vide order dated 31.3.1999 so far as claim of Sohan Lal was concerned but in respect to Rahaman Shah (vendee of Smt Chaina Devi) the order of Consolidation Officer dated 17.1.1990 was partly modified. One proceeding under Section 12 of U.P.C.H Act was initiated by Chhavinath (husband of petitioner) for recording of his name on the basis of sale-deed dated 8.6.2001, alleged to be executed by Ram Bharose. The Consolidation Officer vide order dated 1.3.2005 rejected the application filed by Chhavinath under Section 12 of U.P.C.H.Act. The order of Consolidation

Officer was maintained in appeal by Settlement Officer of Consolidation vide order dated 25.5.2007 as well as in revision by Deputy Director of Consolidation vide order dated 9.1.2008. Respondent nos. 3 to 5 Ram Sewak & 2 others, vendees of Ram Bharosey on the basis of sale deed alleged to be executed on 21.12.1999, filed an application under Section 12 of U.P.C.H. Act which was allowed by Consolidation Officer vide order dated 6.4.2000 directing to record the names of Ram Sewak & 2 others in place of Ram Bharosey. Against the order of Consolidation Officer dated 6.4.2000, direct revision under Section 48 of U.P.C.H. Act was filed by Chhavinath (husband of petitioner) which was allowed vide order dated 3.9.2012, setting aside the order of Consolidation Officer to decide the proceeding under Section 12 of U.P.C.H. Act afresh. After passing of remand order dated 3.9.2012 passed by Deputy Director of Consolidation, Consolidation Officer vide order dated 7.11.2012 ordered to record the name of Chhavinath on the basis of sale deed dated 8.6.2001 as well as name of Ram Sewak & 2 others on the basis of sale deed dated 21.12.1999, alleged to be executed by Ram Bharosey. Against the order dated 7.11.2012, respondent no.2/Chaina Davi filed a restoration application before Consolidation Officer as well as before Deputy Director of Consolidation on 29.1.2013 against the order dated 3.9.2012 alongwith application under Section 5 of Indian Limitation Act. Respondent nos.3 to 5 alongwith Shanti Devi filed objection to the aforementioned time barred restoration application. Deputy Director of Consolidation vide order dated 14.3.2013 allowed the restoration application filed by respondent no.2/Chaina Devi, setting aside the orders dated 3.9.2012 & 7.11.2012 and restored the revision on its original number. Hence this writ petition for following relief:-

“Issue a writ, order or direction in the nature of certiorari, quashing the impugned order dated 14.3.2013, passed by the Additional Collector (Administration) / Deputy Director of Consolidation, District Bareilly (Annexure No.11 to the writ petition).”

3. This Court entertained the matter on 17.4.2013 and stayed the further proceedings of Revision No. 346 & 347 in pursuance of the order dated 14.3.2013.

4. In pursuance of the order dated 17.4.2013 parties have exchanged their pleadings.

5. Learned Senior Counsel for the petitioner submitted that impugned order dated 14.3.2013 passed by Deputy Director of Consolidation, restoring the proceedings of revision is perverse and without jurisdiction, as such, impugned order cannot be sustained in the eye of law. He further submitted that proper objection has been filed on behalf of petitioner against the application under Section 5 of Indian Limitation Act filed in support of restoration applications filed by respondent no-2/Chaina Devi. He further submitted that earlier adjudication has taken place in respect of Khata No-99Aa but present dispute relates to Khata No-99, as such, impugned order dated 14.3.2013 cannot be sustained in the eye of law. He further submitted that two separate restoration applications were filed on behalf of respondent no-2 before Consolidation Officer & Deputy Director of Consolidation but Deputy Director of Consolidation has exceeded his jurisdiction in setting aside the order of Consolidation Officer as remedy against the order of Consolidation Officer lies in appeal. He further submitted that respondent no.2 was not party before Consolidation Officer as well as before Deputy Director of Consolidation, as such, she has no right/ locus to apply for restoration/recall before consolidation officer/ Deputy Director of Consolidation. He further

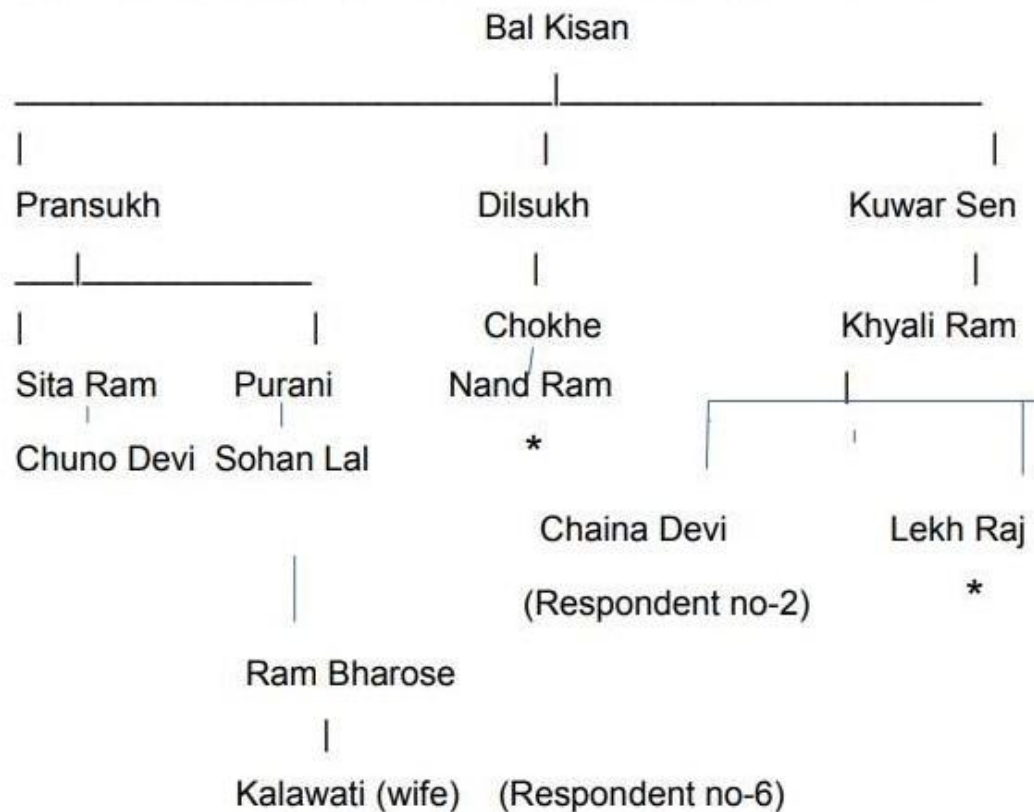
submitted that respondent no.-2 has no concern with plot no. 661, as such, she has no locus to file restoration / recall against the orders passed by consolidation authorities.

6. On the other hand, learned counsel for the respondent no-2 submitted that earlier proceedings under section-9 A (2) of the U.P.C.H. Act initiated by Ram Bharosey and Section-12 of U.P.C.H. Act initiated by Chhavinath (petitioner's husband) was decided against the Ram Bhrosey as well as Chhavinath as instant proceeding under Section 12 of U.P.C.H. Act is barred by principle of res judicata. He further submitted that order recording the names of petitioner as well as respondent no 2 to 5, has been passed without impleading the respondent no 2 as party, as such, orders are illegal. He further submitted that in earlier proceeding under section-12 of U.P.C.H. Act initiated by Chhavinath (petitioner's husband) , respondent no-2 was party, as such, in the subsequent proceeding initiated under section-12 of U.P.CH. Act, order cannot be passed without impleading the respondent no-2 as party. He submitted restoration applications along with prayer for condonation of delay were properly filed before Consolidation Officer as well as Deputy Director of Consolidation. He submitted that under the impugned order dated 14.3.2013, restoration applications have been allowed restoring the proceedings of revision to their original numbers in order to decide the matter on merit after opportunity of hearing to respondent no-2 which requires no interference in exercise of jurisdiction under Article 226 of the Constitution of India. He submitted that Ram Bharosey had no right to execute sale-deed in respect to plots of Khata No-99Aa, as such, Chhavinath (petitioner's husband) and respondents nos.- 2 to 5 have no right & title to be recorded over plots of Khata No-99Aa as vendees of Ram Bharosey as held by consolidation authorities in the earlier proceedings under section 9A(2) of U.P CH. Act as well as under section-12 of U.P.C.H. Act.

7. I have considered the arguments advanced by learned counsel for the parties and perused the record.

8. There is no dispute about the fact that in the proceeding under Section 12 of U.P.C.H. Act an order was passed by Consolidation Officer on 6.4.2000 for recording the names of respondent nos.3 to 5 in place of Ram Bharosey (husband of respondent no-6). There is also no dispute about the fact that Deputy Director of Consolidation vide order dated 3.9.2012 in the revisions filed by Chhavinath (petitioner's husband) as well as respondent no. 6 (wife of Ram Bharosey) set aside the order dated 6.4.2000 passed by Consolidation Officer and remanded the matter back before Consolidation Officer to decide the proceeding under Section 12 of U.P.C.H. Act afresh. There is also no dispute about the fact that Consolidation Officer vide order dated 7.11.2012 directed to record the name of Chhavinath (petitioner's husband) as well as respondent nos. 3 to 5 in place of Ram Bharosey. There is also no dispute about the fact that respondent no. 2 filed restoration applications before Deputy Director of Consolidation against the order dated 3.9.2012 along with prayer for condonation of delay as well as before Consolidation Officer against the order dated 7.11.2012 along with prayer for condonation of delay. There is also no dispute about the fact that Deputy Director of Consolidation vide order dated 14.3.2013 allowed the restoration applications filed by respondent no.2, setting aside the orders dated 3.9.2012 as well as 7.11.2012 and restored both the revisions on their original numbers for fresh adjudication after affording opportunity of hearing to respondent no. 2 in accordance with law.

9. In order to appreciate the controversy involved in the matter, perusal of family pedigree will be relevant which is as under:-



10. In the earlier proceeding initiated under section- 9-A(2) of the U.P.C.H. Act, it has been finally held by consolidation authorities that Sohan Lal father of Ram Bharosey cannot be recorded over khata no-99A, as such, name of Sohan Lal was expunged and names of Chaina Devi as well as Chuno Devi remained ordered to be recorded as recorded in basic year. In the earlier proceeding initiated under Section 12 of U.P.C.H. Act by Chhavinath (petitioner's husband), consolidation authorities have held that Chhavinath cannot be recorded on the basis of sale deed dated 8.6.2001, alleged to be executed by Ram Bharosey son of Sohan Lal in view of the right & title adjudicated in the proceeding under section-9- A (2) of U.P.C.H. Act. In the earlier consolidation proceeding, Chaina Devi was party but in the subsequent proceeding under Section 12 of U.P.C.H. Act, Chaina Devi was not impleaded and order for recording the name of Chhavinath (petitioner's husband) on the basis of alleged sale deed dated 8.6.2001 has been allowed which is not proper exercise of jurisdiction by consolidation authorities.

11. It is also material to mention that respondent no.2 /Chaina Devi has filed two restoration applications, one before Consolidation Officer and another before Deputy Director of Consolidation along with prayer for condonation of delay. The Deputy Director of Consolidation has rightly exercised the jurisdiction in setting aside the order allowing the revisions dated 3.9.2012 as well as order dated 7.11.2012 passed by Consolidation Officer, allowing the application filed under Section 12 of U.P.C.H. Act as Deputy Director of Consolidation can exercise the jurisdiction against any order passed by the consolidation authority subordinate to him in view of the provisions contained under Section 44- A of U.P.C.H. Act. Section 44-A of the U.P. C.H. Act will be relevant for perusal which is as under:

“44-A Powers of subordinate authority to be exercised by a superior authority: Where powers or duties are to be exercised or duties to be performed by any authority under this Act or the rules, made thereunder, such powers or duties may also be exercised or performed by any authority superior to it.”

12. The Deputy Director of Consolidation/revisional court can decide the entire dispute after impleading the respondent no.2 / Chaina Devi as party in both the revisions in proper manner, considering the earlier orders passed by the consolidation authorities under Section 9-A(2) of U.P.C.H. Act and Section 12 of U.P. C.H. Act. The issue as to whether the disputed plots are same or different in the earlier proceeding and in the subsequent proceeding will be examined by Deputy Director of Consolidation in proper manner.

13. Considering the entire facts and circumstances of the case, no interference is required against the impugned order dated 14.3.2013 passed by respondent no.1/revisional court, restoring the revisions under Section 48 of U.P.C.H Act on their original numbers for fresh adjudication of dispute in accordance with law.

14. The **writ petition is dismissed**. Respondent No.1/ revisional court is directed to decide the revisions in accordance with law after impleading respondent no-2/Chaina Devi as opposite party in both the revisions, expeditiously, preferably within period of 3 months from the date of production of certified Copy of this order before him.

(2026) 1 ILRA 514

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 14.01.2026

BEFORE

**THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE MANJIVE SHUKLA, J.**

Writ C No. 12085 of 2025

Victim X in Fir No. 048 of 2025 P.S. Katra Bazar Distt. Gonda ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

ISSUE FOR CONSIDERATION

Whether, for grant of compensation under the Uttar Pradesh Rani Lakshmi Bai Mahila Samman Kosh Rules, 2015, in a case covered under Section 4 of the POCSO Act, the injury report must necessarily indicate penetrative sexual assault injury.

HEADNOTE

Compensation under Uttar Pradesh Rani Lakshmi Bai Mahila Samman Kosh Rules, 2015 – Scheme is a beneficial legislation and has to be read as a beneficial legislation in a liberal manner – POCSO Act, 2012, Ss 3, 4 – Penetrative sexual assault – For the penetrative sexual assault to be proven, it is not necessary that there be an injury - Absence of injury cannot be a ground to refuse compensation – District Steering Committee cannot conduct a trial – Finding of Steering Committee without any basis in law and contrary to the Scheme – Direction to pay compensation of Rs. 3 lacs within 10 days.

HELD:

Petitioner, a victim covered under Section 4 of the POCSO Act, was aggrieved by the inaction on the part of the respondent authorities in providing compensation under the Uttar Pradesh Rani Lakshmi Bai Mahila Samman Kosh Rules, 2015, despite the fact that the charge-sheet had been filed alleging penetrative sexual assault. The District Steering Committee kept the claim of the petitioner in abeyance on the basis that, on basic internal examination and pathological report, no evidence of penetrating injury was found.

Court held that the actions as provided in Section 3(a), 3(b), 3(c) and 3(d) of the POCSO Act would amount to penetrative sexual assault and that, for penetrative sexual assault to be proven, it is not necessary that there be an injury that conclusively proves the said penetrative sexual assault. Court further held that any of the actions as prescribed under Section 3 of the POCSO Act would lead to penetrative sexual assault and no further evidence is required for the punishment. Court held that as long as the FIR and the charge-sheet indicate the offence under Section 4 of the POCSO Act, no further investigation is required to be carried out by the Steering Committee and the Steering Committee cannot conduct a trial and come to a contrary finding that, since there is no injury indicated in the injury report, the compensation is not payable. Court directed that the compensation of Rs. 3 lacs be paid to the victim immediately within a period of 10 days. The writ petition was disposed of accordingly. (Paras 9, 10, 14, 16–18) (E-5)

CASE LAW CITED

Dalip Kumar @ Dalli v. State of Uttaranchal, Criminal Appeal No. 1005 of 2013, decided on 16.01.2025;
Lok Mal @ Loku v. State of Uttar Pradesh, Criminal Appeal No. 325 of 2011, decided on 07.03.2025.

List of Acts

Constitution of India, 1950;
Protection of Children from Sexual Offences Act, 2012;
Uttar Pradesh Rani Lakshmi Bai Mahila Samman Kosh Rules, 2015.

List of Keyword

Uttar Pradesh Rani Lakshmi Bai Mahila Samman Kosh ; Penetrative sexual assault; Compensation under victim scheme; POCSO Act; Liberal interpretation; Refusal of compensation; Payment of compensation to victim.

CASE ARISING FROM

Decision of the District Steering Committee, keeping in abeyance the claim of the petitioner for compensation under the Uttar Pradesh Rani Lakshmi Bai Mahila Samman Kosh Rules, 2015, on the ground that the medico-legal and pathological reports did not show evidence of penetrating injury.

Appearances for Parties

Advs For Petitioner: Anjum Ara
Advs For Respondents: C.S.C.

(Delivered by Hon'ble Shekhar B. Saraf, J.
& Hon'ble Manjive Shukla, J.)

1. Heard learned counsel appearing on behalf of the parties.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the inaction on the part of the respondent authorities in providing compensation to the petitioner in terms of the scheme of the Government named as 'Uttar Pradesh Rani Lakshmi Bai Mahila Samman Kosh Rules, 2015' (hereinafter referred to as 'the Scheme').

3. The case of the petitioner is that the victim was sexually assaulted on March 7, 2025 and subsequently, charge sheet has been filed on June 25, 2025. The petitioner relies on serial No.6 of the Annexure No.1 of the scheme, wherein victims covered under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act') are entitled to receive aggregate compensation of Rs.3 lacs; firstly, Rs.1 lac is required to be paid within 15 days of filing of the F.I.R. and the balance amount of Rs.2 lacs is to be paid within a month of filing of the charge sheet.

4. Learned counsel appearing on behalf of the petitioner submits that till date not a single naya paisa has been paid to the petitioner inspite of the charge sheet clearly indicating penetrative sexual assault as per Section 4 of the POCSO Act.

5. Shri Shailesh Chandra Tiwari, learned counsel appearing on behalf of the State has vehemently argued and placed on record the decision of the U.P. Rani Lakshmi Bai Mahila Evam Bal Samman Kosh, District Steering Committee- District Gonda, that has kept in abeyance the claim of the petitioner for reasons provided in paragraph 6 of the meeting held on 24.12.2025. The relevant portion of the same is delineated herein-below:-

"6- निम्न प्रकरण में पीड़ित द्वारा मा० उच्च न्यायालय, खण्डपीठ लखनऊ में उ०प्र० रानी लक्ष्मीबाई महिला एवं बाल सम्मान कोष योजनान्तर्गत आर्थिक सहायता दिलाये जाने की प्रार्थना की गयी है। जिला संचालन समिति की बैठक में प्रकरण पर विचार किया गया। प्रकरण में घटना एवं मेडिकोलीगल परीक्षण के मध्य 01 दिवस का अंतराल होने बावजूद भी मेडिकोलीगल रिपोर्ट व पैथालॉजी रिपोर्ट के आधार पर नोडल चिकित्सा अधिकारी द्वारा दिये गये अभिमत में Penetrating Sexual Assault का साक्ष्य न पाये जाने का उल्लेख किया गया है, जिसके आधार पर समिति द्वारा सम्यक विचारोपरान्त प्रकरण को इस प्रतिबंध के साथ निरस्त करते हुए निस्तारित किये जाने का निर्णय लिया गया कि यदि भविष्य में उनमें मा० न्यायालय द्वारा दोष सिद्धि का निर्णय दिया जाता है, जिसके आधार पर पीड़ित द्वारा उसमें आर्थिक सहायता का दावा किया जाता है, तो उक्त प्रकरण को पुर्नजीवित करते हुए आर्थिक सहायता के लिए विचार किया जायेगा।"

क	आई.डी.	नाम	मु०अ०सं०	धारा	थाना	एफ.आई.आर. तिथि

1	5300600542	KULSUM	48/25	Section 4 POCSO	Katra bazar	07-Mar-25

जिला प्रोबेशन अधिकारी को निर्देश दिये गये कि उक्त प्रकरणों को निरस्त करते हुए निस्तारित कराये जाने की कार्यवाही सुनिश्चित करें।

6. Learned counsel appearing on behalf of the State submits that in the present case, an FIR has been lodged and charge sheet has also been filed. He however, submits that the injury report dated March 8, 2025 categorically indicates that on the basic internal examination and pathological report, no evidence of 'penetrating injury' has been found. He supports the decision taken by the steering committee by submitting that the pre requisite for grant of compensation under the present scheme is that there should be injury found in the injury report, which is absent in the present case. He, accordingly, submits that the steering committee has correctly taken a decision that since the injury report indicates no 'penetrative injury', the scheme would not apply in the present case.

7. At the very outset, we would like to bring on record Sections 3 and 4 of the POSCO Act that deal with penetrative sexual assault. Sections 3 and 4 of the POCSO Act are delineated herein-below:-

"3. Penetrative sexual assault.-A person is said to commit "penetrative sexual assault" if-
(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

4. Punishment for penetrative sexual assault.-(1) Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine.

(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."

8. One may further bring on record the excerpt of the Annexure that provides for provision of monetary compensation for the victims:-

S. No.	Section of IPC	Punishment	To whom	Amount of	Stage of	Pre requisites

	Special Act	provided	Compensation payable	Compensation	Payment	for payment
1.						
2.						
3.						
4.						
5.						
6.	Section 4, POCSO Penetrative Sexual assault	Not less than 7 years	Victim	Rs.3,00,000/-	1. Rs.1,00,000/- to be paid within 15 days as first installment 2. Balance amount of Rs.2,00,000/- with in one month of charge sheet	FIR injury report indicating penetrative sexual assault and charge sheet

9. From a bare perusal of Section 3 read with Section 4 of the POCSO Act, we are of the view that the very actions as provided in Section 3(a), 3(b), 3(c) and 3(d) would amount to penetrative sexual assault and it is clear that for the penetrative sexual assault to be proven, it is not necessary that there be an injury that conclusively proves the said penetrative sexual assault.

10. Furthermore, a catena of Hon'ble Supreme Court judgements has clearly held that any of the actions as prescribed under Section 3 of the POSCO Act would lead to a penetrative sexual assault and no further evidence is required for the punishment as prescribed under Section 4 of the POSCO Act.

11. The Supreme Court in **Dalip Kumar @ Dalli v. State Of Uttaranchal** (Criminal Appeal No. 1005 of 2013) decided on January 16, 2025 has observed that penetrative sexual assault need not always lead to physical injury. The relevant paragraphs of the judgment are quoted herein below:

8. We must caution that bodily injuries are not necessary to prove sexual assault1 and neither it is important to raise a hue or cry. In this regard, the Supreme Court's Handbook on Gender stereotypes(2023) provides as under: "Different people react differently to traumatic events. For example, the death of a parent may cause one person to cry publicly whereas another person in a similar situation may not exhibit any emotion in public. Similarly, a woman's reaction to being sexually assaulted or raped by a man may vary based on her individual characteristics. There is no "correct" or "appropriate" way in which a survivor or victim behaves.

9. It is a common myth that sexual assault must leave injuries. Victims respond to trauma in varied ways, influenced by factors such as fear, shock, social stigma or feelings of helplessness. It is neither realistic nor just to expect a uniform reaction....

(Emphasis added)

12. The Supreme Court in **Lok Mal @ Loku v. The State Of Uttar Pradesh** (Criminal Appeal No. 325 of 2011) decided on March 7, 2025 has again reiterated that penetrative sexual

assault does not always entail physical injury as it depends on the factual matrix of each case. The relevant paragraph of the judgment is quoted herein below:

“11. Merely because in the medical evidence, there are no major injury marks, this cannot be a reason to discard the otherwise reliable evidence of the prosecutrix. It is not necessary that in each and every case where rape is alleged there has to be an injury to the private parts of the victim and it depends on the facts and circumstances of a particular case. We reiterate that absence of injuries on the private parts of the victim is not always fatal to the case of the prosecution. According to the version of the prosecutrix, the accused overpowered her and pushed her to bed in spite of her resistance and gagged her mouth using a piece of cloth. Thus, considering this very aspect, it is possible that there were no major injury marks. The appellant made an attempt to raise the defence of false implication, however, he was unable to support his defence by any cogent evidence. Ld. counsel for the appellant further submitted that there is an inordinate delay in lodging complaint and registering 7 FIR. However, considering the evidence on record, we are of the opinion that the said delay in lodging of the complaint and registering FIR has been sufficiently explained and is not fatal to the case of the prosecution.”

(Emphasis added)

13. In light of the same, we are of the view that the pre requisites as are required in the Scheme do not in any manner require that the injury report must definitely indicate a penetrative sexual assault injury. Our reading of the said provision of the Scheme is that for granting benefit to the victim, the three documents, that is, the FIR, the injury report and the charge sheet should be present.

14. As long as the FIR and the charge indicate the offence under Section 4 of the POCSO Act, no further investigation is required to be carried out by the steering committee and the steering committee cannot conduct a trial and come to a contrary finding that since there is no injury indicated in the injury report, the compensation is not payable.

15. It is to be further noted that the Scheme is a beneficial legislation that aims to ameliorate the trauma and the pain that is suffered by the victims, and accordingly, has to be read as a beneficial legislation in a liberal manner.

16. Under the Scheme, compensation is to be paid to the victim of penetrative sexual assault not because the victim has sustained injuries during the penetrative sexual assault, but due to the very fact of having suffered the penetrative sexual assault. Therefore, till such time, the offence is covered within the definition of penetrative sexual assault as per Section 3 of the POSCO Act, it is immaterial whether there is any injury or not and only because there is no injury that cannot be a ground to refuse compensation to such victims.

17. Ergo, we come to the conclusion that the finding of the steering committee is without any basis in law and contrary to the Scheme.

18. In light of the same, since charge sheet has already been filed in the present case, we direct the compensation of Rs.3 lacs to be paid to the victim immediately within a period of 10 days from date.

19. With the above directions, the writ petition is disposed of.

(2026) 1 ILRA 520
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.01.2026

BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE SATYA VEER SINGH, J.

Writ C No. 26221 of 2024

Sunil Kandu @ Sunil Kumar Gupta

...Petitioner
Versus

Secretary, Ministry of Home Affairs & Ors. ...Respondents

ISSUE FOR CONSIDERATION

Whether Constitutional Court can grant compensation to a person who has been subjected to wrongful arrest and detention in proceedings under Article 226 of the Constitution of India.

HEADNOTE

Compensation for wrongful arrest and detention – Constitution of India, Article 21 – Procedure established by law – Code of Criminal Procedure, 1973, Section 41(1)(ba) – Arrest and detention in police lock-up cause incalculable harm to reputation and self-esteem – Fundamental right under Article 21 infringed by arbitrary and capricious action on the part of arresting police personnel – Petitioner a helpless victim of that act – Constitutional Courts can grant compensation – Compensation of Rs. 1,00,000/- awarded.

HELD:

Petitioner sought compensation for wrongful arrest and detention. The allegation against the petitioner was of molestation and attempt to rape. There was nothing on record, nor anything produced before the Court, to show that some investigation had been made pursuant to the information received for having reason to believe that the petitioner had committed the alleged offence. Court held that the police did not have "credible information" that the petitioner had committed the alleged offence and that the arrest of the petitioner was not in accordance with the "procedure established by law". Court held that constitutional courts can grant compensation. The Court awarded compensation of Rs. 1,00,000/- to the petitioner, to be paid by respondent No. 2 within four weeks.

Court reiterated that no arrest can be made in a routine manner on a mere allegation of commission of an offence; that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of the complaint and a reasonable belief as to the person's complicity and the need to effect arrest; and that the police officer must be able to justify the arrest apart from his power to do so. (Paras 15–20)

Writ petition allowed. (E-5)

CASE LAW CITED

Rudul Sah v. State of Bihar, (1983) 4 SCC 141;
Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy, (2011) 14 SCC 481;
Joginder Kumar v. State of U.P., (1994) 4 SCC 260;
Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273;
Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51.

List of Acts

Constitution of India, 1950;
Code of Criminal Procedure, 1973;
Protection of Human Rights Act, 1993.

List of Keyword

Cyber crime; Freezing of bank account; Debit freeze; Seizure of bank account; Section 94 BNSS; Section 106 BNSS; Lien on bank account; Reasonable belief; Intimation to Magistrate; Blanket freeze of account; De-freezing of account.

CASE ARISING FROM

Illegal Arrest and detention of the petitioner for 79 days.

Appearances for Parties

Advs For Petitioner: In person, Sunil Kandu
Advs For Respondents: Anil Kumar Srivastava, C.S.C.; Prem Narayan Rai

(Delivered by Hon'ble Arindam Sinha, J.)

1. Petitioner appears in person. Prayers made by him in the petition are reproduced below.

"(I) Hon'ble Justices are requested to kindly pass an order in accordance with the Constitution under Section 18(A-1) of the Human Rights Act, 1993, in the interest of justice, to provide compensation to the family of the petitioner from opponents No. 1 and 2. (II) Hon'ble Justices are requested to pass a just order for the judicial investigation of the above matter by the Law Officer of the Human Rights Commission, who has worked as a senior judges in the District Court and is currently working in the Human Rights Commission, on the complaint application dated 03.03.2023 submitted by the petitioner under Section 13(1) of the Human Rights Act, 1983, the investigation of which is pending before the Commission till date, and to submit the judicial investigation report to this court. (III) Any other order by the Hon'ble Justices, as they may deem fit, keeping in view the circumstances of the above case, may be passed in the interest of justice in favour of the petitioner."

2. The writ petition came to be assigned to the Bench presided over by a learned Judge nominated by the Hon'ble The Chief Justice on administrative order dated 26th September, 2024. Office reported that said learned Judge, as per roster w.e.f. 7th October, 2025, was sitting at Lucknow Bench. Further report was, at present this Bench has the nomination. Hence, there was subsequent administrative order dated 7th October, 2025 made by the Hon'ble The Chief Justice to list before the appropriate Court. The petition having had thus come before us, it was moved by petitioner in person on 8th October, 2025. He had submitted he seeks compensation for wrongful

arrest and detention. He relied on section 18 (a) (i) in Protection of Human Rights Act, 1993 to submit, there be direction for payment of compensation. Upon the criminal case initiated against him having had been disposed of on 14th July, 2022, he had filed complaint dated 3rd March, 2023 before the Commission, to make enquiry. He submitted further, it is not necessary to seek result of the enquiry because on departmental enquiry made against concerned police personnel, there stood issued order of punishment dated 28th November, 2023. Guilt of the police personnel, who arrested him without prima-facie satisfying himself on credible evidence of the allegation of attempt to rape, was an act that infringed his human and fundamental right of liberty, violated by the police personnel, a public servant. He relied on **order dated 8th September, 2025** of the Supreme Court made in **Petition for Special Leave to Appeal (Crl.) no. 11244 of 2025 (Sohan Singh @ Bablu vs. State of Madhya Pradesh)**.

3. There was further hearing on 20th November, 2025. It will be convenient to reproduce paragraphs 1 and 2 of order made that day.

"1. The writ petition has been called on for further hearing. Petitioner appearing in person, on query, supplies information as noted below.

(i) He was arrested on 17th April, 2017.

(ii) Final report in the criminal case initiated against him is dated 4th May, 2017.

(iii) His bail application was moved and order made on 30th June, 2017.

(iv) He was released from custody on 4th July, 2017.

(v) The criminal case was disposed of on 14th July, 2022.

(vi) Petitioner lodged complaint with the Commissioner on 3rd March, 2023. The Commission issued order of inquiry on 10th March, 2023.

2. Petitioner relies on several judgments noted in a spiral booklet he has prepared. We appreciate his research and enterprise. For purpose of adjudication and notice to respondents that we require comments on following judgments, they are noted below. (i) Rudul Sah Vs. State of Bihar reported in (1983) 4 SCC 141;

(ii) Smt. Nilabati Behera alias Lalit Behera Vs. State of Orissa reported in (1993) 2 SCC 746;

(iii) S.R. Bommai Vs. Union of India reported in (1994) 3 SCC 1; and

(iv) Judgment dated 30th November, 2017 of Delhi High Court in Bablu Chauhan @ Dablu Vs. State Government of NCT of Delhi reported in 2018 (1) RCR (Criminal) 523."

4. Mr. Manish Goyal, learned senior advocate and Additional Advocate General was entrusted by State to defend. On 26th November, 2025 Mr. Goyal had relied on judgment of the Supreme Court in **Municipal Corporation of Delhi (MCD) vs. Association of Victims of Uphaar Tragedy** reported in **(2011) 14 SCC 481**, paragraphs 45, 52, to 54, 80, 104 and 108. He had submitted on, inter-alia, tortious liability and constitutional tort. Today Mr. Goyal hands up short note of submissions.

5. We made several queries to Mr. Goyal to ascertain the facts and the procedure established by law for arrest. This is because contention of State is upon reliance of article 21 in the Constitution. The article is reproduced below.

"21. Protection of life and personal liberty.- No person shall be deprived of his life or personal liberty except according to procedure established by law."

(emphasis supplied)

Our inquiry reveals, clause (ba) under sub-section (1) in section 41, Code of Criminal Procedure, 1973, since repealed but necessary as it was in operation at the material time, empowered any police officer to arrest without an order from a Magistrate and without a warrant. State has relied on the provision. The clause is reproduced below;

"41. When police may arrest without warrant.

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person –

.....

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;

..... "

(emphasis supplied)

6. The complainant had lodged complaint with police station (P.S. Cantt., District Gorakhpur) on 30th March, 2017 at about 10:10 A.M. She said, inter-alia, on the day before, 29th March, 2017 at around 12:00 noon she along with her companion reached Gorakhpur station. Her companion went to get some food. She went to answer nature's call. When she returned, she could not locate the place, where her companion had asked her to sit. She started crying. At that time a person came and offered to help her reach home. It be mentioned, complainant said she is resident of Siddharth Nagar. We are told it is a place situate approximately 100 kms away from Gorakhpur. Complainant went on to say, this unknown person disclosed his name and address. He offered to help her to get a bus for her to go home. He started taking her towards Charfatak and after finding her alone, molested and tried to rape her. When she shouted, passersby came and saved her from him. After sometime her companion arrived searching for her. The passersby told him about the incident. On basis of this complaint, first information report (FIR) was registered. Police commenced investigation. Complainant was produced for medical examination on 30th March, 2017 at 04:00 P.M. There is Police Medico Legal Report dated 30th March, 2017. English translation of the report is reproduced below.

"Police Medico legal

30-3-2017

10KA/1

Examine Reeta Age about 26 years/F W/o Ram Chandar Village Chanhdaya P.S. Uska Bazar Dist-Siddhart Nagar on dated 30-03-2017 at 4:00 pm at DHCKD B/B/Vimlesh Verma CP No. 1465 P.S. Cantt Gorakhpur

M/L A Black mole (RT) side of nose

Injury (1) contused swelly 3.0 into to 2.0 cm. (LT) side of

Forehead 2.5 cm above (LP) eyebrows

2. Scabbed abrasion size 0.50 into 0.50 cm. (Lf) side of nose brown in color.

3. C/O over chest (4) C/O over abdomen

Ing (1) caused by hard and blunt object, about one to two days described simple=e in.....

Ing (2) caused by falling hard surface, simple..... year.....about one to two days Ing (3) and (4) needs no opr.

*Stamp
C.M.O. Gorakhpur"
(emphasis supplied)*

7. Complainant also recorded her statement before the police on 30th March, 2017. Mr. Goyal submits, pursuant thereto complainant got her statement recorded under section 164, before the Magistrate. She said in the statement under section 164, inter-alia, when she was crying a boy (obviously petitioner) came to her and asked her why she was upset. On query petitioner submits, he is presently 40 years old. Mr. Goyal submits, petitioner disclosed himself to be of 30 years age before the police. Above have been relied upon as credible information that petitioner had committed a cognizable offence covered by clause (ba) under section 41(1).

8. There are subsequent facts, of the police having sought to file final report on 27th April, 2017. The report was not accepted by the Magistrate and further investigation directed. The case ultimately came to be dropped under section 203 as the complainant, in spite of repeated notices, did not appear to be examined. This was on order dated 14th July, 2022. On earlier order dated 30th June, 2017 petitioner was enlarged on bail, upon conditions of submitting personal bond of Rs. 1 lac and 2 competent sureties of said amount to satisfaction of concerned Magistrate. Petitioner had suffered 79 days of having been in custody.

9. We notice, in the bail application petitioner had pointed out that a person with intent of molestation and rape would not go and identify himself to the victim for purposes of befriending her. This identification complainant got recorded in the FIR. The police picked up petitioner on 17th April, 2017, from his FIR recorded address at Lucknow and produced him to obtain direction for remand. Then subsequent investigation revealed, petitioner was not present in Gorakhpur on 29th March, 2017.

10. We are clear in our mind complainant was not carrying a mobile phone. According to her, she could not locate the spot where her companion had left her. She walked with petitioner to a place near Charfatak. On referring to Google maps we find Charfatak is shown as 2.1 km away from Gorakhpur station. We are convinced there was no commotion, when, according to the complainant, she accompanied petitioner out of the station. We're at a loss to understand how her companion then located her in the place near to Charfatak at about 4:00 P.M. The FIR registered does not mention any person, who was part of the gathering on the complainant screaming distress, as had accompanied her to lodge the complaint. There is a simple explanation because the complaint was not lodged immediately. It was lodged the next day.

11. Our perusal of the FIR, statements under section 161 and 164 reveal complainant's allegation was that petitioner had grabbed her by the neck and bit her on the cheek. There is no mention of any hint of injury in aforesaid Police Medico Legal Report dated 30th March, 2017 to corroborate her such allegation. The police does not appear to have sought to verify from the complainant, the place of occurrence. There is nothing to show they did nor was the case diary produced by State to demonstrate otherwise. Where the FIR mentions gathering of passersby, reiterated by complainant in her statements before the police and the Magistrate, the police proceeded to arrest without locating or even trying to locate a single witness, of an incident of molestation and rape committed in broad day light at a place between Gorakhpur Station and near to Charfatak. However, armed with petitioner's address they proceeded to Lucknow to arrest him on 17th April, 2017, more than two weeks after registration of the FIR. We're not surprised there was internal inquiry against the police personnel, relied upon by petitioner. A paragraph from the preliminary investigation report dated 3rd October, 2023 (English translation), of the Superintendent of Police is reproduced below.

"Therefore, the first investigation officer of the case, S.I. Promod Kumar Singh, currently posted at Police Station Vibhuthikhand, Commissionerate, Lucknow, is found guilty of negligence in collecting strong/confirmatory and electronic/circumstantial evidences in the case."

Above is clear indictment regarding the arrest. Subsequently it was established that petitioner was not present at the scene of alleged occurrence.

12. Contention of State in opposing the writ petition is also that the Human Rights Commission could not have entertained the complaint as it was lodged beyond time prescribed in section 36 of Protection of Human Rights Act, 1993. The section is reproduced below.

"36. Matters not subject to jurisdiction of the Commission.- (1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed."

(emphasis supplied)

Petitioner appearing in person has sought for any other relief and we as the writ Court are competent to mould the relief.

13. Mr. Parth Goswami, learned advocate holding the brief appears on behalf of respondent no. 3 (the Commission). He reiterates his submissions and reliance on authorities as recorded in paragraph 4 of aforesaid order dated 20th November, 2025, text of which is reproduced below.

"4. Mr. Parth Goswami, learned advocate appearing on behalf of respondent no.3 (the Commission) submits, the Supreme Court in Paramjit Kaur Vs. State of Punjab reported in (1999) 2 SCC 131 had said that the Commission may inquire on direction made by the Constitutional

Courts. He submits further, Rudul Sah (supra) stands distinguished in Union of India through I.O. Narcotics Control Bureau Vs. Man Singh Verma reported in 2025 SCC OnLine SC 456."

14. On behalf of State there was reliance on Municipal Corporation of Delhi (MCD) vs. Association of Victims of Uphaar Tragedy (supra). Paragraphs 45, 52, to 54, 80, 104 and 108 were relied upon. The presiding learned Judge of the Bench spoke for it but the other learned Judge also added his thoughts as stated in paragraphs 78 onward of the judgment. Contention of petitioner is of having undergone wrongful arrest without credible information had and satisfaction obtained. We think fit to reproduce below paragraph 45 in the judgment, which is extract from an earlier judgment of said Court. The fact of petitioner having been arrested by the police does not point towards inaction or negligence as discussed in other relied upon paragraphs 52 to 54, 80, 104 and 108.

*"45. In **Rabindra Nath Ghosal vs. University of Calcutta** reported in (2002) 7 SCC 478 the Supreme Court held: The Courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in a public law proceedings. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the Court to grant compensation in a petition under Articles 226 and 32 by applying the principle of public law proceeding. The Court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties unless there is malice or conscious abuse. Before exemplary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act."*

(emphasis supplied)

15. On ascertaining the facts we are satisfied that the police did not have credible information and thereby could not have reason to believe on the basis of it that petitioner had committed the alleged offence. We reiterate, molestation and rape attempt was alleged to be on 29th March, 2017. We have already noted, complaint made and FIR registered was on 30th March, 2017. Medical examination and report were also of that date. The police arrested petitioner on 17th April, 2017 from his FIR recorded address at Lucknow. There is nothing on record nor anything produced before us to show some investigation made pursuant to the information received, for having reason to believe petitioner had committed said offence. In the circumstances, fundamental right of petitioner under article 21 had been infringed by arbitrary and capricious action on part of the arresting police personnel, a public functionary and petitioner was a helpless victim of that act.

16. In context of last two preceding paragraphs we see that the Supreme Court in **Joginder Kumar vs. State of U.P.** reported in (1994) 4 SCC 260 (Bench strength of three learned Judges),

paragraph 20 thereof referred to third report of the National Police Commission, for its suggestions. Extracted and reproduced below are the suggestions appearing in the paragraph.

"20. In India, Third Report of the National Police Commission at p. 32 also suggested:

"An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

*(i) **The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terrorstricken victims.***

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines....."

(emphasis supplied)

Suggestion clause (i) does not cover petitioner because there could be no necessity to arrest petitioner more than a fortnight after the alleged offence, to bring his movements under restraint to infuse confidence in the terror stricken victim. As aforesaid, the complainant is resident of Siddharth Nagar and petitioner was picked up from far away Lucknow. Other clauses (ii), (iii) and (iv) are not even remotely applicable to petitioner.

17. In **Satendra Kumar Antil vs. Central Bureau of Investigation** reported in **(2022) 10 SCC 51**, the Supreme Court also declared on section 41 by paragraph 23 therein, reproduced below.

"23. Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offense, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured."

On this aspect an earlier judgment of said Court in **Arnesh Kumar vs. State of Bihar** reported in (2014) 8 SCC 273 was relied upon.

18. With reference to the suggestions in Third Report of the National Police Commission the Supreme Court in **Joginder Kumar vs. State of U.P.** (supra) said, the guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the police officer to do so. An existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer, in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief, both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified.

19. Petitioner is before us seeking compensation for wrongful arrest. We are convinced his arrest was not on procedure established by law. It may well be that petitioner was out of time in taking his complaint to the Commission on his allegation of violation also of his human right of liberty. We note that the criminal case against him was disposed of on 14th July, 2022 and less than a year therefrom, he approached the Commission. From the cases cited and our research we see that the Supreme Court has said that the constitutional Courts can grant compensation. We choose to rely on **Rudul Sah vs. State of Bihar reported in (1983) 4 SCC 141** (Bench strength of three learned Judges), paragraphs 1 and 11. The paragraphs are reproduced below.

"CHANDRACHUD, C.J.- This Writ Petition discloses a sordid and disturbing state of affairs. Though the petitioner was acquitted by the Court of Session, Muzaffarpur, Bihar, on June 3, 1968 he was released from the jail on October 16, 1982, that is to say, more than 14 years after he was acquitted. By this habeas corpus petition, the petitioner asks for his release on the ground that his detention in the jail is unlawful. He has also asked for certain ancillary reliefs like rehabilitation, reimbursement of expenses which he may incur for medical treatment and compensation for the illegal incarceration. 11. Taking into consideration the great harm done to the petitioner by the Government of Bihar, we are of the opinion that, as an interim measure, the State must pay to the petitioner a further sum of Rs. 30,000 (Rupees thirty- thousand) in addition to the sum of Rs. 5,000 (Rupees five thousand) already paid by it. The amount shall be paid within two weeks from today. The Government of Bihar agrees to make the payment though, we must clarify, our order is not based on their consent."

As such we are minded and do award compensation of Rs. 1,00,000/-. The amount be paid to petitioner by respondent no. 2 within four weeks from communication of certified copy of this judgment made to the office by him.

20. The writ petition is accordingly allowed and disposed of.

(2026) 1 ILRA 529
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.01.2026

BEFORE

THE HON'BLE MANOJ KUMAR GUPTA, J.
THE HON'BLE ARUN KUMAR, J.

Writ C No. 28263 of 2025

Smt. Soni

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the trial court acted in excess of jurisdiction in entertaining and allowing an application under Section 151 CPC to restore status quo ante, without compliance with Order XXXIX Rule 3 CPC and without affording an opportunity of hearing to the defendants.

HEADNOTE

Code of Civil Procedure, 1908, Section 151; Order XXXIX Rules 1, 2, 2A & 3 – Ex parte ad-interim injunction – Mandatory requirements of Order XXXIX Rule 3 CPC – Application under Section 151 CPC entertained and allowed ex parte on the very same date – No finding recorded that the plaintiff was in possession of the suit property on the date when injunction order was passed, nor any finding as regards the date on which the alleged dispossession had taken place – Order for restoring status quo ante passed without affording any opportunity of hearing to the defendants – Trial court acted in a patently illegal manner, with material irregularity and exceeded its jurisdiction – Temporary injunction was purely prohibitory in nature and not mandatory – No order of the trial court directing the Administrative Authorities to put respondent No. 8 in possession – Constitution of joint team of Revenue and Police officials for delivery of possession without jurisdiction – Action of Court below as well as Administrative Authorities found to be totally mala fide – Costs imposed as compensation – Direction for placing the matter before Hon'ble the Chief Justice for consideration of disciplinary action against the Civil Judge (Jr. Divn.). (E-5)

HELD:

Father-in-law of the petitioner was a co-tenure holder of the plot. After his death, the names of his heirs, namely, Shyamji, Premji, Ramji, Lalji and Shivdhari Devi, were recorded. Respondent No. 8 obtained a sale deed from Shyamji and Premji in respect of a specified portion of the undivided residential house, despite

there being no partition of the property. Respondent No. 8 instituted an Original Suit seeking permanent injunction. On the very date of institution, i.e., 27.01.2025, the Civil Judge (Junior Division) granted an ex parte ad-interim injunction restraining the defendants from interfering with the alleged possession of Respondent No. 8, without compliance with Order XXXIX Rule 3 CPC. Respondent No. 8 moved an application dated 05.02.2025 under Section 151 CPC alleging dispossession in violation of the injunction order. On the very same date, the trial court entertained and allowed the application ex parte, directing the SHO to ensure compliance with the injunction order, without issuing notice to the defendants and without recording any finding regarding possession or the date of alleged dispossession.

The Sub-Divisional Magistrate directed the constitution of a joint team of Revenue and Police officials, purportedly to deliver possession to Respondent No. 8 on the basis of the prohibitory injunction order dated 27.01.2025. On 18.07.2025, a heavy police force and revenue officials forcibly dispossessed the petitioner and handed over possession to Respondent No. 8.

Court held that the trial court completely overlooked the mandatory provisions of Order XXXIX Rule 3 CPC and failed to ensure compliance with the statutory requirement of service of notice upon the defendants along with copies of the plaint and other relevant documents. Trial court acted in a patently illegal manner, with material irregularity, in entertaining the application dated 02.02.2025 under Section 151 CPC, for restoring the possession, and in allowing the said application on the same date ex parte. Trial court ought to have issued notice of the said application to the defendants and afforded them an opportunity to contest the same. In no event, the procedure adopted by the trial court was justified. There was no finding recorded in the order dated 05.02.2025 that Respondent No. 8 was in possession of the suit property on the date when the injunction order was passed in his favour, nor was there any finding as regards the date on which the alleged dispossession had taken place. In the absence of these findings, the order of the trial court allowing the application for restoring status quo ante was wholly illegal. The trial court acted in a patently illegal manner, and the dispossession of the petitioner and her minor children was wholly without jurisdiction. The Administrative Authorities exceeded their authority and jurisdiction in constituting a revenue team for delivering possession to Respondent No. 8. The order of temporary injunction was purely prohibitory in nature and not mandatory. Directions were issued for restoration of possession to the petitioner and other co-sharers; costs were imposed for illegal dispossession and mental trauma; and the matter was directed to be placed before the Hon'ble Chief Justice for consideration of disciplinary action against the Civil Judge (Junior Division).

CASE LAW CITED

Board of Trustees of the Port of Mumbai v. Nikhil N. Gupta and another, (2015) 10 SCC 139;
Sree Ram v. State of U.P. and others, 2011 (2) ALJ 187 (DB);
Smt. Jagannathiya v. State of U.P. and others, 2006 (64) ALR 330 (DB).

List of Acts

Code of Civil Procedure, 1908.

List of Keyword

Joint ancestral house; Ex parte ad-interim injunction; Order XXXIX Rule 3 CPC; Section 151 CPC; Restoration of possession; No physical partition; Delivery of possession; Dispossession; Trial court exceeded its jurisdiction; Administrative authorities exceeded jurisdiction; Mandatory procedural safeguards.

CASE ARISING FROM

Writ petition seeking mandamus directing respondent Nos. 2 to 7 to open the lock and restore possession of the petitioner over her joint ancestral house

Appearances for Parties

Advs For Petitioner: Girish Pratap Singh; Manish Nath Tripathi

Advs For Respondents: C.S.C.; Prabhakar Dubey

(Delivered by Hon'ble Manoj Kumar Gupta, J.
& Hon'ble Arun Kumar, J.)

1. The present writ petition has been filed for the following reliefs:-

i. Issue a writ, order or direction in the nature of Mandamus commanding and directing the respondent no. 2 to 7 to open the lock and restore the possession of the petitioner over her joint ancestral house.

ii. Issue a writ, order or direction in the nature of Mandamus commanding the State Government to take appropriate action against the Respondent no. 4, 5, 6 and 7 for crushing the rule of law.

FACTS OF THE CASE

2. The case of the petitioner is that her father-in-law namely, Gelhari was a co-tenure holder of plot No.211, area 0.431 hectare. After his death, the names of the petitioner's husband Shyamji, his brothers Premji, Ramji and Lalji and their mother Shividhari Devi came to be recorded in the relevant khatauni in his place. During his lifetime, he constructed a two storied building over the said plot, having frontage of 20 feet on Bansi-Dandi Road and a width of 68 feet. On the ground floor, there are two shops, each having a width of 9 feet and a gallery of 6 feet width, which serves as an entrance to the remaining part of the house. In one of the shops, the petitioner has been running a beauty parlour and income from the said business is the only source of livelihood for the petitioner and her family. The husband of the petitioner, namely, Shyamji and his younger brother Premji, unfortunately fell into bad company of respondent No.8 and started consuming liquor with him. Respondent No.8 is a Peshkar in the court of Chief Judicial Magistrate. Taking advantage of the situation, he succeeded in obtaining a sale deed dated 14.2.2024 in his favour for a portion of the undivided residential house, measuring 10 feet from the front and 68 feet in width.

3. It is stated that respondent No.8 procured the said sale deed for a specific portion of the residential house, fully knowing that no division or partition of the aforesaid house had ever taken place amongst the co-sharers and families of all the co-sharers were residing in the same. On 13.1.2025, respondent no.5, the Tehsildar, Tehsil Bansi, District Siddharth Nagar, alongwith police force and respondent no.8, reached the house of the petitioner and asked her to vacate the house. The petitioner strongly opposed the same, stating that the house in question is the ancestral house, in which she has been residing with her three minor children. When respondent No.8 failed in his attempt to take possession by force, he instituted Original Suit No. 49 of 2025 against the petitioner, her husband Shyamji, and his brother Premji, praying for decree of permanent injunction restraining the defendants from taking possession of property allegedly purchased by him through sale deed dated 14.02.2024; from breaking the lock of the said house; from raising construction

over it; and from interfering in his alleged possession. Notably, the other three co-sharers were not impleaded as parties in the said suit.

4. On 27.1.2025, the date of institution of the suit, Civil Judge (Jr. Divn) issued summons to the defendants and fixed 24.2.2025 for filing of written statement and 6.3.2025 for framing of issues. On the very same date, Civil Judge (Jr. Divn.) also granted an ex parte interim injunction, restraining the defendants from interfering in the alleged possession of the plaintiff over the suit property. It is categorically stated that respondent No.8 was never put in actual possession of the suit property in pursuance of the sale deed. However, the trial court, without conducting any enquiry on the issue of possession and even in absence of any supporting evidence, hurriedly granted the said ex parte injunction.

5. As respondent No. 8 was not in possession, he therefore, with a pre-meditated design, moved an application on 16.5.2025 before the Superintendent of Police, Siddharth Nagar, alleging that the defendants, despite the injunction order, had forcibly taken possession of the house by breaking the lock. It was alleged that the petitioner and the other defendants of the suit had agreed to vacate the house by the end of March; however, even after repeated requests, they have failed to do so. Accordingly, a request was made to direct the concerned authorities to ensure delivery of possession of the suit property to respondent no.8.

6. It is noteworthy that, in respect of the said application, respondent No.8, in the supplementary affidavit filed by him, clarified that the said application was in fact moved on 4.5.2025 and not on 16.05.2025, as earlier stated. The Superintendent of Police marked the said application to Inspector Incharge of Police Station Khesaraha District- Siddharth Nagar, on 16.5.2025, and therefore the said date came to be mentioned by the Chowky Incharge Sakarpar, Police Station Khesaraha, District - Siddharth Nagar, in his report dated 28.5.2025 submitted on the said application to the Sub Divisional Officer, Bansī, District Siddharth Nagar. He has stated in his report that despite the temporary injunction order dated 27.1.2025 in favour of respondent No.8, he could not get possession of the house and that the same continues to be occupied by Shyamji and his family members. The report further refers to the application dated 16.5.2025 submitted by respondent No. 8 to Superintendent of Police, Siddharth Nagar for being handed over possession of the said house to him. It is also stated therein that, in respect of said house, Original Suit No. 49 of 2025 has been instituted by respondent no.8 against Shyamji in the court of Civil Judge (Jr. Divn.) and an order of temporary injunction was passed in the said suit on 27.1.2025. Based on the aforesaid, a recommendation was made for constitution of a joint team of officials for the purpose of delivering possession of the house to respondent No.8. On the said application, the Sub Division Magistrate, vide order dated 25.6.2025, directed the Tehsildar to constitute a joint team of Revenue and Police officials and to ensure disposal of the matter. In pursuance thereof, the Tehsildar, by order dated 2.7.2025, directed the Naib Tehsildar to constitute the said team, and in furtherance thereof, a joint team of Revenue officials and police personnel was proposed by Naib Tehsildar vide order dated 8.7.2025. Thereafter, Tehsildar, Tehsil Bansī, district Siddharth Nagar, by letter No. 121/Ra.Li/2025-26 dated __.07.2025, approved the constitution of the revenue team for effecting delivery of possession, purportedly in compliance of the order of temporary injunction of the trial court dated 27.1.2025 in Original Suit No.49 of 2025.

7. The case of the petitioner is that, on the basis of aforesaid directions, a heavy police force from two police stations and Revenue team headed by Naib Tehsildar, Khesaraha, and Revenue Inspector, alongwith five Lekhpals, reached the house of the petitioner on 18.7.2025. The petitioner was forcibly arrested and detained in a police vehicle alongwith her three children, aged 8 years, 4 years and 3 years respectively. The Revenue authorities and the police forcibly threw out the entire goods lying in the beauty parlour run by the petitioner. Thereafter, they handed over possession of the house to respondent No.8 by permitting him to put his lock on the premises. The petitioner had no prior knowledge of the interim order dated 27.1.2025 passed in the original suit. It was only on 18.7.2025, at the time of her forcible eviction, that the joint team of Revenue and Police officials apprised her of the order of temporary injunction. The petitioner alleges that she even had no knowledge of the suit. After her dispossession, she attempted to meet the District Magistrate, Siddharth Nagar on 18.7.2025 and 19.7.2025 but could not succeed in meeting him. The petitioner thereafter submitted several representations to higher authorities, including the Chief Minister, but as none of her grievances were attended to, she was constrained to file the present writ petition.

8. On the first date of hearing of the writ petition, i.e., 22.8.2025, appearance was entered on behalf of respondent No.8. During course of hearing, learned counsel for respondent No.8 sought to justify the action of the administrative authorities in constituting a joint team of Revenue officials and Police personnel for delivering possession to respondent No. 8, on basis of an order said to have been passed by the trial court on 5.2.2025, on the application moved by respondent No.8 under Section 151 CPC. The said order is as under:

वादी द्वारा प्रार्थना पत्र अन्तर्गत धारा 151 सी०पी०सी० प्रस्तुत कर कथन किया गया है कि प्रतिवादी द्वारा विवादित मकान में जबरन ताला तोड़कर कब्जा कर लिया है। न्यायालय द्वारा अन्तरिम अस्थायी निषेधाज्ञा जारी किया गया है, उसके बावजूद भी प्रतिवादीगण न्यायालय के आदेश का उल्लंघन कर रहे हैं।

सूना एवं पत्रावली का अवलोकन किया। पत्रावली के अवलोकन से विदित होता है कि न्यायालय द्वारा दिनांक 27.01.2025 को प्रतिवादीगण के विरुद्ध अन्तरिम निषेधाज्ञा जारी किया गया है, इसके बावजूद प्रतिवादीगण द्वारा उक्त विवादित सम्पत्ति में जबरन कब्जा कर लिया है। अतः वादी का प्रार्थना पत्र न्यायहित में स्वीकार किया जाता है। मामला अर्जेन्ट है। ऐसे में थानाध्यक्ष खेसरहा को आदेशित किया जाता है कि न्यायालय द्वारा पारित आदेश दिनांक 27.01.2025 का अनुपालन कराया जाना सुनिश्चित करें। तदनुसार प्रार्थना पत्र निस्तारित किया जाता है। पत्रावली नियत दिनांक को 72 पर सुनवाई हेतु पेश हो।

9. Having regard to the facts of the case and the submissions made on behalf of respondent No.8, the following order was passed on 22.8.2025 :-

“1. Sri Prabhakar Dubey, Advocate has entered appearance on behalf of respondent No.8.

2. We have heard learned counsel for the parties at some length and prima facie, it is evident that the present case is gross abuse of the process of law and the administrative powers of the State.

3. Before we proceed to pass orders on merit, as prayed by learned counsel for respondent No.8, he is granted time to complete his instructions.

4. We also require the Civil Judge (Junior Division)/Judicial Magistrate, Bansi, Siddharth Nagar, to submit his comments through the District Judge in relation to the manner in which order dated 05.02.2025 has been passed by him in Original Suit No.49/2025.

5. The Registrar General shall communicate the instant order to the District Judge, Siddharth Nagar for immediate compliance.

6. Put up as fresh on 25.08.2025."

10. In pursuance of the said order, Sri Pankaj, Civil Judge (Jr. Divn.), who had passed various orders in the suit from time to time, submitted his comments, through the District Judge, Siddharth Nagar, which is as under:

प्रेषक,

सिविल जज (जू०डि०) / जे०एम०

बांसी, जनपद सिद्धार्थनगर।

सेवा में,

माननीय जनपद न्यायाधीश

जनपद सिद्धार्थनगर।

विषय: अर्द्धशासकीय पत्र संख्या 88/2025 दिनांकित 22.08.2025 एवं रिट सी० नं० 28263/2025 श्रीमती सोनी प्रति उ०प्र० सरकार व सात अन्य के अनुपालन के संबंध में आख्या।

महोदय,

अति विनम्र निवेदन है कि मूल वाद संख्या 49/2025 संदीप गुप्ता बनाम श्यामजी आदि में वादी संदीप गुप्ता द्वारा न्यायालय सिविल जज (जू०डि०) / जे०एम० बांसी, सिद्धार्थनगर में दिनांक 27.01. 2025 को वाद दायर किया गया एवं न्यायालय सिविल जज (जू०डि०) / जे०एम० बांसी, सिद्धार्थनगर द्वारा दिनांक 27.01.2025 को प्रथम दृष्टया वादी के पक्ष में खसरा खतौनी एवं पंजीकृत बैनामा के आधार पर अंतरिम अस्थायी निषेधाज्ञा पारित किया गया तथा प्रतिवादीगण / विपक्षीगण को नोटिस जारी किया गया।

दौरान मूलवाद सुनवाई वादी द्वारा दिनांक 05.02.2025 को प्रार्थना पत्र मय शपथ पत्र अन्तर्गत धारा 151 व्यवहार प्रक्रिया संहिता दाखिल किया गया। जिसमें वादी द्वारा यह कथन किया गया कि प्रतिवादीगण / विपक्षीगण द्वारा पूर्व में पारित आदेश दिनांकित 27.01. 2025 अंतरिम अस्थायी निषेधाज्ञा का पालन नहीं किया जा रहा है, तथा संपत्ति पर जबरदस्ती कब्जा किया जा रहा है। इस संबंध में न्यायालय द्वारा माननीय उच्चतम न्यायालय एवं माननीय उच्च न्यायालय के विधि व्यवस्था को दृष्टिगत रखते हुए

1. Board of Trustees of the Port of Mumbai Vs. Nikhil N. Gupta, (2015) 10 SCC 139, 2. Sree Ram Vs. State of U.P. 2011 (2) ALJ 187 (All) (DB) 3. Smt. Jagannathiya Vs. State of U.P.] 2006 (64)

ALR 330 (AII) (DB) दिनांक 05.02.2025 को वादी के प्रार्थना पत्र अन्तर्गत धारा 151 व्यवहार प्रक्रिया संहिता स्वीकार करते हुए संबंधित थानाध्यक्ष को आदेशित किया गया कि वह न्यायालय द्वारा पारित आदेश दिनांक 27. 01.2025 का अनुपालन कराया जाना सुनिश्चित करें। न्यायालय द्वारा पूर्व में पारित आदेश दिनांकित 27.01.2025 किसी प्रकार का परिवर्तन नहीं किया गया है।

इस न्यायालय द्वारा उस समय उपलब्ध परिस्थितियों एवं प्रस्तुत साक्ष्यों पर विचार करते हुए अंतरिम अस्थायी निषेधाज्ञा आदेश की प्रभावशाली बनाये रखने तथा संभावित विघटन एवं विवाद की स्थिति को टालने के उद्देश्य से उक्त प्रार्थना पत्र स्वीकार किया गया।

पत्रावली में विगत कई तिथि व्यतीत हो जाने पर भी प्रतिवादीगण न्यायालय में उपस्थित नहीं हो रहे हैं और न ही प्रतिवादीगण द्वारा आज तक पत्रावली पर अपना जवाबोत्तर एवं अस्थायी निषेधाज्ञा प्रार्थना पत्र पर आपत्ति दाखिल किया गया है। पत्रावली प्रार्थना पत्र अन्तर्गत आदेश 39 नियम 1 व 2 के गुण दोष पर निस्तारण हेतु दिनांक 10.10.2025 नियत है

आख्या माननीय महोदय की सेवा में सादर प्रेषित ।

दिनांक 22.08.2025

भवदीय

सिविल जज जू० डि०/ जे० एम०

बांसी, जनपद सिद्धार्थ नगर ।

11. Respondent No.8 has also filed his affidavit. The stand taken by him is that the petitioner has not approached this Court with clean hands. It is alleged that the petitioner has incorrectly stated in the writ petition that respondent No.8 was posted as Reader in the court of CJM Siddharth Nagar, whereas, according to him, the correct position is that he was posted as Clerk in Copying Section. He denied having any closeness with the Judge. On merit, it is submitted that the property belonged to Gelhari, and after his death, it devolved on five persons. It is alleged that thereafter an oral settlement took place among the family members, pursuant to which two brothers executed the sale deed dated 14.2.2025 in respect of their shares in favour of respondent no.8. It is further claimed that possession was also delivered to him at the time of execution of the sale deed, and that he put his lock on the room which was allegedly constructed in the part of the property purchased by him. It is also alleged that as respondent No.8 is a permanent resident of District Sant Kabir Nagar and not permanently residing in the disputed house, the petitioner and other co-sharers taking advantage of the situation, broke open the lock, and forcibly entered the room allegedly in his possession, compelling him to institute the suit for permanent injunction restraining the defendants from creating any interference in his possession. The trial court granted a temporary injunction in his favour on 27.1.2025. It is alleged that in violation of the said injunction order, the petitioner broke open the lock on 2.2.2025, compelling respondent no.8 to move an application on 5.2.2025 before the trial court seeking restoration of possession. The trial court, accordingly, passed the order on 5.2.2025, directing the SHO, Khesarhara, Siddharth Nagar, to ensure restoration of possession in favour of respondent No.8 and to submit a compliance report within three days. In compliance of the said order, the SHO, Police Station Khesarhara submitted a

compliance report dated 7.2.2025 stating that possession had been restored in favour of respondent No.8 and that he had put his lock on the premises. Alongwith the compliance report, copies of the relevant reports and certificate was annexed, according to which, possession of the property had been duly handed over to respondent No.8. The further case of respondent No.8 is that, thereafter, the petitioner again broke the lock and entered the house. Consequently, this time, he directly requested the Tehsil authorities for delivery of possession, whereupon the Sub Divisional Magistrate vide order dated 28.5.2025, directed the Tehsil authorities to conduct spot inspection and take necessary action. Pursuant thereto, a team was constituted and possession was again delivered to respondent No.8 on 20.7.2025, and a spot memo was prepared in that regard.

12. Thus, the case of respondent No.8 is that he has not taken possession forcibly, but strictly in accordance with law. It is further asserted that possession of only 10 feet x 15 feet of the house has been delivered to him and the remaining portion continues to be in possession of the other co-sharers. According to respondent no.8, the petitioner is one of the defendants in the civil suit and has effective alternative remedy of moving an application for vacation of the order of temporary injunction. On this premise, it is contended that the present writ petition is not maintainable and is liable to be dismissed.

13. The petitioner, however, has filed a rejoinder affidavit, reasserting that respondent No.8 wields considerable influence in the district court establishment. It is stated that on enquiry, she came to know that respondent no.8 had earlier worked as Peshkar in the court of Munsif, and was thereafter transferred as a Peshkar in the POCSO Court, and is presently working in the Copying Section. It has been reiterated that respondent No.8 was never in possession of any part of the house. According to the petitioner, respondent No.8 was well aware that the property in question is a residential house, in which families of five co-shares are residing and there has been no physical partition of their respective shares.

14. It has further been reasserted that the case set up by respondent No.8, allegeing that the petitioner and other co-sharers twice broke open the lock and took possession, is palpably false. It is specifically pleaded that respondent No.8 never came into actual physical possession of any part of the ancestral property on basis of the sale deed. According to the petitioner, possession was sought to be obtained for the first time on 18.7.2025 through administrative intervention, under garb of the ex parte injunction order dated 27.1.2025 and not on basis of any pre-existing lawful possession. It is further stated that Original Suit No. 49 of 2025 has been instituted by Shivdhari, widow of Gelhari, seeking cancellation of the sale deed and the said civil suit is presently pending. It is submitted that in absence of any fresh order of Civil Court directing the revenue authorities to handover possession to respondent No.8, the administrative authorities had no authority to entertain the application dated 26.05.2025. The dispossession of the petitioner, on the basis of the said application dated 26.05.2025, under the guise of execution of the temporary injunction order dated 27.01.2025, by the administrative authorities, is without jurisdiction.

Contentions of learned counsel for the parties:

15. Learned counsel for the petitioner submitted that :-

(a) The administrative authorities had no power or jurisdiction to constitute any joint team for the purpose of delivering possession of the property to respondent No.8. The entire exercise carried out by the joint team constituted in pursuance of the officer memo bearing letter No. 121 dated __ July 25, is without authority of law and liable to be set aside.

(b) The trial court exceeded its jurisdiction in granting ad-interim ex parte injunction, without first ascertaining whether the plaintiff (respondent No.8) was in actual physical possession of the suit property. Again, the trial court fell into error in entertaining the application for restoration of possession under Section 151 CPC, firstly, on a date not fixed in the case, and secondly, in allowing it on the same date, even without issuing any notice to the petitioner and without conducting any enquiry. According to learned counsel, such an order, having serious civil consequences, could not have been passed in a summary manner.

(c) There was no order of the trial court for delivery of possession to respondent no.8, on basis of which the revenue team could have been constituted vide office memo dated July 25.

(d) Respondent No.8 could never have come into, nor was he ever in possession of any defined or demarcated portion of the property, inasmuch as the property is undivided. Further, the stand taken in the counter affidavit is inconsistent and falsifies the claim of respondent No.8 that he was dispossessed twice by the petitioner and other co-sharers.

(e) Trial court passed various orders in favour of respondent no.8 being swayed by the fact that he was an employee of the district court and worked as Peshkar in different courts. Consequently, the entire exercise stands vitiated.

16. Per contra, learned counsel for respondent No.8 submitted that:

(i) Respondent No.8 was lawfully handed over possession of the portion of the house in respect of which sale deed was executed in his favour, the vendors being in actual physical possession thereof at the time of execution of the sale deed.

(ii) The petitioner and other co-sharers twice broke open the locks and succeeded in dispossessing respondent No.8 and, therefore, the trial court and the administrative authorities have rightly passed the orders to protect his possession and to restore status quo ante.

(iii) The petitioner has an effective alternative remedy of seeking vacation of the temporary injunction by moving appropriate application before the trial court and, therefore, the present writ petition ought not to be entertained.

17. We have considered the rival submissions advanced by learned counsel for the parties and perused the material on record, including the written submissions.

Discussion and Analysis:

18. Admittedly, Gelhai, father-in-law of the petitioner, was a co-tenure holder along with several other persons of Plot No.211 area 0.4310 hectare. It is also admitted that upon his death, his share in the joint holding devolved on his four sons, namely, Shyamji, Premji, Ramji, Lalji and his wife, Shivdhari Devi. As per revenue records, though after death of Gelhai, name of all his heirs, came to be recorded in his place but there is no physical partition of the respective shares. There is also no evidence brought on record in this regard by respondent No. 8, except the bald assertion in respect of oral settlement. Moreover, there is no such case set up in the suit nor respondent no. 8

has ever asserted that his vendors were exclusive owners of the portion of property being transferred. There was also no such recital in the sale deed. In fact, in the sale deed, it has not been stated how a specific portion of the property is being sold.

19. The specific case of the petitioner is that the house has been in joint possession of all the co-tenure holders. She has been residing therein along with her three children. One of the two shops on the ground floor was in her possession wherefrom she has been running a beauty parlour and cosmetic shop. It has been stated that since husband of the petitioner is a drunkard, she earns livelihood for the family from the business being run from the aforesaid shop. Respondent No.8, in the counter affidavit filed by him, has not denied that the petitioner was running a beauty parlour from one of the shops on the ground floor. He has also not disputed that the petitioner has been dispossessed on basis of the orders passed by the trial court and the action taken by the Administrative Authorities was ostensibly for giving effect to the orders of the trial court.

20. The present proceedings, in pursuance of which the petitioner and her family have been dispossessed, commenced with an application stated to have been filed by respondent No. 8 on 04.05.2025 before the Superintendent of Police, District Siddharth Nagar. In the said application, respondent no. 8 has asserted that he had purchased a small part of 0.0063197 hectare out of 0.4310 hectare of Gata No. 211, over which a residential building was in existence, by means of sale-deed dated 14.02.2024 from Shyamji and Premji. On basis of the said transaction, his name was mutated in the revenue records on 27.04.2024. It was further stated that he had put his domestic belongings in the said portion and had put a lock thereon, thereby coming in possession of the same. On 27.01.2025, he instituted a suit in the court of Civil Judge (J.D.), Bansi seeking a decree of permanent injunction restraining the defendants from breaking the lock, raising construction over the property, or otherwise interfering with his alleged possession. It is alleged that despite order of temporary injunction in his favour, the vendors broke open the lock and re-entered the house, assuring him they would vacate the premises by March. However, despite repeated requests, they did not vacate the house. Respondent No.8 further claimed that he attempted to contact the vendor, Shyamji, telephonically as well as personally, but all such attempts failed. On the basis of the aforesaid allegations, the said application was filed seeking issuance of appropriate orders for delivery of possession of the house to respondent No.8. The application, for ease of reference, is extracted below:

extracted below:

"सेवा में,

श्रीमान् पुलिस अधीक्षक महोदय,
जनपद सिद्धार्थनगर।

महोदय,

सविनय निवेदन है कि प्रार्थी मौजा सकारपार, तप्पा बीसो, परगना-बांसी पूरब तहसील बांसी थाना खेसरहा, जनपद सिद्धार्थनगर स्थित आराजी गाटा सं0-211/0.4310 हे0 में से 0.0063197 हे0 में निर्मित आवासीय मकान का दिनांक 14.02.2024 को श्यामजी व प्रेमजी पुत्रगण गेल्हई से बैनामा लिया था। उक्त

आराजी का नामांतरण दिनांक 27.04.2024 को प्रार्थी के हक में तहसीलदार महोदय बांसी द्वारा किया जा चुका है, जिसके आधार पर प्रार्थी का नाम खतौनी में बतौर संक्रमणीय भूमिधर दर्ज हो चुका है। क्रय शुदा मकान में प्रार्थी द्वारा कुछ घरेलू सामान रखकर एवं ताला लगाकर आबाद हो गया। माननीय सिविल जज जू०डि० बांसी द्वारा दिनांक 27.01.2025 को प्रार्थी के मकान का न ताला तोड़े न ही उक्त मकान में कोई निर्माण करें न ही वादी के शांति पूर्ण कब्जा दखल में अवरोध उत्पन्न करें। इसके बावजूद विक्रेता द्वारा उक्त मकान का ताला तोड़कर कब्जा कर लिया और विक्रेतागण द्वारा आज तक उक्त मकान खाली नहीं किया गया। प्रार्थी द्वारा विक्रेता श्यामजी पुत्र गेल्हई के मोबाइन नं०8948358513 पर फोन किये जाने पर उक्त विक्रेता श्यामजी द्वारा न तो प्रार्थी का फोन रिसीव किया जाता है और न ही व्यक्तिगत रूप से प्रार्थी से सम्पर्क किया जाता है।

अतः श्रीमान् जी से निवेदन है कि प्रार्थी का उक्त क्रय शुदा आवासीय मकान पर कब्जा दिलाये जाने हेतु सम्बन्धित को आदेशित करने की कृपा करें।

सादर।

दिनांक-04.05.2025

संलग्नक-थाना खेसरहा दिनांकित 02.02.2025

की आख्या

प्रार्थी

संदीप गुप्ता

मो०नं०-9721283848"

21. It is noteworthy that in the said application, respondent No. 8 did not disclose the date on which he was allegedly dispossessed by the vendors by breaking the lock and re-entering the portion claimed to have been sold to him. It is further relevant to note that after obtaining order of ad interim injunction from the trial court on 27.01.2025, respondent No. 8 filed an application under Section 151 CPC on 05.02.2025 alleging that the defendants in the suit had forcibly taken possession of the sold property by breaking open the locks, despite the subsistence of the order of temporary injunction, thereby violating the order passed by the court. The relevant portion of the said application is extracted herein below:

"उपरोक्त स्थगन आदेश की जानकारी प्रतिवादीगण को हो गयी और वह वादी के अनुपस्थित का लाभ उठाकर दिनांक 02.02.2025 को वादी के मकान अक्षर ABFEA का ताला तोड़कर उसमें जबरन घुस गये और माननीय न्यायालय के स्थगन आदेश का उल्लंघन करके बादी दखिल दावे के उद्देश्य को फेल करने पर आमदा है। ऐसी परिस्थित में तहसीलदार बांसी व राजस्व निरीक्षक मय लेखपाल थानाध्यक्ष खेसरहा मय पुलिसबल के साथ बादी के मकान में जो दौरान मुकदमा प्रतिवादीगण द्वारा ताला तोड़कर कब्जा कर लिया गया है को खाली कराया जाना आवश्यक व न्यायसंगत है।"

22. On the same date, the trial court allowed the aforesaid application and directed the SHO, Khesraha, to ensure compliance with the order of ad-interim injunction dated 27.01.2025. The order passed by the trial court on the said date reads as follows:

"दिनांक & 05-02-2025

वादी द्वारा प्रार्थना पत्र अन्तर्गत धारा 151 सी०पी०सी० प्रस्तुत कर कथन किया गया है कि प्रतिवादी द्वारा विवादित मकान में जबरन ताला तोड़कर कब्जा कर लिया है। न्यायालय द्वारा अन्तरिम अस्थायी निषेधाज्ञा जारी किया गया है। उसके बावजूद भी प्रतिवादीगण न्यायालय के आदेश का उल्लंघन कर रहे हैं।

सूना एवं पत्रावली का अवलोकन किया। पत्रावली के अवलोकन से विदित होता है कि न्यायालय द्वारा दिनांक 27.01.2025 को प्रतिवादीगण के विरुद्ध अन्तरिम निषेधाज्ञा जारी किया गया है, इसके बावजूद प्रतिवादीगण द्वारा उक्त विवादित सम्पत्ति में जबरन कब्जा कर लिया है। अतः वादी का प्रार्थना पत्र न्यायहित में स्वीकार किया जाता है। मामला अर्जेन्ट है। ऐसे में थानाध्यक्ष खेसरहा को आदेशित किया जाता है कि न्यायालय द्वारा पारित आदेश दिनांक 27.01. 2025 का अनुपालन कराया जाना सुनिश्चित करें। तदनुसार प्रार्थना पत्र निस्तारित किया जाता है। पत्रावली नियत दिनांक को 712 पर सुनवायी हेतु पेश हो।

हस्ताक्षर अपठनीय

05.02.2025

सिविल जज (जू०डि०) / जे०एम०

बांसी, सिद्धार्थनगर।"

23. On the same date, the trial court also issued a notice to the Inspector Incharge, Police Station, Khesraha, District Siddharth Nagar directing him to ensure due compliance of the order dated 27.01.2025 and to submit a compliance report within three days. The notice issued by the trial court reads as follows:

न्यायालय सिविल जज (जू०डि०) / न्यायिक मजिस्ट्रेट, बांसी, सिद्धार्थनगर।

नोटिस

बनाम

थाना प्रभारी, खेसरहा, सिद्धार्थनगर।

आपको अवगत कराना है कि मूल वाद संख्या 49/2025 संदीप गुप्ता बनाम श्यामजी आदि में दिनांक 27.01.2025 को प्रतिवादीगण को अन्तरिम निषेधाज्ञा जारी किया गया है। जिसके बावजूद प्रतिवादीगण द्वारा उक्त मकान का ताला तोड़कर घर में घुस गये हैं, न्यायालय के आदेश का उल्लंघन किया गया है। जो कि अत्यन्त आपत्तिजनक है।

अतः आपको आदेशित किया जाता है कि न्यायालय के आदेश दिनांक 27.01.2025 का अनुपालन कराया जाना सुनिश्चित करे और न्यायालय को अन्दर 03 दिवस में उक्त कार्यवाही से अवगत करें।

हस्ताक्षर अपठनीय

दिनांक 05.02.2025

05.02.2025

सिविल जज (जू०डि०) / जे०एम०

बांसी, सिद्धार्थनगर।

संलग्नक आदेश दिनांक 27.01.2025 की एक प्रति।"

24. It is noteworthy that on 05.02.2025 itself, the very date on which application under Section 151 CPC was filed, it was entertained and allowed ex parte. The suit was not fixed for any other purpose on that date. As a matter of fact, while granting ex parte ad-interim injunction on 27.01.2025, the trial court had issued summons to the defendants and had fixed 24.02.2025 for W.S. and 06.03.2025 for settlement of issues. It is further relevant to note here that while passing order of exparte ad-interim injunction and fixing 10.02.2025 for consideration of the application for temporary injunction, the trial court completely overlooked the mandatory provisions of Order XXXIX Rule 3 CPC. Under the said provision, the court granting ex parte injunction is required to direct the plaintiff to take immediate steps to serve upon the defendants, by the registered post, copies of the application for injunction alongwith the supporting affidavit, a copy of the plaint, and copies of the documents relied upon and further to file, on the day such injunction was granted or on the immediately following day, an affidavit stating that copies have been duly delivered or dispatched. A perusal of the order granting temporary injunction reveals that no specific reason has been recorded therein for formation of the opinion that the object of granting the injunction would be defeated by delay. Furthermore, the trial court failed to ensure compliance with the statutory requirement of service of notice upon the defendants alongwith copies of plaint and other relevant documents as mandated under law.

25. The specific case of the petitioner is that she has neither been served with summons in the suit nor was she aware of the ex parte injunction order until the Revenue Authorities and the Police Team arrived at the site and delivered possession to respondent No.8. In cases where an ex parte injunction order is granted, the law mandates that every endeavour must be made to dispose of the injunction application at the earliest. However, a perusal of the order-sheet reveals that on the very next date i.e. 10.02.2025, the trial court without advertting to the question as to whether respondent No.8 had complied with the mandatory requirements contained in the proviso to Order XXXIX Rule 3 CPC, adjourned the matter to 24.02.2025 and extended the injunction in a routine manner. The same course of action was repeated on subsequent dates, namely, 24.02.2025, 06.03.2025, 18.03.2025, 25.03.2025, 24.04.2025, 15.05.2025, 30.05.2025, 11.07.2025. The orders passed on the aforesaid dates are extracted herein below:

"10/2/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० 7ग।

बादीगण दिनांक 24.02.2025 को पेश हो। TI नियत तिथि तक प्रभावी।

24/2/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० 7ग।

वादीगण दिनांक 06.03.2025 को पेश हो। TI प्रभावी।

06/3/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० 7ग।

बादीगण दिनांक 18.03.2025 को पेश हो। TI नियत तिथि तक प्रभावी।

18/3/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० 7ग।

वादीगण दिनांक 25.03.2025 को पेश हो। TI नियत तिथि तक प्रभावी।

25/3/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० 7ग।

वादीगण दिनांक 24.04.2025 को पेश हो। TI प्रभावी।

24/4/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० 7ग।

वादीगण दिनांक 15.05.2025 को पेश हो। TI प्रभावी।

15/5/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० 7ग।

बादीगण दिनांक 30.05.2025 को पेश हो। TI प्रभावी।

30/5/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० 7ग।

वादीगण दिनांक 11.07.2025 को पेश हो। TI प्रभावी।

11/7/25

पेश हुआ। अधिवक्तागण उपस्थित वास्ते आ०नि० 7ग।

वादीगण दिनांक 10.10.2025 को पेश हो। TI प्रभावी।"

26. The aforesaid circumstances clearly demonstrate that the trial court proceeded in a cursory manner in utter disregard of the mandatory requirements of law. This court is constrained to observe that the manner in which the proceedings were conducted, leaves it unclear as to whether such a course was adopted out of ignorance of law or for reasons extraneous thereto.

27. It is further noteworthy that on 05.02.2025, respondent No. 8 moved an application before the trial court under Section 151 CPC alleging that on 02.02.2025 the defendants broke open the locks of the portion allegedly in his possession and thereby violated the injunction order, and on that basis, sought restoration of possession. The alleged dispossession is stated to have taken place within five days from the date of grant of the ex parte injunction and within the period fixed by the trial court for service of summons upon the defendants. However, in the said application, there is

no indication whatsoever that respondent no.8 had taken steps to serve the defendants with the summons of the suit, though, by the date of filing of the application, the period granted for services had already expired. It is also relevant to note that, as per the averments contained in the application dated 05.02.2025, the apprehended conduct which formed the basis for seeking injunctions namely, re-entry into the said portion by breaking open the locks, had allegedly materialized in the manner projected by respondent no.8 at the time of institution of the suit.

28. The trial court in the comments submitted in pursuance of the order dated 28.08.2025 has tried to justify his action by placing reliance on the judgement of Supreme Court in **Board of Trustees of the Port of Mumbai Vs. Nikhil N. Gupta and another, (2015)10 SCC 139** and Division Bench judgements of this Court in **Sree Ram Vs. State of Uttar Pradesh and others, 2011(2)ALJ 187** and **Smt. Jagannathiya Vs. State of U.P. through Secretary Home, U.P. Lucknow and others, 2006 (64) ALR 330**.

(a) In Board of Trustees of the Port of Mumbai (Supra), one of the party, which had suffered a decree of eviction and had been given time to vacate subject to filing of undertaking before the Supreme Court, failed to vacate the premises. Consequently, when the contempt petition was filed before Supreme Court by the decree holder complaining breach of undertaking on part of the judgement debtor, the Supreme Court directed for execution of warrant of possession notwithstanding the objections by the judgement debtor or by any third party alleged to be in possession of the suit premises. The facts of the said case are clearly distinguishable except that it recognises the principle that in case of violation of undertaking given to a Court, it has power to issue appropriate direction to ensure execution of the decree.

(b) In Sree Ram (supra) in a writ petition filed under Article 226 of the Constitution before this Court, it was alleged that the injunction order granted by the trial court in a Civil Suit was being violated. The plaintiff's application under Order XXXIX Rule 2A CPC was stated to be pending. The petitioner prayed for appropriate direction by this Court to the District Administration to ensure compliance of the order of injunction passed by the trial court. After citing various judgements of Supreme Court holding that the Court is competent to pass suitable orders under Section 151 CPC to meet ends of justice and to prevent abuse of process of Court, it has been held that the trial court also has sufficient powers to issue appropriate directions to District Administration/Police Authorities to ensure compliance with its order. While clarifying the above stated legal position, the High Court permitted the petitioner to approach the trial court for enforcement of the order and directed the trial court to look into the matter and pass appropriate orders after providing opportunity of hearing to the parties. The said decision, as noted, recognises the power of the Court to issue appropriate orders to advance the cause of justice subject to opportunity of hearing being provided to the parties. The said judgement, in fact, would go against the stand taken by the learned trial Judge, as in the present case, the application under Section 151 CPC was allowed on the very date it was filed and without affording any opportunity of hearing to the defendants.

(c) The third judgement relied upon by the trial Judge in case of Smt. Jagannathiya (supra) also merely holds that once the Court is satisfied that interim order passed by it has been disobeyed, it is obliged to pass appropriate directions for enforcement of its order and it cannot remain a mere spectator. In the said case, an order of temporary injunction was granted by the trial court and the said order was upheld by the revisional court and also in the petition filed

before this Court under Article 227 of the Constitution. The case of the plaintiff was that despite the order of interim injunction in her favour, the defendants were interfering in her possession, and the court below had expressed its inability to enforce its order, observing that the duty to enforce the orders passed by it was that of the Police Authorities. In the said context, it was held that the trial court, apart from specific powers conferred upon it under Order XXXIX, Rule 2A CPC, also has power, to issue necessary instructions to the police, if the facts so warrant, to ensure compliance with its order.

29. The power of trial court to restore status quo ante, in appropriate cases, is not in dispute. However, the question which arises for consideration before this court is whether, in the facts and circumstances of the instant case, there existed any justification or occasion for exercise of such power, particularly in the absence of compliance with the mandatory procedural safeguards and without affording an opportunity of hearing to the affected parties.

30. As already noticed, the application was filed on 05.02.2025 on a date which was not fixed in the suit. The trial court, on the very same date, took up the application for consideration and allowed it ex parte. The undue haste with which the application was entertained and granted gives rise to a serious doubt regarding the propriety of the exercise undertaken by the trial court. The court was required to issue notice of the said application to the defendants. It ought to have conducted atleast a prima facie fact finding exercise to ascertain whether the plaintiff was, in fact, in possession of the property and whether the alleged dispossession had taken place after the grant of order of temporary injunction so as to constitute a violation thereof. This requirement was all the more imperative in the facts of the instant case, where the order of temporary injunction was granted ex parte, solely on the version of the plaintiff, without even obtaining any Commissioner's report with regard to possession of the suit property.

31. The admitted case of respondent No. 8 is that in pursuance of order of trial court dated 05.02.2025, he was again put in possession of the suit property by the Police Authorities and a written acknowledgement was issued by him, addressed to SHO, Police Station Khesraha stating that possession had been restored. However, in the subsequent application filed by him on 14.05.2025, there is neither any reference to the alleged dispossession in the past nor to the order of the trial court dated 05.02.2025, nor even to the alleged restoration of possession in pursuance thereof on 07.02.2025. The petitioner does not complain of any dispossession in pursuance of order dated 05.02.2025. On the contrary, she categorically denies that respondent No.8 was ever put in possession of the suit property. She has also specifically denied the allegation regarding breaking open of locks on 02.02.2025 as well as alleged restoration of possession to respondent No. 8 in compliance with the order dated 05.02.2025.

32. In the suit, the specific case of respondent No. 8 was that he was in possession on the date of filing of the suit and on that basis, relief of permanent injunction was sought. The application for temporary injunction was founded on the allegation that there was a threat of dispossession of the plaintiff/respondent No.8 by defendants by breaking open the locks and the trial court, accepting the same to be true, also granted ex parte ad interim injunction. However, the aforesaid stand of respondent No. 8 stands totally belied by the pleadings made by him in paragraph-7 of the short counter affidavit filed in the present writ petition, wherein he has stated that after purchasing the

property and being put in possession thereof, he came to know that the co-sharers of the house, including the petitioner, had broken the lock and entered into the portion purchased by him, which compelled him to institute the suit. Paragraph-7 of the short counter affidavit of respondent No.8 is reproduced hereinbelow:

“7. That it is stated here that since the answering respondent is the permanent resident of District Sant Kabir Nagar and doing job in District- Siddhartha Nagar, and as such he is not permanently residing in the said house which he purchased through sale deed, and accordingly the answering respondent has put the lock over the property in question, but after some it was informed to the answering respondent that the other co sharer including the petitioner have break the lock and enter in the purchased room, and then the answering respondent filed Suit No- 49 of 2025 Sandeep Gupta Vs Shyamji and others seeking permanent injunction restraining the defendants from creating any interference in the possession of the plaintiff and not to break the lock put over the property in question.”

33. Reverting to the application dated 14.05.2025 filed by respondent No. 8 before the police authorities seeking appropriate orders for handing over possession to him, it is pertinent to note that the said application was forwarded to Inspector Incharge, Police Station Khesraha, District Siddharthnagar on 16.05.2025 and appears to have been received at the police station on the same date. On the said application, the Inspector Incharge, Sakarpar, Police Station Khesraha submitted his report to Sub Divisional Officer, Bansi. In the said report, it was categorically stated that respondent No. 8 could not get possession of the property on basis of the sale deed in his favour and accordingly, a request was made for constituting a joint team for delivering possession to respondent No. 8. The said report assumes significance and is, therefore, reproduced herein below:

"सेवा में,

श्रीमान् उपजिलाधिकारी बांसी महोदय,

जनपद सिद्धार्थनगर।

महोदय,

सादर निवेदन है कि आवेदक संदीप गुप्ता पुत्र रामप्रसाद सा० गोवापार थाना घनघटा जनपद सन्तकबीर नगर के द्वारा गाटा सं०-211/0.4310 हे० में से 0.0063197 हे० में निर्मित आवासीय मकान मौजा स्थित सकारपार में श्यामजी पुत्र गेलहई सा० टिकूर थाना खेसरहा जनपद सिद्धार्थनगर से दिनांक 14.02.2024 को बैनामा लिये जो दिनांक 27.04.2024 को नामान्तरण हो चुका है। उक्त मकान का कब्जा आवेदक उपरोक्त को नहीं मिल पाया है। उक्त मकान में विपक्षी श्यामजी पुत्र गेलहई उपरोक्त अपने परिवार के साथ रह रहे हैं। उक्त मकान का कब्जा दिलाने हेतु आवेदक उपरोक्त द्वारा दिनांक 16.05.2025 को श्रीमान पुलिस अधीक्षक सि०नगर महोदय को प्रार्थना पत्र दिया गया है तथा उक्त प्रकरण के सम्बन्ध में मूल वाद सं०49/2025 संदीप बनाम श्यामजी मा० न्यायालय द्वारा दिनांक 27. 01.2025 को अस्थाई निषेधाज्ञा आदेश पारित किया गया है।

अतः महोदय से निवेदन है कि आवेदक उपरोक्त का उक्त मकान का कब्जा दिलाने हेतु संयुक्त टीम गठन करने की कृपा की जाय। जिससे उक्त प्रकरण में समस्या का समाधान कराया जा सके। रिपोर्ट सादर सेवा में प्रेषित है।

ह० / अपठनीय

28.05.2025

राकेश त्रिपाठी

चौकी प्रभारी सकारपार

थाना खेसरहा

जनपद सिद्धार्थनगर"

34. In the report, shelter has been taken behind the ex parte injunction order dated 27.01.2025, without appreciating that the said order was in prohibitive terms and not for delivering possession to respondent No. 8 in case he was not already in possession. There is also no reference to order of trial court dated 05.02.2025 apparently for the reason that in purported compliance of the said order, possession had allegedly been restored to respondent No. 8 in the past and therefore, the said order had exhausted itself. On the other hand, the report reinforces the stand of the petitioner that respondent No. 8 never came in actual physical possession of the house on basis of the alleged sale deed. Admittedly, there was no fresh order of the trial court directing the Administrative Authorities to put respondent No. 8 in possession of the house. The order of temporary injunction was purely prohibitory in nature and not mandatory. Therefore, the Chowki Incharge, Sakarpar clearly exceeded his authority in requesting the SDO to constitute a joint team for delivery of possession to respondent No. 8, merely on basis of the request of respondent No. 8.

35. The subsequent direction issued by the SDM dated 25.06.2025 to the Tehsildar for constituting a joint team, followed by order of the Tehsildar dated 02.07.2025 to Naib Tehsildar to the same effect, and Office Order dated __, July 2025¹ whereby a team of Revenue Officials was constituted for delivery of possession of the property to respondent No. 8, are without jurisdiction. In the facts and circumstances noted above, the Administrative Authorities had exceeded their authority and jurisdiction in constituting a revenue team for delivering possession to respondent No. 8.

36. Although, the name of respondent No. 8 came to be recorded in the revenue records in place of vendors but his name is jointly recorded with other co-tenure holders. As already stated, there is no division of the holding. The theory of oral partition has been set up by respondent No. 8 for the first time in the short counter affidavit. Copy of the khasra which is document of possession has also not been filed in the suit nor before this Court. In the aforesaid situation, even if, we abstain from going into the merits of the ex parte injunction order dated 27.01.2025, we are left with no doubt in our mind that the trial court had acted in a patently illegal manner, with material irregularity, in entertaining the application dated 02.02.2025 under Section 151 CPC, for restoring the possession, and in allowing the said application on the same date ex parte. At the least, the trial

court ought to have issued notice of the said application to the defendants and afforded them an opportunity to contest the same. In no event, the procedure adopted by the trial court was justified.

37. Additionally, we find that there is no finding recorded in the order dated 05.02.2025 that respondent No. 8 was in possession of the suit property on the date when injunction order was passed in his favour, nor is there any finding as regards the date on which the alleged dispossession had taken place. In the absence of these findings, the order of the trial court allowing the application for restoring status quo ante is wholly illegal.

38. We find that the trial court has exceeded its jurisdiction in passing order dated 05.02.2025 and the Administrative Authorities have equally erred in constituting a revenue team for delivering possession to respondent No. 8 and in thereafter dispossessing the defendants, including the petitioner herein, from the suit property, through the said team. It amounts to a gross abuse of the administrative powers and is wholly without jurisdiction. The tearing hurry in which the matter has proceeded raises serious doubt about the bona fides of orders passed by the trial court and the action taken by the Administrative Authorities. The circumstances clearly warrant an enquiry on the administrative side.

39. As we find that both the Court below as well as Administrative Authorities have acted in a totally mala fide manner and in colourable exercise of power in dispossessing the petitioner and consequently, we are not declined to accept the submission that the instant petition should not have been entertained and the petitioner should be relegated to the alternative remedy of filing objection and praying for appropriate relief before the trial court.

40. Accordingly, we **dispose of** the writ petition with the following directions:

a) Respondents No. 2 & 3 are directed to ensure that the possession of the property in dispute is handed over to the petitioner and other co-sharers within 48 hours from the date of communication and receipt of a copy of this order.

b) Let copy of this order be placed before the Hon'ble Chief Justice for consideration and for passing appropriate orders, if so deemed fit, for initiating disciplinary enquiry against the Civil Judge (Junior Division) who has passed the order dated 05.02.2025.

c) So far as respondent No. 8, an employee of District Judgeship Siddharthnagar is concerned, the matter be placed before the competent authority for appropriate action in accordance with law.

d) The petitioner shall be entitled to costs quantified at Rs.1,00,000/-, which shall be paid by respondent No. 8 by way of compensation for illegal dispossession of the petitioner and for the mental trauma suffered by the petitioner and her three minor children. The aforesaid amount shall be paid by respondent No. 8 to the petitioner within a period of one week from the date of this order, failing which respondent No. 2 shall forthwith issue a recovery certificate for recovery of the said amount as arrears of land revenue and shall ensure recovery thereof from respondent No. 8 and payment to the petitioner positively within a further period of one month.

(2026) 1 ILRA 548
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.01.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE SWARUPAMA CHATURVEDI, J.

Writ C No. 42608 of 2025 & Other connected cases

M/S Hinduja Housing Finance Ltd. ...Petitioner
State of U.P. & Ors. Versus
...Respondents

ISSUE FOR CONSIDERATION

Common question of law under Section 14 of the SARFAESI Act, 2002 regarding delay in deciding applications of the financial institution for taking physical possession of secured assets by the competent Magistrates.

HEADNOTE

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Sections 14, 26D, 26E – Applications by secured creditor for taking physical possession of secured assets – Delay in disposal by District Magistrate/Chief Metropolitan Magistrate – Statutory timeline of thirty days extendable up to sixty days – Legislative intent of expeditious enforcement of security interest – Role of Magistrate confined to administrative assistance and verification of statutory compliance – Delay defeats the very purpose of the Act – Statutory priority of secured creditor – Directions issued to ensure timely disposal of Section 14 applications.

Writ petitions allowed. (E-5)

HELD:

SARFAESI Act, 2002 is a special legislation enacted to enable banks and financial institutions to enforce security interests in a swift and effective manner, without having inordinate delay. Section 14 was made to provide an effective tool to protect the interest of the secured creditor. The secured creditor may request the District Magistrate or the Chief Metropolitan Magistrate for the purpose of taking possession or control of any secured asset. Section 14 empowers the District Magistrate or the Chief Metropolitan Magistrate to render administrative assistance for taking possession of the secured asset upon satisfaction of the statutory conditions prescribed. The function of the Magistrate is confined to verification of factual compliance with statutory requirements. The Magistrate's role under Section 14 is not adjudicatory but executive and facilitative.

Section 14 applications are to be decided promptly and not permitted to remain pending for indefinite periods, and the extension is for meeting certain exigencies only. Prolonged pendency of applications under Section 14 undermines the very purpose of the SARFAESI Act. The bar contained under Section 14(3) makes it clear that once assistance is rendered under Section 14 in accordance with law, such acts are not amenable to challenge before any court or authority. This underscores that the Magistrate's role under Section 14 is not adjudicatory but executive and facilitative.

The right to approach the Magistrate under Section 14 is a substantive statutory remedy, and any inordinate delay in its consideration amounts to denial of such remedy, which cannot be sustained in law. Delay in deciding Section 14 applications has the potential to expose secured assets to competing claims, attachments or encumbrances, thereby undermining the statutory priority expressly recognized under Section 26E. Even where an order under Section 14 has been passed and possession was delivered but was disturbed by trespass, the secured creditor is entitled to seek further administrative assistance for effective implementation of the Section 14 order. District Magistrate/Chief Metropolitan Magistrate is directed to decide the petitioner's applications filed under Section 14 as expeditiously as possible and preferably within a period of thirty days. **(Paras 17–18, 20–21, 26–27, 31–32, 37, 40–43)**

CASE LAW CITED

NKGSB Cooperative Bank Ltd. v. Subir Chakravarty and others, (2022) 10 SCC 286;
C. Bright v. District Collector and others, (2021) 2 SCC 392;
State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd., (2007) 11 SCC 363;
Salem Advocate Bar Association (2) v. Union of India, (2005) 6 SCC 344;
Kalpana Mehta v. Union of India, (2018) 7 SCC 1;
Indian Bank (Erstwhile Allahabad Bank) v. State of U.P. and others, Writ – C No. 7126 of 2021, decided on 24.08.2021.

List of Acts

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
Constitution of India.

List of Keyword

SARFAESI Act, 2002; Section 14 application; Physical possession; Delay by Magistrate; Statutory timeline; Secured creditor; Priority under Section 26E; Non-performing asset; Enforcement of security interest.

CASE ARISING FROM

Delay in disposal of applications under Section 14 of the SARFAESI Act, 2002 by the District Magistrate/Chief Metropolitan Magistrate, Ghaziabad and other concerned authorities.

Appearances for Parties

Advs For Petitioner: Ashutosh Sharma; Nitesh Kumar Jauhari; Ajeet Singh

Advs For Respondents: C.S.C.

(Delivered by Hon'ble Swarupama Chaturvedi, J.)

1. Heard Sri Ashutosh Sharma, Sri Nitesh Kumar Jauhari and Sri Ajeet Singh learned counsel for petitioners and Sri Pradeepta Kumar Shahi, learned Additional Chief Standing Counsel and Sri Mukul Tripathi, learned Standing Counsel for the State respondents.

2. By means of the present batch of petitions filed under Article 226 of the Constitution of India, petitioners have prayed for issuance of an appropriate writ, order or direction in the nature of mandamus directing the concerned Magistrates to decide the applications filed by them under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter “SARFAESI Act, 2002”) expeditiously, within a time-frame for ensuring the physical possession of the property to petitioners.

3. The petitioner is same in all petitions, which is a registered housing finance company and a notified financial institution under the SARFAESI Act, 2002. The petitions challenge administrative delays in the exercise of statutory duties by the concerned Magistrates, which, according to the petitioner, amount to a violation of the mandatory timelines prescribed under the SARFAESI Act 2002 and also directions issued by this Court in various writ petitions in order to ensure the timeline.

4. All the writ petitions in this batch raise a common question of law under the SARFAESI Act, 2002, they are, therefore, being heard together and decided by this common judgment. For the sake of convenience, the factual background of each petition is set out separately, and references to pleadings and documents are confined to the respective petitions unless otherwise indicated.

5. In each case, the borrowers availed loans from the petitioner, creating an equitable mortgage over the respective properties. Following defaults in repayment, the loan accounts were declared Non-Performing Assets. In accordance with the statutory procedure, demand notices under Section 13(2) of the SARFAESI Act 2002 were issued. As debts remained unpaid, the petitioner took symbolic possession of the assets under Section 13(4). Subsequently, the petitioner filed applications under Section 14 of the SARFAESI Act before the competent court to obtain actual physical possession of the secured assets. The grievance in all the petitions is that the applications have not been decided within the statutory period, and the authorities concerned have allegedly been mechanically fixing dates without passing substantive orders.

Writ C No. 42608 of 2025

6. Factual background in Writ C No. 42608 of 2025 is that the borrower availed a housing loan of Rs.10,01,000/- on 13.02.2024, creating an equitable mortgage over scheduled property. Following a default in repayment, the loan account was declared a Non-Performing Asset on 06.05.2024. Learned counsel for the petitioner submits that in accordance with the statutory procedure, a demand notice under Section 13(2) of the SARFAESI Act, 2002 was issued by the petitioner for the amount of Rs. 10,27,581/- due as on 20.02.2025. He further submits that neither any objection was filed nor the debt was paid, and therefore the petitioner initiated action under Section 13(4). Thereafter, to obtain actual physical possession, the Petitioner filed Case No. 3239 of 2025 before the Chief Judicial Magistrate, Ghaziabad but the application has not been decided within the statutory period and the same is still pending as the Respondent No.2 is merely fixing dates mechanically in the matter.

Writ C No. 42610 of 2025

7. The petitioner provided a housing loan of Rs. 9,00,000/- to the borrowers in Writ C No. 42610 of 2025. To secure the loan, the borrowers created an equitable mortgage by depositing the original title deeds of the property with the petitioner. However, the borrowers failed to adhere to the repayment schedule, prompting the petitioner to declare the loan account as a Non-Performing Asset on 06.01.2025, in accordance with the Reserve Bank of India guidelines. Thereafter, proceedings were initiated under the SARFAESI Act, 2002, and a demand notice was issued on 25.02.2025, requiring the borrowers to discharge their dues amount. The borrowers neither made the payment nor filed any objections. Consequently, the petitioner took symbolic possession of the secured property and filed Case No. 3238 of 2025 under Section 14 of the SARFAESI Act, 2002, before the Chief Judicial Magistrate, Ghaziabad. Despite the statutory mandate to decide Section 14 applications within thirty to sixty days, the matter remained pending, prompting the petitioner to approach this court. Learned counsel for the petitioner submits that the delay impairs their statutory right to recover public money and that, in the absence of any challenge to the proceedings in another forum, there is no legal impediment preventing the Magistrate from passing order in the case.

Writ C No. 42622 of 2025

8. The petitioner provided a housing loan of Rs. 5,05,000/- to Mr. Mahmood Siddiqui and Mrs. Ruksana. To secure the loan, the borrowers created an equitable mortgage by depositing the original title deeds of their property situated at Ghaziabad. Over time, the borrowers defaulted on their repayment obligations, and consequently, on 05.03.2025, the petitioner declared the loan account a Non-Performing Asset in accordance with the Reserve Bank of India guidelines. Following the default, the petitioner, initiated recovery proceedings under the SARFAESI Act, 2002. A demand notice under Section 13(2) was served upon the borrowers on 12.03.2025, but they neither cleared the dues nor filed any legal objections under Section 13(3A) of the Act. The petitioner subsequently took symbolic possession of the mortgaged property. As the respondents failed to discharge their full liability within the prescribed period and did not challenge the recovery proceedings before the Debt Recovery Tribunal, the petitioner filed case no. 3236 of 2025 under Section 14 of the SARFAESI Act, 2002 before the Chief Judicial Magistrate, Ghaziabad, for appropriate order on physical possession of the secured asset, but the case remains pending.

WRIT C No 42639 of 2025

9. The fact in Writ C No. 42639 of 2025 is that the respondents 4 and 5 availed a housing loan of Rs. 17,60,000/- from the petitioner financial institution on 20.11.2023, securing the loan by creating an equitable mortgage through the deposit of the original title deeds of the property with the petitioner. Learned counsel for the petitioner submits that the respondents 4 and 5 are willful defaulters, having deliberately failed to maintain their loan accounts in accordance with the repayment schedule. As a result of their default, the petitioner was compelled to declare the loan account as a Non-Performing Asset on 06.05.2024. Thereafter, the petitioner invoked the provisions of the SARFAESI Act, 2002 and issued a demand notice dated 27.06.2024 under Section 13(2) read with Rules 3 and 4 of the Security Interest (Enforcement) Rules to the debtors/respondent nos. 4 and 5. Non-compliance with the notice compelled the petitioner to take symbolic possession of the mortgaged property, issuing a possession notice dated 19.11.2024 under

Section 13(4) of the Act, which was duly pasted on the mortgaged property and also published in two leading newspapers.

10. As the respondents failed to discharge their liability in full within the prescribed period, the petitioner approached the District Magistrate under Section 14 of the SARFAESI Act, 2002, in Case No. 513 of 2025, seeking appropriate orders for physical possession of the secured asset. The District Magistrate transferred the case to the respondent no.2, who passed an order under Section 14 of the SARFAESI Act on 28.02.2025. By the said order, the competent authority directed the Magistrate to assist the Authorized Officer of the petitioner in taking actual physical possession of the mortgaged property. The petitioner deposited one day's salary of the required police force on 29.07.2025, following which physical possession of the secured property was taken on 06.10.2025 in the presence of the District Administration, with the house being sealed peacefully.

11. The core issue in this writ petition is that, on the same day, the petitioner came to know that the respondents had broken the seal and trespassed into the property. The petitioner immediately approached the police and lodged a First Information Report dated 06.10.2025, and also informed the Magistrate, but no action has been taken to date. The Authorized Officer of the petitioner repeatedly requested compliance with the Section 14 order dated 28.02.2025. Meanwhile, respondents no.4 and 5 are illegally occupying the property and respondent no. 1, 2 and 3 have not discharged their liability to get the order dated 28.02.2025 effectively executed. On facts regarding grievance, this petition is different although the broader issue is same as the effective physical possession is still not with the petitioner.

Writ C No. 42645 of 2025

12. The background fact in Writ C No. 42645 of 2025 is that a loan of Rs. 10,01,000/- was granted to Respondent Nos.3 and 4 on 25.02.2023 after creating an equitable mortgage by depositing the original title deeds of the property with the petitioner on 13.02.2024. Due to payment default, the loan account was declared as a Non-Performing Asset on 05.03.2025. Following the default, the petitioner, initiated recovery proceedings under the SARFAESI Act, 2002, issuing a formal demand notice under Section 13(2) on 12.03.2025. Despite service of the notice, the borrowers neither cleared the dues nor filed any legal objections. Thereafter, the petitioner took symbolic possession of the mortgaged property and approached the Chief Judicial Magistrate, Ghaziabad (Respondent No. 2), under Section 14 of the Act in case no.3240 of 2025, which remains pending.

Writ C No. 42660 of 2025

13. Dispute in Writ C No. 42660 of 2025 is regarding an unpaid housing loan of Rs. 19,00,000/- provided to Ms. Anju and Mr. Vijay after executing an equitable mortgage by depositing the original title deeds of the property with the petitioner. However, borrowers defaulted in repayment, prompting the petitioner to classify the loan account as a Non-Performing Asset and subsequently, taking symbolic possession of the property as per law and thereafter in order to take actual physical possession and recover the outstanding dues, the petitioner filed case no. 3237 of

2025 under Section 14 of the SARFAESI Act, 2002 before the Chief Judicial Magistrate, Ghaziabad, seeking assistance in taking physical control of the mortgaged property.

14. Learned counsel for the petitioner submits that the statute imposes mandatory obligation upon the District Magistrate or the Chief Judicial Magistrate, to decide such applications within the time-frame prescribed therein, and that the role of the Magistrate is purely administrative. Learned counsel further submits that repeated adjournments, often at the instance of the borrowers, are impermissible in proceedings under Section 14 and that such delay defeats the very object of the SARFAESI Act by frustrating the secured creditor's statutory right to enforce security interest. It is, therefore, urged that appropriate directions be issued for expeditious disposal of the pending applications.

15. Per contra, learned counsel appearing for the respondents submits that the delay in disposal of the applications under Section 14 cannot be attributed solely to the magistrates and authorities concerned and is stated to be occasioned by administrative exigencies and the pendency of other matters. It is contended that adequate opportunity is required to be afforded before passing orders affecting possession of immovable property and that no mala fides can be attributed to the authorities.

16. Having heard counsel appearing for respective parties and after perusal of the records and examination of factual background in all the petitions in the present batch, it is apparent that while the amounts, dates of disbursement, and particulars of the borrowers differ, all the writ petitions raise a common question of law arising under Section 14 of the SARFAESI Act, 2002. All petitions except Writ C No. 42639 of 2025, the petitioner challenge the delay in deciding applications for physical possession filed by the petitioner financial institutions before the competent Magistrates, despite the statutory mandate prescribing a timeline for disposal. In Writ C No. 42639 of 2025, the application has got decided although the financial institution is still not in the effective physical possession due to trespass on the same day when the possession was handed over to the petitioner. The Court, therefore, proceeds to examine the statutory framework, and relevant judicial principles applicable to the disposal of Section 14 applications.

17. The SARFAESI Act, 2002 was brought to regulate the securitization and reconstruction of financial assets and enforcement of security interest and to provide for a central data base of security interest created on property rights, and for matters connected therewith an incidental thereof. The object and reasons to bring the SARFASI Act 2022 are as under:-

“The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with international prudential norms and accounting practices there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow place of

recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These Committees, inter alia, have suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the court. Acting on these suggestions, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on the 21st June, 2002 to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. ...”

18. The SARFAESI Act 2002 is a special legislation enacted to enable banks and financial institutions to enforce security interests in a swift and effective manner, without having inordinate delay. The statute reflects a conscious legislative departure from traditional recovery mechanisms, premised on speed, certainty and minimal court intervention. The legislative scheme strikes a calibrated balance between the rights of secured creditors and the safeguards available to borrowers. While enforcement measures under Section 13 are enabled without prior judicial intervention, borrowers are conferred a substantive post-measure remedy under Section 17 before the Debts Recovery Tribunal.

19. The Supreme Court while interpreting Section 14 of the SARFAESI Act 2002 in **NKGSB Cooperative Bank Limited Vs Subir Chakravarty and others (2022) 10 SCC 286**, discussed the object of the Act and emphasized that the intention of law makers is to empower financial institution. Relevant paragraph of the judgement is reproduced below for ready reference:

“29. The underlying purpose of the 2002 Act is to empower the financial institutions in India to have similar powers as enjoyed by their counterparts, namely, international banks in other countries. One such feature is to empower the financial institutions to take possession of securities and sell them. The same has been translated into provisions falling under Chapter III of the 2002 Act. Section 13 deals with enforcement of security interest. Sub-Section (4) thereof envisages that in the event a default is committed by the borrower in discharging his liability in full within the period specified in sub-Section (2), the secured creditor may take recourse to one or more of the measures provided in sub-Section (4). One of the measures is to take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset. That, they could do through their “authorised officer” as defined in Rule 2(a)47 of the 2002 Rules.”

20. To achieve the object and reasons of bringing the SARFAESI Act, 2002, Section 14 was made to provide an effective tool to protect the interest of secured creditor. The secured creditor may for the purpose of taking possession or control of any secured asset, request in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be security are found to be taken possession thereof.

21. Section 14 of the SARFAESI Act, 2002 provides a complete mechanism under which the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, shall perform his duties. Providing the clear timeline to pass suitable orders for the purpose of taking possession of the secured asset, demonstrate the intention of the law makers to ensure the physical possession in favour of financial institution, who are secured creditors.

22. Since the controversy in the present batch of petitions turns upon the interpretation and implementation of Section 14 of the SARFAESI Act, 2002, therefore the said provision is extracted hereinbelow:

“14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor: Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that-

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii)above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with: Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate

or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date of application: Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days. Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,-

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority."

23. Report of the Joint Committee on the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 has analysed the situation under which the amendment was to be brought in SARFAESI Act 2002. The report highlights the purpose of bringing the amendment in following words:

"3. The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 is an important legislation which seeks to amend the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and make consequential amendments in the Indian Stamp Act, 1899 and the Depositories Act, 1996. The object of the amendments proposed in the Bill is to improve the ease of doing business and facilitate investment leading to higher economic growth and development."

(Page No. 2)

24. The above-mentioned report specifies the reason for the addition of the proviso to provide the extension upto sixty days in Section 14 of the SARFAESI Act 2002, which is added only to meet certain exigencies and delay beyond even that maximum extended day in routine cannot be seen in consonance with the intention of law makers. Relevant paragraph of the Report is reproduced below for the ready reference:

"25. Recording of reasons by CMM or DM - Clause 12 (Insertion of proviso after second proviso to section 14(1) of the principal Act). The Committee decide to insert the following proviso after second proviso to section 14(1) of principal Act with a view to provide further extension of time to meet certain exigencies to CMM/DM to pass an order under section 14 of the principal Act:

“Provided further that where the Chief Metropolitan Magistrate or District Magistrate is of the opinion that an order under this sub-section can not be passed within thirty days, he may after recording reasons for the same pass the order within such further period not exceeding in aggregate sixty days.”

(Page No. 13)

25. Report of the Joint Parliamentary Committee can be used to understand the intention of the law makers, and it has been consistently accepted by the Supreme Court in a catena of judgements. Supreme Court in **Kalpna Mehta v. Union of India, (2018) 7 SCC 1** has discussed the issue of reliance on different parliamentary proceedings as external aids and observed as follows:

“123. A Constitution Bench in R.S. Nayak v. A.R. Antulay [R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183 : 1984 SCC (Cri) 172] , after referring to various decisions of this Court and development in the law, opined that the exclusionary rule is flickering in its dying embers in its native land of birth and has been given a decent burial by this Court. The Constitution Bench further observed that the basic purpose of all canons of the Constitution is to ascertain with reasonable certainty the intention of Parliament and for the said purpose, external aids such as reports of Special Committee preceding the enactment, the existing state of law, the environment necessitating enactment of a legislation and the object sought to be achieved, etc. which Parliament held the luxury of availing should not be denied to the court whose primary function is to give effect to the real intention of the legislature in enacting a statute. The Court was of the view that such a denial would deprive the Court of a substantial and illuminating aid to construction and, therefore, the Court decided to depart from the earlier decisions and held that reports of committees which preceded the enactment of a law, reports of Joint Parliamentary Committees and a report of a commission set up for collecting information can be referred to as external aids of construction.”

(Emphasis added)

26. In the light of above, we are of the considered view that Section 14 empowers the District Magistrate or the Chief Metropolitan Magistrate to render administrative assistance for taking possession of the secured asset upon satisfaction of the statutory conditions prescribed under the provisos to sub-section (1). The nature of the function discharged under Section 14 is very specific. From the reading of the provision it is clear that the function of the Magistrate is confined to verification of factual compliance with statutory requirements. The legislature has consciously ensured that collateral challenges do not impede the enforcement process, reserving such issues for adjudication before the Debts Recovery Tribunal under Section 17 SARFAESI Act 2002.

27. Recognizing the need for expeditious action, the legislature has prescribed timelines for disposal of applications under Section 14. The incorporation of time limits is a clear reflection of legislative intent that such applications are to be decided promptly and not permitted to remain pending for indefinite periods because the extension is for meeting certain exigencies only. Supreme Court has interpreted the timeline provided in Section 14 of the SARFAESI Act 2002 and it has held that the time frame is of directory nature in **C. Bright Vs District Collector and others**

(2021) 2 SCC 392 while dealing with the maximum limit provided under Section 14 of SARFAESI Act 2002.

28. In **C. Bright (supra)** the Court was dealing with the situation where the power of the Magistrate after the maximum sixty days was under consideration and while observing the timeline being directory in nature, the Supreme Court has held that:

“21. The Act was enacted to provide a machinery for empowering banks and financial institutions, so that they may have the power to take possession of secured assets and to sell them. The DRT Act was first enacted to streamline the recovery of public dues but the proceedings under the said Act have not given desirous results. Therefore, the Act in question was enacted. This Court in Mardia Chemicals@, Transcore@ and Hindon Forge (P) Lid. has held that the purpose of the Act pertains to the speedy recovery of dues, by banks and financial institutions. The true intention of the legislature is a determining factor herein. Keeping the objective of the Act in mind, the time-limit to take action by the District Magistrate has been fixed to impress upon the authority to take possession of the secured assets. However, inability to take possession within time-limit does not render the District Magistrate functus officio. The secured creditor has no control over the District Magistrate who is exercising jurisdiction under Section 14 of the Act for public good to facilitate recovery of public dues. Therefore, Section 14 of the Act is not to be interpreted literally without considering the object and purpose of the Act. If any other interpretation is placed upon the language of Section 14, it would be contrary to the purpose of the Act. The time-limit is to instil a confidence in creditors that the District Magistrate will make an attempt to deliver possession as well as to impose a duty on the District Magistrate to make an earnest effort to and for reasons to be recorded within 60 days. In this light, the remedy under Section 14 of the Act is not rendered redundant if the District Magistrate is unable to handover the possession. The District Magistrate will still be enjoined upon, the duty to facilitate delivery of possession at the earliest.”

29. Supreme Court in **State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd., (2007) 11 SCC 363** has held that:

“18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.”

Applying the aforesaid rationale, the expression “certain contingencies” must be construed strictly and purposively, so as to exclude situations that give rise to unwarranted adjournments and thereby cause avoidable and impermissible delay in the passing of orders, which would otherwise defeat the object of the provision.

30. Supreme Court in **Salem Advocate Bar Assn. (2) Vs Union of India, (2005) 6 SCC 344**, has taken up the issue of adjournments and its effect and there it is observed by the Supreme Court that:

“31. ...We may, however, add that grant of any adjournment, let alone the first, second or third adjournment, is not a right of a party. The grant of adjournment by a court has to be on a party showing special and extraordinary circumstances. It cannot be in routine. While considering the prayer for grant of adjournment, it is necessary to keep in mind the legislative intent to restrict the grant of adjournments.”

31. Where a statute not only creates a duty but also prescribes the timeframe for its discharge, the obligation assumes higher degree of responsibility and give it a mandatory colour. Delay in such circumstances amounts to failure to exercise jurisdiction vested by law. Prolonged pendency of applications under Section 14 undermines the very purpose of the SARFAESI Act. Secured assets are time-sensitive in nature and are susceptible to deterioration and erosion of value. Delay in enforcement directly impacts recoverability and adversely affects the financial system.

32. Sub-section (3) of Section 14 reinforces the legislative intent by granting statutory protection to the acts performed by the Chief Metropolitan Magistrate or the District Magistrate, or any officer authorised by them, in pursuance of the powers exercised under the said provision. The bar contained therein makes it clear that once assistance is rendered under Section 14 in accordance with law, such acts are not amenable to challenge before any court or authority. The object of this provision is to ensure that the process of taking possession of secured assets is not obstructed by collateral proceedings and that the recovery mechanism under the SARFAESI Act operates in a swift, effective, and uninterrupted manner. This statutory immunity also underscores that the Magistrate’s role under Section 14 is not adjudicatory but executive and facilitative, intended solely to aid the secured creditor in enforcement of security interest.

33. This Court cannot overlook the broader public interest involved. Inefficiencies in statutory recovery mechanisms ultimately burden the public exchequer and erode confidence in institutional lending. Sections 26B to 26E of SARFAESI Act 2002, aim to bring certainty, transparency and priority in the enforcement of security interests. Once the secured creditor has complied with the provisions of Section 26D, there is no reason for denying the creditor the benefit of statutory provisions enacted to protect the secured creditor.

34. Section 26D mandates registration of the security interest with the Central Registry as a condition precedent for enforcement under the Act. The requirement of registration ensures public notice and obviates uncertainty regarding competing claims. Upon such registration, Section 26E accords priority to the secured creditor over all other debts, subject to the provisions of the Act. The conferment of statutory priority reflects a deliberate legislative choice to strengthen secured lending and ensure effective recovery. The priority conferred under Section 26E is intended to be real and effective. Such priority would stand diluted if the enforcement process is stalled at the stage of administrative assistance under Section 14 due to avoidable delays.

35. The legislature, being conscious of the delays that traditionally plague recovery proceedings, has consciously incorporated timelines under Section 14 of the Act. Sub-section (1) read with the provisos makes it abundantly clear that the application is required to be disposed of within the period prescribed therein, subject to a short extension for recorded reasons. Such

timelines are not ornamental but are intended to infuse statutory discipline and ensure that recovery proceedings are not rendered illusory by administrative inertia.

36. Requirement of registration under Section 26D is not a mere procedural formality but a statutory condition precedent for enforcement. Therefore, once the secured creditor demonstrates compliance with Section 26D by placing on record the registration of the security interest, the Magistrate is expected to act with promptitude. Any avoidable delay in granting assistance frustrates not only Section 14 but also the combined operation of Sections 26D and 26E of the Act.

37. After giving due consideration to the statutory provisions and legal principles, we are of the view that the right to approach the Magistrate under Section 14 is a substantive statutory remedy and any inordinate delay in its consideration amounts to denial of such remedy, which cannot be sustained in law. Delay in deciding applications under Section 14 has the potential to expose the secured asset to competing claims, attachments or encumbrances, thereby undermining the statutory priority expressly recognized under Section 26E. Such a consequence would be wholly inconsistent with the legislative design.

38. This Court in **Writ C No. 7126 of 2021, Indian Bank (Erstwhile Allahabad Bank) vs. State of U.P. And 4 Others** disposed of the writ petition on 24.08.2021, with a direction that the instant proceedings be concluded necessarily within a period of 30 days unless there is any legal impediment in the nature of any stay order passed by the competent court. This Court has further directed as under:-

“In view of large number of petitions coming up before this Court, we issue a direction to all the District Magistrates in the State of U.P. to keep a record/register of all the pending applications filed under Section 14 of the Act that may clearly disclose to the District Magistrate (on a fortnightly basis) details of all institutions of such applications made in that district and their disposal within that time.

The said register may be duly inspected by the District Magistrate from time to time and also countersigned by him. Based on the entries recorded in such register, a quarterly report of all institution of applications filed under Section 14 of the Act together with the length of pendency of each application be sent to the Registrar General of this Court in the tabular form that may indicate the requirement of the Act is being fulfilled, in letter and spirit, who shall place the same before the appropriate Committee dealing with the functioning of the Debt Recovery Tribunals and Debt Recovery Appellate Tribunals.

The above direction has become necessary because at present, it appears that generally the proceedings for obtaining actual physical possession are being delayed much beyond the time limit set by the statute. It creates avoidable litigation and defeats the very object of the Act.

Let a copy of this order be communicated by the Registrar General to the Chief Secretary, Government of Uttar Pradesh for further intimation and compliance by all the District Magistrates in the State of U.P and the Debt Recovery Appellate Tribunal, Prayagraj. Also, let a copy of this order be placed before the appropriate Committee dealing with the functioning of the Debt Recovery Tribunal and Debt Recovery Appellate Tribunals.”

39. It appears that the direction of this Court in above case has not been complied with in its letter and spirit and therefore the cases of similar nature are still before this Court in routine basis. This creates the requirement of sending the copy of this order to all district magistrates to ensure the order is being passed on applications filed under Section 14 of the SARFAESI Act 2002 in timely manner.

40. The provisions of Sections 14, 26D and 26E must be read harmoniously. The statutory priority conferred upon secured creditors is not merely declaratory but operational, and it necessarily presupposes timely facilitation by the authorities entrusted with implementation.

41. In view of the aforesaid statutory scheme, the limited yet important function under Section 14 cannot continue with unexplained delay. We are of the view of the considered view that the petitioner-financial institution has made out a clear case for interference of this Court. Continued pendency of the application defeats the purpose of the Act and warrants issuance of appropriate directions.

42. In the light of foregoing discussions, Writ C No. 42608 of 2025, Writ C No. 42610 of 2025, Writ C No. 42622 of 2025, Writ C No. 42645 of 2025 and Writ C No. 42660 of 2025 are **allowed**. Learned District Magistrate/ Chief Metropolitan Magistrate is directed to decide the petitioner's applications filed under Section 14 of the SARFAESI Act, being Case No. 3239 of 2025, Case No. 3238 of 2025, Case No. 3236 of 2025, Case No. 3240 of 2025, and Case No. 3237 of 2025, strictly in accordance with law as discussed above, as expeditiously as possible and preferably within a period of thirty days from the date of receipt of a copy of this order.

43. This in our considered view Writ C No 42639 of 2025 also deserves to be allowed and is **allowed** in the light of this common order and the petitioner may file an application afresh for necessary action to ensure compliance of order already passed under Section 14 of SARFAESI Act, 2002 and in the light of the judgment of Supreme Court in the case of **C. Bright v. District Collector and others (supra)**, and the documents evidencing registration of secured asset with the Central registry under Section 26D of the SARFAESI Act, 2002.

44. Accordingly, all writ petitions **allowed**. No order as to costs.

(2026) 1 ILRA 561
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 30.01.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Matters Under Article 227 No. 191 of 2026

Ram Bahadur & Ors.

...Petitioners

Versus

Hajirunnisha & Ors.

...Respondents

Issue for consideration

The present petition challenged the revisional order setting aside the trial court's decision which had held that a civil suit for cancellation of a sale deed relating to agricultural land was barred under section 331 of the U.P. Zamindari Abolition & Land Reforms Act, 1950.

Headnote

Constitution of India,1950-Article 227- Code of Civil Procedure,1908-Section 9-U.P. Zamindari Abolition & Land Reforms Act,1950-Section 331-Suit for cancellation of sale deed-Agricultural land-Maintainability-Plaintiffs claiming to be recorded tenure holders on the basis of a registered will and mutation entries instituted a suit for cancellation of a sale deed allegedly executed by their predecessor-in-interest, alleging fraud, forgery and absence of consideration, along with consequential relief of injunction-Trial court held suit barred under section 331 of the U.P.ZA & LR Act-Revisional court set aside that order-Jurisdiction must be decided on the basis of the plaint allegations, not the defence-A suit for cancellation is not included in Schedule II of Section 331-Revenue courts have no power to cancel a sale deed-Therefore, Civil court jurisdiction is not barred-The suit is maintainable-Petition dismissed.(Para 22 ,23) (E-6)

Held

The court ruled that where a recorded tenure holder seeks cancellation simpliciter and his title is not under cloud requiring declaration; Civil court jurisdiction is neither expressly nor impliedly barred. Hence, suit maintainable before civil court.

Case law Cited

Kamla Prasad and Others Vs. Krishna Kant Pathak and others (2007) AIR SCW 1403 , Pyarelal Vs. Shubhendra Pilia (2019) 3 SCC 692, Shri Ram Vs. Ist ADJ (2001) 3 SCC 24, Sanwermal Kejriwal Vs. Vishwa Coop. Housing Society Ltd.(1990) 2 SCC 288, Ram Padarath Vs. Second Addl. District Judge (1988) SCC OnLine All 685= 1989 RD 21, Bismillah Vs. Janeshwar Prasad (1990) 1 SCC 207, Gorak Nath Dube Vs. Hari Narain Singh (1973) 2 SCC 535, Narendra Kumar Mittal Vs. Nupur Housing Development (P) Ltd., Pancham Vs. Ram Gen (2009) SCC OnLine All 1830=(2009) 108 RD 737-referred to.

List of Acts

Constitution of India, 1950, Code of Civil Procedure, 1908, U.P. Zamindari Abolition & Land Reforms Act,1950.

List of Keywords

Cancellation of Sale deed, Agricultural land, Civil court jurisdiction, Revenue court, Mutation, Recorded Tenure holder, Forged sale deed, Supervisory jurisdiction, Void document, Section 331 U.P.Z.A. & L.R. Act.

Case Arising from

**CIVIL JURISDICTION:MATTERS UNDER ARTICLE 227 No.-191 OF 2026
Ram Bahadur And 6 Others Vs. Hajirunnisha And 7 Others**

From the Judgment and order dated 30.01.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Petitioner(s):

Vimal Kishore Verma, Harsh Verma

Adv. for Respondent(s):

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Vimal Kishore Verma Advocate, the learned counsel for the petitioner and perused the records.

2. By means of the instant petition filed under Article 227 of the Constitution of India the petitioners have assailed the validity of a judgment and order dated 14.11.2025, passed by the learned Additional District Judge, Court No.5, Lakhimpur Kheri in Civil Revision No.19 of 2024: Hazirunnisha and others Vs. Ram Bahadur and others, whereby the revision filed by the opposite parties against an order dated 31.05.2024, passed by the Civil Judge, Junior Division, Outlying Court, Nighasan Lakhimpur Kheri in Regular Suit No.482 of 2014 has been allowed and the order dated 31.05.2024 passed by the learned Civil Judge deciding preliminary issue no.5 holding that the civil court has no jurisdiction to entertain a suit for cancellation of a sale-deed in respect of an agricultural land, has been set aside.

3. The plaintiffs / opposite parties filed Regular Suit No.482 of 2014 for cancellation of sale deed and perpetual injunction pleading that they are the recorded tenure holders of the land bearing Gata No.916, measuring 0.214 hectare situated in Village Suthna Barsola, Pargana Khairigadh, Tehsil Nighasan, District Kheri. The previous owner of the land in question Late Abdul Bari, who was father in law of the plaintiff no.1 and father of the plaintiff nos.2, 3 and 4, had executed a registered will in favour of the plaintiffs and their names were mutated in the revenue records by means of an order dated 18.07.2011 passed by the Tehsildar Nighasan. On 20.01.2014 the defendants tried to take possession of the property in dispute claiming that Late Abdul Bari had executed a registered sale deed dated 04.07.1988 in favour of Ram Kishun, father of the defendant nos.1 and 2. The plaintiffs sought cancellation of the sale deed stating that the sale deed is forged, it has not been executed by Late Abdul Bari, it does not make a mention of plot number and it was executed on 04.07.1988 during pendency of consolidation proceedings, no mutation was effected during the consolidation proceedings and, therefore, the defendants cannot get their names mutated now. It was further stated that no consideration was paid for execution of the sale deed.

4. A written statement has been filed inter alia pleading that the names of the defendants have been mutated on the basis of the sale deed in question as co-tenure holder of the land in question by means of an order dated 04.06.2014 passed by Tehsildar Nighasan and the suit is barred by the provisions of Section 331 of U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as "the U.P.Z.A. & L.R. Act).

5. The learned trial court framed issues and issue no.5 was whether the suit is barred by Section 331 of U.P.Z.A. & L.R. Act, 1950.

6. The learned trial court held that the plaintiffs are not the recorded tenure holders of the disputed agricultural land. The dispute involves declaration of bhumidhari rights of the plaintiffs. Relief of declaration of the ownership of the agricultural land has not been sought in the plaint specifically but in essence the claim of the plaintiffs was based on his ownership on the basis of will while the plea of the defendants was that the plaintiff is not the owner of the property and the property belongs to the defendants on the strength of a registered sale deed. Adjudication of title of land is the main question involved in the suit. As the main question for adjudication relates to the declaration of the rights or title of the agricultural land, a suit will lie in revenue court and not in a civil court.

7. The plaintiffs challenged the aforesaid order by filing Civil Revision No.19 of 2024, which has been allowed by means of the impugned order dated 14.11.2025.

8. The learned revisional court held that the names of the plaintiffs were mutated in the revenue records under the orders of Tehsildar, Nighasan. The plaintiffs have filed extracts of khatauni for the year 1416 to 1421, wherein their names are recorded on the strength of a registered will. The defendants have also filed extracts of khatauni for the year 1416 to 1421 as per which the names of the defendants have been mutated on the basis of a sale deed. Thus, it is claimed that the plaintiffs name was recorded on the basis of a registered will and the defendants' names have been recorded on the basis of a sale deed. In case the plaintiffs succeed and the sale deed in question is canceled, the plaintiffs would get the land on the basis of the registered will and in case the suit is dismissed, the land in question would continue to be recorded in the revenue records in the name of the defendants. Therefore, the conclusion of the trial court that the suit is barred by Section 331 of U.P.Z.A. & L.R. Act, is liable to be set aside.

9. Assailing the validity of the aforesaid order, the learned counsel for the petitioners has submitted that the names of the opposite parties are not recorded in the revenue records and, therefore, the defendants are necessarily required to seek a declaration of their title from the revenue court and the suit for cancellation of sale deed is barred by the provisions of Section 331 of U.P.Z.A. & L.R. Act.

10. The learned counsel for the petitioners has placed reliance on the judgments of Hon'ble Supreme Court in the cases of **Kamla Prasad and others Vs. Krishna Kant Pathak and others: (2007) AIR SCW 1403** and **Pyarelal v. Shubhendra Pilonia: (2019) 3 SCC 692**. In both these cases, the Hon'ble Supreme Court followed the decision in the case of **Shri Ram v. Ist ADJ: (2001) 3 SCC 24**, wherein the Hon'ble Supreme Court held that: -

"7. ... where a recorded tenure-holder having a prima facie title and in possession files suit in the civil court for cancellation of sale deed having been obtained on the ground of fraud or impersonation cannot be directed to file a suit for declaration in the Revenue Court, the reason being that in such a case, prima facie, the title of the recorded tenure-holder is not under cloud. He does not require declaration of his title to the land. The position would be different where a person not being a recorded tenure-holder seeks cancellation of sale deed by filing a suit in the civil court on the ground of fraud or impersonation. There necessarily the plaintiff is required to seek a declaration of his title and, therefore, he may be directed to approach the Revenue Court, as the sale deed being void has to be ignored for giving him relief for declaration and possession."

11. In **Sanwarmal Kejriwal v. Vishwa Coop. Housing Society Ltd.: (1990) 2 SCC 288**, the Hon'ble Supreme Court held that: -

"24. But the jurisdiction of the court in which the action is originated must be determined on the averments in the plaint or claim application and not on the defence taken by the adversary party. For example, if the plaintiff goes to court alleging that the defendant is a trespasser, the ordinary court will have jurisdiction and its jurisdiction will not be taken away merely because the defendant pleads tenancy. If, however, the defendant succeeds in proving that

he is a tenant in respect of premises, possession whereof is sought, the court trying the case would dismiss the suit on the ground that the plaintiff had failed to prove the jurisdictional fact that the defendant was a trespasser...."

(Emphasis added)

12. The plaintiffs / opposite parties have pleaded in the plaint that they are the recorded tenure holders and they have prayed for a decree of cancellation of sale deed executed by Late Abdul Bari on 04.07.1988 and registered on 27.01.1989, and they have sought a decree of perpetual injunction restraining the defendants / petitioners from interfering in their possession. The plaintiffs have not sought a decree of declaration of their title. As per the averments made in the plaint, the plaintiff is the recorded tenure holder. The defendants / petitioners have pleaded in their written statement that now the plaintiffs are not recorded tenure holders and the defendants have been recorded as the tenure holders. As per the law laid down by the Hon'ble Supreme Court in *Sanwamal Kejriwal v. Vishwa Coop. Housing Society Ltd.* (supra), the jurisdiction is to be determined on the basis of the averments made in the plaint and not on the defence taken by the defendants.

13. Moreover, the plaintiffs have not sought a relief of declaration of their title. They have sought a decree of cancellation of sale deed.

14. Sub-sections (1) and (1-A) of Section 331 (1) of the U. P. Zamindari Abolition Act provide as follows: -

"331. Cognizance of suits, etc. under this Act.-(1) *Except as provided by or under this Act no court other than a court mentioned in column 4 of Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (V of 1908), take cognizance of any suit, application, or proceedings mentioned in column 3 thereof, or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application:*

Provided that where a declaration has been made under Section 143 in respect of any holding or part thereof, the provisions of Schedule II insofar as they relate to suits, applications or proceedings under Chapter VIII shall not apply to such holding or part thereof.

Explanation. If the cause of action is one in respect of which relief may be granted by the revenue court, it is immaterial that the relief asked for from the civil court may not be identical to that which the revenue court would have granted. (1-A) Notwithstanding anything in sub-section (i), an objection that a court mentioned in column 4 of Schedule II, or as the case may be, a civil court, which had no jurisdiction with respect to the suit, application or, proceeding, exercised jurisdiction with respect thereto shall not be entertained by any appellate or revisional court unless the objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice."

15. Suit for cancellation of sale deed is not mentioned in Schedule II referred to in Section 331 (1) of the U.P.Z.A. & L.R. Act. Therefore, no Revenue Court has been conferred with the jurisdiction to adjudicate upon a suit for cancellation of a sale deed.

16. Section 9 of the Civil Procedure Code provides that: -

"9. Courts to try all civil suits unless barred.-The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred.

Explanation [I].?A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II.?For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place."

17. Suit for cancellation of sale deeds is not barred by the provisions contained in Section 331 read with Schedule II of the U.P.Z.A. & L.R. Act and, therefore, cognizance of such a suit by the civil court is neither expressly nor impliedly barred.

18. In **Ram Padarath v. Second Addl. District Judge:** 1988 SCC OnLine All 685 = 1989 RD 21, a Full Bench of this Court held that: -

"41. In the case of void document* said to have been executed by a plaintiff during his disability or by some one impersonating him or ***said to have been executed by his predecessor whom he succeeds, the relief of cancellation of the document is more appropriate relief for clearing the deck of title and burying deep any dispute or controversy on its basis in presenti or which may take place in future. The document after its cancellation would bear such an endorsement in Sub-Registrar's register and would be the basis for correction of any paper and revenue record including record of register. Section 31 of the Specific Relief Act itself prescribes as to who can seek relief of cancellation. A third person cannot file a suit for cancellation of a void document. If in fact no decree for cancellation was needed and real and effective relief could be granted by the revenue court only, the civil court decree would even then be valid and not void if no objection to the same was taken before the trial court. If such an objection was taken before the trial court before framing of issues and objection continued to be taken before appellate and revisional court and there has been failure of justice because of change of forum then the civil court decree could be said to be without jurisdiction.**

* * *

46. We are of the view that the case of *Indra Deo v. Smt. Ram Piari*, 1982 (8) ALR 517 has been correctly decided and the said decision requires no consideration, while the Division Bench case, *Dr. Ayodhya Prasad v. Gangotri*, 1981 AWC 469 is regarding the jurisdiction of

consolidation authorities, but so far as it holds that suit in respect of void document will lie in the revenue court it does not lay down a good law. Suit or action for cancellation of void document will generally lie in the civil court and a party cannot be deprived of his right getting this relief permissible under law except when a declaration of right or status of a tenure-holder is necessarily needed in which event relief for cancellation will be surplusage and redundant. A recorded tenure-holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void document which made him to approach the court of law and in such case he can also claim ancillary relief even though the same can be granted by the revenue court."

(Emphasis added)

19. In **Bismillah v. Janeshwar Prasad**: (1990) 1 SCC 207, the Hon'ble Supreme Court held that: -

"7. It is settled law that the exclusion of the jurisdiction of the civil court is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. The provisions of a law which seek to oust the jurisdiction of civil court need to be strictly construed. Section 331 of the Act has been the subject of series of pronouncements of the High Court as to the circumstances and the nature of the suits in which its exclusionary effect operates. Distinction was sought to be drawn between the class of cases where the binding effect of a deed had had to be got rid of by an appropriate adjudication on the one hand and the class of cases in which a transaction could be said to be void in law where what the law holds to be void, there is nothing to cancel or set aside on the other. In the former case, it was held, a suit was cognisable by the civil court while in the latter, it was not, it being open to the statutory authority to take note of the legal incidents of what was non est.

* * *

9. It is true that the question of jurisdiction depends upon the allegations in the plaint and not the merits or the result of the suit. However, in order to determine the precise nature of the action, the pleadings should be taken as a whole. If as, indeed, is done by the High Court the expression 'void' occurring in the plaint as descriptive of the legal status of the sales is made the constant and determinate and what is implicit in the need for cancellation as the variable and as inappropriate to a plea of nullity, equally, converse could be the position. The real point is not the stray or loose expressions which abound in inartistically drafted plaints, but the real substance of the case gathered by construing pleadings as a whole. It is said "Parties do not have the farsight of prophets and their lawyers the draftsmanship of a Chalmers".

10. Indeed in *Gorakh Nath Dube v. Hari Narain Singh* [(1973) 2 SCC 535] this Court, dealing with the provisions of the U.P. Consolidation of the Holdings Act, 1954 where the provision excluding the civil court's jurisdiction is even wider, has had occasion to observe: (SCR p.342 : SCC p.538, para 5)

'...but, where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it....'

(Emphasis added)

20. In **Narendra Kumar Mittal v. Nupur Housing Development (P) Ltd.**: (2020) 20 SCC 158, the Hon'ble Supreme Court quoted with approval of the law laid down in **Ram Padarath** (Supra) and further held that: -

"6. In the instant case, the plaintiff has pleaded that it had purchased the disputed property under five sale deeds all dated 17-10-1998 from the first defendant. The suit was filed for cancellation of the sale deed dated 15-6-2006 on the ground of fraud and misrepresentation. The plaintiff had not sought any relief with respect to its own right and title as a tenure-holder or declaration of its title or status. As stated above, the only relief sought in the suit filed was for cancellation of the alleged sale deed dated 15-6-2006. We are of the view that Section 331 of the Act does not deprive a party of his right to approach the competent court of law for getting a document cancelled, especially when, prima facie, the title of the recorded tenure-holder is not under cloud. The Revenue Court does not have jurisdiction of granting relief of cancellation of a deed on the ground of fraud and misrepresentation.

* * *

9. In the instant case, since the plaintiff claims title under sale deeds of 1998 executed by the first defendant, it need not be forced to seek a declaration of its title. Therefore, the plaintiff had filed a suit for cancellation of the subsequent sale deed executed by the first defendant in favour of the second defendant. Hence, there is no bar under Section 331 of the Act for the plaintiff to approach the civil court and the suit filed by it was maintainable."

21. In **Pancham v. Ram Gen**: 2009 SCC OnLine All 1830 = (2009) 108 RD 737, a coordinate bench of this Court held that: -

"19. ...The suit question was plain and simple suit for cancellation of sale deed in term of Section 31 of Specific Relief Act, 1963 and on the strength of said sale deed, the right of plaintiff was to be adversely effected. Revenue Court is not at all Competent to give relief of cancellation of sale deed. Jurisdiction of Civil Court is ousted if the relief can be granted by the special court, conferred with the jurisdiction to grant relief. Section 331 of U.P.Z.A. & L.R. Act ousts jurisdiction of the other courts, and therein emphasis is on words "cause of action" and any relief which can be accorded by Revenue Court. A suit for cancellation of sale deed is not such a suit application or proceeding as mentioned in column 3 of the Schedule II nor is it a suit application or proceeding based on a cause of action in respect of which relief can be obtained by means of any such suit or application from a Revenue Court mentioned in Column 4 of Schedule II of the Act...."

22. In the present case, the plaintiffs-opposite parties have filed the suit for cancellation of sale deed and perpetual injunction pleading that they are the recorded tenure holders of the land in

dispute. The land was previously owned by Late Abdul Bari, who was the father of the plaintiff nos.2, 3 and 4 and father-in-law of the plaintiff no.1. He had executed a registered will in favour of the plaintiffs and their names were mutated in the revenue records by means of an order dated 18.07.2011 passed by the Tehsildar Nighasan. The plaintiffs alleged that the defendants tried to take possession of the property in dispute on 20.01.2014 claiming that Late Abdul Bari had executed a registered sale deed dated 04.07.1988 in favour of Ram Kishun, father of the defendant nos.1 and 2. The plaintiffs sought cancellation of the sale deed stating that the sale deed is forged, it has not been executed by Late Abdul Bari, it does not make a mention of plot number and it was executed on 04.07.1988 during pendency of consolidation proceedings, no mutation was effected during the consolidation proceedings and, therefore, the defendants cannot get their names mutated now. It was further stated that no consideration was paid for execution of the sale deed. The defendants have pleaded in the written statement that the names of the defendants have been mutated on the basis of the sale deed in question as co-tenure holder of the land in question by means of an order dated 04.06.2014 passed by Tehsildar Nighasan. It is evident that initially the land in question was owned by the plaintiffs' predecessor in interest and after his death, the plaintiffs' names had been recorded in the revenue records. The plaintiffs' claim is solely for cancellation of the sale deed allegedly executed by their predecessor-in-interest in favour of the defendants and for a consequential injunction. In case the sale deed is canceled, the plaintiffs would not need a separate relief of declaration as the obvious consequence of cancellation of the sale deed would be restoration of the plaintiffs' names recorded in the revenue records. The revenue Courts have no jurisdiction to entertain a suit for cancellation of a sale deed. Therefore, there is no bar against the jurisdiction of the Civil Court for entertaining the suit for cancellation of sale deed filed by the plaintiffs / opposite parties.

23. In view of the foregoing discussion, there appears to be no illegality or infirmity in the impugned order dated 14.11.2025, passed by the learned Additional District Judge, Court No.5, Lakhimpur Kheri in Civil Revision No.19 of 2024: Hazirulnisha and others Vs. Ram Bahadur and others. The petition lacks merit and the same is accordingly *dismissed*.

(2026) 1 ILRA 569
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 22.01.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Matters Under Article 227 No. 202 of 2026

Maan Singh

...Petitioner

Versus

L.I.C., Agra

...Respondent

Issue for Consideration

Whether The National Commission has rightly interfered with such an order in exercise of its revisional jurisdiction and has corrected the apparent error committed by the District Commission and upheld by the State Commission by setting aside the orders and dismissing the complaint.

Head Notes

The Constitution of India, 1950-Article 227; The Insurance Act, 1938- Section 64-VB-All the parties in the proceedings from which a petition under Article 227 of the Constitution of India arises, are necessary parties to the petition- Section 64-VB of the Insurance Act provides that an insurer shall not be liable for any loss in respect of any insurance business until the premium payable is received by him, but it does not provide that the insurance company would be liable to pay the insurance benefit merely because it has received the premium, even if the risk coverage has not commenced under the contract of insurance-Section 64- VB of the Insurance Act does not come to the aid of the petitioner for claiming benefit of the insurance policy consequent to the death of his son prior to the commencement of risk coverage under the policy.

Held- The order passed by the District Commission allowing the complaint without dealing with the defence of the Insurance Company and not accepting the valid defence based on the terms of the contract insurance without assigning any reason, is an order which suffers from illegality and material irregularity. The National Commission has rightly interfered with such an order in exercise of its revisional jurisdiction and has corrected the apparent error committed by the District Commission and upheld by the State Commission by setting aside the orders and dismissing the complaint- Petition dismissed. **(Para 4, 10 & 15)** (E-15)

Case Law Cited

Kranti Associates (P) Ltd. v. Masood Ahmed Khan: (2010) 9 SCC 496

List of Acts

The Constitution of India, 1950; The Insurance Act, 1938

List of Keywords

Pacta sunt servanda; Section 64- VB of the Insurance Act; Risk coverage not commenced under the contract of insurance; Death prior to the scheduled date of commencement of the policy

Case Arising From

Order dated 28.04.2025, passed by the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No.239 of 2024.

Appearances for Parties

Counsel for Petitioner(s) : Brijendra Chaudhary, Neeraj Kumar Singh

Counsel for Respondent(s): Sanjeev Singh

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Ms. Anu Kumari, Advocate holding brief of Sri Neeraj Kumar Singh, the learned counsel for the petitioner, Sri Sanjeev Singh, the learned counsel for the opposite party and perused the records.

2. By means of the instant petition filed under Article 227 of the Constitution of India the petitioner has challenged the validity of an order dated 28.04.2025, passed by the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No.239 of 2024.

3. The petitioner had filed a Consumer Complaint No.330 of 2012 before the District Consumer Disputes Redressal Commission-I Agra against- (i) Deputy Manager, Life Insurance Corporation of India, Sanjay Place, Agra, and (ii) Manager, Life Insurance Corporation of India, Branch Office at III Sanjay Place, Agra, whereas those parties have not been impleaded in the petition filed under Article 227 of the Constitution of India, wherein the only opposite party is "Life Insurance Corporation of India".

4. When the complaint was regarding non payment of benefits under an insurance policy issued by the Life Insurance Corporation of India, the Corporation was a necessary party to the complaint and as it was not impleaded, the complaint was bad for non-joinder of a necessary party. Moreover, the complaint had been filed against (i) Deputy Manager, Life Insurance Corporation of India, Sanjay Place, Agra, and (ii) Manager, Life Insurance Corporation of India, Branch Office at III Sanjay Place, Agra, and they have not been impleaded. This petition suffers from the defect of non-joinder of necessary parties. Although this defect is a curable defect and the Life Insurance Corporation of India having been impleaded, no prejudice would be caused to the opposite party, this defect is being pointed out as the Court is frequently experiencing that the petitions are being filed in a casual manner without taking care of impleadment of necessary parties. Therefore this Court reiterates the settled principle of law that all the parties in the proceedings from which a petition under Article 227 of the Constitution of India arises, are necessary parties to the petition.

5. It was stated in the complainant that the complainant had taken a life insurance policy in the name of his son Ajay Kumar, aged 14 years on 28.05.2009. He had paid the first installment of the policy premium on 28.07.2009 and the second installment was paid on 29.11.2009. The petitioner's son Ajay Kumar died due to electrocution on 13.05.2010. The opposite party did not pay insurance amount to the petitioner but the amount paid towards premiums was refunded to the complainant.

6. A copy of the reply filed by the opposite party has not been annexed with the petition. The District Commission allowed the complaint by means of an order dated 05.09.2014, wherein it is mentioned that the opposite parties had pleaded that it was a deferred policy which had to commence with effect from 24.05.2010, whereas the petitioner's son died before the aforesaid date. Although, the District Commission has taken note of this plea taken by the opposite parties in defence, it has allowed the complaint and directed the opposite parties to pay Rs.3,20,000/- along with 7% interest to the petitioner-claimant, without dealing with the defence of the opposite parties.

7. The opposite parties challenged the award of the District Commission by filing Appeal No.2081 of 2014. The State Consumer Disputes Redressal Commission, U.P. Lucknow, dismissed the appeal by means of a judgment and order dated 05.12.2023. The opposite parties then filed Revision Petition No.239 of 2024 which has been allowed by the National Consumer Disputes Redressal Commission, New Delhi by means of the impugned judgment and order dated 28.04.2025.

8. The National Commission held that the undisputed facts are that the complainant-petitioner had taken a life insurance policy for his son Ajay Kumar on 28.05.2009. He had paid two installments of the policy premium. The complainant's son Ajay Kumar died on 13.05.2010 due to electrocution. The policy reveals that it was a policy with a deferred date of commencement of risk

cover with effect from 28.05.2010. Admittedly, the petitioner's son died due to electrocution on 13.05.2010, i.e., before commencement of the policy. The National Commission held that the insurance contracts are governed by the principles of "Pacta sunt servanda" (agreements must be kept). The terms and conditions of a policy form the basis of the contractual relationship between the parties. As the petitioner's son died on 13.05.2010, prior to the scheduled date of commencement of the policy on 28.05.2010, as per the terms of the policy the complainant is not entitled to get any claim under the policy, except refund of the premiums paid, which has already been done by the opposite parties.

9. The counsel for the petitioner has submitted that as per the provision contained in Section 64-VB of the Insurance Act 1938, having paid two installments of the policy premium, the petitioner was entitled to get the benefits under the insurance policy. Section 64-VB of the Insurance Act provides as follows: -

"64VB. No risk to be assumed unless premium is received in advance.- (1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation. ?Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.

(6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer."

10. Section 64-VB of the Insurance Act provides that an insurer shall not be liable for any loss in respect of any insurance business until the premium payable is received by him, but it does not provide that the insurance company would be liable to pay the insurance benefit merely because it has received the premium, even if the risk coverage has not commenced under the contract of insurance. I am of the considered view that Section 64-VB of the Insurance Act does not come to the aid of the petitioner for claiming benefit of the insurance policy consequent to the death of his son prior to the commencement of risk coverage under the policy. Therefore, I find no force in the submission of the learned Counsel for the petitioner.

11. The learned counsel for the petitioner submitted that the District Commission had allowed the complaint, the State Commission had upheld the order of the District Commission and there was no jurisdictional error in the orders of the District Commission and the State Commission warranting any interference by the National Commission in exercise of its revisional jurisdiction.

12. The jurisdiction of the National Commission was provided in Section 21 of the Consumer Protection Act, 1986 (which has since been repealed but which would apply to present case), which provided as follows: -

"21. Jurisdiction of the National Commission. - *Subject to the other provisions of this Act, the National Commission shall have jurisdiction,?*

(a) to entertain,?

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees 87[one crore]; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity."

13. It is apparent from the facts mentioned above that the District Commission had allowed the complaint after merely noting the defense of the opposite parties that the petitioner's son had died on 13.05.2010, prior to the commencement of the policy on 28.05.2010, but without dealing with it. When a plea is raised in defence before any judicial forum, it has to be considered and it can be rejected only by a reasoned order.

14. In **Kranti Associates (P) Ltd. v. Masood Ahmed Khan: (2010) 9 SCC 496**, the Hon'ble Supreme Court referred to numerous precedents on the point and summarised the principles (in paragraph 47 of the judgment) as follows: -

"(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

15. The order passed by the District Commission allowing the complaint without dealing with the defence of the Insurance Company and not accepting the valid defence based on the terms of the contract insurance without assigning any reason, is an order which suffers from illegality and material irregularity. The National Commission has rightly interfered with such an order in exercise of its revisional jurisdiction and has corrected the apparent error committed by the District Commission and upheld by the State Commission by setting aside the orders and dismissing the complaint.

16. In view of the foregoing discussion, I find no error or illegality in the impugned order passed by the National Commission. The petition lacks merit and the same is **dismissed.**

(2026) 1 ILRA 575
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 16.01.2026

BEFORE

THE HON'BLE ALOK MATHUR, J.

Matters Under Article 227 No. 7018 of 2025

Surya Narayan

...Petitioner

Versus

Board of Revenue & Ors.

...Respondents

Issue for Consideration

Board of Revenue has concluded the hearing and reserved the matter for judgment on 15.09.2025 AND even after expiry of four months from the date of reserving the judgment, the judgment has not been pronounced and therefore in the present writ petition prayer has been made for direction to the Board of Revenue to pronounce the judgment in the said case with expedition.

Head Notes

The Constitution of India, 1950-Article 227; The Uttar Pradesh Revenue Code, 2006-Sections 24(4) & 210- The Apex Court in the case of Ravindra Pratap Sahi Vs. State of U.P. and Others,

Criminal Appeal No. 3700/3701 of 2025, wherein citing the judgment of the Apex Court in the case of Anil Rai, the Apex Court was of the view that judgment should be pronounced within a period of three months. It was further observed that in case the judgments are not pronounced, then within two weeks of the fact been brought to the knowledge of the respective Bench, the matter ought to be assigned to another Bench.

Held- Petition is disposed of with direction to the petitioner to bring this judgment to the knowledge of the Board of Revenue. In case judgment is not pronounced within two weeks from the date of production of certified copy of this order, the matter shall be assigned to another Bench of the Board of Revenue for being heard and decided in terms of various directions issued by the Apex Court as well as directions issued in the present case. **(Para 7, 8 & 9)** (E-15)

Case Law Cited

Ravindra Pratap Sahi Vs. State of U.P. and Others, Criminal Appeal No. 3700/3701 of 2025 (decided on 25.08.2025); Anil Rai Vs. State of Bihar, 2001 (7) SCC 318

List of Acts

The Constitution of India, 1950; The Uttar Pradesh Revenue Code, 2006

List of Keywords

Reserving a judgment and time period consumed for its pronouncement; Judgment should be pronounced within a period of three months; From the date they are reserved

Case Arising From

An appeal under Section 24(4) of the U.P. Revenue Code, 2006 before the Commissioner, Ayodhya Division, Ayodhya, which was rejected on 03.01.2025, which order in turn was assailed before the Board of Revenue by filing revision under Section 210 of the U.P. Revenue Code, 2006

Appearances for Parties

Counsel for Petitioner(s) : Saryu Prasad Tiwari, Prince Kumar Pandey
Counsel for Respondent(s) : C.S.C., Mohan Singh

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Sri Saryu Prasad Tiwari, learned counsel for the petitioner as well as learned Standing Counsel for respondent nos. 1 and 3.

2. In the light of proposed order notice to private respondent is dispensed with.

3. It has been submitted by learned counsel for the petitioner that respondent no. 4 had filed an appeal under Section 24(4) of the U.P. Revenue Code, 2006 before the Commissioner, Ayodhya Division, Ayodhya, which was rejected on 03.01.2025, which order in turn was assailed before the Board of Revenue by filing revision under Section 210 of the U.P. Revenue Code, 2006 by respondent no. 4.

4. It has been submitted that interim order was passed on 04.02.2025 and records were also summoned. It has been submitted that when the proceedings before the Board of Revenue were not concluded expeditiously, consequently, writ petition was filed by the petitioner being Writ Petition No. 4826 of 2025, before this Court which was disposed of by order dated 12.08.2025, giving

liberty to the petitioner to file appropriate application before the trial Court within next two weeks for expediting the proceedings.

5. It has been submitted that the Board of Revenue has concluded the hearing and reserved the matter for judgment on 15.09.2025 and which fact is evident from the status of the said case which has been obtained by the petitioner on-line. It has been submitted that even after expiry of four months from the date of reserving the judgment, the judgment has not been pronounced and therefore in the present writ petition prayer has been made for direction to the Board of Revenue to pronounce the judgment in the said case with expedition.

6. The issue pertaining to reserving a judgment and time period consumed for its pronouncement has been subject matter which has been dealt with by the Hon'ble Supreme Court in number of cases. In the case of **Anil Rai Vs. State of Bihar, 2001 (7) SCC 318**, the said issue came to be noticed by the Apex Court which pertains to the matters which were pending before the various High Courts where arguments have been concluded but the judgment has not been pronounced for sufficient length of time and in the aforesaid circumstances, the Apex Court had observed as under :-

“9. It is true, that for the High Courts, no period for pronouncement of judgment is contemplated either under the Civil Procedure Code or the Criminal Procedure Code, but as the pronouncement of the judgment is a part of the justice dispensation system, it has to be without delay. In a country like ours where people consider the Judges only second to God, efforts be made to strengthen that belief of the common man. Delay in disposal of the cases facilitates the people to raise eyebrows, sometimes genuinely which, if not checked, may shake the confidence of the people in the judicial system. A time has come when the judiciary itself has to assert for preserving its stature, respect and regards for the attainment of the rule of law. For the fault of a few, the glorious and glittering name of the judiciary cannot be permitted to be made ugly. It is the policy and purpose of law, to have speedy justice for which efforts are required to be made to come up to the expectation of the society of ensuring speedy, untainted and unpolluted justice.

10. Under the prevalent circumstances in some of the High Courts, I feel it appropriate to provide some guidelines regarding the pronouncement of judgments which, I am sure, shall be followed by all concerned, being the mandate of this Court. Such guidelines, as for the present, are as under:

(i) The Chief Justices of the High Courts may issue appropriate directions to the Registry that in a case where the judgment is reserved and is pronounced later, a column be added in the judgment where, on the first page, after the cause-title, date of reserving the judgment and date of pronouncing it be separately mentioned by the Court Officer concerned.

(ii) That Chief Justices of the High Courts, on their administrative side, should direct the Court Officers/Readers of the various Benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that month.

(iii) On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months, the Chief Justice concerned shall draw the attention of the Bench concerned to the pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of

the arguments amongst the Judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover.

(iv) Where a judgment is not pronounced within three months from the date of reserving it, any of the parties in the case is permitted to file an application in the High Court with a prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.

(v) If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances."

7. This aspect of the matter was again considered by the Apex Court in the case of **Ravindra Pratap Sahi Vs. State of U.P. and Others, Criminal Appeal No. 3700/3701 of 2025** (decided on 25.08.2025), wherein citing the judgment of the Apex Court in the case of **Anil Rai (supra)**, the Apex Court was of the view that judgment should be pronounced within a period of three months. It was further observed that in case the judgments are not pronounced, then within two weeks of the fact been brought to the knowledge of the respective Bench, the matter ought to be assigned to another Bench.

8. This Court see no reason as to why the said pronouncement be also made applicable to the revenue Courts including the Board of Revenue, who are directed to pronounce judgments within a period of three months from the date they are reserved.

9. Accordingly, in view of the arguments of the respective counsels as well as taking into account various directions of the Apex Court, present writ petition is **disposed of** with direction to the petitioner to bring this judgment to the knowledge of the Board of Revenue. In case judgment is not pronounced within two weeks from the date of production of certified copy of this order, the matter shall be assigned to another Bench of the Board of Revenue for being heard and decided in terms of various directions issued by the Apex Court as well as directions issued in the present case.

10. Let a copy of the present judgment be also placed before the Chairman, Board of Revenue, U.P. Lucknow by the office of learned Chief Standing Counsel, forthwith.

(2026) 1 ILRA 578
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 05.01.2026

BEFORE
THE HON'BLE SUBHASH VIDYARTHI, J.

Matters Under Article 227 No. 7293 of 2025

Smt. Kamla Verma & Ors.

...Petitioners

Versus

A.D.J.-XII Lko. & Ors.

...Respondents

Issue for Consideration

Whether the ex parte decree for ejectment passed in SCC Suit No.60 of 2012 is a nullity on grounds of improper service of summons on the original tenant and substituted heirs, absence of fresh summons post-substitution, defective notice under Section 106 TP Act by power of attorney holder, and non-substitution of petitioner no.2 (Hema Verma)?

Headnotes

Code of Civil Procedure, 1908 --- O. XXII r.4 --- Provincial Small Causes Courts Act, 1887 --- s.25 --- U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 --- s.3(a) --- Execution of Decree --- Objections u/s.47 CPC --- Ex-parte Decree --- Substitution of heirs post death of original defendant in ex-parte suit --- No fresh summons required --- Service by refusal on substitution application sufficient --- Decree not nullity.

HELD:

Where suit proceeded ex-parte against original defendant prior to his death, substitution of heirs under O. XXII r.4 CPC not mandatory; court may exempt plaintiff from substitution and decree suit notwithstanding death. Even after substitution following service by refusal on heirs, no fresh summons required as suit already ex-parte. Executing court cannot go behind decree to question trial court's satisfaction on service or notice validity. [Paras 15-17, 25]

Code of Civil Procedure, 1908 --- s.47, s.152 --- U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 --- s.3(a) --- Mere typographical error in heir's name (Heena/ Hema Verma) --- Corrected u/s.152 CPC --- Decree binding on joint heirs of deceased tenant in residential premises --- No averment of normal residence with deceased tenant.

HELD: Heirs of deceased tenant in residential building become joint tenants only if normally residing with him at death; no such plea raised. Error in name description does not vitiate decree where notices served on heirs and knowledge of proceedings exists. Joint tenants bound by decree against others; notice to one suffices. [Paras 9-10, 18-20, 24]

Petition dismissed. (E-14)

Case Law Cited

***Savitri Devi v. District Judge, Gorakhpur*, 1999 2 SCC 577 --- referred to; *Jogendrasinhji Vijaysinghji v. State of Gujarat*, 2015 9 SCC 1 --- relied on; *Textile Association (India) Bombay Unit v. Balmohan Gopal Kurup*, AIR 1990 SC 2053 -distinguished; *Harish Tandon v. ADM*, 1995 1 SCC 537 --- relied on; *Gian Devi Anand v. Jeevan Kumar*, 1985 2 SCC 683 --- relied on; *H.C. Pandey v. G.C. Paul*, 1989 3 SCC 77 --- referred to; *Durga Prasad Tiwari v. Additional District Judge*, 2008 1 All LJ 518 --- relied on.**

List of Acts / Statutes

Code of Civil Procedure, 1908; Transfer of Property Act, 1882; U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 ; Provincial Small Causes Courts Act, 1887; Constitution of India.

List of Keywords

Ex-parte decree; Substitution of heirs; Service by refusal; Joint tenants; Typographical error; Executing court; Nullity of decree.

Case Arising From

Judgment and order dated 27.05.2025 passed by Addl. Distt. Judge-XII, Lucknow in SCC Revision No.24 of 2015; order dated 23.05.2015 passed by Judge Small Causes Court, Lucknow in Misc. Case No.31 of 2014 in Execution Application No.1 of 2014 arising out of ex-parte judgment dated 16.09.2013 in SCC Suit No.60 of 2012, Salil Kumar Rastogi v. Ram Bharose Verma (dead) through LR.

Appearance for Parties**For the Petitioners: Sri Jitendra Kumar Saxena.****For the Respondents: Learned Standing Counsel.**

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Jitendra Kumar Saxena, the learned counsel for the petitioners and perused the records.

2. By means of the instant petition filed under Article 227 of the Constitution of India, the petitioners have challenged an ex-parte judgment and decree dated 16.09.2013, passed by learned Judge Small Causes Court, Lucknow in SCC Suit No.60 of 2012: Salil Kumar Rastogi Vs. Ram Bharose Verma (dead) through LR's. The petitioners had filed an application under Section 47 read with Section 151 C.P.C. raising objection against the application for execution of the ex-parte decree and the Judge Small Causes Court, Lucknow rejected this application by means of an order dated 22.03.2015. The rejection order was challenged by filing SCC Revision No.24 of 2015, which has been dismissed by means of a judgment and order dated 27.05.2015 and the petitioners have challenged the validity of the order dated 23.05.2015 and the revisional order dated 27.05.2015 also.

3. The petitioners have impleaded the learned Additional District Judge-XII, Lucknow and Judge Small Causes Court, Lucknow as opposite parties no.1 and 2 to the petition.

4. The Registry had put an objection against impleadment of the courts as the opposite parties to the petition and although the petitioners have filed a supplementary affidavit stating that the courts have been impleaded erroneously no prayer has been made for striking out the courts as the opposite parties to the petition, whereas, as far back as in the year 1995 in the case of **Savitri Devi Vs. District Judge, Gorakhpur; (1999) 2 SCC 577** the Hon'ble Supreme Court deprecated the practice of courts being impleaded as opposite parties to the petition filed in the High Courts and Hon'ble Supreme Court.

5. In the case of **Jogendrasinhji Vijaysinghji v. State of Gujrat, (2015) 9 SCC 1** the Hon'ble Supreme Court has clarified that: -

43. ...The civil courts, which decide matters, are courts in the strictest sense of the term. Neither the court nor the Presiding Officer defends the order before the superior court it does not contest. If the High Court, in exercise of its writ jurisdiction or revisional jurisdiction, as the case may be, calls for the records, the same can always be called for by the High Court without the Court or the Presiding Officer being impleaded as a party. ... the authorities or the tribunals, who in law are entitled to defend the orders passed by them, are necessary parties and if they are not arrayed as parties, the writ petition can be treated to be not maintainable or the court may grant liberty to implead them as parties in exercise of its discretion. There are tribunals which are not at all required to defend their own order, and in that case such tribunals need not be arrayed as parties...

Therefore, the Additional District Judge ought not to have been impleaded.

6. The proceeding arise out of S.C.C. Suit No. 60 of 2012 filed by the landlord Salil Kumar Rastogi (the opposie party no. 3) for ejectment of the tenant Sri. Ram Bharose Verma (since deceased, the predecessor in interest of the petitioners) from the premises bearing House No.109/136-Ka, new No.109/187, situated in Model House, Lucknow. The landlord had pleaded in the suit that he had purchased the house from its previous owners Nishi Tandon and Ramesh Tandon. He had sent a notice under Section 106 of Transfer of Property Act to the tenant, which was served on 28.03.2012, but in spite of it the tenant did not pay rent to him and did not vacate the house. It is recorded in the order dated 10.12.2012 passed by the trial Court that the defendant Ram Bharose Verma did not put in appearance in spite of service of summon and, therefore, the suit was ordered to proceed ex-parte.

7. The tenant defendant Sri. Ram Bharose Verma died on 27.01.2013. The plaintiff filed an application for substitution of his heirs. On 21.03.2013, the trial Court held service of notice of the application for substitution to be sufficient. On 23.04.2013, the trial Court passed an order allowing the substitution application recording that inspite of service of notice on the proposed heirs of the deceased defendant, they had not filed any objection against the application. The plaintiff examined himself in evidence and produced a carbon copy of the notice alongwith postal receipt and a copy of the power of attorney as documentary evidence. The suit was decreed by an ex-parte judgment dated 16.09.2013 wherein the trial court has recorded a satisfaction that the defendant was in arrears of rent exceeding four months and he had not paid the rent and had not vacated the property in spite of service of notice. No revision was filed against the ex-parte judgment and decree dated 16.09.2013 and it has attained finality.

8. The decree holder filed Execution Application No. 1 of 2014 for execution of the ex-parte judgment and decree dated 16.09.2013. The petitioners filed an application under Section 47 CPC, which was registered as Misc. Case No. 31 of 2014, wherein it was inter alia, stated that the notice of demand of arrears of rent was sent by the landlord, Salil Kumar Rastogi, but the suit was filed through his power of attorney holder, Mr. Shoeb Ahmed. The notice sent by the house owner cannot form the basis of a suit for ejectment filed through his power of attorney holder when the power of attorney holder himself had not sent any notice determining tenancy and demanding arrears of rent. The petitioners also alleged that the summon of the suit had not been served properly. However, there is no categorical denial that summons of the suit had not been served on the petitioners-tenants. One of the objections raised in the application under Section 47 is that the landlord has substituted Heena Verma whereas the petitioner no.2 is Hema Verma, who has not been impleaded as a defendant to the suit after the death of the original defendant Late Ram

9. The objections under Section 47 CPC were rejected by means of the impugned order dated 23.05.2015 wherein the Court held that the plea that the suit was filed through a power of attorney holder cannot be examined upon objections filed under Section 47 CPC, as the executing court cannot go behind the decree. The suit was filed against the original tenant, Ram Bharose Verma. His heirs were substituted after his death. The name of Hema Verma has been corrected through an application under Section 152 CPC. A mere error in spelling of the name of the petitioner no.2 does

not affect the validity of the decree when notices were duly served on the heirs of the deceased tenant, Shri Ram Bharose Verma, and they had full knowledge of the proceedings.

10. It is also mentioned in the impugned order dated 23.05.2015 that Hema Verma had filed an application in Execution Case No. 1/14 stating that she is not a party to the proceedings, rather, Heena Verma has been impleaded as a party and, therefore, she would not be bound by the outcome of the execution case. This objection of the petitioner no.2 has already been decided by means of a detailed order dated 08.05.2015.

11. The executing court further held that the SCC suit was instituted on 17.05.2012, summons were issued to the defendant and on 10.12.2012, service of summons was held to be sufficient and the suit was ordered to proceed ex-parte. After the death of the original defendant, Shri Ram Bharose Verma, notices were issued to his proposed heirs and service was held to be sufficient by means of an order dated 21.03.2013 on the ground that the heirs declined to receive the notice and thereafter the substitution application was allowed by means of an order dated 23.04.2013.

12. The executing court held that the petitioner no.2 is daughter of the original tenant and the decree passed against the other joint tenants would equally be binding on her, as any of the joint tenants can represent the other joint tenants. A mere error in description of the name of the petitioner no.2 would not render the decree nullity. This order has been affirmed in revision.

13. Assailing the validity of the aforesaid orders, the learned counsel for the petitioners has submitted that after substitution of heirs of the deceased original tenant late Ram Bharose Verma, the trial court did not issue any notice to the heirs of the original tenant and the court passed an ex-parte judgment and decree, which is nullity.

14. A perusal of the order sheet of the trial court indicates that when summons of the suit were served on the original defendant, yet he did not appear before the trial court, an order was passed on 10.12.2012 to proceed with the suit ex-parte. The original tenant Sri Ram Bharose Verma, died on 27.01.2013. Thereafter, an application for substitution of his heirs was filed, upon which notices were issued to the proposed heirs of late Ram Bharose Verma. On 21.03.2013, the court passed an order holding service of notice of the application to be sufficient on the proposed heirs of late Ram Bharose Verma and on 23.04.2013, the substitution application was allowed and heirs of Late Ram Bharose Verma were substituted in his place. Thereafter, the court fixed a date for filing an additional written statement, which was not filed, the plaintiff filed evidence and advanced its ex-parte submissions and the suit was decreed ex-parte on 16.09.2013.

15. Order XXII, Rule 4 (4) provides as follows: -

Order XXII

Death, Marriage and Insolvency of Parties

(4). Procedure in case of death of one of several defendants or of sole defendant. -

* * *

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representative of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place."

16. As per the provision contained in Order XXII Rule 4(4) CPC, when the suit was proceeding ex-parte against the original defendant, Late Ram Bharose Verma, by means of an order dated 10.12.2012, it was not necessary for the trial court to substitute the legal representatives of late Ram Bharose Verma and the suit could have been decreed ex-parte, even without carrying out substitution of the name of the original defendant, yet the court issued notices on the application for substitution of the deceased defendant. The notices were served by refusal to receive the same. By means of the order dated 21.03.2013, the trial court held service of notice to be sufficient by refusal and, thereafter, the heirs of the original defendant were substituted.

17. When substitution of the heirs of the original defendant was not necessary for the reason that the suit was already proceeding ex-parte against the original defendant, there was no necessity of issuing any fresh summons to the heirs of the original defendant, more particularly when the notices on the application for substitution were served by refusal. In these circumstances, the ex-parte judgment and decree dated 16.09.2013 cannot be said to be nullity for non-issuance of any fresh summons to the substituted heirs of the original defendant after their substitution, when the original defendant was not contesting the suit, even after service of notice and the suit was proceeding ex-parte.

18. The learned counsel for the petitioners has submitted that the petitioner no.2 has not been substituted and, therefore, the impugned ex-parte judgment is not binding on her. A perusal of the substitution application shows that the heir no.2 of the deceased defendant is mentioned as Heena Verma whereas the petitioner no.2 is Hema Verma. The learned trial Court has already held that it was a mere typographical error in the description of petitioner no.2, which has been corrected by an order passed under Section 152 CPC and it would not make the decree a nullity.

19. Section 3(a) of U.P. Act No.13 of 1972 provides as follows:

3. Definitions.- *In this Act, unless the context otherwise requires-*

(a) tenant, in relation to a building, means a person by whom its rent is payable, and on the tenant's death-

(1) in the case of residential building, such only of his heirs as normally resided with him in the building at the time of his death;

(2) in the case of a non-residential building, his heirs;

(Explanation.-An occupant of a room in a hotel or a lodging house shall not be deemed to be a tenant;

20. The learned Counsel for the petitioners has admitted that the premises in question is a residential premises and therefore, Section 3(a)(2) of Act would not apply to the present case. In the application under Section 47 CPC, as also in the petition under Article 227 of the Constitution of India, there is no averment that petitioner no.2 was normally residing with late Ram Bharose Verma in the building in question at the time of his death. Therefore, the pleadings do not make out that upon the death of late Ram Bharose Verma, the petitioner no.2 became a tenant in respect of the premises in dispute and she was entitled to be substituted in his place.

21. The Learned Counsel for the petitioner has placed reliance upon a judgment of the Hon'ble Supreme Court in the case of **Textile Association (India) Bombay Unit Vs. Balmohan Gopal Kurup and another: AIR 1990 Supreme Court 2053** wherein the Hon ble Supreme Court has noted that there is a finding in this case that the respondent was as much a tenant as the mother and other brother. That being the position, the ex-parte decree for eviction obtained against his mother and brother, without impleading him in that suit has to be set aside .

22. Neither is there any such finding in the present case, nor are there any pleadings or averments so as to make out that the petitioner no.2 has become one of the joint tenants upon the death of the original defendant for the reason that she was normally residing with him in the building at the time of his death. Therefore, the facts of the present case are different from the facts on the basis whereof the judgment in the case of Textile Association (Supra) was rendered.

23. In **Harish Tandon v. ADM: (1995) 1 SCC 537**, the Hon ble Supreme Court held that: -

*23. It appears to us, in the case of H.C. Pandey v. G.C. Paul [(1989) 3 SCC 77] it was rightly said by this Court that **after the death of the original tenant, subject to any provision to the contrary, the tenancy rights devolve on the heirs of the deceased tenants jointly. The incidence of the tenancy is the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs and there is no division of the premises or of the rent payable therefor and the heirs succeed to the tenancy as joint tenants.***

24. In the case of Gian Devi Anand v. Jeevan Kumar [(1985) 2 SCC 683] the Constitution Bench of this Court in connection with Delhi Rent Control Act, 1958 said:

The heirs of the deceased tenant in the absence of any provision in the Rent Act to the contrary will step into the position of the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant. As the protection afforded by the Rent Act to a tenant after determination of the tenancy and to his heirs on the death of such tenant is a creation of the Act for the benefit of the tenants, it is open to the Legislature which provides for such protection to make appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be enjoyed and the manner in which the same is to be enjoyed. If the Legislature makes any provision in the Act limiting or restricting the benefit and the nature of the protection to be enjoyed in a specified manner by any particular class of heirs of the deceased tenant on any condition laid down being fulfilled, the benefit of the protection has necessarily to be enjoyed on the fulfilment of the condition in the manner and to the extent stipulated in the Act.

25. *The framers of the Act have clearly expressed their intention in Sections 12, 20 and 25 while protecting the tenant from eviction except on the grounds mentioned in Section 20, that **after the death of the original tenant his heirs will be deemed to be holding the premises as joint tenants and for any breach committed by any of such joint tenants, all the heirs of the original tenant have to suffer.** They cannot take a plea that unless the grounds for eviction mentioned in sub-section (2) of Section 20 are established individually against each one of them, they cannot be evicted from the premises in question.*

24. In **Durga Prasad Tiwari v. Additional District Judge/Special Judge (S.C./S.T. Act), Allahabad: (2008) 1 All.L.J. 518 = 2007 SCC OnLine All 590**, this Court held that

20. *...The Supreme Court in the case of Harish Tandon (supra) has categorically held that the heirs of tenant inherit the premises as joint tenants and not as tenants-in-common and therefore, the notice to one was sufficient notice to all for the purpose of the proceedings under section 21(1)(a) of the Act. The Supreme Court held that after the death of the original tenant, his heirs became the joint tenants and not tenants-in-common .*

Therefore, the petitioner no. 2 being merely one of the several joint tenants, even in case there was any defect in service of notice upon her, it would not make the decree passed against all the joint tenants a nullity when the notices were served on the other joint tenants.

25. The Learned Counsel for the petitioners next submitted that summons of the suit were not properly served on the original defendant. The trial court has recorded a satisfaction regarding proper service of the suit in the order dated 10.12.2012, on the basis whereof the ex-parte judgment and decree dated 03.10.2013 was passed. The petitioners did not assail the order dated 10.12.2012 and they did not file any revision under Section 25 of the Provincial Small Causes Courts Act against the ex-parte judgment and decree dated 03.10.2013. It is settled law that the executing court cannot go behind the decree and cannot examine the facts recorded or the satisfaction recorded by the trial court in the ex-parte judgment or in any order passed during the pendency of the suit. Therefore, this plea is not open to be raised in a proceeding under Section 47 CPC.

26. In view of the foregoing discussions, I find no good ground to entertain the petition, which is **dismissed** at the admission stage.

(2026) 1 ILRA 585
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.01.2026

BEFORE

THE HON'BLE SAMIT GOPAL, J.

Matters Under Article 227 No. 15414 of 2025

Krishna Bihari Yadav
State of U.P. & Ors.

...Petitioner
Versus
...Respondents

Issue for Consideration

Whether the order dated 30.08.2025 in Petition No. 669 of 2025 U/s 12/13 Human Right Protection Act (Krishna Bihari Yadav Vs. Raj Kumar Pandey and others) passed by Human Right Protection Commission/Special Judge Additional District and Sessions Judge, Court No.1, Allahabad, is liable to set aside.

Head Notes

The Constitution of India, 1950-Article 227; The Protection of Human Rights Act, 1993- Sections 12/13- Litigant has come to Court with clean hands and disclose all the facts of the case-It is not for him to choose as to which fact has to disclose and which is not to be disclosed- The litigant has to disclose each and every fact pertaining to the matter before the Court and leave it on the Court to decide it. He cannot decide what to disclose and what not to disclose before the Court.

Held- That filing of the present petition is clearly abuse of process of Court and its filing also flows from severe concealment of material and relevant facts. On merits there is no illegality or irregularity in the order impugned - The order dated 05.11.2025 as passed by the court concerned and then the applicant moving the second petition for the same cause has not been disclosed in the present petition. Even arraying new parties in the present petition who were not respondents in the original petition before the court concerned is also a new instance without any justifiable reason- petition is thus dismissed with a exemplary cost of Rs. 20,000/- on the petitioner. **(Para 13 & 14)** (E-15)

Case Law Cited

S.P. Chengalvaraya Naidu Vs. Jagannath: (1994) 1 SCC 1 ; Bhaskar Laxman Jadhav Vs. Karmveer Wagh Education Society & Others: (2013) 11 SCC 531 ; Moti Lal Songara Vs. Prem Prakash @ Pappu: (2013) 9 SCC 199 ; Nidhi Kaim Vs. State of Madhya Pradesh: (2017) 4 SCC 1 ; Kusha Duruka Vs. State of Odisha: (2024) 4 SCC 432 ; Vishnu Vardhan @ Vishnu Pradhan Vs. The State of Uttar Pradesh & others: 2025 INSC 884

List of Acts

The Constitution of India, 1950; The Protection of Human Rights Act, 1993

List of Keywords

Clean hands; Disclosing all the facts; Litigant cannot decide; What to disclose and what not to disclose before the Court.

Case Arising From

The order dated 30.08.2025 in Petition No. 669 of 2025 U/s 12/13 Human Right Protection Act (Krishna Bihari Yadav Vs. Raj Kumar Pandey and others) passed by Human Right Protection Commission/Special Judge Additional District and Sessions Judge, Court No.1, Allahabad

Appearances for Parties

Counsel for Petitioner(s) : Vijai Kumar Mishra

Counsel for Respondent(s) : G.A., Om Krishna Yadav

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

1. List revised.

2. Heard Sri Vijai Kumar Mishra, learned counsel for the petitioner, Sri Om Krishna Yadav, learned counsel for the respondent no.8 and Sri Bade Lal Bind, learned counsel for the State and perused the records.

3. Vakalatnama of Sri Om Krishna Yadav is not on record despite his name being printed in the cause list.

4. Office to trace out the same and place it on record and make a note in the order sheet about it.

5. This petition for writ under Article 227 of the Constitution of India has been filed by the petitioner **Krishna Bihari Yadav** son of late Kalideen, with the prayers to issue a order or direction to set-aside the order dated 30.08.2025 in Petition No. 669 of 2025 U/s 12/13 Human Right Protection Act (Krishna Bihari Yadav Vs. Raj Kumar Pandey and others) passed by Human Right Protection Commission/Special Judge Additional District and Sessions Judge, Court No.1, Allahabad and with a further prayer to issue a order or direction by directing the Human Right Protection Commission/Special Judge Additional District and Sessions Judge, Court No.1 Allahabad to allow the prayer made by the petitioner with regard to registering a First Information Report against respondent no.2 to 7 after making proper inquiry under Sections 115(2), 119(1), 119(2), 198, 199, 308(5), 308(6), 352, 351(2)(3), 332, 324(4), 61(2), 201, 229, 248, 255, 256, 257, 258 BNS.

6. Learned counsel for the petitioner strenuously argued that the order impugned dated 30.08.2025 passed by the Human Rights Protection Commission/Special Judge, Additional District and Sessions Judge, Court No.1, Allahabad is an illegal order inasmuch as the court has allowed his application numbered as Paper No. 14-kha to the records but by the same stroke has dismissed his petition being Petition No. 669 of 2025 and the matter has been directed to be consigned to records. It is submitted that the said order thus is totally illegal, perverse and deserves to be set aside. It is submitted that if the application paper No.14-kha of the petitioner was allowed by the court concerned the CrI. Misc. Case No. 669 of 2025 (Krishna Bihari Yadav Vs. Ram Kumar Pandey and others) could not have been ordered to be dismissed. It is submitted that as such the present petition be allowed and the prayers as prayed be granted.

7. Learned counsel for the opposite party no.8 raises a preliminary objection in the present matter by submitting that in so far as the respondent nos. 8 and 9 namely Bhola Yadav and Awadhesh Kumar Yadav are concerned, they are not impleaded as a respondents in the original application filed before the court concerned by the petitioner and thus they could not have been impleaded as respondents in the present petition. It is submitted that the said act is totally mischievous act and the petition deserves to be dismissed on the said ground itself. Further he submits that there has been material concealment and misstatement in the present petition for writ inasmuch as the petitioner in para no. 1 states it is the first petition for the relief claimed therein whereas after the order impugned dated 30.08.2025 he moved another petition under Section 12 and 13 of the Human Rights Act, 1993 before the court of Human Rights Protection/Additional District and Sessions Judge, Court No.1, Prayagraj being Petition No. 938 of 2025 (Krishna Bihari Yadav Vs. Ram Kumar Pandey and others) which stood dismissed vide order dated 05.11.2025, copy of the order has been produced before the Court which is taken on record. It is submitted that there is no disclosure about the said fact which was relevant and important and should have been mentioned in the present petition. It is submitted that even the petitioner has moved application before the Human Rights Commission, Lucknow and the proceedings therein are going on in which replies have been sought from the police authority also and the petition/complaint therein is pending and even the fact has not been disclosed in the present petition for writ. It is submitted that

thus there is material concealment of relevant facts and the present petition be dismissed with exemplary cost.

8. Learned counsel for the State also opposed the petition and arguments of learned counsel for the petitioner and submitted that that in so far as the order impugned is concerned, the same was passed on an application dated 29.08.2025 filed by the petitioner/complainant Krishna Bihari Yadav before the court concerned mentioning therein that due to inadvertence the complaint has been filed before wrong court whereas it should have been filed before the District and Sessions Judge, Allahabad and thus he had prayed that he may be permitted to file a fresh petition before the appropriate court and the petition filed by him be directed to be withdrawn. It is submitted that the said application was moved as paper No.14-kha before the court concerned and vide order dated 29.08.2025 the said application was allowed by specific order and the petition as filed before the court concerned numbered as Petition No. 669 of 2025 was dismissed and thus the natural consequences which flows is that the petition has been withdrawn seeking liberty to file it before the appropriate court which was allowed and the petitioner before this Court had the liberty to file the petition before the appropriate court. It is submitted that there is nothing on record to show that the petitioner approached the concerned court for filing of his petition. It is submitted that there is no illegality or irregularity in the order impugned and the said order has been passed on the Application No. 14-kha of the petitioner himself which was for the said prayer which was allowed in full. He further submits that the filing of the present petition is clearly abuse of process of court and the same be dismissed with cost.

9. After having heard learned counsels for the parties and perusing the records, it is evident that the petitioner filed a complaint before the court of the Human Rights Commission/Special Judge, Additional District and Sessions Judge, Court No.1, Prayagraj numbered as Petition No. 669 of 2025 (Krishna Bihari Yadav Vs. Ram Kumar Pandey and others) under Sections 12 and 13 of the Human Rights Act, 1993, the matter was pending before the said Court after which an application dated 29.08.2025 numbered as paper No.14-kha before the court concerned was filed by the petitioner mentioning therein that due to inadvertence the said case has been filed before the said court whereas it had to be filed before the Court of District and Sessions Judge, Allahabad and thus it was prayed that the said petitioner may be permitted to file a fresh petition before the appropriate court and his petition to be directed to be returned and appropriate orders be passed. On the said application, the court concerned vide order impugned dated 30.08.2025 allowed the application paper No. 14-kha of the petitioner and dismissed the Petition No. 669 of 2025. The said order is a specific order in the facts and circumstances of the case as prayed by the petitioner himself. There is no illegality or irregularity in the same since the petitioner had prayed for withdrawal of his petition and approaching the appropriate court as per his wisdom as mentioned in his application No. 14-kha to the records. The said application was allowed and his complaint was dismissed.

10. This Court does not find any patent illegality or irregularity in the order impugned dated 30.08.2025. The same has been passed on an application filed by the petitioner himself before the court concerned and his prayer was allowed.

11. Now coming to the concealment of relevant and material facts in the present petition for writ, the records show that the respondents nos. 8 and 9 namely Bhola Yadav and Awadhesh Yadav respectively are not the respondents in the original application dated 07.06.2025 filed by the petitioner before the court concerned, certified copy of which is from page 16 of the paper book. No reason whatsoever has been stated as to why new persons have been impleaded as respondents in the present petition. Learned counsel for the petitioner also is unable to satisfy the Court regarding the reason why new persons who were not initially respondents in the complaint have been impleaded as respondents in the present petition. This fact remains a mystery.

12. Further the fact that subsequent to the order impugned dated 30.08.2025 passed by the trial court, a petition under Section 12 and 13 of the Human Rights Act, 1993 was again filed by the petitioner before the Court of Human Rights Protection Commission/Additional District and Sessions Judge, Court No.1, Prayagraj numbered as Petition No. 938 of 2025 (Krishna Bihari Yadav Vs. Ram Kumar Pandey and others) and the same was dismissed vide order dated 05.11.2025 is also neither pleaded nor disclosed in the present petition. Learned counsel for the petitioner further could not justify regarding the non-disclosure before this Court in the present petition of filing of a subsequent petition for the same cause before the court concerned.

13. The law with regards to pleadings and disclosure of relevant and important facts is trite as has been held by the Apex Court in the cases of **S.P. Chengalvaraya Naidu Vs. Jagannath: (1994) 1 SCC 1 ; Bhaskar Laxman Jadhav Vs. Karmveer Wagh Education Society & Others: (2013) 11 SCC 531 ; Moti Lal Songara Vs. Prem Prakash @ Pappu: (2013) 9 SCC 199 ; Nidhi Kaim Vs. State of Madhya Pradesh: (2017) 4 SCC 1 ; Kusha Duruka Vs. State of Odisha: (2024) 4 SCC 432 ; Vishnu Vardhan @ Vishnu Pradhan Vs. The State of Uttar Pradesh & others: 2025 INSC 884**, it has been held that in no specific terms that a litigant has come to Court with clean hands and disclose all the facts of the case. It has further been held that it is not for him to choose as to which fact has to disclose and which is not to be disclosed. It is held that he has to disclose each and every fact pertaining to the matter before the Court and leave it on the Court to decide it. He cannot decide what to disclose and what not to disclose before the Court. Further regarding the disclosure the law as has been settled is to the extent that even a passing reference of a certain facts has not been considered to be a disclosure of a fact and it has to be in full and complete.

14. In the present case, there is concealment of relevant fact and material. The order dated 05.11.2025 as passed by the court concerned and then the applicant moving the second petition for the same cause has not been disclosed in the present petition. Even arraying new parties in the present petition who were not respondents in the original petition before the court concerned is also a new instance without any justifiable reason.

15. This Court has come to the conclusion that filing of the present petition is clearly abuse of process of Court and its filing also flows from severe concealment of material and relevant facts. On merits there is no illegality or irregularity in the order impugned. The present petition is thus **dismissed** with a exemplary cost of Rs. 20,000/- which is imposed on the petitioner, to be deposited within a period of three weeks before the Registrar General of this Court. When the said amount is deposited, the same shall be transferred to the account of the High Court Legal Services

Committee for its utilization. If the said amount is not deposited, the Registrar General shall issue a letter to the District Magistrate/Collector, Prayagraj for recovery of the said amount as land revenue from the writ petitioner who shall recover it and transmit to the Registrar General of this Court for its utilization as stated aforesaid.

(2026) 1 ILRA 590
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.01.2026

BEFORE

THE HON'BLE NALIN KUMAR SRIVASTAVA, J.

Criminal Misc. Bail Application No. 109 of 2025

Piyush Verma

...Applicant

Versus

State of U.P. & Anr.

...Opposite Parties

ISSUE FOR CONSIDERATION

Whether Opposite Party No.2 violated conditions of anticipatory bail by seeking adjournments, thereby justifying cancellation of bail.

HEADNOTES

Criminal Law - Criminal Procedure Code, 1973 - Sections – 205, 317, 439, - Indian Penal Code (IPC) - Sections - 120-B, 406, 420 - Bail cancellation application - filed for seeking cancellation of anticipatory bail - granted to accused opposite party no. 2 - by the Additional Sessions Judge, Varanasi - Applicant pleaded that the accused misused bail conditions by seeking repeated adjournments and not cooperating with trial - Opposite party argued that only exemption applications were filed, not adjournments, and proceedings were not delayed - Distinction between adjournment applications and exemption applications - Court finds that exemption applications are distinct from adjournments, no violation of bail conditions occurred - reliance was placed on Supreme Court precedents (*Bhaskar Industries Ltd.* and *Rameshwar Yadav*) - Held, Exemption from personal attendance does not delay proceedings - there is no ground to cancel bail – accordingly, the bail cancellation application is rejected - with directions issued to the Registrar General of High Court to circulate judgment to judicial officers to avoid confusion between adjournment and exemption applications.(Para – 16, 17, 18)

Application rejected. (E-11)

CASE LAW CITED

Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd. (2001) 7 SCC 401,
Rameshwar Yadav v. State of Bihar (2018) 4 SCC 608.

LIST OF ACTS

Indian Penal Code (IPC),
 Code of Criminal Procedure (Cr.P.C.).

LIST OF KEYWORDS

Bail cancellation - Anticipatory Bail - Exemption Application - Adjournment Application - Cooperation with Trial - Bail Conditions - Misuse of Bail.

CASE ARISING FROM

Complaint Case No. 115562 of 2023, Police Station Bhelupur, District Varanasi.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Pradeep Verma, Shri Chandra Dutt,

Counsel for Respondent(s): Shri N.I. Jafri (Senior Advocate), assisted by Shri Ali Jamal Khan and learned A.G.A.

(Delivered by Hon'ble Nalin Kumar Srivastava, J.)

1. The application in hand has been moved on behalf of the applicant - Piyush Verma seeking cancellation of anticipatory bail granted to the accused / opposite party no.2 in Complaint Case No. 115562 of 2023, under Sections 406, 120-B IPC, Police Station Bhelupur, District Varanasi vide order dated 31.5.2025 passed by the Additional Sessions Judge, Varanasi.

2. Heard Shri Pradeep Verma, learned counsel for the applicant, Shri N.I. Jafri, learned Senior Advocate assisted by Shri Ali Jamal Khan, learned counsel for the opposite party no.2 as well as the learned A.G.A. for the State and perused the record.

3. The facts giving rise to the present application for cancellation of anticipatory bail to the accused / opposite party no.2 are that the applicant had filed a Complaint Case No. 115562 of 2023 against Smt. Pooja Grover and her husband Umang Grover for the offences under Sections 420, 406, 120-B IPC before the Court concerned and after recording the statements of complainant and the witnesses under Sections 200 and 202 CrPC, the Court concerned passed an order dated 4.11.2023 summoning the aforesaid accused persons to face trial for the offence under Sections 420, 406 and 120-B IPC which was challenged before this Court by way of Application U/S 482 No. 20040 of 2024 and this Court vide order dated 13.12.2024 disposed of the said application and the said summoning order was set-aside and the matter was remitted back to the Court concerned to pass order on the point of summoning afresh, expeditiously in accordance with law. Subsequently, the trial Court passed an order dated 24.2.2025 summoning both the accused persons to face trial for the offences under Sections 406 and 120-B IPC. In pursuance of the said order the opposite party no.2 moved an application seeking anticipatory bail before the trial Court, which was allowed. Feeling aggrieved with the subsequent conduct of the accused / opposite party no.2 causing misuse of the order granting anticipatory bail, the present application for cancellation of anticipatory bail has been moved.

4. It has been submitted by the learned counsel for the applicant that there are credible evidence against the accused / opposite party no.2 on record. Specific allegations have been levelled against the opposite party no.2 in the complaint and also in the statements recorded under Sections 200 and 202 CrPC. It is also submitted that one of the conditions for granting anticipatory bail to the opposite party no.2 was that she will fully cooperate with the trial of this case and no unnecessary adjournment shall be sought by her.

5. It is also submitted that after grant of anticipatory bail in favour of the accused / opposite party no.2 she is not cooperating with the trial of this case and on two successive occasions adjournment applications were moved by her, hence, she is violating the condition for anticipatory

bail granted to her by the Court concerned. Therefore, the anticipatory bail granted to the accused / opposite party no.2 is liable to be cancelled and the impugned order is liable to be quashed.

6. On the other hand, learned Senior Advocate appearing for the accused / opposite party no.2 opposed the prayer for cancellation of anticipatory bail and submitted that the case has not been fixed for evidence so far and two dates on which the adjournment applications are said to be moved were not fixed for evidence. It is also submitted that on the said dates exemption applications were moved and not adjournment applications. It is further submitted that the accused / opposite party no.2 is ready and willing to fully cooperate with the trial court and she is in fact cooperating with the trial Court and the judicial proceedings have not been hampered on account of her alleged non-cooperation so far.

7. It is further urged that the case was not fixed for evidence on the date when the exemption application was moved. It is further submitted that even the evidence may be recorded in the absence of the accused and the accused / opposite party no.2 will have no objection. Since the accused / opposite party no.2 has already appeared before the Court, her personal appearance could be exempted by the trial court and moreover it is a complaint case. He also undertakes that the accused is always ready and willing to participate into the proceedings of the case before the Court and if any exemption is granted by the Court to her, her non-appearance before the trial court shall not come in the proceedings of the trial, as she would be present before the Court through counsel. There is no infirmity or illegality in the impugned order warranting interference by this Court. In support of his submissions with regard to dispense with the presence of the accused / opposite party no.2 before the Court, learned Senior Advocate appearing for the accused / opposite party no.2 has placed reliance upon the decisions of the Hon'ble Apex Court in **Bhaskar Industries Ltd. Vs. Bhiwani Denim @ Apparels Ltd., (2001) 7 SCC 401** and **Rameshwar Yadav vs. State of Bihar, (2018) 4 SCC 608**.

8. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record carefully.

9. Before dealing with the matter, it is desirable to quote the provisions of Sections 205 CrPC and 317 CrPC relevant in order to disposal of the case in hand, which are as under :

"205. Magistrate may dispense with personal attendance of accused.

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader. (2) But the Magistrate inquiring into or trying the case, may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided."

"317. Provision for inquiries and trial being held in the absence of accused in certain cases.

(1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately."

10. While granting anticipatory bail to the accused / opposite party no.2, the Court concerned vide order dated 31.5.2025 imposed following conditions :

"1. अभियुक्ता विचारण में पूर्ण सहयोग करेगी तथा अनावश्यक स्थगन प्रस्तुत नहीं करेगी।

2. अभियुक्ता किसी भी व्यक्ति जो इस मामले के तथ्यों से परिचित हो को किसी प्रकार का प्रलोभन नहीं देगी और न ही किसी प्रकार से प्रताड़ित करेगी, धमकायेगी।

3. अभियुक्ता भविष्य में यदि किसी अन्य आपराधिक गतिविधि में सम्मिलित होती है तो यह उसके अग्र मABAILC No. 109 of 2025 जमानत के निरस्तीकरण का पयार्स आधार होगा।

4. अभियुक्ता अग्र म जमानत पर रहने की अविधि में भारत देश से बाहर नहीं जायेगी।

11. This is the first condition for alleged wilful violation of which the present application for cancellation of anticipatory bail has been moved.

12. An application to dispense with the personal attendance of an accused is only meant that for certain reasons the accused is not present before the Court but on his /her behalf his/her counsel is present over there to attend the Court and to participate in the proceedings taken before the Court on a particular date but it never means that by way of an exemption application the accused wants to adjourn the proceedings of the case on the pretext of his personal absence for certain reasons. On the other hand, an adjournment application is meant to postpone the proceedings of the case on a particular day on a temporary basis for some other day on any ground taken by the accused in the said application. Hence, whenever an adjournment application is moved by the accused there is no iota of doubt that on a particular day the accused is not willing and ready, whatsoever be the reasons thereof, to participate in the proceedings of the case on a particular day and such conduct of the accused can be taken by the Court as an attempt to prolong the proceedings of the case on some pretext. Since to participate in the proceedings of a trial on the part of an accused is a binding condition for bail, the accused, who has got bail from a Court on the aforesaid condition, cannot be permitted to get the proceedings of the case adjourned on a particular day only at his own will. However, on sufficient and satisfactory ground an adjournment application may be allowed by the Court but at the same time it provides a chance to the prosecution to question the conduct of the

accused to get the case adjourned. The Court ought to have been strict in its view and approach to hold that repeated adjournment applications are moved with the object only to get the trial delayed and that certainly amounts to an infringement and violation of the conditions imposed upon him while providing him opportunity of bail. On the other hand, however, if the personal presence of an accused is required in view of the Court before it e.g. at the stage of evidence where question of identification in dock is required the application to dispense with personal attendance of the accused before the Court may be rejected as well but so far as the case in hand is concerned, as submitted by the learned Senior Advocate appearing for the accused / opposite party no.2, the case was not fixed for evidence on the date when exemption application was moved. The reason for absence of the accused / opposite party no.2 has been mentioned in the exemption application which shows that the exemption was sought for on the ground that accused / opposite party no.2 alongwith her husband, who is also an accused in this case, was out-of-station and that was the reason for her absence before the Court on the date fixed. The submissions made by the accused / opposite party no.2 finds strength from the law laid down by the Hon'ble Apex Court in the cases of **Bhaskar Industries Ltd.** (supra) and **Rameshwar Yadav** (supra).

13. In **Bhaskar Industries Ltd. case** (supra) the issue before the Hon'ble Apex Court was as to whether the application for exemption from personal attendance moved by the accused could be treated as one moved under Section 205 CrPC or under Section 317 CrPC. The High Court in that case had observed that the accused had already appeared before the Court after obtaining the order of pre arrest bail and furnishing bond and sureties to the satisfaction of the Court, he was not entitled to file an application under Section 205 CrPC at subsequent stage after appearing before the Court. However, the Hon'ble Apex Court found that the said observation was factually incorrect. The power of Magistrate under Section 317 CrPC was also discussed by the Hon'ble Apex Court in connection with the discretion of Court to exempt a person from personal appearance and in crux it was concluded that there is no impediment on the power of the Magistrate to consider the application of an accused for his exemption from personal appearance.

14. Same view has been expressed by the Hon'ble Supreme Court later in the case of **Rameshwar Yadav** (supra).

15. In fact seeking temporary suspension or postponement of a legal proceeding on a particular date by way of filing an adjournment application and thereby to make a request for a later date by way of filing an adjournment application is different from that of an application seeking exemption from personal appearance for any valid reason like distance or illness etc. and in that way the party seeks an exemption from any obligation in a legal manner. Here lies the difference between an adjournment application and an exemption application and the exemption application is not meant to avoid the legal proceedings to be taken on a particular date, time or location.

16. From a perusal of the application dated 10.11.2025, which is annexed with the supplementary affidavit, it is evident that it is not an adjournment application but it is simply an application for exemption from appearance before the Court moved by accused / opposite party no.2. As mentioned above, there is a huge difference between an application for exemption of appearance and adjournment of proceedings. It appears that the applicant has been unable to understand the said difference.

17. In view of the aforesaid discussions, in my view, there is no force in the submissions advanced by the learned counsel for the applicant. There is no good ground to cancel the anticipatory bail granted to the accused / opposite party no.2 as no violation of any of the conditions imposed while granting anticipatory bail by the court to the accused has been made by her. The application is liable to be rejected and the same is accordingly **rejected**.

18. Before parting, it would be apt to note that the Court often comes across the cases where it appears that although nature, scope and object of an application seeking exemption of the personal attendance of an accused on a particular date is different from that of an application to adjourn the proceedings but the Presiding Officers often get confused and an exemption application is treated as an adjournment application by them which is not the correct notion of law. Hence, to remind them of the real nature and object of the application of both kinds, the Registrar General of this Court is directed to circulate copy of this judgment to all District and Sessions Judges, Principal Judges of Family Courts, and Presiding Officers of Commercial Courts and further to all the Judicial Officers of the State of Uttar Pradesh for information and compliance.

19. This Court is thankful to Shri Pradeep Verma, learned counsel for the applicant, Shri N.I. Jafri, learned Senior Advocate assisted by Shri Ali Jamal Khan, learned counsel for the opposite party no.2 and Sri Nitesh Srivastava, learned A.G.A. for the State and Mr. Akash Verma, Research Associate of this Court for ably assisting the Court.

(2026) 1 ILRA 595
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 13.01.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Misc. Bail Application No. 6338 of 2025

Suresh Lodhi

...Applicant

Versus

State of U.P.

...Opposite Party

ISSUE FOR CONSIDERATION

Whether the accused-applicant (who has killed his wife by strangulation) is entitled to bail in the second bail application?

HEADNOTES

Criminal Law – Code of Criminal Procedure (Cr.P.C.) – Section 161 - Bharatiya Nyaya Sanhita (B.N.S.) – Section 103(1), - Indian Penal Code (IPC) – Section 193 - Second Bail application – filed by accused-husband – seeking bail in a criminal proceedings initiated under Section 103(1) B.N.S. – earlier his, first Bail was not pressed, since at that time prosecution evidence is going on - FIR - offence of wife's death by strangulation – investigation revealed video-graphed statement of minor daughter implicating father – inquest and post-mortem confirmed ante-mortem strangulation – trial initiated, witnesses examined, some turned hostile – applicant pleaded that hostile witnesses entitle him to bail – court find that - (i) Second bail application was filed without awaiting outcome of trial, – Hostile witnesses do not automatically entitle the

accused to bail; their testimony can still be scrutinized and partially relied upon, – (iii) Medical evidence (horizontal ligature mark) rules out suicide and supports homicidal strangulation, – (iv) Applicant appears to be influencing witnesses even while incarcerated, – (v) Gravity of offense (murder within matrimonial home) and applicant's absconding conduct weigh against bail – held - no ground for enlargement on bail – consequently, second bail application is rejected – directions issued to the trial court to proceed uninfluenced by observations. (Para – 14, 15, 16, 17)

Bail Application Rejected. (E-11)

CASE LAW CITED

State v. Sanjeev Nanda (2012) 8 SCC 450,
State of U.P. v. Ramesh Prasad Misra (1996) 10 SCC 360,
K. Anbazhagan v. Supt. of Police (2004) 3 SCC 767,
Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1,
Zahira Habibullah Sheikh (5) v. State of Gujarat (2006) 3 SCC 374.

LIST OF ACTS

Code of Criminal Procedure (Cr.P.C.),
Bharatiya Nyaya Sanhita (B.N.S.) – Section 103(1),
Indian Penal Code (IPC).

LIST OF KEYWORDS

Bail application - Hostile witness – Strangulation - Horizontal ligature mark - Suicide vs. homicide - Influence on witnesses - Absconding accused.

CASE ARISING FROM

Case Crime No. 336 of 2024, Police Station Maurawan, District Unnao, Uttar Pradesh.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Aditya Prakash.
Counsel for Respondent(s): Shri Mayank Sinha, A.G.A.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Aditya Prakash, the learned counsel for the applicant as well as Sri Mayank Sinha, the learned A.G.A. for the State and perused the record.

2. This is second application seeking release of the applicant on bail in Case Crime No. 336 of 2024, under Sections 103(1) B.N.S., Police Station Maurawan, District Unnao.

3. After advancing submissions in support of the first Bail Application No. 11960/2024, the learned Senior Advocate representing the applicant had stated that prosecution evidence was going on and the applicant would await the outcome of the trial and would not press the bail application and, therefore, the first bail application was rejected by means of an order dated 16.05.2025. This second bail application has been filed on 07.07.2025 without awaiting the outcome of trial.

4. The aforesaid case has been registered on the basis of F.I.R. lodged on 12.07.2024, stating that the informant's niece had got married to the applicant about 20 years ago. He got information that the applicant had killed his wife by strangulating her. Upon reaching the

applicant's home, the informant found the dead body of his niece lying on the floor and the applicant had ran away from his home.

5. The inquest report mentions a ligature mark around the neck. Blood had oozed out from ears and nose. The inquest proceeding was witnessed by five persons, not including the applicant. The witnesses expressed opinion that the deceased had been killed by strangulating with a saree.

6. The post-mortem examination report mentions a ligature mark present in front of neck, going backwards, horizontally around the neck. There was a contused swelling over right Occipito-parital region of head and a contusion over right side of chest. The cause of death has been opined to be due to ante-mortem strangulation and all the injuries were ante mortem injuries.

7. The investigating officer recorded statement of the complainant, the deceased's sister and the deceased's daughter. The deceased's daughter aged about 14 years stated that her father (the applicant) had beaten up her mother and thereafter he killed her and left the home. This statement was videographed.

8. The complainant has been examined as PW-1 and he stated that the deceased used to suffer from abdomen pain and the family members of her husband had told that she had said that she would commit suicide. This witness was declared hostile. During cross-examination by the defense counsel, PW-1 stated that after the incident, he came to know from the villagers that his niece had committed suicide. He had inquired from the two daughters of the deceased, who stated that their mother was suffering from abdominal pain and, therefore, she committed suicide by hanging.

9. A daughter of the deceased has been examined as PW-2 and she stated that two persons had entered her house in the night of the incident. She did not recognize those persons. Her father was not present. Her younger brother went to her mother's room at about 02:00 a.m. and found her mother dead. Her brother woke her up and then she also went to the mother's room and found her lying dead on the floor. Thereafter she told about it to her grandmother. She did not know as to how did her mother die. When the two persons came there she was sleeping. An altercation took place between those persons and her mother and thereupon she woke up and went inside the room of her mother. Those two persons had covered their faces with clothes and were strangulating her mother. One was carrying a knife and both of them had threatened her. At this stage this witness was declared hostile.

10. During cross examination by the defense counsel, PW-2 stated that her father was languishing in jail and she, her brother and sister want that he should be released from jail and all of them should live together. Whenever she visits her father in the jail, her father requests her to get him free from incarceration. She further stated that two thieves had entered the house, strangulated her mother and snatched away the jewelry worn by her.

11. At this stage the learned AGA has drawn attention of the Court to the inquest report, which mentions that a nose-pin of yellow metal was present in nose of the dead body, two bangles of yellow color were present in each of the hands and a ring of yellow metal was also present on

her finger. Therefore, the statement that thieves had snatched away her jewelry is false on the face of the record. Although in the examination-in chief the PW2 had stated that the two persons who had killed her mother had covered their faces with clothes, during cross-examination she stated that both the thieves had not covered their faces but she did not recognize them.

12. The learned counsel for the applicant had submitted that as both the prosecution witnesses including the complainant and daughter of the deceased have turned hostile, the applicant is entitled to be enlarged on bail.

13. In **State v. Sanjeev Nanda: (2012) 8 SCC 450**, the Hon'ble Supreme Court observed that: -

“99. Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law, thereby eroding people's faith in the system.

*100. This Court in State of U.P. v. Ramesh Prasad Misra [(1996) 10 SCC 360] held that it is equally settled law that **the evidence of a hostile witness could not be totally rejected**, if spoken in favour of the prosecution or the accused, but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. In K. Anbazhagan v. Supt. of Police [(2004) 3 SCC 767], this Court held that if a court finds that in the process the credit of the witness has not been completely shaken, it may after reading and considering the evidence of the witness as a whole, with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be creditworthy and act upon it. This is exactly what was done in the instant case by both the trial court and the High Court and they found the accused guilty.*

*101. We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in Manu Sharma v. State (NCT of Delhi) [(2010) 6 SCC 1] and in Zahira Habibullah Sheikh (5) v. State of Gujarat [(2006) 3 SCC 374] had highlighted the glaring defects in the system like non-recording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to intimidation, inducement and other methods of manipulation. Courts, however, cannot shut their eyes to the reality. **If a witness becomes hostile to subvert the judicial process, the court shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal justice system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation.** Further, Section 193 IPC imposes punishment for giving false evidence but is seldom invoked.”*

(Emphasis added)

14. The story that the deceased had committed suicide is belied from the post-mortem examination report which mentions presence of a horizontal ligature mark around the neck of the

deceased, which is not possible in case of a suicide and which is only possible in case of strangulation by some other person. Therefore, it appears that the deceased has been killed by strangulation inside her matrimonial home. Although the daughter of the deceased has resiled from her statement recorded under Section 161 Cr.P.C., the statement was videographed and, therefore, it is apparent that the deceased's daughter has turned hostile under influence of the applicant who is her father and as per the statement of PW-2 who keeps on asking his daughter (PW-2) to help him in coming out of the prison.

15. There are serious discrepancies in the statement of the PW-2 even while helping the applicant as at one place she said that she had not seen anyone killing the deceased while at the other place she said that two thieves had killed her. At one place she says that the two persons had covered their faces and at another place she says that their faces were not covered. The story of thieves having stolen away some jewelry is proved to be false from the inquest report which mentions presence of jewelry on the dead body.

16. In these circumstances, prima facie, it appears that even while remaining incarcerated, the applicant is influencing the prosecution witnesses. The applicant is accused of killing his wife by strangulation in side his house. The hypothesis of suicide being projected by the defense Counsel, is not supported by the horizontal ligature mark around neck of the dead body and this mark suggests strangulation by some other person. The applicant is the husband of the deceased, he is said to have absconded after the incident and he has not witnessed the inquest proceeding. Therefore, keeping in view the peculiar facts and circumstances of the case, I am of the considered view that the fact of cause do not warrant enlargement of the applicant on bail.

17. The second bail application of the applicant is *rejected*.

18. It is clarified that the trial Court shall conclude the trial without being influenced by any observation made in this order.

(2026) 1 ILRA 599
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 05.01.2026

BEFORE

THE HON'BLE NALIN KUMAR SRIVASTAVA, J.

Criminal Misc. Bail Application No. 17430 of 2024

Netram

...Applicant

Versus

State of U.P.

....Opposite Party

ISSUE FOR CONSIDERATION

Whether prolonged delay in trial and long incarceration of the accused (husband in a dowry death case) entitles him to bail despite seriousness of the offence.

HEADNOTES

Criminal Law – Code of Criminal Procedure (Cr.P.C.) - Section 309 - Indian Penal Code (IPC) - Sections 498-A, 304-B - Dowry Prohibition Act – Sections 3, 4 - Constitution of India: Article 21
 - Second Bail application – filed by accused-husband – FIR – offence of Dowry Death – dowry death of wife within three years of marriage – investigation - charge-sheet - cognizance taken - trial initiated – first bail rejected on merits - second bail pressed on ground of delayed trial and long incarceration – applicant pleaded that only 5 out of 30 witnesses examined, trial court proceeding casually – State opposed citing gravity of offence and evidence against accused – Court finds that, delay alone cannot justify bail in heinous offences like dowry death – and held that, right to speedy trial is constitutional but must be balanced with societal interest and gravity of crime – hence, bail rejected – direction issued to expedite proceedings, conclude trial within three months and send monthly progress reports - applicant free to move fresh Bail Application if trial not concluded within time. (Para – 20, 21, 22, 23)
 Bail Application Rejected. (E-11)

CASE LAW CITED

Union of India v. K.A. Najeeb (2021) 3 SCC 713
 Sanjay Chandra v. CBI (2012) 1 SCC 40
 Hussain Ara Khatoon v. State of Bihar (1980) 1 SCC 98
 Gurwinder Singh v. State of Punjab (2024 INSC 92)
 Gulfisha Fatima v. State (Govt. of NCT of Delhi), 2026 SCC OnLine SC 10
 Union of India v. Saleem Khan
 Abdul Rehman Antuley v. R.S. Nayak AIR 1992 SC 1701
 Ranjan Dwivedi v. CBI (2012) 3 SCC (Cri) 945
 Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598
 Rajesh Ranjan Yadav @ Pappu Yadav v. CBI AIR 2007 SC 451
 Union of India v. Amrit Lal Manchanda (2004) 3 SCC 75

LIST OF ACTS

Code of Criminal Procedure (Cr.P.C.) - Indian Penal Code (IPC) - Dowry Prohibition Act – Constitution of India.

LIST OF KEYWORDS

Bail application - Dowry death - Speedy trial - long incarceration - Grave offence - Article 21 - Delay in trial - Judicial supervision - Expeditious disposal - Social crime.

CASE ARISING FROM

Case Crime No. 324 of 2022, Police Station Barkheda, District Pilibhit, Uttar Pradesh.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Upendra Kumar Singh.
 Counsel for Respondent(s): AGA.

(Delivered by Hon'ble Nalin Kumar Srivastava, J.)

1. Heard learned counsel for the applicant as well as the learned A.G.A for the State and perused the record.

2. This is the second application for grant of bail filed on behalf of the applicant - **Netram** with the prayer to enlarge him on bail in Case Crime No.324 of 2022, under Sections 498-A, 304-B IPC and Section 3/4 Dowry Prohibition Act, Police Station Barkheda, District Pilibhit.

3. The first bail application of the accused-applicant was rejected by this Court vide order dated 6.6.2023 on merits.

4. It is alleged in the F.I.R. that within three years of marriage, the daughter of the informant was subjected to dowry death by her in-laws including the present accused applicant, who is the husband of the deceased. It is also alleged in the F.I.R. that a demand of additional dowry was made to the deceased and she was subjected to cruelty and harassment on account of the aforesaid demand and when the demand was not fulfilled, she was hanged by all her in-laws. F.I.R. was lodged on 5.8.2022 and investigation started which culminated into the charge-sheet and at present the trial is going on.

5. The instant application for grant of bail has been moved on the ground of delayed trial and long incarceration period of the applicant. It is urged by the learned counsel for the applicant that he has been languishing in jail since 26.08.2022. While disposing the first bail application of the applicant, the learned trial court was directed to expedite the hearing of the trial and to conclude the same preferably within a period of one year by this Court but till date trial has not been concluded. In the instant case charge-sheet was submitted on 22.10.2022 and cognizance was taken on 21.11.2022 and after committal of the matter, trial started before the trial court and out of total 30 witnesses, only 5 witnesses have been examined till date. It is further submitted that the applicant is an undertrial and the prosecution has miserably failed to produce witnesses before the trial court vigilantly and the trial court is also proceeding with the trial in a casual manner resulting into a long incarceration of the applicant without any fault on his part. The trial is delayed unnecessarily, hence, the applicant is entitled for grant of bail.

6. Per contra, learned A.G.A. opposed the prayer for bail and submitted that the first application for grant of bail of the applicant was rejected on merits by a detailed order passed by this Court. The trial started in the year 2023 and at present it is pending for evidence and the trial court is making sincere efforts and taking all the steps to procure the appearance of the witnesses in this case. The evidence of witnesses of fact has been concluded and now trial is pending for recording the evidence of formal witnesses only. The present accused applicant is the husband of the deceased and dowry death of his wife has been caused in his own house by way of hanging and there is ample evidence recorded during the course of trial which attributes the main role of causing dowry death of the deceased, who was the only child of her parents, to her husband, the present accused applicant. It is further submitted that the trial of this case is expected to be decided expeditiously hence, there is no ground to allow the instant bail application and the same is liable to be rejected.

7. I have considered the rival submissions made by the learned counsel for the accused / applicant and the learned State counsel and perused the record.

8. So far as the case in hand is concerned, it is apparent from the perusal of the record and copies of the order-sheet that the first date for recording the evidence of prosecution witnesses was fixed as 16.1.2023. Albeit it was a case relating to an undertrial but the learned trial court took no pain to ensure the presence of the witnesses before it to record their deposition promptly and as a matter of fact after 17.11.2023 when evidence of P.W.5 was recorded, no other witness turned till

date before the trial court to record his deposition and the copies of the order-sheet further reflect that no effort was made by the learned trial court to ascertain their presence before the Court and only stereo type orders were passed on subsequent dates. This made the present accused applicant to appear before the Court from jail on each and every date without any fruitful proceedings on ground. Even the mandate provided under Section 309 Cr.P.C. (Section 346 B.N.S.S.) was also not paid any attention to and the Court took no interest or pain even to see whether the processes sent to the witnesses had been returned to the Court or not and consequently the accused applicant was compelled to move second application for grant of bail before this Court.

9. A perusal of the record reflects that the first bail application of the applicant was rejected by this Court vide order dated 6.6.2023 passed in Crl. Misc. Bail Application No.20730 of 2023 and the evidence on record and the complicity of the accused as well in the commission of the alleged offence have been discussed in the aforesaid order. The earlier bail application of the accused applicant was rejected by the Court after considering all the material facts, evidence on record and circumstances of the case on merits.

10. The Courts in India have always been vigilant to protect the constitutional rights and particularly the right to liberty of a person and this approach is echoed in a catena of decisions passed by the Hon'ble Apex Court and this Court as well viz : **Union of India vs. K.A. Najeed (2021) 3 SCC 713, Sanjay Chandra vs. Central Bureau of Investigation, (2012) 1 SCC 40 and Hussain Ara Khatoon vs. State of Bihar (1980) 1 SCC 98** and so on. The principle underlying these decisions establishes that no person can be deprived of his constitutional right to liberty which includes a speedy trial as well which is guaranteed by Article 21 of the Constitution and for an inordinate delay in trial, right to bail accrues in favour of an undertrial.

11. But in the facts and circumstances of the instant case it would not be proper that only on the basis of delayed trial, the present second bail application of the applicant should be allowed. It is a case of dowry death of a young deceased which was caused in her matrimonial house within three years of her marriage by hanging. Accused-applicant is the husband of the deceased, the most responsible person to protect his wife from all the dangers, legally and morally. While considering the argument of the learned counsel for the applicant relating to the long incarceration of the undertrial and delayed trial, in my considered view it does not, in the facts and circumstances of the present case, ipso facto entitle him to bail. Delay in trial, by itself, cannot be the sole ground to enlarge the applicant on bail where the offence alleged is grave and punishable with upto life imprisonment.

12. In **Gurwinder Singh vs. State of Punjab & Another, 2024 INSC 92 [Criminal Appeal No.704 of 2024 (@ Special Leave Petition (Criminal) No.10047 of 2023)]**, the Hon'ble Apex Court found that bail was pressed on ground of delayed trial but the evidence on record prima facie reveal the complicity of the accused as a part of the commitment of the offence and there were chances and every likelihood that he will influence the key witnesses of this case which might hamper the process of justice and, therefore, in the facts and circumstances of the case it was held that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail.

13. It is a trite law that the right to speedy trial, though guaranteed as a valuable constitutional protection under Article 21, cannot be stretched to a point where it overshadows the overwhelming circumstances of guilt that stand against the accused at this stage. Delay in trial, though regrettable, is not by itself a ground for bail in cases involving grave and heinous offences, particularly where the evidence links the accused to the commission of the crime. It is also well settled that though bail is the rule and jail an exception, the nature and gravity of the offence, the role attributed to the accused and the societal impact of releasing an accused charged with heinous offences are relevant considerations which cannot be overlooked. Hence, to uphold an accrual of right to bail of the accused only on the ground of delayed trial will not be correct innunciation of law.

14. It also must be taken into cognizance of that the person behind the bar has no control over the proceedings of the Court and this is the uncontaminated duty of the trial Court to make all the sincere efforts for the production of the witnesses before it and the undertrial has absolutely no role in the said procedure. The Courts must be aware of the fact that if the trial is delayed on account of non-appearance of witnesses and the undertrial is only visiting the Court on each and every date from jail only to put his signature over the order-sheet and get a new date and returns to jail to further put his appearance before the Court on the next date fixed only to take another date. This is a very sorry state of affairs to which every Court must take account of. A delayed trial is certainly nothing else but a denial of justice and it should never be forgotten that speedy trial is a benign right of the accused which must not be usurped in any condition. The Presiding Officer in the Court does not sit only to adjourn the case but to ensure an effective proceeding and in this way the Presiding Officer is a person most responsible for the production of witnesses and recording their depositions before the Court. It is a denial of valuable right of personal liberty and the concept of access to justice. That is the underlying reason in certain conditions like the present one, orders for expeditious disposal of the case are passed by the High Court exercising its supervisory power upon the Subordinate Courts and the instant case deserves the same treatment.

15. During course of submission a point arose that whenever a direction is issued to a Subordinate Court for the expeditious disposal of a case, it creates panic upon the Presiding Officer who is already overburdened with the huge pendency of cases before him and if such mandate is passed in several cases the other works of the Court are certainly hampered and most of his time and energy is engaged to ensure the compliance of the orders of the High Court.

16. The Court feels that whenever a direction is issued by this Court to the Subordinate Courts for the expeditious disposal of a trial / case, it never means to create any panic to the Court concerned. As a protector of the Constitution, this Court has a constitutional power and duty as well to have a control over the functioning of the District Courts and also to issue proper directions and guidance from time to time to the trial Courts as to in what manner a trial should be taken place and also to remind the Subordinate Courts of their rights and duties. A direction for the expeditious disposal of a case aims only to keep the proceedings of the Court moving in a right direction and speed and it never intends to put the Presiding Officers in a state of stress or to make them upset. The object and reason behind passing any order or any observation made by the higher Courts should always be kept into mind by the Subordinate Courts, as held in **Union of India Vs. Amrit Lal Manchanda and Another, (2004) 3 Supreme Court Cases 75**. It is strongly impressed upon that an order passed for expeditious disposal of a case by this Court is binding upon not only the

Court / Presiding Officer concerned but upon all the stake holders viz : police and executive officers, prosecution agency, staff, counsels, litigants etc. as well.

17. However, in the instant case, keeping in view the gravity and seriousness of the offence and other relevant parameters for grant of bail, as mentioned above, I am of the view that at this stage the delayed trial cannot be supposed to be a ground to allow this repeat bail application.¹⁸ The aforesaid view of this Court finds support from the legal dictum promulgated by the Hon'ble Apex Court in a very recent case of **Gulfisha Fatima Vs. State (Govt. of NCT of Delhi), 2026 SCC OnLine SC 10** (delivered on 5th January, 2026) where the bail of the undertrial was refused in a very serious offence under U.A.P.A. and necessity to maintain a balance between Article 21 of the Constitution which protects a person's right to life and liberty and nature of the offence and law prevailing thereon was impressed upon. The relevant paragraphs of the said decision are extracted below.

"42. The approach of addressing delay-related concerns through calibrated judicial supervision, rather than automatic enlargement on bail, stands reinforced by the decision of this Court in Union of India v. Saleem Khan⁴. In that case, despite the accused having remained in custody for over five years and the trial not having commenced, this Court declined to interfere with the rejection of bail qua one accused, while upholding bail granted to another, thereby reiterating that delay-based pleas must necessarily be adjudicated on an accused-specific footing. Significantly, even while acknowledging the constitutional imperative of a speedy trial, the Court did not eclipse the statutory rigour under Section 43D(5) of the UAPA but instead directed expeditious conclusion of the trial and cautioned against any conduct on the part of the accused that may further protract the proceedings. The decision thus affirms that prolonged custody, though a matter of concern, does not operate as an automatic ground for grant of bail where the statutory threshold continues to be attracted.".....

"56. Rather, delay serves as a trigger for heightened judicial scrutiny. The outcome of such scrutiny must be determined by a proportional and contextual balancing of legally relevant considerations, including (i) the gravity and statutory character of the offence alleged, (ii) the role attributed to the accused within the alleged design or conspiracy, (iii) the strength of the prima facie case as it emerges at the limited threshold contemplated under the special statute, and (iv) the extent to which continued incarceration, viewed cumulatively in the facts of the case, has become demonstrably disproportionate so as to offend the guarantee of personal liberty under Article 21.".....

"226. Delay can warrant a more searching constitutional scrutiny. But it does not authorise the Court to dilute the statutory threshold by undertaking credibility findings. The balance must be maintained: constitutional concern is real, but statutory restraint is equally real. Where the prima facie threshold continues to be crossed, delay is met through expeditious trial directions and continued judicial monitoring, not by negating Section 43D(5).".....

19. **Abdul Rehman Antuley Vs. R.S. Nayak, AIR 1992 SC 1701** is another authority on the point as to whether the accused should be released on bail if allegedly there has been an unreasonable delay in the trial. The Hon'ble Apex Court held that whenever a complaint of infringement of right to speedy trial is made the Court has to consider all the circumstances of the case and it is not possible in the very nature of things and present day circumstances to draw a time-limit beyond which a criminal proceeding will not be allowed to go.

20. On the aforesaid subject, a co-joint reading of the decisions of Hon'ble Apex Court in **Ranjan Dwivedi v. CBI, (2012) 3 SCC (Cri) 945, Ram Govind Upadhyay vs Sudarshan Singh & Ors., 2002 (3) SCC 598 and Rajesh Ranjan Yadav alias Pappu Yadav Vs. CBI, AIR 2007 SC 451** reminds that the Courts ought to be cautious in its approach in the interest of society in a matter which stands out to be a social crime of very serious nature and other incriminating factors when delay in conclusion of trial is pleaded and while paying attention to Article 21 which enshrines the fundamental right to individual liberty, a balance has to be struck between the right to individual liberty and the interest of the society at the same time and the crux would be that no right can be absolute and reasonable restrictions can be placed on them. No doubt an offence in the form of dowry death is a social crime.

21. Hence, delay alone cannot justify grant of bail considering the gravity of the offence and the restrictive statutory framework. Hence, it may be summed up that mere delay in trial pertaining to grave offence as one involved in the instant case cannot be used as a ground to grant bail. The second bail application of the accused applicant is hereby rejected.

22. However, the learned trial court is directed to make all possible endeavour to expedite the trial of the case following the mandate provided under Section 309 Cr.P.C. (Section 346 B.N.S.S.) and to conclude it expeditiously, preferably within a period of three months from the date of presentation of certified copy of this order before it. Trial court is also directed to send monthly report regarding the progress of the case to the Registry of this Court. If the trial is not decided within the aforesaid period, the applicant will be at liberty to move another application for grant of bail before this Court.

23. This Court sincerely feels that that the Court / Presiding Officer is not the only stake holder in the justice delivery system or for trial and disposal of a case, but there are several factors which create hindrance and obstructions in the smooth functioning of a Court and sometimes derail the normal functioning of the Court viz. lawyers strike and non-cooperation with the Court, lackadaisical approach of the prosecution agency, negligence on the part of police / administrative authorities, incompetency of staff, conduct of the parties / witnesses in a case in general creating obstruction in the judicial proceedings etc., hence, besides the Presiding Officer concerned, all the stake holders i.e. police and executive authorities, prosecution agency, counsels, parties to the case, staff etc. are also made bound by this order and it will be their responsibility also to assist the Court in every manner for the expeditious disposal of this case.

(2026) 1 ILRA 606
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 30.01.2026

BEFORE

THE HON'BLE SAMIT GOPAL, J.

Criminal Misc. Bail Application No. 32305 of 2025

Alok Singh

...Applicant

Versus

State of U.P.

...Opposite Party

ISSUE FOR CONSIDERATION

Whether accused should be granted bail on the ground of parity with co-accused who already bailed by the Supreme Court.

Whether the other connected Criminal Misc. Applications filed by other co-accused's seeking quashing of charge sheet and cognizance order are maintainable.

Whether criminal proceedings (Trial) are delayed due to interim protection orders granted in favour of the co-accused.

HEADNOTES

Criminal Law - Criminal Procedure Code, 1973 - Sections – 205, 317, 439, - Indian Penal Code (IPC) - Sections - 120-B, 406, 420 - Second Bail application – connected with three Criminal Misc. Application U/s 482 No. 1569/2025 and Criminal Applications U/s 528 BNSS No. 8780/2025 & 18833/2025 – Bail Application filed against rejection of first bail – earlier first Bail rejected – FIR - alleging offence of illegal seizure of Rs. 50 lakhs, threats, and corruption – investigation concluded, statements recorded - recovery of Rs. 30 lakhs from accused and Rs. 14 lakhs from co-accused – charge sheet filed - cognizance taken - trial initiated but delayed due to interim protection orders for co-accused – connected cases under Section 528 BNSS dismissed, interim relief vacated – applicant pleaded parity with co-accused granted bail by Supreme Court and long incarceration – Court finds that, trial delay due to interim protection “no coercive action” orders for co-accused, resulted charges not framed - parity principle applicable – law on quashing strict, Section 91 CrPC not available at pre-trial stage, disputed facts to be tested at trial – held – Second bail granted to applicant-accused for four months subject to strict conditions including attendance, non-tampering, and surrender after expiry – hence, second bail allowed - but temporarily – other connected Criminal Applications are dismissed – further, directions issued to trial court to expedite the trial proceedings - and Registrar of High Court directed to communicate order to District Judge Gorakhpur accordingly. (Para – 26, 35, 36, 37, 40, 41, 42, 43, 44, 45, 47)

Bail granted but, Application is remained pending. (E-11)

CASE LAW CITED

State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568 – Neeharika Infrastructure (P) Ltd. v. State of Maharashtra (2021) 19 SCC 401 – Pradeep Kumar Kesarwani v. State of U.P. (2025 SCC OnLine SC 1947) – Delhi Race Club (1940) Ltd. v. State of U.P. (2024 INSC 626).

LIST OF ACTS

Indian Penal Code (IPC) - Prevention of Corruption Act, 1988 - Code of Criminal Procedure (CrPC) - Bharatiya Nyaya Suraksha Sanhita (BNSS) - Indian Evidence Act, 1872.

LIST OF KEYWORDS

Bail Application - Parity Principle - Quashing of Charge Sheet - Cognizance Order - No Coercive Action – prerogative of the police – recovery – confessional statement – prevention of corruption – test of identification – extraordinary and inherent powers of the court – law for quashing is strict and trite - Long Incarceration - Fair Trial Rights - Mini Trial Doctrine - Expedited Trial – Bail for short time.

CASE ARISING FROM

Case Crime No. 93/2024, Police Station Kotwali, District Gorakhpur - **Sessions Case No. 898/2024** pending before Special Judge (PC Act), Court No. 2, Gorakhpur.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Narendra Kumar, Sri Raja Chaudhary (holding brief), Sri Preet Pal Singh Rathore, Sri Karunesh Pratap Singh.

Counsel for Respondent(s): - Shri Birendra Pratap Singh, AGA-I, Sri Ajay Singh, AGA-I (earlier hearings).

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

1. Heard Sri Raja Chaudhary, Advocate, holding brief of Sri Narendra Kumar along with Sri Narendra Kumar, learned counsel for the applicant in Criminal Misc. Bail Application No.32305 of 2025 & Criminal Misc. Application U/S 482 No.1569 of 2025 (Alok Singh vs. State of U.P. and another), Sri Preet Pal Singh Rathore, learned counsel for the applicant in Application U/S 528 BNSS No.8780 of 2025 (Vishal Tiwari vs. State of U.P. and another) and Sri Karunesh Pratap Singh, learned counsel for the applicant in Application U/s 528 Bnss No. 18833 of 2025 (Prachand Pratap Singh Vs State of U.P. and another) and Sri Birendra Pratap Singh, learned counsel for the State in all the matters. Perused the record and also the orders dated 05.01.2026 and 16.01.2026 passed by this Court in the bail application.

2. The present bunch of cases consists of **Criminal Misc. Bail Application No. 32305 of 2025: Alok Singh vs. State of U.P., Application U/s 482 No. 1569 of 2025: Alok Singh Vs. State of U.P. and another, Application U/s 528 Bnss No. 8780 of 2025: Vishal Tiwari Vs. State of U.P. and another and Application U/s 528 Bnss No. 18833 of 2025: Prachand Pratap Singh Vs. State of U.P. and another.**

3. The bail application was earlier taken up on 05.01.2026 and following order was passed by this Court:-

'1. This matter is listed today as item no. 129 in the daily cause list of this Bench.

2. Post lunch, Shri Narendra Kumar, Advocate, appearing on behalf of the applicant, made a mention by producing before the Court an order dated 19.12.2025 in Special Leave to Appeal (Criminal) No. 16835 of 2025 (Prince Srivastava v. The State of UP) which is connected with SLP (Criminal) No. 15778 of 2025 that the Apex Court has granted bail to co-accused Prince Srivastava vide the said order whereas insofar as the applicant is concerned, has requested the High Court to consider the case of the applicant for regular bail as expeditiously as possible on its merits and in accordance with law, preferably before 30.01.2026.

3. *The order passed in SLP (Criminal) No. 15778 of 2025, which relates to the applicant, reads as under:*

"We dispose of this Special Leave Petition by noting the fact that the petitioner herein has sought for regular bail (Crl. Misc. Bail Application No.32305 of 2025 pending on the file of the High Court of Allahabad) and the said application is pending before the High Court.

In the circumstances, it is unnecessary to go into the correctness of the impugned order as in the present case the petitioner had sought default bail and the said stage has now lapsed.

We therefore request the High Court to consider the case of the petitioner herein for regular bail as expeditiously as possible on its own merits and in accordance with law and preferably before 30.01.2026.

Pending application(s), if any, shall stand disposed of."

4. *This is the second bail application of the applicant- Alok Singh in Case Crime No. 93/2024, under Sections 389, 406, 420, 506, 411, 120-B IPC and Section 13 of the Prevention of Corruption Act, Police Station- Kotwali, District- Gorakhpur. The first bail application of the applicant being Criminal Misc. Bail Application No. 25998/2024 (Alok Singh v. State of UP), was rejected by this Court vide order dated 02.12.2024.*

5. *Learned counsel for the applicant has drawn the attention of the Court to Annexure-12 of the paper-book and submitted that the trial court proceedings of the present matter has been staying as an order of no coercive action has been passed in favour of the accused- Vishal Tiwari in an application under Section 528 BNSS No. 8780/2025 (Vishal Tiwari v. State of UP & Anr.). It is submitted that thus, the charge in the matter has still not been framed and the trial court is marking the presence of the accused through video conferencing and adjourning the matter by observing that there is a stay order by the High Court. He has placed before the Court the certified and true copy of the order sheet of the trial court, which is Annexure-13 to the affidavit, which is from 7-6-2024 to 3-9-2025. The situation thus is that one co-accused has got a protective order in the nature of no coercive action against him in a petition filed under Section 528 BNSS which is stated to be pending before this Court. However, insofar as the applicant and other co-accused are concerned, there is no such order but the trial as a whole is being adjourned on the said pretext. It could not be brought to the notice of the court that there has been any stay of proceedings by any specific order passed by any court. More so, since a petition under Section 528 BNSS has been filed by co-accused and is pending, due to which the trial is being adjourned and is not being taken up by the trial court; it would be proper and appropriate that the same be tagged with the present application for being decided together.*

6. *Connect with application under Section 528 BNSS No. 8780/2025 (Vishal Tiwari v. State of UP & Anr.).*

7. *The file be then placed before the Hon'ble The Chief Justice for nominating a Bench to hear both the matters.*

8. When the matter is listed next, the details of the connected file shall also be printed in the cause list.

9. The order of the Apex Court as produced by the learned counsel for the applicant is taken on record.

10. When the matter is listed next, the office shall print the matter under the heading "Supreme Court Expedited Matter".

11. Let the matter be listed on 16.1.2026.

12. In the meantime, the Registrar (Compliance) shall seek a report from the District and Sessions Judge concerned/ the trial court concerned through fax regarding the status of the trial, the stage at which it is and also the reason for delay in framing of charge.'

4. Subsequently the matter was taken up on 16.01.2026 and the following order was passed by this Court:

'1. List revised.

2. Heard Sri Raja Chaudhary, Advocate, holding brief of Sri Narendra Kumar, and Sri Narendra Kumar, learned counsels for the applicant, Sri Ajay Singh, learned A.G.A.-I for the State and perused the record.

3. This matter is connected with two other applications being Application U/s 528 Bnss No. 18833 of 2025 and Application U/s 528 Bnss No. 8780 of 2025 and listed today in the list of Additional/Unlisted List-I. The matters were placed before Hon'ble The Chief Justice in compliance of the order dated 05.1.2026 for nominating a Bench to hear all the matters together and vide order dated 14.1.2026 this Court has been nominated to hear the matters.

4. There is no appearance on behalf of the applicants in the connected matters even in the revised list.

5. Since there is a request of Bar Association of not passing any adverse order today as there is a massive traffic restrictions in the city due to Magh Mela which has been circulated to the Court under the order dated 13.01.2026 of Hon'ble The Chief Justice, the matters are adjourned for today.

6. Sri Narendra Kumar, Advocate, shall give notice in writing to learned counsels appearing in both the said connected matters about this order along with copy of this order within three days and produce its receipt by the next date.

7. List on 28.1.2026.

8. *At this stage, learned counsel for the applicant submits that one application being Application U/S 482 No. 1569 of 2025, Alok Singh vs. State of U.P. and another is also pending before this Court in the present matter and the same be connected with this bail application so that the same be also heard and decided together.*

8. *As prayed, connect with Application U/S 482 No. 1569 of 2025, Alok Singh vs. State of U.P. and another. Since the said application is connected with this bail application, office shall again seek nomination from Hon'ble The Chief Justice by the next date for nominating the Bench to hear the matters together.*

9. *Learned counsel for the applicant submits that no other matter now as per his instructions is pending before this Court.'*

5. Office then placed the records of all the matters before Hon'ble The Chief Justice for nomination on which vide order dated 24.1.2026 of Hon'ble The Chief Justice this Bench has been nominated to hear all the matters. The matters are thus listed before this Bench under heading Hon'ble Supreme Court Order (Expedited) cases in the Additional/Unlisted List-1.

6. The bail application is the second bail application. The first bail application of the applicant Alok Singh was rejected by this Court vide order dated 02.12.2024 passed in Criminal Misc. Bail Application No.25998 of 2024 (Alok Singh vs. State of U.P.). The same reads as under:-

'1. Heard Sri V.P. Srivastava, learned Senior Advocate assisted by Sri Narendra Kumar, learned counsel for the applicant and Sri Ajay Singh, learned AGA-I for the State and perused the records.

2. The present bail application under Section 439 Cr.P.C. has been filed by the applicant Alok Singh with a prayer to release him on bail in Case Crime No.93 of 2024, under Sections 379, 406, 420, 506, 411, 389, 120-B I.P.C. and Section 13 of Prevention of Corruption Act, Police Station Kotwali, District Gorakhpur, during the pendency of trial.

3. A First Information Report of the matter was lodged on 09.4.2024 at 05:52 hours, under Sections 379, 406, 420, 506 I.P.C. and 13 Prevention of Corruption Act by original complainant Naveen Kumar Srivastava against the applicant Alok Singh (Sub-Inspector), Prince Srivastava (co-accused) and 02-03 other associates alleging therein that he is a businessman and in the evening he used to collect money with relation to his business and comes back home in the late evening and then on the next day deposits it in the bank and like each day on 03.04.2024 he had collected Rs.50 Lakhs and when he along with his brother Gagan Kumar Srivastava were coming with a bag at about 06:00 a.m., they were stopped by applicant Alok Singh and 3-4 people in plain clothes, who asked him about the bag on which he told them that there is Rs.50 Lakhs in the same, on which there was some commotion and then the applicant took the money from him and told him that he is traveling without permission during election time with huge money and he would implicate him in a case of theft and loot. The money was counted which was found to be Rs.50 Lakhs. He then pleaded that the money belongs to him and may be returned, on which they stated to get it inquired and then return it to him. The co-accused Prince Srivastava then told Inspector

that he would talk to them and took them outside and told them that if they want to be saved then they should tell the Sub Inspector to make an inquiry and then return money to them. They then requested Sub Inspector about it who detained the money and told them to come on the next day. Thereafter, on the next day they contacted him where the co-accused Prince Srivastava was also present after which they were threatened and the applicant told him that they would not get the money back and threatened them whereupon, they returned back home and told the family members about it who then encouraged him and told that a complaint before the higher authority be made, after which they went to the police station and made a complaint requesting that report be lodged and action be taken.

4. Learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. It is submitted that the applicant is a Sub-Inspector in the police department and was performing his duties with utmost sincerity. During the period of election, when the Code of Conduct was implemented in the course of which, he checked the first informant and his brother Gagan Kumar Srivastava and recovered Rs.30 Lakhs from the first informant. It is submitted that the money was returned on the third day of its recovery after being satisfied regarding the same to be of the informant. It is further submitted that C.D.R. of the applicant, the first informant Naveen Kumar Srivastava and brother of first informant Gagan Kumar Srivastava would go to show' that on 03.04.2024 from 5:00 p.m. to 8:45 p.m., they were shown at different locations and as such the story that the applicant stopped them and then took money from them is false. It is submitted while placing the statement of the first informant that the story as narrated by him is concocted story without any credible support. It is further submitted that the recovery of money has been shown at 6:00 p.m. but the C.D.R. would show all the said three persons to be at different locations. It is submitted that the service provider of mobile of the said three persons is the same as has been mentioned by the Investigating Officer while noting the certificate under the Evidence Act in the case diary. It is submitted that as such no offence is made out. It is further submitted that the applicant has no criminal history as stated in paragraph 27 of the affidavit. The applicant is in jail since 09.04.2024.

5. Per contra, learned counsel for the State vehemently opposed the prayer for bail and submitted that the applicant is involved in the mater. It is submitted that the applicant was arrested and Rs.30 Lakhs was recovered from his possession. It is further submitted that at the time of arrest of the applicant, co-accused Prince Srivastava was also apprehended and Rs.14 Lakhs was recovered from his possession. It is submitted that the recovery was done on 09.04.2024. It is submitted that the applicant has not claimed the said money. It is further submitted that the recovery of Rs.30 Lakhs which is huge amount has not been explained by the applicant. He further submitted that insofar as the C.D.R. of the applicant and that of Gagan Kumar Srivastava is concerned, the same would go to show that at the time of incident, they were at the same place. It is further submitted that the C.D.R. although goes to show the location of the mobile but since the waves cross each-other it cannot be conclusively established that persons were at the said place since a minor movement or deviation from one place to the other may change the tower location. It is submitted that bail of co-accused Prince Srivastava from whose possession Rs.14 Lakhs was recovered and has been rejected by this Court vide order dated 03.09.2024 passed in Criminal Misc. Bail Application No. 21814 of 2024 (Prince Srivastava vs. State of U.P.). It is submitted that

the applicant is involved in the present matter and no such ground is pleaded and argued which would go in his favour for making out a case for bail and hence the bail application be rejected.

6. After having heard the learned counsels for the parties and perusing the records, it is evident that the applicant is named in the first information report. The first informant Naveen Kumar Srivastava and his brother Gagan Kumar Srivastava were carrying money, which they had collected out of their business which was detained by the applicant, in the presence of co-accused Prince Srivastava who tried to intervene and get the matter settled. The money was detained by the applicant and the first informant was told to come on the next date. On the next date, the money was not returned to him but to the contrary he was threatened by the applicant and the co-accused. Subsequently, on 09.04.2024 on the information of police informer, the applicant and the co-accused Prince Srivastava were apprehended and from the possession of the applicant Rs.30 Lakhs was recovered whereas from the possession of co-accused Prince Srivastava Rs.14 Lakhs was recovered. The recovery is of a huge amount and planting this huge amount for false implication, is not possible. No reason whatsoever has been shown for false implication of the applicant. There is no explanation at all coming from the applicant regarding the huge amount of money recovered from his possession. The bail of co-accused Prince Srivastava has been rejected by this Court vide order dated 03.09.2024 from whose possession Rs.14 Lakhs was recovered. Insofar as, the location from the C.D.R. is concerned, the same is matter of trial which is to be looked into and considered by the trial court after evidence is recorded and the accused leads his defence for the same.

7. Looking to the facts and circumstances of the case, nature of evidence and gravity of offence, the huge amount of money recovered from the possession of the applicant and the fact that bail of co-accused Prince Srivastava has been rejected by this Court, this Court does not find it a fit case to release the applicant on bail.

8. The bail application is rejected.'

7. Subsequently the present second bail application has been filed by the applicant Alok Singh before this Court with the following prayers:-

'It is, therefore most respectfully prayed that this Hon'ble Court may be graciously be pleased to release the applicant on bail in Case Crime No.-93 of 2024, under Sections 379, 406, 420, 506, 411, 389, 120B I.P.C. and under Section 13 of Prevention of Corruption Act, P.S.-Kotwali, District Gorakhpur, to the satisfaction of the Court concerned during the pendency of the trial. So that justice be done.'

8. Application U/s 482 No. 1569 of 2025: Alok Singh Vs. State of U.P. and another, has been filed by the applicant- Alok Singh with the following prayers:-

'It is, therefore most respectfully prayed that this Hon'ble Court may be graciously be pleased to allow the present application and set-aside the order dated 12.07.2024 passed by learned Additional Sessions Judge/Special Judge Prevention of Corruption Act, Court No.-2 Gorakhpur, whereby the learned Court rejected the application under section 91 Cr.P.C. moved by the applicant and further be pleased to direct the Investigating Officer of the Case Crime No.- 93 of 2024 under

section 389, 406, 420, 506, 411, 120B I.P.C. and under section 13 of The Prevention of Corruption Act P.S.-Kotwali, District-Gorakhpur to collect the CCTV footage of Police station Kotwali, District-Gorakhpur since 12:05 am to 8.20 am on 9th April 2024 and the place of arrest of the applicant where from the applicant was allegedly arrested (near Tarang Overbridge) by the police and C.D.R. and G.P.S. Location, Call-I.D. and Internet Root Tracking of the police Team who have arrested of the applicant, and preserve the same and also make the part of case diary and/or pass such other and further orders, which this Hon'ble Court may deem, fit and proper in the circumstances of the case. So that justice be done.'

9. On 20.1.2025 the following order was passed by this Court:-

'1. List revised.

2. Heard Sri Narendra Kumar, learned counsel for the applicant, Sri Birendra Pratap Singh learned counsel for the State and perused the record.

3. Learned State counsel prays for three weeks' time to file counter affidavit. Prayer is allowed.

4. Learned counsel for the applicant will have two weeks thereafter to file rejoinder affidavit, if any.

5. List on 25.02.2025.'

10. The matter was taken up and heard on 28.01.2026 by this Bench and the following order was passed:-

'1. List revised.

2. Sri Raja Chaudhary, Advocate holding brief of Sri Narendra Kumar along with Sri Narendra Kumar are present for the applicant, Sri Birendra Pratap Singh, learned counsel for the State who have been heard and records perused.

3. Counter affidavit of the State has been filed which is on record to which a rejoinder affidavit has also been filed on behalf of the applicant which is also on record. Perused the entire records.

4. Arguments concluded.

5. Judgment reserved.

6. Interim order, if any, shall continue till delivery of judgment.'

11. **Application U/s 528 Bnss No. 8780 of 2025:** Vishal Tiwari Vs. State of U.P. and another, has been filed by the applicant- Vishal Tiwari with the following prayers:-

'It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to allow the instant application by quashing the charge sheet dated 05.06.2024 and the cognizance order dated 07.06.2024 alongwith passed by the learned Additional Session Judge/Special Judge (P.C. Act), Court No.2, Gorakhpur as well as the entire proceedings of Session Case No. 898/2024, (State vs. Alok Kumar Singh & others) arising out of Case Crime No. 93/2024, under sections 389, 406, 420, 506, 411 IPC & 13 of the Prevention of Corruption Act read with section 120-B IPC, Police Station Kotwali, District Gorakhpur, presently pending before the Court of Additional Session Judge/Special Judge (P.C. Act), Court No.2, Gorakhpur, So that justice be done, otherwise the applicant shall suffer irreparable loss and hard injury.

It is further prayed that during pendency of the present application before this Hon'ble Court the further proceedings as well as effect and operation of cognizance order dated 07.06.2024 passed by the learned Additional Session Judge/Special Judge (P.C. Act), Court No.2, Gorakhpur passed in Session Case No. 898/2024, (State vs. Alok Kumar Singh & others) arising out of Case Crime No. 93/2024, under section 389, 406, 420, 506, 411 IPC & 13 of the Prevention of Corruption Act read with section 120-B IPC, Police Station Kotwali, District- Gorakhpur, presently pending before the Court of Additional Session Judge/Special Judge (P.C. Act), Court No.2, Gorakhpur, may be stayed and/or pass any other further order which this Hon'ble court may deem fit and proper in the facts and circumstances of the present case; else the applicant shall suffer irreparable loss and injury.'

12. The matter was taken up and heard on 07.05.2025 by another Bench of this Court and the following order was passed:-

'1-This application under Section 528 BNSS has been filed by the applicant for quashing the charge-sheet dated 05.06.2024, cognizance order dated 07.06.2024 and proceedings of Sessions Case No. 898 of 2024 (State Vs. Alok Kumar Singh and others) arising out of Case Crime No. 93 of 2024, under Sections 389, 406, 420, 506, 411 IPC and Section 13 of Prevention of Corruption Act read with Section 120B IPC, Police Station Kotwali, District Gorakhpur pending in the court of Additional Sessions Judge/Special Judge (P.C. Act), Court No. 2, Gorakhpur.

2-Heard Mr. Anil Tiwari, learned Senior Counsel, assisted by Mr. Kabeer Tiwari, learned counsel for the applicant, Mr. Deepak Mishra, learned A.G.A. for the State of U.P./opposite party no. 1 and perused the record.

3-As per prosecution case in brief, complainant/ opposite party no. 2 lodged an F.I.R. on 09.04.2024 under Sections 379, 406, 420, 506 IPC and Section 13 of Prevention of Corruption Act against Inspector Alok Singh (Incharge, Police Post Beniganj), Prince Srivastava and their two-three companion alleging inter alia that he is a businessman and he used to return home after collecting the money of his business by evening and deposit the same in bank next day. In this sequence, on 03.04.2024 at about 06:00 A.M., he alongwith his brother keeping Rs. 50 Lakhs in a bag were going on a motorcycle towards Harish Chauraha from Charan Lal Chauraha. When he reached near the Police Post, Beniganj, he saw Inspector Alok Singh, In-charge, Police Post Beniganj and three-four persons were standing there. Inspector signalled them to stop and inquired about the bag. He disclosed that Rs. 50 Lakhs are kept in the bag. He recognized a person standing

with the inspector, whose name is Prince Srivastava. Thereafter, the Inspector took the bag and went inside the police post and started counting the money and told them that the total money is Rs. 50 Lakhs and also threatened them to send jail in relation to offence of loot. Thereafter, Inspector kept the money with him saying that he will inquire about the money. On the pretext of investigation, inspector has taken entire amount extending threat to send them jail. Prince and his companions whom he does not recognize, who were with them on that day too were standing there. Thereafter his money was not returned.

4-It is submitted by learned counsel for the applicant that with regard to incident dated 03.04.2025, F.I.R. was lodged on 09.04.2025, in which applicant is not named. As per F.I.R., specific allegation of forcefully taking Rs. 50 Lakhs of the complainant is against Inspector Alok Singh (Incharge, Police Post Beniganj) and Prince Srivastava. After F.I.R. Rs. 30 Lakhs have been recovered from the possession of Inspector Alok Singh (Incharge, Police Post Beniganj) and Rs. 14 Lakhs have been recovered from the possession of Prince Srivastava on the same day. During investigation complainant in his statement has made improvement stating inter alia that after taking his money by the Inspector, Prince Srivastava took him and his brother to Prachand Singh, who is resident of his locality, where Prachand Singh, Mukesh and Vishal Tiwari (applicant) met them and told that he will get his money back but they will take commission on the money. Much emphasis has been given by contending that if this statement of complainant is treated as true that on 03.04.2024, applicant demanded commission in lieu of getting his money back from the inspector, then this fact and name of the applicant must have been mentioned in the F.I.R. dated 09.04.2025. It is also pointed out that complainant in his statement has disclosed that his work is to transmit money of party from one place to another. As such complainant has not come with clean hand. Lastly, it is submitted that so far as case of the applicant is concerned, basic ingredients to constitute an offence under Sections 389, 406, 420, 506, 411, 120B IPC and Section 13 of Prevention of Corruption Act are lacking and his case is distinguishable from the case of named accused persons. Though in the statement of complainant, there is allegation of demand of commission against the applicant, who is not a public servant but it is admitted fact that no commission has been given by the complainant to the applicant.

5-Learned A.G.A. for the State opposed the prayer of the applicant by reiterating the prosecution case as mentioned in F.I.R. by contending that applicant was also involved in the matter and as per C.D.R. collected by the investigating officer, applicant was also found in touch with named accused Alok Singh. It is also pointed out that apart from the present case, the applicant has criminal history of two other cases bearing Case Crime No. 259 of 2013, under Sections 323, 504, 506 IPC, Police Station Gorakhnath, District Gorakhpur and Case Crime No. 170 of 2017, under Sections 420, 504, 506 IPC, Police Station Gorakhnath, District Gorakhpur.

6-Having heard the learned counsel for the parties as noted above, I find that case of the applicant stands on different footing than that named co-accused Inspector Alok Singh (Incharge, Police Post Beniganj) and Prince Srivastava.

7-Prima facie, matter requires consideration.

8-Learned Government Advocate has accepted notice on behalf of the State of U.P./opposite party no.1.

9-Let a notice be issued to opposite party no.2 returnable at an early date.

10-Steps be taken within a week.

11-Six weeks' time is granted to the opposite parties to file counter affidavit. Rejoinder affidavit, if any, may be filed by the applicant within three weeks thereafter.

12-List this case on 07.08.2025.

13-Till the next date of listing, no coercive action shall be taken against the applicant Vishal Tiwari.'

13. Application U/s 528 Bnss No. 18833 of 2025: Prachand Pratap Singh Vs. State of U.P. and another, has been filed by the applicant- Prachand Pratap Singh with the following prayers:-

'It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to allow the instant application by quashing the charge sheet dated 05.06.2024 and the cognizance order dated 07.06.2024 alongwith passed by the learned Additional Session Judge/Special Judge (P.C. Act), Court No.2, Gorakhpur as well as the entire proceedings of Session Case No. 898/2024, (State vs. Alok Kumar Singh & others) arising out of Case Crime No. 93/2024, under sections 389, 406, 420, 506, 411 IPC & 13 of the Prevention of Corruption Act read with section 120-B IPC, Police Station Kotwali, District Gorakhpur, presently pending before the Court of Additional Session Judge/Special Judge (P.C. Act), Court No.2, Gorakhpur, So that justice be done, otherwise the applicant shall suffer irreparable loss and hard injury.

It is further prayed that during pendency of the present application before this Hon'ble Court the further proceedings as well as effect and operation of cognizance order dated 07.06.2024 passed by the learned Additional Session Judge/Special Judge (P.C. Act), Court No.2, Gorakhpur passed in Session Case No. 898/2024, (State vs. Alok Kumar Singh & others) arising out of Case Crime No. 93/2024, under section 389, 406, 420, 506, 411 IPC & 13 of the Prevention of Corruption Act read with section 120-B IPC, Police Station Kotwali, District- Gorakhpur, presently pending before the Court of Additional Session Judge/Special Judge (P.C. Act), Court No.2, Gorakhpur, may be stayed and/or pass any other further order which this Hon'ble court may deem fit and proper in the facts and circumstances of the present case; else the applicant shall suffer irreparable loss and injury.'

14. The matter was taken up and heard on 26.5.2025 by another Bench of this Court and the following order was passed:-

'1. This application under Section 528 B.N.S.S. has been filed by the applicant with a prayer to quash the charge-sheet dated 05.06.2024, cognizance order dated 07.06.2024 and further proceedings of Sessions Case No. 898 of 2024 (State Vs. Alok Kumar Singh and others) arising out

of Case Crime No. 93 of 2024, under Sections 389, 406, 420, 506, 411 I.P.C. and Section 13 of Prevention of Corruption Act read with Section 120B I.P.C., Police Station Kotwali, District Gorakhpur, pending in the court of learned Additional Sessions Judge/Special Judge (Prevention of Corruption Act), Court No. 2, Gorakhpur.

2. Heard learned counsel for the applicant, learned Additional Government Advocate representing the State of U.P./opposite party No. 1 and perused the record.

3. As per prosecution case, in brief, complainant/ opposite party No. 2 lodged a first information report on 09.04.2024 for the alleged offence under Sections 389, 120B, 411, 406, 420, 506 I.P.C. and Section 13 of Prevention of Corruption Act against Inspector Alok Singh (Incharge, Police Outpost Beniganj), Prince Srivastava and their two-three companions alleging inter alia that he is a businessman and he used to return home after collecting the money of his business by evening and deposit the same in bank next day. In this sequence, on 03.04.2024 at about 06:00 A.M., he along with his brother keeping Rs. 50 lakhs in a bag was going on a motorcycle towards Harish Chauraha from Charan Lal Chauraha. When he reached near the Police Outpost, Beniganj, he saw Inspector Alok Singh, In-charge, Police Outpost Beniganj and three-four persons were standing there. Inspector signalled them to stop and inquired about the bag. He disclosed that Rs. 50 lakhs are kept in the bag. He recognized a person standing with the inspector, whose name is Prince Srivastava. Thereafter, the Inspector took the bag and went inside the police outpost and started counting the money and told them that the total money is Rs. 50 lakhs and also threatened them to send jail in relation to the offence of loot. Thereafter, Inspector kept the money with him saying that he will inquire about the money. On the pretext of investigation, inspector has taken entire amount extending threat to send them jail. Prince and his companions whom he does not recognize, who were with them on that day too were standing there. Thereafter his money was not returned.

4. It is submitted by learned counsel for the applicant that with regard to the incident dated 03.04.2025, F.I.R. was lodged on 09.04.2025, in which applicant is not named. As per F.I.R., specific allegation of forcefully taking Rs. 50 lakhs from the complainant is against Inspector Alok Singh (Incharge, Police Outpost Beniganj) and Prince Srivastava. After lodging of F.I.R., Rs. 30 lakhs have been recovered from the possession of Inspector Alok Singh (Incharge, Police Outpost, Beniganj) and Rs. 14 lakhs have been recovered from the possession of Prince Srivastava on the same day. During investigation complainant, in his statement, has made improvement stating inter alia that after taking his money by the Inspector, Prince Srivastava took him and his brother to Prachand Singh (applicant), who is resident of his locality, where Prachand Singh, Mukesh and Vishal Tiwari met them and told that they will get his money back but they will take commission on the money. Much emphasis has been given by contending that if this statement of complainant is treated as true that on 03.04.2024, applicant demanded commission in lieu of getting his money back from the inspector, then this fact and name of the applicant must have been mentioned in the F.I.R. dated 09.04.2025. It is also pointed out that complainant, in his statement, has disclosed that his work is to transmit money of party from one place to another. As such complainant has not come with clean hands. Lastly, it is submitted that so far as case of the applicant is concerned, basic ingredients to constitute an offence under Sections 389, 406, 420, 506, 411, 120B I.P.C. and Section 13 of Prevention of Corruption Act are lacking and his case is distinguishable from the

case of named accused persons. Though in the statement of complainant, there is allegation of demand of commission against the applicant, who is not a public servant but it is admitted fact that no commission has been given by the complainant to the applicant.

5. Learned Additional Government Advocate representing the State opposed the prayer of the applicant by reiterating the prosecution case as mentioned in F.I.R. by contending that applicant was also involved in the matter and as per C.D.R. collected by the investigating officer, applicant was also found in touch with named accused Alok Singh.

6. Having heard the learned counsel for the parties as noted above, I find that case of the applicant stands on different footing to that of named co-accused Inspector Alok Singh (Incharge, Police Outpost, Beniganj) and Prince Srivastava.

7. Prima facie, matter requires consideration.

8. Learned Government Advocate has accepted notice on behalf of the State of U.P./opposite party no. 1.

9. Let a notice be issued to opposite party no.2 returnable at an early date.

10. Steps be taken within a week.

11. Six weeks' time is granted to the opposite parties to file counter affidavit. Rejoinder affidavit, if any, may be filed by the applicant within three weeks thereafter.

12. connect and list this case on 07.08.2025 along with Criminal Misc. Application under Section 528 B.N.S.S. No. 8780 of 2025.

13. Till the next date of listing, no coercive action shall be taken against the applicant Prachand Pratap Singh in the aforesaid case.

14. It is made clear that benefit of this order shall not be extended to named co-accused Inspector Alok Singh (Incharge, Police Outpost, Beniganj) and Prince Srivastava.'

15. The facts common to all the cases are that a First Information Report of the matter was lodged on 09.4.2024 at 05:52 hours, under Sections 379, 406, 420, 506 I.P.C. and 13 Prevention of Corruption Act by original complainant Naveen Kumar Srivastava against Alok Singh (Sub-Inspector), Prince Srivastava and 02-03 other associates alleging therein that he is a businessman and in the evening he used to collect money with relation to his business and comes back home in the late evening and then on the next day deposits it in the bank and like each day on 03.04.2024 he had collected Rs.50 Lakhs and when he along with his brother Gagan Kumar Srivastava were coming with a bag at about 06:00 a.m., they were stopped by Alok Singh and 3-4 people in plain clothes, who asked him about the bag on which he told them that there is Rs.50 Lakhs in the same, on which there was some commotion and then Alok Singh took the money from him and told him that he is traveling without permission during election time with huge money and he would implicate him in a case of theft and loot. The money was counted which was found to be Rs.50

Lakhs. He then pleaded that the money belongs to him and may be returned, on which they stated to get it inquired and then return it to him. Prince Srivastava then told the Inspector that he would talk to them and took them outside and told them that if they want to be saved then they should tell the Sub Inspector to make an inquiry and then return money to them. They then requested the Sub Inspector about it who detained the money and told them to come on the next day. Thereafter, on the next day they contacted him where Prince Srivastava was also present after which they were threatened and the applicant told him that they would not get the money back and threatened them whereupon, they returned back home and told the family members about it who then encouraged him and told that a complaint before the higher authority be made, after which they went to the police station and made a complaint requesting that report be lodged and action be taken.

16. Investigation in the matter concluded and a charge sheet dated 05.6.2024 was submitted against the accused- Alok Singh and Prince under Sections 389, 406, 420, 506, 411 I.P.C. and 13 Prevention of Corruption Act read with Section 120B I.P.C. and against the accused- Mukesh Kumar, Prachand Pratap Singh and Vishal Tiwari, under Sections 389, 406, 420, 506, 411 I.P.C. and Section 13 Prevention of Corruption Act read with Section 120B I.P.C.

17. Cognizance on the said charge sheet was taken vide order dated 7.6.2024 by In-charge Special Judge(P.C.Act), Court No. 2, Gorakhpur, under Sections 389, 406, 420, 506, 411 I.P.C. and 13 Prevention of Corruption Act read with Section 120B I.P.C against the accused Alok Singh and Prince Srivastava, subsequent to sanction for prosecution and against accused Mukesh Kumar, Prachand Pratap Singh and Vishal Tiwari for offences under Section under Sections 389, 406, 420, 506, 411 I.P.C. and 13 Prevention of Corruption Act read with Section 120B I.P.C.

18. The second bail application has thus been filed with the prayer to release the applicant Alok Singh on bail.

Order on Criminal Misc. Application U/S 482 Cr.P.C. No. 1569 of 2025 (Alok Singh vs. State of U.P. and another)

19. The Criminal Misc. Application U/S 482 Cr.P.C. No. 1569 of 2025 has been filed with the prayer that the order dated 12.7.2024 passed by the Additional Sessions Judge/Special Judge, Prevention of Corruption Act, Court No. 2, Gorakhpur be set aside and further the Investigating Officer of the case be directed to collect the CCTV footage of Police Station Kotwali, District Gorakhpur from 12:05 am to 08:20 am on 09.4.2024 and the place of arrest of the applicant and further C.D.R. and G.P.S. location, Call-I.D. and Internet Root Tracking of the police Team who had arrested the applicant, be preserved and made part of the case diary.

20. Learned counsel for the applicant submitted that the applicant is an accused in the present matter. It is submitted that the preservance of required details of C.D.R. and also collection of CCTV footage of the Police Station is necessary for fair trial and fair defense of the accused since the entire prosecution case is being challenged as being false and fabricated. It is submitted that if the said documents and details are not collected and preserved the applicant would not have a fair chance of his defence and thus the application moved under Section 91 Cr.P.C. be allowed.

21. Per contra, learned State counsel opposed the prayer and arguments of learned counsel for the applicant and submitted that the order of the trial court specifically mentions that for the same cause the applicant had previously filed an application dated 22.4.2024 being application no.209/2024 which stood rejected on merits vide order dated 14.4.2024 and in the present application there is no reference of the same and further by observing that the investigation is a prerogative of the police and the court cannot interfere in it and thus rejected the said application. It is submitted that perusal of the application under Section 91 Cr.P.C. dated 30.5.2024 of the applicant which is numbered as Misc. Application No.317/2024 shows that it is with the same prayer and perusal of the same would go to show that there is no reference whatsoever of the previous application for the same relief being filed and it being dismissed by the trial court which is a material concealment by the applicant, however, the trial court has again dismissed the said application on its merits and thus there was no reason for the trial court to entertain the present application under Section 91 Cr.P.C. for the second time and thus the present application is devoid of any merit and deserves to be dismissed.

22. In response learned counsel for the applicant submitted that non-disclosure of filing of the previous application for the same relief and also non-disclosure of the order of the trial court rejecting the same, is a technicality and cannot be termed as concealment. It is submitted that the application under Section 91 Cr.P.C. dated 30.5.2024 is maintainable and deserves to be allowed and the prayers as prayed for, deserve to be allowed.

23. After having heard learned counsels for the parties and perusing the records, it is evident that an application under Section 91 Cr.P.C. has been filed by the applicant for collecting of CCTV footage of Police Station Kotwali, District Gorakhpur from 12:05 am to 08:20 am on 09.4.2024 and the place of arrest of the applicant and further C.D.R. and G.P.S. location, Call-I.D. and Internet Root Tracking of the police Team who had arrested the applicant, be preserved and made part of the case diary. The said application stood rejected by the trial court vide order dated 12.7.2024. The same is under challenge before this Court. Counter affidavit has been filed by the State to which rejoinder affidavit has been filed by the applicant which are already on the record and have been perused.

24. At the first instance it would be relevant to mention that the trial court has observed that previously the applicant had filed an application dated 24.4.2024 for the same relief being application no. 209/2024 which stood rejected vide order dated 14.5.2024 and the said fact has not been disclosed in the subsequent application filed by him which is a concealment. Further the fact remains that the order dated 14.5.2024 of the trial court on the first application of the applicant for the same relief, has attained finality and has not been challenged further. A second application thus for the same relief and even with concealment would not be maintainable. More so, on merits of the matter, in the case of **State of Orissa v. Debendra Nath Padhi : (2005) 1 SCC 568** it has been held by the Apex Court that entitlement of the accused to seek order under Section 91 Cr.P.C. would ordinarily not come till the stage of defence. It has been held as under:

“25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is 'necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code'. The first and foremost requirement of the

section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.'

(emphasis supplied)

25. As of now, directing the Investigating Officer to collect CCTV footage and make it part of the investigation, would be an interference in the investigation and directing investigation to be done in a particular manner.

26. No ground for interference is made out.

27. The Criminal Misc. Application U/S 482 Cr.P.C. No. 1569 of 2025 is dismissed.

Order on Application U/s 528 Bnss No. 8780 of 2025 (Vishal Tiwari Vs State of U.P. and another) and Application U/s 528 Bnss No. 18833 of 2025(Prachand Pratap Singh vs. State of U.P. and another)

28. In so far as two applications being **Application U/s 528 Bnss No. 8780 of 2025: Vishal Tiwari Vs State of U.P. and another** and **Application U/s 528 Bnss No. 18833 of 2025: Prachand Pratap Singh vs. State of U.P. and another**, are concerned, the same have a common relief and challenge of the charge sheet dated 05.6.2024, order of cognizance dated 07.6.2024 and the entire proceedings of the case identified as Sessions Case No. 898/2024 (State vs. Alok Kumar Singh and others) arising out of Case Crime No. 93/2024, under Sections 389, 406, 420, 506, 411 I.P.C. and 13 of Prevention of Corruption Act read with Section 120B I.P.C., Police Station Kotwali, District Gorakhpur, pending in the court of Additional Sessions Judge/Special Judge (PC Act), Court No. 2, Gorakhpur.

29. Learned counsel appearing for the applicant Prachand Pratap Singh submitted that the only evidence against the applicant is his own confessional statement and admissibility of the same is

barred by Section 25 of the Evidence Act. It is further submitted that the applicant is not named in the F.I.R. despite the fact that Gagan Kumar Srivastava the brother of the informant knew him. It is further submitted that there is no recovery of any incriminating material from the possession of the applicant whereas there is recovery of Rs.30 lakh from the co-accused Alok Kumar Singh, Rs.14 lakh from the co-accused Prince Srivastava. It is submitted that there is no other evidence against the applicant-Prachand Pratap Singh.

30. Refuting the arguments of learned counsel for the applicant, learned counsel for the State submitted that the applicant is named in the statement of the first informant recorded under Section 161 Cr.P.C. and active role has been assigned to him. It is submitted further that the argument that except for the confessional statement of the accused there is no other evidence, is incorrect inasmuch as the first informant has specifically named the applicant in his statement recorded under Section 161 Cr.P.C. during investigation and assigned the role to him. It is submitted that charge sheet after investigation has been submitted against the applicant on which the court concerned has taken cognizance and thus there is ample evidence against him. It is further submitted that at this stage appreciating the veracity of the prosecution case by drawing distinction and variations of the prosecution version from the F.I.R. and the statements of the witnesses recorded during investigation cannot be done and the same cannot be appreciated as mini trial cannot be done at this stage. It is submitted that looking to the facts of the case, nature of case, evidence available on record, it cannot be said that no offence is made out against the applicant. Thus the present application deserves to be dismissed.

31. Learned counsel appearing for the accused-applicant Vishal Tiwari adopted the arguments of learned counsel for the accused- applicant Prachand Pratap Singh but further supplemented his argument that while submitting charge sheet the Investigating Officer deleted Section 379 I.P.C. and added Section 389 I.P.C. apart from other sections. It is submitted while placing para-28, 37, 38, 41 and 42 of the affidavit that the applicant is a student and thus offence under the Prevention of Corruption Act would not be attracted, there is no recovery from the applicant, no test identification parade was conducted to get the identity of the applicant fixed, no offence whatsoever is made out against the applicant- Vishal Tiwari and further offence under Sections 406 and 420 I.P.C. is not made out as both the offences cannot exist simultaneously as has been held by the Apex Court in the case of *Delhi Race Club (1940) Ltd. and others vs. State of Uttar Pradesh and another: 2024 INSC 626*.

32. Learned State counsel while refuting the arguments of learned counsel for the applicant Vishal Tiwari, submitted that complicity of the applicant surfaced in the present matter during investigation. The applicant is named by the first informant in his statement recorded during investigation and specific role has been assigned to him. It is submitted further that the investigation shows implication of the applicant for offences under Sections 420 I.P.C. and 406 I.P.C. distinctly and thus he can be tried for them together. It is submitted that the prayers as prayed for be dismissed.

33. After having heard learned counsels for the parties and perusing the records, it is evident that these two petitions under Section 528 B.N.S.S. have been filed for quashing of charge sheet and order taking cognizance and the entire proceedings therein. Law with regard to the same is

trite. The scope and ambiguity of powers to be exercised under section 482 Cr.P.C. has been elaborately dealt with and considered by the Apex Court in the case of ***Neeharika Infrastructure (P) Ltd. v. State of Maharashtra : (2021) 19 SCC 401*** and it has been observed and held as under:

'13. From the aforesaid decisions of this Court, right from the decision of the Privy Council in Khwaja Nazir Ahmad [King Emperor v. Khwaja Nazir Ahmad, 1944 SCC OnLine PC 29 : (1943-44) 71 IA 203 : AIR 1945 PC 18], the following principles of law emerge:

13.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences.

13.2. Courts would not thwart any investigation into the cognizable offences.

13.3. However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on.

13.4. The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 CrPC is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court.)

13.5. While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

13.6. Criminal proceedings ought not to be scuttled at the initial stage.

13.7. Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule.

13.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 CrPC.

13.9. The functions of the judiciary and the police are complementary, not overlapping.

13.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

13.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

13.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

13.13. The power under Section 482 CrPC is very wide, but conferment of wide power requires the Court to be cautious. It casts an onerous and more diligent duty on the Court.

13.14. However, at the same time, the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], has the jurisdiction to quash the FIR/complaint.

13.15. When a prayer for quashing the FIR is made by the alleged accused, the Court when it exercises the power under Section 482CrPC, only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.'

34. The Apex Court in the case of ***Pradeep Kumar Kesarwani Versus State of Uttar Pradesh and Another : 2025 SCC OnLine SC 1947*** has laid a four-step test for High Courts to follow while considering petitions for quashing criminal proceedings under Section 482 of the Code of Criminal Procedure. It has been held as under:

'20. The following steps should ordinarily determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:'

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused. [(See:Rajiv Thapar v. Madan Lal Kapoor (Criminal Appeal No. 174 of 2013)]'

35. Merely on the ground that the applicants were not named in the F.I.R. cannot be a ground for coming to the conclusion that their implication in the present matter is false and no offence whatsoever is made out against them. Investigation of the matter is done to unfurl the truth and to see the complicity of the accused in the matter. During investigation the first informant has specifically disclosed the names of both the applicants namely Prachand Pratap Singh and Vishal Tiwari and has assigned specific roles to them and as such it cannot be said that there is no evidence whatsoever on record against them.

36. Law for quashing is strict and trite. The present cases do not fall within the category of cases as enumerated in the judgement of Apex Court in the case of *Neeharika Infrastructure (P) Ltd. (Supra)* and also on the four-steps test in the case of *Pradeep Kumar Kesarwani (Supra)*. No ground for interference is made out. Thus, it is trite law that at the stage of quashing only the material of the prosecution has to be seen and the court cannot delve into the defence of the accused and then proceed to examine the matter on its merit by weighing the evidence so produced. The disputed questions of facts of the case cannot be adjudged and adjudicated at this stage while exercising powers under Section 482 Cr.P.C. and only the prima facie prosecution case has to be looked into as it is. Evidence needs to be led to substantiate the defence of the accused. Further it is also well settled that that while exercising powers under section 482 Cr.P.C., the High Court is not required to conduct a mini trial.

37. Both the said applications of the applicant Prachand Pratap Singh and Vishal Tiwari are dismissed.

38. Interim order, if any, shall stand vacated in both the matters.

39. The trial court concerned is directed to proceed with the trial expeditiously without granting any undue adjournment to either of the parties.

Order on Criminal Misc. Bail Application No.32305 of 2025 (Alok Singh vs. State of U.P.)

40. The bail of the applicant Alok Singh has been pressed mainly on the ground of parity with the co-accused. It is submitted that the Apex Court vide order dated 19.12.2025 passed in Petition(s) for Special Leave to Appeal (Crl.) No(s). 16835 of 2025, Prince Srivastava vs. The State of U.P., has granted bail to the co-accused Prince Srivastava. It is submitted that the Apex Court has in the said order observed that he is in jail since 09.4.2024 and charges have not yet been framed and there are as many as 11 witnesses and thus having regards to long incarceration and the fact that charges are yet to be framed and the trial is yet to be commenced, bail has been granted to him.

41. This Court vide order dated 5.1.2026 passed in the bail application sought a report from District and Sessions Judge concerned/trial court concerned regarding status/stage of trial and also the reason for delay in framing of charge, to which a report has been sent which has been placed by the office on record. This Court has perused the said report dated 13.1.2026 sent by the Additional Sessions Judge/Special Judge (P.C.Act), Court No. 1, Gorakhpur, duly forwarded by District Judge, Gorakhpur on the said date. Perusal of the said report goes to show that trial court has in para-3 stated that in a Petition No. 6664 of 2024, Prachand Pratap Singh and 2 others vs. State of U.P., arrest of the petitioners has been stayed vide order dated 27.4.2024. Further in para-4 of the said report it is stated that in Application U/S 528 BNSS No. 18833/2025, Prachand Pratap Singh vs. State of U.P. and another, an order dated 26.5.2025 has been passed directing no coercive measures against the said accused. Further in para-6 of the said report it is mentioned that since arrest of the accused Mukesh Kumar, Prachand Pratap Singh and Vishal Tiwari has been stayed by the High Court no warrants of arrest can be issued against them and they are regularly absenting before the trial court. The accused Prince Srivastava and Alok Kumar Singh are appearing before the trial court from jail. It further states that since arrest has been stayed the said three accused persons have not appeared before the trial court and thus charge is not being framed. Further in para-4 it is mentioned that the matter is now fixed for 20.01.2026 and the accused have been summoned and effort will be made to frame charge on priority. The fact thus as reported is that charge in the matter could not be framed due to said 3 accused not appearing before the trial court due to protective order passed by the High Court for which the prosecution cannot be faulted.

42. Looking to the fact that the co-accused Prince Srivastava has been granted bail by the Apex Court vide order dated 19.12.2025, it is provided that the applicant- **Alok Singh** be released on bail for a period of **four (04) months** in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

(vii) The applicant shall surrender before the court concerned after expiry of four(04) months.

43. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

44. The applicant shall file his surrender certificate by the next date.

45. Since trial of the matter has already been expedited by this Court for which direction have been passed the trial court is expected to comply with the same.

46. Let the matter be listed on 29.05.2026.

47. Registrar (Compliance) to communicate this order to the District and Sessions Judge, Gorakhpur and the trial court concerned for information and necessary action within one week from today.

(2026) 1 ILRA 627
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.01.2026

BEFORE

THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Criminal Misc. Bail Application No. 45385 of 2025

Jagroop

...Applicant

Versus

State of U.P.

...Opposite Party

ISSUE FOR CONSIDERATION

Whether a person can take sureties of more than one person in Bail(s)?

HEADNOTES

Criminal Law – Code of Criminal Procedure (Cr.P.C.) – Section 441, 441-A, - Bharatiya Nagarik Suraksha Sanhita, 2023 – Sections – 215, 485, 486, - Bharatiya Nyaya Sanhita (BNS), 2023 - Sections 229, 233, 237, 246, 318(2), 318(4), 336(3), 338, 340(2) - Bail application – filed by accused-applicant, seeking bail - FIR U/sections 229, 233, 237, 246, 318(2), 318(4), 338, 336(3), 340(2) of BNSS - investigation ongoing – court seeking report regarding status of report as well as the fact whether there is any bar that a person cannot be the surety in more than one cases if the valuation of his land or property in more than the sureties taken by him - I.O. appeared - applicant pleaded property valuation sufficient and law permits multiple sureties – AGA opposed citing false affidavit and cognizable offences – Court finds - Surety Law clarification - BNSS Sections 485 & 486 allow multiple sureties subject to sufficiency - Sections 485 & 486 BNSS permit multiple sureties subject to sufficiency and fitness - District Court Formats - Non-uniform formats across districts - some contrary to BNSS - district formats requiring denial of other sureties are contrary to law – court observations that false affidavit may invite proceedings - held - (i) All district courts will adopt the Mathura-format uniformly regarding disclosure of other sureties, – (ii) property valuation sufficient, - (iii) applicant entitled to bail with conditions with directions for verification, compliance with Supreme Court guidelines - Registrar General directed to circulate order for uniform compliance. (Para – 9, 12, 14, 15, 16, 17, 18, 19)
Bail Application Allowed. (E-11)

CASE LAW CITED

Kapil Wadhawan v. Central Bureau of Investigation, 2025 SCC OnLine SC 3038 - Policy Strategy for Grant of Bail, In Re: Suo Motu Writ Petition (Crl.) No.4 of 2021, (2024) 10 SCC 685

LIST OF ACTS

code of Criminal Procedure (Cr.P.C.) - Bharatiya Nyaya Sanhita (BNS), 2023

LIST OF KEYWORDS

Bail application - Surety declaration - Property valuation - non-cognizable offences - Cognizable offences - False affidavit - Uniform format - BOMS (Bail Order Management System).

CASE ARISING FROM

Case Crime No. 774 of 2025, Police Station Kasaya, District Kushinagar, Uttar Pradesh

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Amrita Kashyap, Rohit Shukla.
Counsel for Respondent(s): Anand Pratap Singh, A.G.A.

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

1. Heard Sri Rohit Shukla, learned counsel for the applicant, Sri Anand Pratap Singh, learned A.G.A. for the State and perused the record.

2. The instant bail application has been filed with a prayer to release the applicant on bail in Case Crime No.774 of 2025, under Sections-229, 233, 237, 246, 318(2), 318(4), 338, 336(3), 340(2) of BNS, 2023, Police Station-Kasaya, District-Kushinagar, during the pendency of the trial.

3. This matter was heard on 12.01.2026. On that date, court passed the following order:

"Put up this case in the week commencing 27.1.2026 as fresh, enabling the learned A.G.A. to seek instructions regarding status of the investigation as well as the fact whether there is any bar that a person cannot be the surety in more than one cases if the value of his land or property is more than the sureties taken by him.

Learned A.G.A. will also seek instruction regarding the amount of surety furnished by the applicant and the total value of the land of the applicant adduced to furnish sureties in different case crime numbers.

On the next date, the I.O. of this case shall remain present before this Court along with the relevant record."

4. In compliance of the order dated 12.01.2026, I.O., Sri Brahm Kumar Upadhyay, Sub-Inspector is present and has handed over the instructions to the learned AGA and learned AGA has apprised the court that apart from 10 cases mentioned in the FIR, the applicant has also submitted his surety in other cases but the detail of other cases could not be obtained because of non-availability of bail orders but learned AGA admitted on the basis of instruction that valuation of the property of applicant is about Rs.18.70 lakhs.

5. Learned counsel for the applicant has submitted that valuation of the property of the applicant on which the applicant has taken the surety of the accused is of 18.70 lakhs, therefore, applicant can take sureties for more than one accused in view of Section 441A Cr.P.C. (Section 486 of BNSS) so long as the valuation of property is more than the total surety. It is further submitted by learned counsel for the applicant that in the case of forgery committed, during proceeding of a court and in view of the bar u/s 215 BNSS regarding the offence u/s 229, 233, 236, 237, 242 to 248 and 267 of IPC, cognizance can be taken only on the basis of complaint not on the basis of FIR. It is further submitted by learned counsel for the applicant that Sections 318(2), 318(4), 338 BNSS are in the category of non-cognizable offence for which FIR cannot registered. Therefore, applicant is entitled to be released on bail.

6. Per contra, learned A.G.A. has vehemently opposed the prayer for bail and submitted that though the offences as mentioned above by the learned counsel for the applicant are non-cognizable under BNSS but Sections 336 (3) and 340 (2) of BNSS are cognizable offence whether the case made out under these sections or not that can be seen at the time of framing of charge and also submitted that a person cannot be sureties in more than one case but the learned AGA could not dispute that there is no provision which prohibits a person to become surety of more than one accused in more than one case so long as the valuation of property is more than total value of surety. Learned AGA has also submitted that the applicant filed a declaration before the court below while taking sureties in different cases as required by Section 441A Cr.P.C. (corresponding Section 486 BNSS) wherein it is specifically mentioned by the applicant that he has not taken bail of any other accused and he will also not submit a surety for any other accused in any other case. Therefore, prima facie applicant has filed false affidavit before the trial court while taking bail sureties of different accused persons.

7. Considering the aforesaid submission, a legal question arises, "Whether a person can take sureties of more than one person in bail(s)?" Section 485 of BNSS (Section 441 of Cr.P.C.) provides that on releasing a person on bail bond, one or more sufficient sureties should be submitted on behalf of the accused for undertaking that the person released on bail shall attend the court at the time and place and concerned court can determine sufficiency or fitness of sureties. Section 485 of BNSS is being quoted as under:

"485. Bond of accused and sureties.-

(1) Before any person is released on bond or bail bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bond or bail bond, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond or bail bond shall also contain that condition.

(3) If the case so requires, the bond or bail bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an enquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness."

8. Similarly, Section 486 of BNSS (corresponding Section 441A of Cr.P.C.) further provides that while a person standing surety to an accused for his release on bail shall make a declaration before the court as to the number of persons to whom he has stood as surety along with the other details. Section 486 of BNSS is being quoted as under:

"486. Declaration by sureties.-

Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars."

9. From the perusal of above mentioned Sections 485 and 486 of BNSS, it is clear that a person can submit his sureties for more than one accused in same case or different case, subject to satisfaction of court regarding his sufficiency and fitness. Therefore, there is no bar for a person to stand as surety for more than one accused person for their release on bail, subject to his sufficiency or capacity.

10. In the present case, court found that the declaration u/s 486 BNSS submitted by the applicant shows that the format prevalent in district judgeship Kushinagar is containing the clause that a surety who has taken surety, has not submitted his surety for any other accused person and he will not take surety in any other case. Just to inquire whether this format has been issued by the High Court, this Court summoned the Registrar General of this Court, who apprised this Court that no such format regarding declaration of sureties as per Section 486 BNSS (441A Cr.P.C.) has been issued by the High Court. Therefore, this Court also obtained prevalent format of declaration by sureties as required by Section 486 BNSS from district-Bulandshahar, district-Mathura, district-Sambhal and on perusal of these formats, court was surprised that there is no uniformity in all these formats and the format of declaration used in district judgeship Bulandshahr, district judgeship Sambhal are contrary to provision of Section 486 BNSS (Section 441A Cr.P.C.) as these formats contain the clause that the sureties has not submitted bail sureties in any other case. However the format of declaration prevalent in district Mathura appears to be in consonance with Section 486 BNSS wherein it is mentioned in clause V "The detail of other cases in which the sureties has been submitted in bail by the person making declaration."

11. Because of printed proforma prevalent in different district courts which were not in consonance with Section 486 BNSS, sureties have filed incorrect declaration mistakenly, that they have not submitted bail surety in any other case despite the fact that these sureties have submitted their bail sureties in different other cases and in several cases, FIRs have been lodged against the sureties on the ground that they have taken sureties for more than one accused person but has filed a declaration before the court that they have not taken bail sureties of any other person.

12. Therefore, this Court issues direction to all district courts to adopt the format of declaration prevalent in district Mathura wherein in clause V, detail of cases in which the person has taken surety including the case in question has been mentioned and declaration should not contain the averments that sureties will not stand as surety for any other accused person unless his surety is not sufficient for want of valuation or capacity.

13. Now coming to the facts of present case, considering the aforesaid submission and taking into account that prima facie the value of the property of the applicant is more than the sureties taken by him and there is no bar in Cr.P.C. or BNSS to take sureties of more than one person in bail so long the valuation of property is higher than the total value of surety, therefore, applicant is entitled to be released on bail. However, for filing the false affidavit before the court as mentioned by the learned AGA, the concerned court is free to proceed against the applicant, in accordance with law as well as considering the mandate of the judgement of the Apex Court in the case of **Kapil Wadhawan vs Central Bureau of Investigation** reported in **2025 SCC OnLine SC 3038** and without expressing any opinion on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

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

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

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

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

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

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

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

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

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

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

20. **Registrar General** is directed to circulate a copy of this order to all District Judges of U.P. for necessary compliance.

21. Personal appearance of Sri Brahm Kumar Upadhyay, Sub-Inspector, is exempted.

(2026) 1 ILRA 632
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 30.01.2026

BEFORE

THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Criminal Misc. Bail Application No. 45637 of 2025

Raju @ Rajkumar

...Applicant

Versus

State of U.P.

...Opposite Party

ISSUE FOR CONSIDERATION

Whether the applicant is entitled to bail in a case arising from a police encounter where grievous injuries were sustained, considering non-compliance with Supreme Court guidelines in PUCL's case and subsequent procedural lapses.

HEADNOTES

Criminal Law – Code of Criminal Procedure (CrPC) - Sections 157, 158, 173, 176, 190, 357-A - Constitution of India: Articles 21, 141 - Bharatiya Nyaya Sanhita (BNS): Sections 305(a), 331(4), 317(2)- Bail application - filed by applicant accused - seeking release during trial in a criminal proceedings - arising from a police encounter – FIR - investigation revealed grievous injuries to applicant, but PUCL guidelines not followed - no statement before Magistrate/Medical Officer - investigation not by senior officer – recovery of silver articles - charge sheet - applicant in custody - State opposed bail but admitted lapses – Court observed misuse of police encounters, violation of Article 21 and PUCL directions, emphasized accountability of police leadership – held - custodial interrogation unnecessary, bail principles from Kapil Wadhawan and Policy Strategy for Bail apply – consequently, bail granted, release order through BOMS system and further, directions issued to ensure compliance with PUCL guidelines, accountability of police chiefs, and systemic reforms in encounter cases. (Para – 6, 7, 9, 10, 13, 18, 19, 20, 23, 24, 26)
Bail Application allowed. (E-11)

CASE LAW CITED

1. People's Union for Civil Liberties (PUCL) v. State of Maharashtra (2014) 10 SCC 635.
2. Andhra Pradesh Police Officers Association v. APCLC (2022) 16 SCC 514.
3. Kapil Wadhawan v. Central Bureau of Investigation (2025 SCC OnLine SC 3038).
4. Policy Strategy for Grant of Bail, In Re: Suo Motu Writ Petition (Crl.) No. 4 of 2021 (2024) 10 SCC 685.

LIST OF ACTS

Constitution of India - Code of Criminal Procedure (CrPC) - Bharatiya Nyaya Sanhita (BNS) - Universal Declaration of Human Rights (UDHR) - UN Code of Conduct for Law Enforcement Officers.

LIST OF KEYWORDS

Police encounter, grievous injury, PUCL guidelines, Article 21, Article 141, custodial interrogation, bail principles, human rights, disciplinary action, contempt of court, CBCID investigation, FIR registration, overcrowded jails.

CASE ARISING FROM

Case Crime No. 344 of 2025, Police Station Kotwali Dehat, District Mirzapur - Connected encounter FIR: Case Crime No. 343 of 2025, Police Station Lalganj, District Mirzapur.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Ms. Kusum Mishra,
Counsel for Respondent(s): - Sri Anoop Trivedi, AAG; Sri Pankaj Saxena, AGA; Sri D.P.S. Chauhan, AGA.

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

1. Heard Kusum Mishra, learned counsel for the applicant and Sri Anoop Trivedi, learned AAG assisted by Sri Pankaj Saxena as well as Sri D.P.S. Chauhan, learned A.G.A. for the State.

2. Instant bail application has been filed with a prayer to release the applicant on bail during the trial in Case Crime No.344 of 2025, under Sections 305(a), 331(4), 317(2) BNS, Police Station-Kotwali Dehat, District Mirzapur.

3. This matter was heard on 28.01.2026. On that date, following order was passed;

"1. Heard Ms. Kusum Mishra, learned counsel for the applicant, Sri Pankaj Saxena, learned A.G.A. for the State and perused the record.

2. Instant bail application has been filed with a prayer to release the applicant on bail during the trial in Case Crime No.344 of 2025, under Sections 305(a), 331(4), 317(2) BNS, Police Station- Kotwali Dehat, District Mirzapur.

3. Upon perusal of the F.I.R., this Court found that the matter pertains to a police encounter in which the applicant sustained grievous injuries. Thereafter, vide order dated 13.01.2026, this Court directed the learned A.G.A. to seek instructions in compliance with the judgment of the Hon'ble Apex Court in People's Union for Civil Liberties (PUCL) and another vs. State of Maharashtra, (2014) 10 SCC 635, specifically as to whether any F.I.R. has been registered in respect of the police encounter and whether the statement of the injured has been recorded before a Magistrate or any Medical Officer.

4. Today, the learned A.G.A. produced instructions indicating that an F.I.R. in respect of the police encounter has been registered as Case Crime No. 0343 of 2025 at Police Station Lalganj, District Mirzapur. However, it is admitted that the statement of the injured has neither been recorded before the Magistrate nor by any Medical Officer. Further, in the F.I.R. for the incident of police encounter, the Investigating Officer has been shown as a Sub-Inspector, though it has been informed that subsequently an Inspector has been appointed as the Investigating Officer in the said case.

5. From a perusal of the directions issued by the Hon'ble Apex Court in People's Union for Civil Liberties (PUCL) and another (supra), it is clear that in the event of a police encounter in which the accused sustains grievous injuries, an F.I.R. must be registered forthwith and the investigation should be conducted either by the CBCID or by the police of another police station, and in any case by a police officer of a rank senior to the head of the police party involved in the encounter. Para 31 of PUCL's case is being quoted as under;

31. In the light of the above discussion and having regard to the directions issued by the Bombay High Court, guidelines issued by NHRC, suggestions of the appellant PUCL, amicus curiae and the affidavits filed by the Union of India, the State Governments and the Union Territories, we think it appropriate to issue the following requirements to be followed in the matters of investigating police encounters in the cases of death as the standard procedure for thorough, effective and independent investigation:

31.1. Whenever the police is in receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form. Such recording need not reveal details of the suspect or the location to which the party is headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.

31.2. If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under Section 157 of the Code without any delay. While forwarding the report under Section 157 of the Code, the procedure prescribed under Section 158 of the Code shall be followed.

31.3. An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:

(a) To identify the victim; colour photographs of the victim should be taken;

(b) To recover and preserve evidentiary material, including bloodstained earth, hair, fibres and threads, etc. related to the death;

(c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;

(d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;

(e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;

(f) Post-mortem must be conducted by two doctors in the district hospital, one of them, as far as possible, should be incharge/head of the district hospital. Post-mortem shall be videographed and preserved;

(g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Wherever applicable, tests for gunshot residue and trace metal detection should be performed.

(h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.

31.4. A magisterial inquiry under Section 176 of the Code must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to the Judicial Magistrate having jurisdiction under Section 190 of the Code.

31.5. The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation. However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.

31.6. *The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.*

31.7. *It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc. to the court concerned.*

31.8. *After full investigation into the incident, the report should be sent to the competent court under Section 173 of the Code. The trial, pursuant to the charge-sheet submitted by the investigating officer, must be concluded expeditiously.*

31.9. *In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.*

31.10. *Six-monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six-monthly statements reach to NHRC by 15th day of January and July, respectively. The statements may be sent in the following format along with post-mortem, inquest and, wherever available, the inquiry reports: (i) Date and place of occurrence. (ii) Police station, district. (iii) Circumstances leading to deaths: (a) Self-defence in encounter. (b) In the course of dispersal of unlawful assembly. (c) In the course of affecting arrest. (iv) Brief facts of the incident. (v) Criminal case no. (vi) Investigating agency. (vii) Findings of the magisterial inquiry/inquiry by senior officers: (a) disclosing, in particular, names and designation of police officials, if found responsible for the death; and (b) whether use of force was justified and action taken was lawful.*

31.11. *If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under IPC, disciplinary action against such officer must be promptly initiated and he be placed under suspension.*

31.12. *As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided under Section 357-A of the Code must be applied.*

31.13. *The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under Article 20 of the Constitution.*

31.14. *An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer/counselling, same must be offered.*

31.15. *No out-of-turn promotion or instant gallantry rewards shall be bestowed on the officers concerned soon after the occurrence. It must be ensured at all cost that such rewards are given/recommended only when the gallantry of the officers concerned is established beyond doubt.*

31.16. *If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the*

functionaries as abovementioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the Sessions Judge concerned shall look into the merits of the complaint and address the grievances raised therein.

6. From the aforesaid facts, it is evident that in the present case, although the applicant sustained grievous injuries in a police encounter, the directions issued by the Hon'ble Apex Court in People's Union for Civil Liberties (PUCL) and another (supra), as further affirmed in the case of Andhra Pradesh Police Officers Association vs Andhra Pradesh Civil Liberties Committee (APCLC) reported in (2022) 16 SCC 514, have not been complied with. The police have neither recorded the statement of the injured before a Medical Officer or a Magistrate, nor has the investigation of the police encounter been conducted by an officer of a rank higher than the head of the police party involved in the encounter.

7. This Court is frequently confronted with cases where, even in matters involving petty offences such as theft, the police indiscriminately resort to firing by projecting the incident as a police encounter, without following the procedure laid down by the Hon'ble Apex Court in People's Union for Civil Liberties (PUCL) and another (supra). Although this Court recognizes that police personnel also have the right of private defence and may use force in appropriate circumstances, it is well settled that where death occurs or grievous injuries are caused to the accused, the procedure mandated by the Hon'ble Apex Court, as referred to above, must be strictly followed.

8. The Criminal Misc. Bail Application No. 45870 of 2025 and Criminal Misc. Bail Application No. 227 of 2026 are also listed today, the cases likewise pertain to a police encounter in which the applicant sustained grievous injuries. In the bail application no. 45870 of 2025, the In-charge Inspector, Santosh Kumar Singh, who led the police party during the encounter, has himself stated that the bullet fired by him hit the injured applicant. Accordingly, vide order dated 14.01.2026, this Court directed him to appear before the Court and apprise it as to whether any F.I.R. had been registered in respect of the police encounter and whether any investigation had been conducted.

9. Today, the In-charge Inspector, Santosh Kumar Singh, informed the Court that no F.I.R. has been registered in connection with the police encounter and, consequently, no investigation has been conducted. He further apprised the Court that the statement of the injured applicant has not been recorded either before a Medical Officer or a Magistrate.

10. The aforesaid incidents clearly demonstrate non-compliance with the directions issued by the Hon'ble Apex Court in People's Union for Civil Liberties (PUCL) and another (supra) in cases of police encounters where the accused sustains grievous injuries. It is indeed surprising that, despite the directions of the Hon'ble Apex Court in People's Union for Civil Liberties (PUCL) and another (supra) having been duly circulated, the police appear to be either unaware of or indifferent to the said directions.

11. This Court has noticed that the practice of police encounters, particularly firing at the legs of accused persons, has seemingly become a routine feature, ostensibly to please superior officers or to teach the accused a so-called lesson by way of punishment. Such conduct is wholly

impermissible, as the power to punish lies exclusively within the domain of the Courts and not with the police. India being a democratic State governed by the rule of law, the functions of the Executive, the Legislature, and the Judiciary are distinct and well defined, and any encroachment by the police into the judicial domain cannot be countenanced.

12. The aforesaid facts indicate that neither has the State Government issued any oral or written direction to police officers to teach a lesson to accused persons by firing at their legs, even in cases involving petty offences, nor can such acts be justified on that basis. On the contrary, it appears that certain police officers may be misusing their authority in order to attract the attention of higher officers or to create an impression of public sympathy by portraying incidents as police encounters involving firing upon the accused.

13. It is pertinent to note, for the sake of clarity, that in the present matters no police officer has sustained any injury, which further calls into question the necessity and proportionality of the use of firearms in the alleged encounters.

*14. This Court directs the Additional Chief Secretary (Home) U.P. as well as the Director General of Police, U.P., to appear through video conferencing before this Court at 10:00 a.m. on 30.01.2026 and inform the Court whether any oral or written directions have been issued to police officers to fire upon accused persons in the legs or otherwise in the name of a police encounter or to ensure compliance with the directions of the Hon'ble Apex Court in **People's Union for Civil Liberties (PUCL) and another (supra)** regarding registration of F.I.R., recording of statements of injured persons, and investigation by officers senior in rank to the head of the police party in cases resulting in death or grievous injury during police encounters.*

15. Put up this case, as fresh, on 30.01.2026 at 10:00 A.M along with bail application nos.45870 of 2025 and 227 of 2026.

16. The Registrar (Compliance) is directed to send a copy of this order to the Additional Chief Secretary (Home), U.P., Lucknow, as well as to the Director General of Police, U.P., Lucknow."

4. In compliance of order dated 28.01.2026, Mr. Sanjay Prasad, Additional Home Secretary, U.P. and Mr. Rajeev Krishna, DGP, U.P. are present before this Court through Video Conferencing. Both of them submitted that DGP Circulars dated 01.08.2017 as well as 11.10.2024 were issued to comply with the direction of the Apex Court in the case of **People's Union for Civil Liberties (PUCL) and another vs State of Maharashtra; (2014) 10 SCC 635** regarding police encounter wherein death or grievous injuries occurred. Both the Officers though tried to persuade that the directions of Apex Court in the PUCL's case (supra) are being substantially complied with. When confronted with the fact of present case as well as connected cases, they could not dispute the fact that directions of the Apex Court in **PUCL's case (supra)** are not being substantially complied with by the several police officers though repeated circulars have been issued. Both the above Officers assured that they will issue fresh directions to all the police officers to strictly comply the directions issued in **PUCL's case (supra)** regarding police encounter. They have also assured the Court that whenever required, they will look into the issue and in case any officer found

to be negligent in following the procedure prescribed by the Apex Court in **PUCL's Case (supra)** regarding police encounter wherein death or grievous injuries occurred to the accused, will be dealt with strictly.

5. The Apex Court in **PUCL's case (supra)** which further reiterated in the case of **Andhra Pradesh Police Officers Association vs Andhra Pradesh Civil Liberties Committee (APCLC); (2022) 16 SCC 514** has laid down detailed procedure where the accused died or received grievous injuries in police encounter. The Apex Court has observed that though in the case of death, there is procedure in Criminal Procedure Code for conducting magisterial inquiry but a separate FIR should also be registered regarding police encounter wherein death or grievous injury occurred and investigation should be conducted by CID or by police team headed by an officer above the rank of officer, who was leading the police encounter. For ready reference, paras 31, 32 and 33 of **PUCL's case (supra)** is quoted hereinbelow;

31. In the light of the above discussion and having regard to the directions issued by the Bombay High Court, guidelines issued by NHRC, suggestions of the appellant PUCL, amicus curiae and the affidavits filed by the Union of India, the State Governments and the Union Territories, we think it appropriate to issue the following requirements to be followed in the matters of investigating police encounters in the cases of death as the standard procedure for thorough, effective and independent investigation:

31.1. Whenever the police is in receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form. Such recording need not reveal details of the suspect or the location to which the party is headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.

31.2. If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under Section 157 of the Code without any delay. While forwarding the report under Section 157 of the Code, the procedure prescribed under Section 158 of the Code shall be followed.

31.3. An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:

(a) To identify the victim; colour photographs of the victim should be taken;

(b) To recover and preserve evidentiary material, including bloodstained earth, hair, fibres and threads, etc. related to the death;

(c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;

(d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;

(e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;

(f) Post-mortem must be conducted by two doctors in the district hospital, one of them, as far as possible, should be incharge/head of the district hospital. Post-mortem shall be videographed and preserved;

(g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Wherever applicable, tests for gunshot residue and trace metal detection should be performed.

(h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.

31.4. A magisterial inquiry under Section 176 of the Code must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to the Judicial Magistrate having jurisdiction under Section 190 of the Code.

31.5. The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation. However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.

31.6. The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.

31.7. It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc. to the court concerned.

31.8. After full investigation into the incident, the report should be sent to the competent court under Section 173 of the Code. The trial, pursuant to the charge-sheet submitted by the investigating officer, must be concluded expeditiously.

31.9. In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.

31.10. Six-monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six-monthly statements reach to NHRC

by 15th day of January and July, respectively. The statements may be sent in the following format along with post-mortem, inquest and, wherever available, the inquiry reports: (i) Date and place of occurrence. (ii) Police station, district. (iii) Circumstances leading to deaths: (a) Self-defence in encounter. (b) In the course of dispersal of unlawful assembly. (c) In the course of affecting arrest. (iv) Brief facts of the incident. (v) Criminal case no. (vi) Investigating agency. (vii) Findings of the magisterial inquiry/inquiry by senior officers: (a) disclosing, in particular, names and designation of police officials, if found responsible for the death; and (b) whether use of force was justified and action taken was lawful.

31.11. If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under IPC, disciplinary action against such officer must be promptly initiated and he be placed under suspension.

31.12. As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided under Section 357-A of the Code must be applied.

31.13. The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under Article 20 of the Constitution.

31.14. An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer/counselling, same must be offered.

31.15. No out-of-turn promotion or instant gallantry rewards shall be bestowed on the officers concerned soon after the occurrence. It must be ensured at all cost that such rewards are given/recommended only when the gallantry of the officers concerned is established beyond doubt.

31.16. If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as abovementioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the Sessions Judge concerned shall look into the merits of the complaint and address the grievances raised therein.

32. The above guidelines will also be applicable to grievous injury cases in police encounter, as far as possible.

33. Accordingly, we direct that the above requirements/norms must be strictly observed in all cases of death and grievous injury in police encounters by treating them as law declared under Article 141 of the Constitution of India.

6. From the above directions issued by the Apex Court in **PUCL's case (supra)**, it is clear that these directions are law of land in view of Article 141 of the Constitution of India and it has to be followed mandatorily by the police and it is the duty of the High Court as well as District Courts to assure the strict implementation of directions of the Apex Court.

7. This Court came across in several cases which prima facie shows that some police officers, who are part of police team involved in police encounter, just to get out of turn promotion or appreciation from the higher authority or to get fame in social media unnecessarily used fire arm and caused fire arm injury on the leg of the accused just below the knee. Such act is not permissible in the eyes of law as the power of punishment to accused is within the domain of judiciary and not in the domain of police. India is a democratic country. It has to be run as per the ethos and directions of the Constitution of India which clearly distinguishes role of legislature, executive and judiciary. In the garb of appreciation or for other extraneous purposes, police officers cannot be allowed to take the function of judiciary to punish a criminal by unnecessary firing and causing injuries even on non-vital part.

8. The Universal Declaration of Human Rights (UDHR) has framed general principle on effective prevention and investigation of extra- legal, arbitrary and summary execution. The principle so framed by UDHR are intended to guarantee independence while investigating police killings and help in preventing potential for abuse, corruption, ineffectiveness and negligence in investigation.

9. United nations code of conduct for law enforcement officers (which includes all officers of the law who exercise police power) lays down that in the performance of duty, law enforcement officer shall respect and protect the human dignity and maintain and uphold human rights of all persons. The basic human rights standard for good conduct by law enforcement officers by the amnesty international, inter alia, suggests; (i) do not use force except when strictly necessary and to the minimum extent required under the circumstances, and (ii) do not carry out, order or cover up extra judicial executions or "disappearances", and refuse to obey any order to do so.

10. Article 21 of the Constitution of India provides protection, life and liberty which includes dignity. The same is quoted as under;

"21. Protection of life and personal liberty. ?No person shall be deprived of his life or personal liberty except according to procedure established by law."

11. From the above discussion, it is clear that the protection of human life and dignity is not only the object of the Constitution of India but also universal principles accepted by the international community which cannot be allowed to be taken away at the whims and fancies of certain officers of law enforcement agency.

12. Article 141 of the Constitution prescribes the law declared or laid down by the Apex Court would be the law of land and that has to be followed by the Court as well as State and its agency. The Article 141 is quoted as under;

141. Law declared by Supreme Court to be binding on all courts. ?The law declared by the Supreme Court shall be binding on all courts within the territory of India.

13. In view of above, it is clear that there is no exception to follow the guidelines issued by the Apex Court in PUCL's case (supra) regarding police encounter when death or grievous injuries

occurred though extensive guidelines have been mentioned in the aforementioned paragraphs of PUCL's case (supra). As the present and connected cases are relating to grievous injury to accused in police encounter, this Court summarily prescribes the guidelines in the case of grievous injury to the accused in police encounter, which are as follows;

i. If in pursuance to any information, police party reached at the spot and encounter takes place wherein fire arm is used by the police party and as a result accused or any other person received grievous injury then an FIR to that effect shall be registered by the head of the police party involved in the police encounter in the same police station or adjoining police station but investigation of said FIR shall be conducted by CBCID or police team of any other police station under the supervision of senior police officer at least one level above the head of police party engaged in the police encounter.

ii. In the FIR, name of the members of police party involved in encounter is not required to be mentioned in the category of accused/suspect but only the team whether STF or regular police could be mentioned.

iii. Injured criminal/victim should be provided medical aid and his/her injury should be examined and thereafter his/her statement should be recorded either by the Magistrate or Medical Officer with certificate of fitness of injured.

iv. After complete investigation into incident of police encounter, report should be sent to the competent court who will follow the procedure as mentioned in the judgement given by the Apex Court in PUCL's case (supra).

v. Out of turn promotion or gallantry award shall not be given to the officer of the police party soon after occurrence of police encounter. It must be ensured that such reward are given or recommended only when gallantry reward of person is established beyond doubt by a committee constituted by the police head.

vi. If the family of the injured in police encounter finds that the above procedure has not been followed or there exists lack of independent investigation or pattern of abuse or impartiality by any of the functionaries then he may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident of police encounter. Upon receiving the said complaint, the concerned Sessions Judge shall look into the merit of the complaint and redress the grievance raised therein.

14. In view of above discussion as well as assurance of the Director General of Police, this Court further directs that in case, it is found that police officer in any district has not followed abovementioned guidelines of the Apex Court laid down in PUCL's case (supra) regarding police encounter where death or grievous injury occurred, not only the persons who was leading the police team involved in police encounter but District Police Chief whether SP/SSP/Commissionerate Police would be liable for contempt of court apart from disciplinary proceedings instituted by the police department.

15. As the Apex Court has already observed in its guidelines in PUCL's case (supra) that, if any person is aggrieved by non-action regarding death or grievous injuries in police encounter, then he can file an application before the Sessions Judge. Therefore, Sessions Judge may take action on complaint and in appropriate cases may refer the matter to the High Court for initiation of contempt proceedings against District Police Chief where flagrant violation has been reported regarding the aforesaid guidelines of PUCL's case (supra) for police encounter.

16. Coming to the merit of the case, learned counsel for the applicant submitted that he was not named in the FIR. Subsequently on the basis of recovery of certain articles of silver which includes four pairs of anklet, 10 pairs of toe ring, five silver coins, one small statue of Laxmi and Ganesh of white metal he has been falsely implicated though provision of Section 105 BNSS has not been followed by sending pen drive to the concerned magistrate within 48 hours. He further submitted that charge sheet has been filed by the police, therefore, there is no requirement for custodial interrogation. The applicant has explained the criminal history of three cases in the accompanying affidavit and he is languishing in jail since 30.08.2025. In case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

17. On the other hand, learned A.G.A. for the State opposed the prayer for bail but could not dispute the aforesaid fact.

18. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the nature of offence, evidence, complicity of accused and taking into account overcrowded jails and heavy pendency of criminal cases before the trial courts as well as considering the mandate of the judgement of the Apex Court in the case of **Kapil Wadhawan vs Central Bureau of Investigation** reported in **2025 SCC Online SC 3038** and without expressing any opinion on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

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

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

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

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

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

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

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

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

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

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

25. **Registrar General** is directed to send a copy of this order to all the District Judges of U.P.

26. During Video Conferencing, this Court finds that setup of Video Conferencing is not working properly, therefore, **Registrar (Computer)** is also directed to arrange new setup of Video Conferencing in this Court forthwith.

(2026) 1 ILRA 645
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 29.01.2026

BEFORE

THE HON'BLE ABDUL MOIN, J.
THE HON'BLE MRS. BABITA RANI, J.

Criminal Appeal No. 84 of 2010

Kallu @ Raj Kumar & Anr.
State of U.P.

...Appellants
Versus
...Respondent

Issue for Consideration

The prosecution case arose out of an incident occurred on 24/25.07.2004. Unknown persons attacked family of Krishna Sharma on rooftop. Three persons died due to multiple injuries. Accused convicted by Trial court under section 396 IPC.

Headnotes

A. Indian Penal Code, 1860-Section 396-Criminal Procedure Code,1973-Section 374(2)- murder-conviction-FIR found doubtful and ante-timed as informant and scribe denied authorship-

Occurrence at night-No reliable source of light proved-No Test Identification Parade conducted-Identification of accused for first time in Court-Witnesses making material improvements-Participation of five or more persons not satisfactorily established-Recovery evidence insufficient to cure foundational defects-Prosecution failed to prove guilt beyond reasonable doubt-Conviction and sentence set aside-Accused acquitted.(Para 32 to 74) (E-6)

Held

The court held that the prosecution failed to establish the guilt of the accused beyond reasonable doubt. The First Information Report was found to be doubtful and ante-timed, as both the informant and the scribe denied dictating its contents. The occurrence took place at night and no reliable source of light was proved to enable proper identification of the assailants. The essential ingredients of section 396IPC, namely participation of five or more persons was not satisfactorily proved. Recovery evidence was insufficient to sustain conviction in the absence of credible evidence.

Case law Cited

Manmeet Singh Alias Goldie Vs State Punjab 2015 (7) SCC 167, Raj Kumar alias Raju Vs State of Uttaranchal (Now Uttarakhand) 2008 SCC OnLine SC 631, Dana Yadav @ Dahu Vs State of Bihar, (2002) 7 SCC 295, Marudanal Augusti Vs State of Kerala 1979 SCC OnLine SC 199; Kalicharan & Ors Vs State of U.P. 2022 SCC OnLine SC 1718; Dr S.L. Goswami Vs State of M.P., 1972 SCC Online SC 11 & Hasanbhai Valibhai Qureshi Vs State of Gujarat, State of A.P. Vs Punati Ramulu & Ors 1994 Supp(1) SCC 590, Ram Sut Yadav alias Lavkush Yadav & Ors Vs State of U.P. 2010 SCC OnLine All 450, Mehraj Singh Vs State of U.P. (1994) 5 SCC 188, Mohd. Muslim Vs State of U.P. Cri. Appeal No. 1089 of 2011, Jodhan Vs State of M.P., (2015) 11 SCC 52, Bollavaram Pedda Narsi Reddy Vs State of A.P. 1991 SC OnLine SC 183, Thanedar Singh Vs State of M.P (2002) 1 SCC 487, Wahid Vs State Govt. of NCT of Delhi 2025 INSC 145, S. Govindaraju Vs State of Karnataka, (2013) 15 SCC 315, Sunil Kumar Sambhudayal Gupta & Ors Vs State of Maharashtra 2010 (13 SCC 657, Pulukuri Kottaya & Ors Vs Emperor , AIR 1947 PC 67, Subramanya Vs State of Karnataka, 2022 SCC Online SC 1400, Bob Vs State of Kerala 2023, (1) S.C.R 335-referred to.

List of Acts

Indian Penal Code, 1860, Criminal Procedure Code, 1973.

List of Keywords

Murder, Test Identification Parade, Recovery, Occurrence, Conviction, Acquittal.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 84 of 2010

Kallu @ Raj Kumar & Anr. Vs. State of U.P.

From the Judgment and Order dated 29.01.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Adv. for Appellant(s):-

Rajiv Singh, Kunwar Mukul Rakesh, Kunwar Sushant Prakash, Smriti

Adv. for Respondent(s):-

G.A.,

(Delivered by Hon'ble Mrs. Babita Rani, J.)

1. Heard Sri Kunwar Mukul Rakesh assisted by Sri Kunwar Sushant Prakash, Sri Harish Chandra, learned Amicus Curiae, and Ms. Smriti, learned counsels for the appellants, Sri Umesh

Verma along with Sri G.D. Bhutt, learned Additional Government Advocates, in Criminal Appeal Nos. 84 of 2010, 2695 of 2009 and 212 of 2010 respectively.

2. This common judgment will dispose of the CrI. Appeal Nos. 2695 of 2009 in re: Chhatra Pal v. State of U.P., 84 of 2010 in re: Rajkumar @ Kallu v. State of U.P. and 212 of 2010 in re: Omkar v. State of U.P. which have been directed against the judgment and order dated 30.10.2009 passed by learned Additional Sessions Judge, Court Number 5, Unnao in trial number 181/2005, in re: State v. Chhatra Pal and others bearing crime number 1022/2004 wherein charges were framed under Sections 396 and 412 of Indian Penal Code, 1860, Police Station Kotwali, District Unnao and whereby the appellants/accused have been convicted for the commission of offence punishable under Section 396 of the Indian Penal Code, 1860 and have been sentenced for life imprisonment and a fine of Rs. 20,000/- each and two years simple imprisonment in case of non-payment of fine. However, the appellants were acquitted from the charges of section 412 of Indian Penal Code, 1860. Accused Omkar was acquitted of all charges levelled against him. Hence, instant appeals have been filed by accused Chhatra Pal, Kallu, Mannilal and Khushi Ram, against conviction recorded under Section 396 of Indian Penal Code.

3. The First Information Report (Exhibit Ka.2), in the instant case was lodged by the informant PW3 Balwant Singh on 25.7.2004 at 3:15 AM on the basis of Tahrir (Exhibit Ka.1), written by him with the thumb impression of Krishna Sharma, at Police Station Kotwali, District Unnao.

4. Brief facts of the case relevant for the purpose of disposal of these appeals are that on 24/25.7.2004, at 2:30 AM, when Smt. Krishna Sharma and her family members were sleeping on the rooftop of their house, some unknown criminals illegally entered their house and reached on the rooftop with lathis and dandas (Exhibit Ka8 and Ka9). Upon being resisted by her son, namely Ved Prakash, and husband, Shivkumar, the unknown criminals attacked all of them with lathis and danda and inflicted several serious and fatal injuries on Krishna Devi, Kalpana, Ved Prakash, and Shiv Kumar and fled away from the scene. While the injured victims were being taken to the hospital, one of the injured namely Ved Prakash succumbed to injuries on the way and Kalpana and Shivkumar were referred to District Hospital, Kanpur for further treatment as they were in critical condition. Meanwhile, Krishna Sharma was admitted in Civil Hospital, Unnao.

5. On the basis of the above tehrir (Exhibit Ka.1), a case under Section 460 of the Indian Penal Code, 1860 (IPC) was registered at 3:15 AM on 25.07.2004. The investigation proceedings were initiated and during the investigation, the offence under Section 460 of IPC was converted into Section 396 of IPC. After the death of the injured, namely, Kalpana Sharma, Ved Prakash, and Shiv Kumar was reported, the inquest proceedings and post-mortem examination of dead bodies were conducted. During investigation, the statement of eye witness Kumari Shail (PW2) and injured Krishna Sharma (PW1) were recorded. The accused, Kallu @ Rajkumar and Chhatra Pal were arrested on 07.08.2004. They made the disclosure statement and in consequence to it, the recovery was affected on the pointing out of accused.

6. Accused Khushi Ram was arrested on 09.08.2004 and he also made a disclosure statement leading to recovery of looted articles and danda used in commission of offence. Since the names of the accused Suresh Bengali and Man Singh surfaced in the confessional statements of accused

Kallu, Chhatra Pal and Khushi Ram as well, they were arrested and put to test identification parade which was conducted in presence of Krishna Sharma and Kumari Shail. On not being identified as an accused by Krishna Sharma and Kumari Shail, investigation against both was dropped accordingly.

7. Since the remaining accused could not be arrested during the investigation, therefore, after completion of necessary investigation and necessary formalities, charge-sheet under Section 173 of Code of Criminal Procedure, 1973 (CrPC) was presented in the court against accused Chhatra Pal, Kallu and Khushi Ram, to face trial under Section 396 and 412 of IPC. Subsequently, accused Omkar was also arrested and after completion of investigation against him, supplementary charge sheet was filed against him.

8. Copies of the chargesheet were provided to the accused. The case was committed to the Court of Sessions. On finding a prima facie case involving commission of offence punishable under Sections 396 and 412 IPC, the accused were charge-sheeted accordingly. They pleaded not guilty to the charges and claimed trial.

9. To substantiate its case, the prosecution examined as many as 12 witnesses, namely Krishna Sharma (PW1), Kumari Shail (PW2), Balwant Singh (PW3), Vishvanath (PW4), Dr. Rameshpati Tiwari (PW5), Inspector Devendra Mishra (PW6), Inspector Suresh Babu (PW7), Inspector Suryanath Yadav (PW8), Dr Anil Kumar Tiwari (PW9), Inspector in Charge (PW10), Chottelal Pal (PW11) and Dr Ram Kishore (PW12) in all, besides placing reliance upon the documentary evidence, and thereafter, the prosecution evidence was closed by learned Additional District Government Counsel.

10. Thereafter, statements of the accused under Section 313 of CrPC were recorded. They pleaded innocence and denied the incriminating circumstances appearing against them. However, the accused chose not to adduce any ocular evidence in support of their innocence. They filed the copies of telegrams addressed to higher authorities, in order to prove their innocence in the documentary evidence.

11. Upon appraisal of the evidence produced on record and considering the contentions raised on behalf of accused and prosecution, the learned Trial Court, while acquitting the appellants under Section 412 of IPC, found them guilty for commission of the offences punishable under Section 396 of IPC and sentenced them for life imprisonment, vide judgement and order dated 13.10.2009. However, co- accused Omkar was acquitted from all the charges.

12. Being aggrieved by the impugned judgement and order dated 13.10.2009, appellants-accused have preferred the instant appeals.

13. Although arguments advanced across the bar, in this case, are prolix enough but we propose to deal with only those arguments which have a bearing on the merits of case.

14. Learned counsels for the appellants vehemently argued that the impugned judgment of conviction and order on quantum of sentence was liable to set aside as the findings given by

learned trial court were perverse being based on mis-appreciation of evidence produced on record. The learned trial court had ignored several material lacuna of prosecution which had rendered the prosecution story highly improbable and doubtful. First Information Report is ante-dated and ante-timed, which clearly emerges from a perusal of record and from material contradictions in the statements of PW3 and PW4, but this factum has not been addressed by learned trial court in the impugned judgment. It has been further emphasized in the arguments that although presence of PW1 and PW2 on the place of occurrence may not be disputed, but their evidence regarding the complicity of accused in commission of offence and their identification of the accused in the darkness of night, was highly improbable, unnatural, and unworthy of any credit. No source of light has been established on record, therefore, there was no occasion for PW1 and PW2 to identify the real offenders.

15. In this regard, it is apt to state that the legal position regarding the significance of FIR in a criminal case has been elaborately discussed by the Hon'ble Supreme Court and the Hon'ble High Courts at several occasions. One such instance is the case of *Thulia Kali v. State of Tamil Nadu* (1972) 3 SCC 393, wherein the Hon'ble Supreme Court made the following observations:

"12....First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as name of eye witnesses present at the scene of occurrence."

16. It was vehemently argued that for the offence punishable under Section 396 of IPC, there must be five or more than five persons involved in the offence for recording the conviction and therefore, the learned Trial Court erred in invoking and applying Section 396 of IPC against the appellants. Accordingly, the judgment of conviction and order on sentence deserves to be set aside on this ground alone. Reliance has been placed on the judgment of ***Manmeet Singh Alias Goldie vs. State of Punjab 2015(7) SCC 167***, wherein the Hon'ble Supreme Court found the charges under Section 396 of IPC levelled against the accused as unsustainable as the fact of involvement of five or more persons in the commission of the offense had not been proved.

17. Further reliance in this regard has been placed on ***Raj Kumar alias Raju v. State of Uttaranchal (Now Uttarakhand) 2008 SCC OnLine SC 631*** wherein the Hon'ble Supreme Court held that the offense of dacoity cannot be said to be established in the absence of a finding to the effect of involvement of five or more persons.

18. The contention of the appellants is that in absence of any material on record pertaining to the offence under Section 396 of IPC, the investigating officer filed charge sheet only against three accused persons under Section 396 and 412 of IPC. Further contention is that in spite of the fact that the ingredients of Section 396 IPC were not satisfied, the learned court concerned while taking cognizance on the case, committed it to the Court of Sessions and learned Court of Sessions, framed the charges against the appellants. Therefore, the conviction and sentence order passed by

learned trial court deserves to be set aside in light of law laid down by the Honble Apex Court in **Manmeet Singh** (supra) and **Raj Kumar** (supra).

19. Further contention is that the investigating officer has conducted the investigation in a casual and lackadaisical manner and no test identification parade pertaining to appellants was conducted during investigation. If during the investigation, no identification parade was conducted, then a witness identifying the accused for first time in the court can neither be treated as reliable, nor is it proper to base any conviction on such identification.

20. The significance of the test identification parade in criminal jurisprudence has been discussed by the courts in a catena of cases. The test identification parade is an essential element of investigation and the Hon'ble Supreme Court, in the case of **Dana Yadav @ Dahu v. State of Bihar, (2002) 7 SCC 295** made the following observations regarding the evidence of identification for the first time in court:

"38. In view of the law analysed above, we conclude thus:-

(a) If an accused is well known to the prosecution witnesses from before, no test identification parade is called for and it would be meaningless and sheer waste of public time to hold the same.

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(e) Failure to hold test identification parade does not make the evidence of identification in court inadmissible rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law.

(f) In exceptional circumstances only, as discussed above, evidence of identification for the first time in court, without the same being corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction.

(g) Ordinarily, if an accused is not named in the first Information report, his identification by witnesses in court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above."

(Emphasis by Court)

21. It has also been argued that the medical evidence pertaining to Krishna Sharma PW1 did not establish that she got injured during the commission of offence as she has been admitted via accidental register. Learned counsel for appellants further argued that appellants Kallu and

Mannilal were kept in illegal detention and ultimately shown to be arrested on 07.08.2004, per which telegrams were sent to high-ups by their family members, but learned trial court failed to appreciate these facts and circumstances and passed the conviction order and recorded the order of sentence, merely on the basis of whims and caprices, ignoring the fundamentals of criminal jurisprudence. During trial, statement of accused under Section 313 of CrPC was not recorded according to the procedure prescribed and therefore accused could not avail proper opportunity of being heard. With these broad submissions, it was argued that the impugned judgement was liable to be set aside, the appeals deserved to be accepted, and the appellants acquitted of the offences for which they had been held guilty and convicted. To fortify the argument, learned counsel for appellants placed reliance on judgments of *Manmeet Singh Alias Goldie v. State of Punjab, 2015 (7) SCC 167*; *Marudanal Augusti v. State of Kerala 1979 SCC OnLine SC 199*; *Kalicharan & Others v. State of Uttar Pradesh, 2022 SCC OnLine SC 1718*; *Dr S. L. Goswami v. State of Madhya Pradesh, 1972 SCC OnLine SC 11* and *Hasanbhai Valibhai Qureshi v. State of Gujarat*.

22. Per contra, it was argued by learned AGA for respondent ? state that the findings given by learned trial court were well discussed and reasoned. The evidence produced on record has been properly appreciated and no fault could be found in the same. From the testimony of PW1 and PW2, the complicity of the accused in the commission of the offence has been fully established and no contradictions as such regarding identification of accused in the testimony of PW1 and PW2 have surfaced on record. The gravity of the offence committed by the accused can be assessed by the fact that while committing the offence of the dacoity, the accused inflicted injuries not only on PW1, but also on her husband, son and daughter-in-law in such brutal manner that shortly thereafter, the three of them namely Shiv Kumar, Ved Prakash and Kalpana succumbed and the only surviving injured Krishna Devi was admitted in hospital for about a week for treatment. It was, therefore, argued that the appeals being devoid of any merit are liable to be dismissed.

23. We have given due deliberations to the contentions as raised by learned counsel for appellants and learned AGA and have scrutinised the materials available on record with their able assistance.

Findings:-

24. Admittedly, the offence was committed in the night when almost every ordinary person was supposed to be in deep sleep. The version of the prosecution, which is not in dispute, is that on 24/25.07.2004, when Smt. Krishna Sharma was sleeping on rooftop of her house with her family at about 2:30 AM, some unknown offenders entered in her house and committed the offence of dacoity. During the commission of the offence and as a result of expression of protest by family members, the offenders indiscriminately attacked with lathi and danda, which they were carrying at the time of offence and resultantly, husband of Krishna Sharma namely Shiv kumar, her son Ved Prakash and daughter-in-law namely Kalpana died shortly after occurrence and Krishna sustained life threatening injuries. PW1 was admitted in civil hospital, Unnao at about 4.40 AM.

25. The First Information Report was registered in the concerned police station at about 3:15 AM against unknown persons by PW3. It brooks no dispute that the accused persons were not

named in the FIR and at the time of registration of the FIR, they were not known to the informant PW3. It is during investigation that name of the appellants came to light.

26. After registration of the FIR, the investigation was handed over to the senior inspector Shri Ram, who had conducted the inquest proceedings of deceased Ved Prakash and prepared the inquest report. During investigation, he prepared the site plan of the place of occurrence vide Exhibit Ka.7. On 27.07.2004, the investigation was handed over to inspector Suresh Babu PW7. After taking over the investigation, PW7 recorded the statement of PW2 and thereafter, of PW1. On the basis of statement made by PW1 and PW2, the investigating officer PW7 arrested the accused Kallu and Chhatra Pal. The arrested accused made disclosure statement and consequent of that, recovery of robbed articles and dandas were effected at their pointing out vide recovery memo Ex. Ka.8, Ka.10 and Ka.6 respectively, used in the commission of crime which were discovered in pursuance of the disclosure statements. On the basis of the confessional statement made by the accused named above, remaining accused, namely Suresh Bangali and Mansingh were arrested whose identification parade was conducted by the identification magistrate in the jail and accordingly, accused Suresh Bengali and Man Singh were arraigned in the identification parade, but having not been identified by the injured PW1 and eye witness PW2, they were released from the charges of commission of offence providing them benefit of principle of presumption of innocence, while the appellants faced trial.

27. During trial, the statement of injured Krishna Devi as PW1 and Kumari Shail as PW2 were recorded and relying on the statement of PW1 and PW2 and other incriminating circumstances, learned trial court found the appellants guilty and convicted them.

28. Here in the instant case, firstly, the prosecution was required to prove that victim Shivkumar, Ved Prakash and Kalpana Sharma died due to homicidal injuries inflicted by the accused and Krishna Sharma suffered grievous injuries in the incident. On the perusal of medical evidence produced on record in form of testimony of PW 5 Dr. Ramesh Pati Tiwari and PW 9 Dr. Anil Kumar Tiwari, who conducted post-mortem examination of deceased Kalpana, Shiv Kumar and Ved Prakash and prepared the post-mortem reports Ex. Ka. 4, Ka.5 and Ka. 11, as well as inquest report of above victims being prepared by PW 10 In-charge Inspector Vijay Bahadur Singh as Ex. Ka 13, Ka.17 and Ka.23 respectively, it stands proved that cause of death of all the three deceased was multiple injuries which they sustained on their vital parts and same were found ante-mortem in nature and sufficient to cause death in ordinary course of nature. The prosecution version was that these injuries were caused to the victims due to assault by accused using lathi and danda. The post-mortem reports of all the victims show that they had sustained several lacerated wounds on their heads and on other parts of their bodies, leading to fracture in the bones of the head. It is not the case of appellants that deceased suffered injuries in accident. The nature of injuries clearly indicate that the same cannot be accidental or self-inflicted. Testimony of PW 5 and PW9 with regard to these injuries has remained unshattered and unblemished, who observed that the injuries sustained by the victims were sufficient to cause death in the ordinary course of nature and death was due to shock and haemorrhage. Therefore, the fact that deceased Shiv Kumar, Ved Prakash, and Kalpana had died a homicidal death due to sustaining injuries caused by hard and blunt object, stood proved.

29. Next question that crops up for consideration is as to whether the time, place and occurrence have been established on record and whether there is any error in the observation of the trial court in this regard. As per prosecution, the offence had occurred in the early morning of 25.07.2004 at about 2:30 AM, when Krishna Sharma and her entire family was sleeping on the roof top of the house. During the arguments, learned counsel for appellants did not assail the version of prosecution to the extent of time, date and place of the offence. Therefore, the above facts stand not being disputed and being admitted and thus, no illegality or perversity is found in the observations of learned trial court in this regard.

30. Since in the above discussion, it is not in dispute that incident occurred on the relevant date, time and place during which the victims were killed, now the question is whether the incident was committed by the accused and whether the conviction recorded by the trial court by holding the accused responsible for the incident is proper or not. Considering the submissions advanced by both the parties and to bring a well-reasoned observation, we have been taken through the testimony of independent witnesses and disclosure of appellants and recovery thereof, pertaining to the offence committed.

31. First of all, this court has to assess the circumstances available on record in light of arguments advanced by appellants regarding the anti-timed FIR and alleged false involvement of the appellants. Contention of appellants is that the offence was committed by unknown persons and appellants have been falsely roped in the case despite having not even an iota of evidence against them. During trial, a different story has been brought to bear in this case and prosecution has attempted to overcome the difficulty of First Information Report against unknown person by deposing against the appellant. Further contention is that the prosecution has disowned the registration of the FIR and PW1, who is said to be an injured and eye witness of the occurrence, has herself admitted that she has not lodged any FIR. As a corollary to that, informant PW3 also declined the fact of scribing of tehrir by his own volition or under the dictation of injured Krishna Sharma, rather has stated that he wrote tehrir under the dictation of police, therefore, the testimony of PW1 and PW3 itself is detrimental for prosecution and has given blow to the roots of the case.

32. In the light of this submission, upon examining the record, it was found that PW1 specifically testified that she never dictated the terms of the FIR to PW3 Balwant Singh, nor she got her statement to this effect recorded to the investigating officer PW7. She has testified that she became unconscious on the spot due to injuries suffered on her person and could regain consciousness in the hospital itself. With regard to her thumb impression on the tahrir, she answered that when she was admitted in hospital due to injuries, the police concerned had taken her thumb impression on a blank piece of paper. PW3 admittedly is scribe of tehrir on the basis of which, the first information report was registered. However, this prosecution witness has also not proved the contents of FIR and has alleged that same was written by him under the dictation of the police inspector. He has also corroborated statement of PW1 to the effect that he did not take any instructions from injured Krishna Sharma before or at the time of scribing the tehrir and that she was admitted in the hospital while the complaint was written by him in the police station. PW-1 also supported the version made by PW-3 and corroborated the fact that she did not instruct PW-3 to lodge the FIR. PW3 specifically testified that even the paper and pen was also provided to him by the police inspector, though it is not disputed that written complaint was in his handwriting.

From the perusal of statement of PW1 and PW3, it has been demonstrated that both witnesses have corroborated this fact that the first information report was not lodged according to their accord, rather it was written on the dictation of police and they did not give the version recorded in the first information report. Consequently, it is established on record that the first information report of the instant case lose its corroborative and probative value and first information report appears to be doubtful document and cannot be relied upon to support the prosecution case.

33. The law in this regard is fairly settled and it may be purposeful to refer to certain rulings enumerating the legal position on the evidentiary value of an FIR which appears to be tainted, ante-timed and reflecting the version of the police rather than that of the informant. In the case of **State of A.P. v. Punati Ramulu and Others 1994 Supp (1) SCC 590**, the Hon'ble Supreme Court made the following observations:

"5. According to the evidence of PW 22, Circle Inspector, he had received information of the incident from police constable No. 1278, who was on 'bandobast' duty. On receiving the information of the occurrence, PW 22 left for the village of occurrence and started the investigation in the case. Before proceeding to the village to take up the investigation, it is conceded by PW 22 in his evidence, that he made no entry in the daily diary or record in the general diary about the information that had been given to him by constable 1278, who was the first person to give information to him on the basis of which he had proceeded to the spot and taken up the investigation in hand. It was only when PW 1 returned from the police station along with the written complaint to the village that the same was registered by the circle inspector, PW 22, during the investigation of the case at about 12.30 Noon, as the F.I.R., Ex. P-1. In our opinion, the complaint, Ex. P-1, could not be treated as the F.I.R. in the case as it certainly would be a statement made during the investigation of a case and hit by Section 162, Cr.P.C. As a matter of fact the High Court recorded a categorical finding to the effect that Ex. P-1 had not been prepared at Narasaraopet and that it had "been brought into existence at Pamidipadu itself, after due deliberation". Once we find that the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared the first information report after reaching the spot after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stooped to fabricate evidence and create false clues. Though we agree that mere relationship of the witnesses PW 3 and PW 4, the children of the deceased or of PW 1 and PW 2 who are also related to the deceased, by itself is not enough to discard their testimony and that the relationship or the partisan nature of the evidence only puts the Court on its guard to scrutinise the evidence more carefully, we find that in this case when the bona fides of the investigation has been successfully assailed, it would not be safe to rely upon the testimony of these witnesses either in the absence of strong corroborative evidence of a clinching nature, which is found wanting in this case."

(Emphasis by Court)

34. In **Ram Sut Yadav alias Lavkush Yadav and Others v. State of U.P. 2010 SCC OnLine All 450**, a coordinate bench of this Court made the following observations:

"Another submission of Sri Viresh Misra is that the F.I.R. has not been proved to have been scribed at the dictation of the complainant Dharas Yadav and the whole prosecution case falls to the ground on this ground alone. We find sufficient merit in this submission. The complainant Dharas Yadav (P.W.4) stated that the F.I.R. was not lodged by him and it does not bear his signatures. He claimed that he was not present at the time of incident. The scribe of the F.I.R. Muntazir Ahmed (P.W.3) also turned hostile and stated that the F.I.R. was written by him at the police station Madhuban on the dictation of S.H.O. Sri Mritunjay Mishra. He was cross-examined by learned prosecutor wherein he stated that he works at a dispensary till 7 : 30 - 8 : 00 p.m. When he returned home from the dispensary, he came to know that firing had taken place at the house of Dharas Yadav. He went on the spot and thereafter went to the police station where he found the injured Jairam and Jai Kishan. It is obvious from the statement of this witness that the F.I.R. was not scribed in the village, but was written by Muntazir Ahmed (P.W.3) at the police station allegedly on the dictation of S.H.O. The complainant Dharas Yadav has clearly denied his signatures on the F.I.R. The prosecution has not led any evidence to show that the signatures on the F.I.R. belong to Dharas Yadav. Even Jairam (P.W.5) was not questioned by the prosecution on this point. He could have been asked to identify the signatures of his brother Dharas Yadav, but that was not done. There is nothing on record to show that F.I.R. bears the signatures of Dharas Yadav or that the same was scribed on the dictation of the complainant. On the other hand, the statement of Muntazir Ahmed (P.W.3) clearly shows that the F.I.R. was scribed at the dictation of S.H.O. Mritunjay Mishra, who had enmity with the appellants Yudhisthir alias Dharm Raj Yadav, Ram Sut Yadav alias Lavkush Yadav, their father Ram Naresh and appellant Ram Avtar Yadav. The possibility that the appellants were named in the F.I.R. at the instance of S.H.O. Mritunjay Mishra and S.I. Vasudeo Singh can not be ruled out. Since the F.I.R. has not been proved according to law and is a suspicious document, the whole case falls to the ground and no reliance can be placed on the same."

(Emphasis by Court)

35. It should also not be out of place to mention at this juncture that as per evidence of PW4, constable Vishwanath, he had registered the FIR initially under Section 460 of IPC on the basis of tahrir written and submitted by PW3. The FIR Ex. Ka.2 has been said to be registered at 3:15 AM on 25.07.2004 and same was entered at 3:15 AM in general diary vide Ex. Ka.3, and investigation was carried out immediately after registration of the first information report. PW4 constable Vishwanath has proved registration of first information report and its entry in general diary. On the contrary, PW3 testified that the tahrir was written by him under the dictation of police inspector between 8-8:30 a.m, which is clearly contrary and in material contradiction of evidence of PW4, according to whom the first information was recorded at 3:15 AM. Since the evidence of PW3 regarding presentation of tahrir is contrary to that of evidence of PW4, therefore, it cannot be accepted as gospel truth that first information report of the occurrence was registered at 3:15 AM.

36. One more glaring fact which gives support to the doubt about timings of lodging of FIR emerging from the record is that the injured PW1 was admitted in hospital at 4:40 AM by the police itself, but there is no mention about the registration of the FIR in the medical papers pertaining to injured Krishna Sharma. Had the FIR been lodged at 3:15 AM and in pursuance of the

FIR, the police reached on spot and brought the injured to hospital for medical treatment, then there would have been entry of FIR in the medical papers of the injured. Moreover, PW4 has admitted that there was no entry in the general diary of any other case on the date of occurrence. If on the date of registration of FIR, entries in the general diary of some other cases would have been found, then it could have been accepted that report was registered at 3:15 AM. However, admittedly no entry has been found, therefore, the arguments of defence regarding ante- timed FIR cannot be ignored and the possibility of manipulation in record cannot be ruled out. Keeping in view of above discussion, it is established that the first information report has not been proved to be registered on 3:15 AM dated 25.07.2004, as alleged.

37. In **Mehraj Singh vs State Of U.P., (1994) 5 SCC 188**, the Hon'ble Supreme Court made the following observations:

"12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been 'ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.'"

(Emphasis by Court)

38. In the case of **Mohd. Muslim v. State of U.P. Criminal Appeal No.1089 of 2011**, the Hon'ble Supreme Court made the following observations regarding the evidentiary role of an FIR.

*"The check FIR report was sent to the Court on 08.08.1995 with the delay of about 4 days. It is worth mentioning that FIR in a criminal case and particularly in a murder case is a vital and a valuable piece of evidence especially for the purpose of appreciating the evidence adduced at the trial. It is for this reason that the infirmities, if any, in the FIR casts a doubt on its authenticity. The FIR in such cases may also lose its evidentiary value. In **Meharaj Singh and Ors. Vs. State of U.P. and Ors.**, it has been opined that on account of the infirmities such an ante-timing of the FIR loses its evidentiary value. Thus, this entitles the accused to be given the benefit of doubt."*

(Emphasis by Court)

39. So far as the complicity of the accused in commission of crime is concerned, while observing the guilt and conviction of appellants, learned trial court relied on chain of following two circumstances:

i. ocular evidence of PW1 and PW2, who allegedly identified the accused while committing the offence

ii. disclosure statement made by accused person and consequential recovery thereof.

40. For determination of first circumstance, we have been taken through the testimony of these two star witnesses. PW7 second investigating officer testified that complicity of accused Kallu and Chhatarpal surfaced out in the commission of crime initially in the statement of Km. Shail, which was recorded by him on 27.04.2004 and subsequently in the statement of Krishna Sharma recorded on 02.08.2004 after being discharged from hospital. On the basis of above, both accused were arrested on 07.08.2004 and accused Khushi Ram on 09.08.2004. As per PW7, investigating officer, no test identification parade of the accused was conducted, as the accused were already named by the injured Krishna Sharma and eye witness Kumari Shail PW2. It is to be seen here whether the prosecution has pressed into service the involvement of appellants by the ocular evidence of PW 1 and PW2.

41. Undisputedly, PW1 Krishna Sharma is an injured and eyewitness of the entire episode committed on the fateful night. Law is settled that evidence of an injured witness is always kept on higher pedestal than an ordinary witness and evidence of an injured witness is ordinarily considered reliable because the injury sustained by such witness implies his or her presence on the spot. However, the reliability of such witness depends on opportunity to see the assailants, lightning conditions if occurrence is of night, state of mind of the witnesses etc. Court has also to determine as to whether the injured witness was in position to identify the accused in darkness, specifically when she herself along with her family members suffered injuries in sudden attack and under an atmosphere of fear and shock around.

42. In the case of **Jodhan v. State of M.P., (2015) 11 SCC 52**, the Hon'ble Supreme Court made the following observations regarding the importance of the testimony of an injured witness:

"29. From the aforesaid summarisation of the legal principles, it is beyond doubt that the testimony of the injured witness has its own significance and it has to be placed reliance upon

unless there are strong grounds for rejection of his evidence on the basis of major contradictions and inconsistencies. As has been stated, the injured witness has been conferred special status in law and the injury sustained by him is an inbuilt guarantee of his presence at the place of occurrence. Thus perceived, we really do not find any substance in the submission of the learned counsel for the appellant that the evidence of the injured witnesses have been appositely discarded being treated as untrustworthy by the learned trial Judge."

(Emphasis by Court)

43. In the case of *Bollavaram Pedda Narsi Reddy v. State of Andhra Pradesh* 1991 SCC OnLine SC 183, the Hon'ble Supreme Court emphasized on the importance of prevailing lighting conditions where event of occurrence takes place during the night and accused persons are unknown to the witnesses. The Hon'ble Supreme Court made the following observations:

"9. In the present case, the appellants are admittedly persons with whom the two witnesses had no previous acquaintance. The occurrence happened on a dark night. When the crime was committed during the hours of darkness and the assailants are utter strangers to the witnesses, the identification of the accused persons assumes great importance. The prevailing light is a matter of crucial significance. The necessity to have the suspects identified by the witnesses soon after their arrest also arises. According to the prosecution, the attack on the deceased was sudden and simultaneous and the assailants slipped away in no time. Both PWs 1 and 2 had deposed that they were attracted by the explosion and when they turned back, the assailants surrounded the deceased and inflicted the stab injuries. PW 1 was pushed aside. He fell on the fence of the barbed wire of the transformer, received scratches. His dhoti stuck to the wire. He left it there and ran to the police station in utter confusion. His statement Ex. P-1 does not disclose that PW 2 accompanied him, though PWs 1 and 2 stated before court that they went together. The possibility of the companions of the deceased having been scattered and gone in different directions cannot be ruled out. Even in Ex. P-1 statement what PW 1 said is that six persons attacked the deceased; they were villagers; they were wearing dhoti and kurta. One was about 45 years of age and of dark complexion, another was 30 years of age lean and yet another was also a lean person. These may be the vague impression the witness had on seeing the assailants suddenly. It is not however in evidence that the description given by PW 1 in Ex. P-1 fits in with the description of any one of the appellants. When the magistrates recorded the statements of the witnesses, they could not give any characteristic feature of any one of the assailants. The entire case depends on the identification of the appellants and the identification is founded solely on the test identification parades."

(Emphasis by Court)

44. Now, this court has to analyse the evidence adduced by PW 1 and PW2, who got their statements recorded during investigation to the effect that they could only identify accused Kallu and Chhatra Pal at the scene and not others. On the contrary, they testified before the court that they identified the accused namely Kallu, Chhatra Pal, Khushi Ram and Manni Lal at the scene, in the light of bulb and torches. Therefore, both added a new fact relating to accused Mannilal and Khushi Ram in their evidence, while this fact was not stated earlier to the police during the

investigation. Without offering any explanation, the statement, contrary to one's earlier statement will be treated as a serious inconsistency and an improvement, and the improved testimony of witnesses will fall under the category of discredited evidence. Another circumstance which has drawn our attention is that accused Manilal was not found involved in commission of crime by the investigating officer, during investigation and chargesheet was filed against accused Kallu, Chhatra Pal and Khushi Ram and it is only in the chief examination of PW1, that name of accused Manilal had emerged and on request of prosecution, he was summoned by court exercising powers under Section 319 of CrPC to face the trial as additional accused. Again, PW7 investigating officer stated that he found the complicity of accused Khushi Ram only on the basis of confessional statement given by accused Kallu and Chhatra Pal and after his arrest in this case, he made disclosure statement leading to the recovery of incriminating articles pertaining to dacoity committed at the house of PW1. However, during trial, it was stated by both factual witnesses that accused Khushi Ram and Munnilal were also present on the scene with accused Kallu and Chhatrapal. Further, PW1 has testified that the police concerned were not conducting the investigation properly, and therefore she had sent the representations in this regard to the higher authorities. However, nothing is on record that alleged representation was ever sent by her to the higher authorities and action has ever been taken. Therefore, placing on record the photo copies of representation allegedly sent by PW1 to the higher authorities at the stage of trial, may not carry any probative value.

45. Another factor which needs to be considered is the factor of visibility around the place of occurrence at the relevant time. As per prosecution, accused Kallu and Chhatra Pal were recognised by the husband and son of injured Krishna Sharma at the time of resisting the alleged offenders. It is averred that victim Shiv Kumar and Ved Prakash named the accused Kallu and Chhatra Pal during the commission of the offense and said that they should not do it. PW1 testified that on hearing noises, she woke up and saw that some unknown accused had snatched the bangles of her daughter-in-law namely Kalpana and heard the names of accused Kallu and Chhatra Pal from her son and husband. She also identified the accused in the light coming from adjoining houses and torches of accused. PW2 also corroborated version of PW1. Here in the given circumstances, if the witnesses stated that the accused were identified by them in the light coming from nearby houses, then the court has to examine this very fact as to whether the victims and injured were in the position and had any occasion of recognising the accused. It must be considered as to whether there was light in nearby houses, and if yes, then again, whether that light was sufficient for the victim to identify the accused, despite sudden and violent attack?

In this regard, when PW1 was put in cross examination, she admitted that there had been an electricity connection in her house since about one year to the incident. On being examined about the source of street light available adjoining to her house, PW1 admitted that for about 15 days prior to the incident, the bulb installed on electric pole outside her house was not working and had been switched off at the request of neighbour. Therefore, it is apparent from her admission itself that the street light installed in front of house of PW1 was not in a working condition during the night of occurrence. It is not the case of prosecution that witnesses identified the accused in light coming from their own rooftop. It has also not been indicated that there was any other source of light on the rooftop. In such circumstances, it is established on record that there was no question of any light on the rooftop of their house as well from street light.

46. In this regard, it will be useful to refer to the judgment of *Thanedar Singh v. State of Madhya Pradesh (2002) 1 SCC 487*, wherein the Hon'ble Supreme Court, while reiterating the view laid down in the case of *Mehraj* (Supra), made the following observations regarding the importance of establishing the source of light in cases where the alleged incident takes place at night involving unknown persons:

"8. However, on the aspect of identification, the High Court may be justified in commenting, based on Nathuni Yadavs Vs. State of Bihar (1998 (9) SCC 238) that the approach of the Trial court is faulty. In Nathuni Yadavs case (supra), this Court pointed out that under certain circumstances, the lack of moonlight or artificial light does not per se preclude identification of the assailants. Thomas J. speaking for the Court observed :-

Even assuming that there was no moonlight then, we have to gauge the situation carefully. The proximity at which the assailants would have confronted with the injured, the possibility of some light reaching there from the glow of stars, and the fact that the murder was committed on a roofless terrace are germane factors to be borne in mind while judging whether the victims could have had enough visibility to correctly identify the assailants. Over and above those factors, we must bear in mind the further fact that the assailants were no strangers to the inmates of the tragedy-bound house, the eyewitnesses being well acquainted with the physiognomy of each one of the killers. We are, therefore, not persuaded to assume that it would not have been possible for the victims to see the assailants or that there was possibility for making a wrong identification of them. We are keeping in mind the fact that even the assailants had enough light to identify the victims whom they targeted without any mistake from among those who were sleeping on the terrace.

9. While the possibility of identification of the accused-appellant cannot be ruled out in the present case too having regard to the fact that the accused was not stranger and the occurrence was at an open place, there is one more factor which creates some difficulty in the matter of identification. PW 6 was sleeping on a cot at a little distance from the spot where the victim was sleeping. PW 6 stated that as many as five persons including the appellant surrounded his son and two of the accused were standing in front of his cot. In this situation, assuming that there was faint light emanating from the open sky, would it be possible for PW 6 to observe the appellant firing the shot from the rifle? The possibility seems to be remote. At any rate, this aspect ought to have engaged the attention of the High Court before reversing the trial courts finding on the point of identification by PW 6.

(Emphasis by Court)

47. The next issue now is whether there were houses nearby, and if so, whether those houses had electricity connections, and finally, whether the time of incident, sufficient light was coming from those houses to enable the witnesses to identify the accused? To explore possibilities in his favour, cross-examination was conducted by the accused, in which PW1 admitted that there were no houses to the east or west side of her house and there was a school under construction towards the northern side of the house. It is further stated that there is rikshaw company having 2-3 feet high walls, adjacent to her house. The witness further admitted that there were no houses in the

immediate vicinity rather the houses were at a distance. Even the site plan Ex. Ka.7, prepared by the investigating officer immediately after commission of offence, has not demonstrated any house nearby. However, it is true that there is no evidence to show that PW1 alone had a house there. Possibility cannot be ruled out that there were other houses nearby, as the PW1 herself had admitted, but there is no evidence to establish that any such house was so close that the light was coming from the house and accused were identified in that light. There is also no specific version of prosecution as to from which neighbour's house the light was coming by which the accused were identified. In such circumstances, it is not proved that there were any nearby houses or that any electricity light was available on those houses. Therefore, statement of PW1 and PW2 of identifying the accused in the light coming from the houses of neighbours are unworthy of belief. As far as the claim that the accused were identified in the torchlight switched on by the accused is concerned, it has no substance because in a situation of sudden attack and bloodshed, it doesn't appear natural for a witness to identify the accused.

48. As is clear from the above analysis, no basis has been found to show that there was any source of light in the vicinity on the night of incident. At this juncture, it should also be considered whether there exist any circumstances or possibility in which the accused were identified by their body description, gait, etc. PW1 and PW2, in their chief examination stated that accused Mannilal and Kallu were known to them being their distant relatives and both of them were operating a rickshaw company adjoining to their house. It was stated by both factual witnesses that they knew accused Chhattra Pal and Khushi Ram since the time they used to drive rickshaw in the rickshaw company opened next to their house. They specifically testified that the accused named above committed the offence and during the commission of the offence and upon being identified, accused Chhattra Pal and Kallu shouted that they had been identified and thus, raised a cry to finish all the family members. Thus, the witnesses categorically stated that accused named above committed the offence and they identified the accused on the spot. So far as question of the appellants having been identified by the PW1 and her relationship with appellants is concerned, when she was put in cross examination on this fact, it was stated by her that neither she had any relationship with accused Mannilal and Kallu, nor she ever visited their home or village . She further admitted that she was not on talking terms with accused Mannilal and Kallu, and neither of them ever visited her house. On being questioned about the management of rickshaw company, she replied that accused Kallu was operating the rickshaw company while accused Mannilal was serving in the railways. From the cross examination, it has been demonstrated that the assertion of PW1 of accused Mannilal and Kallu being her distant relatives is contradicted by her own statement, therefore, evidence of PW1 to this extent is not reliable.

49. Another interesting fact that emerged from the evidence of PW1 and PW2 is their admission that accused Manni Lal and Kallu had their faces covered at the time of incident while accused Chhattra Pal was wearing a monkey cap. It is beyond imagination of a prudent person as to how a person with covered face could be identified in absence of light and more particularly when he is not acquainted. The investigating officer PW7 stated in his evidence that he did not conduct the test identification parade of the accused despite the fact that the FIR had been registered against unknown persons. The reason that was given by the investigating officer PW7 for not conducting test identification parade was that the names of the accused had emerged during investigation. Once the FIR of a case is registered against unknown persons, whatsoever situation may be, it is

obligatory on the part of investigating officer to conduct the test identification parade of the accused found involved in commission of a case. Purpose of test identification parade is to check the truthfulness of witnesses and further having occasion of identifying the accused whom the witness claims to have seen at the time of incident. The identification in test identification parade serves as corroborative evidence to support the identification of accused later made in the court. In the instant case, admittedly, there is no evidence that accused were previously known to each other. When accused had muffled their faces and source of light was absent on the place of occurrence and incident happened in the darkness of night, absence of test identification parade during investigation and identification of accused in court shall bring the evidence unsafe to rely upon.

50. The test identification parade assumes greater significance in cases where the accused and the witnesses are unknown to each other or are not well acquainted to each other and where the alleged incident takes place in the darkness of night. In **Wahid v. State Govt. of NCT of Delhi 2025 INSC 145**, the Hon'ble Supreme Court made the following observations,

"22. Normally, where accused persons are unknown and are not named in the FIR, if the prosecution case as regards the manner in which they were arrested is disbelieved, the Court should proceed cautiously with other evidence and objectively determine whether all other circumstances were proved beyond reasonable doubt. In this light we shall now consider the evidence relating to identification of the accused persons. Admittedly, this is a case of night incident. Though seven eye witnesses of the incident were examined by the prosecution, only three (i.e., PW-1, PW-5 and PW-6) identified the accused in court. Out of the remaining four, three including the driver categorically stated that the accused persons are not those who robbed the passengers that night. The fourth one stated that it was too dark, therefore, he is unable to recognise. PW-1, at whose instance the arrest of the accused persons was allegedly effected, during cross-examination, stated that he saw the accused persons first on the date of the incident and second on the date fixed in the case. Admittedly, no test identification parade was conducted and the statement of PW-1 was recorded in court on 28.05.2013, that is, after 16 months of the incident. In such circumstances, not much reliance can be placed on his statement."

(Emphasis by Court)

51. It has also emerged in the cross examination of PW1 that test identification parade of accused Khushi Ram and Chattra Pal was conducted in jail. However, the investigating officer PW 7, refuting the version of the PW1, specifically stated that no test identification parade of accused was conducted. Therefore, statement of PW-1 and PW-7 pertaining to the fact of test identification parade is found contradictory to each other. It would not be out of place to mention here that accused Khushi Ram assailed his involvement in the subject crime and moved an application before learned court concerned to have his test identification parade conducted and the learned court concerned directed the investigating officer to conduct the test identification parade of the accused. However, no test identification parade was conducted despite the order of the learned magistrate concerned. It is the case of prosecution that initially FIR was registered against unknown persons and during the investigation, names of accused facing trial emerged. On the contrary, PW1, placing entire different version, stated in her testimony that she had identified the accused at the time of commission of offence itself. It has not been stated by PW1 in chief examination that the

investigating officer had recorded her statement, regarding the offence during investigation, rather in her cross-examination, she stated that her statement was not recorded during investigation. Thus, according to PW1, her statement was not recorded during investigation. Keeping in view of her admission regarding non-recording of her statement before investigating officer during investigation, the fact of involvement of accused has emerged before the court for the first time. Any statement made by a witness before the court for the first time, ignoring the facts brought during investigation, is sufficient to draw adverse inference not only against the investigation conducted, but also provides reason to court to not rely upon the testimony of witness.

52. One more significant fact has been placed by PW2 in her testimony before the court to the effect that after commission of the offence, the accused fled away from the spot and thereafter she along with her sister came down and raised an alarm. Consequently, the neighbours assembled on the spot and apprehended the accused Munnial and Chattra Pal in their rickshaw company. She identified the accused Munnial and Chhatrapal with blood stained clothes. The police also reached on the spot and took away the accused. When the witness was put in cross examination, it was admitted by her that no such statement was made by her to the investigating officer during the course of investigation. It is settled principle of law that any statement, inconsistent to the earlier statement, made first time before will come within ambit of material omission and improvement and hence cannot be taken as reliable. PW2 admitted that under fear and shock, she covered herself underneath the bed-sheet at the time of commission. She further stated that she along with her grandmother and younger sister came down and saw that accused Chhatrapal and Munnial were apprehended by the public and handed over to the police. She continued to state that after the incident and upon her raising alarm, some neighbours fired and people assembled around. Admittedly, PW2 was ten years old at the time of commission of offence, therefore, her statement should be analysed with care and caution. Although, there is no rule that a child witness is not a competent witness and evidence of such witness can be treated reliable, if such evidence squarely appears unblemished and impeccable. However, in the instant case, statement of PW2 bears material contradictions and infirmities, therefore, her statement cannot be taken as gospel truth in absence of any corroborated evidence. Moreover, at the time of commission of offence, her age was ten years, so keeping in view the panic scene in absence of source of light, it appears that she was fairly incapable to identify the accused. Therefore, in the incident that took place in the darkness and accused having their faces muffled, yet being identified by witnesses, and even by deceased, who allegedly called them by name does not appear credible for any person of ordinary prudence.

53. Another circumstance required to be dealt with in the instant case is testimony of PW3, who is not only informant of the case, but also has claimed himself having been present on the place of occurrence immediately after the incident. He stated that upon hearing noise, he immediately rushed to the place of occurrence and found accused Chhatrapal and Kallu in the custody of public, assembled on the spot. Further, it has been stated by him that the police also reached on spot and took away the accused to police station and injured to hospital. Now the question that arises for consideration is that where an informant, who during investigation was projected only as a person who lodged the first information report, but during the trial claims to have been present at the spot immediately after the occurrence, then what will be the probative value of evidence of such witness? Admittedly, during registration of first information report and

investigation thereto, nothing is on record that the informant PW3 also reached on the spot after the incident and it is for the first time before the court that the witness has stated so, therefore, it amounts to material improvement as it appears that witness has attempted to strengthen the prosecution case. Presence of a witness at the scene after the incident and witnessing the accused being taken into police custody, is a vital fact which is not supposed to be ignored by informant or any person of ordinary prudence and in case such vital fact is missing in tehrir, then certainly, it will be inferred that informant was not present on the scene. Reason why this court has observed so is clear as PW3 would have ample opportunities to make a statement to investigating officer regarding his presence on spot, if any, but he did not choose to get his statement recorded and remained silent throughout the time. Therefore, his silence is a sign of acceptance that he did not reach on the place of occurrence after the incident, hence, there was no occasion for PW3 to observe the custody of accused Chhattapal and Kallu with public assembled on the spot. The courts have consistently held that improvement affecting the core of prosecution case render the witness unreliable and such evidence can be accepted only to the extent it is corroborated by the trustworthy material on record.

54. Where contradictory statements and improvements are made by eye-witnesses in their testimonies before the court, such evidence becomes unreliable and cannot become the sole basis of conviction. In **S. Govindaraju v. State of Karnataka, (2013) 15 SCC 315**, the Hon'ble Supreme Court enunciated the following principles in para 23:

"It is well settled legal proposition that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions were of such magnitude so as to materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements in relation to trivial matters, which do not affect the core of the case of the prosecution, must not be made a ground for CRL.A.1736/2018 C/W rejection of evidence in its entirety. The trial court, after going through the entire evidence available, must form an opinion about the credibility of the witnesses, and the appellate court in the normal course of action, would not be justified in reviewing the same, without providing justifiable reasons for doing so. Where the omission(s) amount to a contradiction, creating a serious doubt regarding the truthfulness of a witness, and the other witnesses also make material improvements before the court in order to make the evidence acceptable, it would not be safe to rely upon such evidence. The discrepancies in the evidence of eyewitnesses, if found not to be minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, the witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with the other evidence available or with a statement that has already been recorded, then in such a case, it cannot be held that the prosecution has proved its case beyond reasonable doubt."

(Emphasis by Court)

55. In **Sunil Kumar Sambhudayal Gupta & ors v. State of Maharashtra, 2010 (13) SCC 657**, the Hon'ble Apex Court made the following observations:

"32. The discrepancies in the evidence of eye-witnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances,

witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that prosecution proved its case beyond reasonable doubt. (Vide: Mahendra Pratap Singh v. State of Uttar Pradesh, (2009) 11 SCC 334).

33. In case, the complainant in the FIR or the witness in his statement under section 161 Cr.P.C., has not disclosed certain facts but meets the prosecution case first time before the court, such version lacks credence and is liable to be discarded. (Vide: State Represented by Inspector of Police, Tamil Nadu v. Sait @ Krishnakumar, (2008) 15 SCC 440).

34. In **State of Rajasthan v. Smt. Kalki & Anr., AIR 1981 SC 1390**, while dealing with this issue, this Court observed as under:

"8. In the depositions of witnesses there are always normal discrepancies, however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person."

35. The courts have to label the category to which a discrepancy belongs. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. (see: Syed Ibrahim v. State of A.P., AIR 2006 SC 2908; and Arumugam v. State, AIR 2009 SC 331)."

56. PW3 has demonstrated his two-fold role before the court. First role is as scribe of tehrir and second role is his alleged arrival on spot and witnessing the custody of accused in the hands of public. Having glanced through his evidence, this witness has admitted that neither he is known to accused Mannilal, nor he ever visited the house of Manni Lal. He further admitted of having no personal knowledge pertaining to rickshaw company and its proprietor and his entire knowledge is based on source of hearsay. Thus, it is clear that he was not earlier acquainted with accused Mannilal or any of them. It is not the case of the prosecution that statement of this witness was recorded by the investigating officer during the investigation, therefore, his testimony regarding his presence on the spot immediately after commission of offence, being for the first time stated before the court, would be treated carrying material omissions, tutored and improvement and cannot be taken in support of prosecution as the law is well settled that any statement made before the court introducing the new material facts for the first time, cannot be accepted against the accused. Even otherwise, his statement regarding the police reaching on the spot and taking the accused to the police station after a while, is in material contradiction and negates the evidence of PW7, who arrested the accused Chhatrapal and Kallu on 07.08.2004. Statements of these two witnesses are mutually contradictory. It is apt to mention here that in case, police and informant contradict each other, the prosecution must explain it and if no explanation is given, then court may draw an adverse inference benefiting accused. Presence of PW3 on the spot becomes suspect even in view of his statement of drizzling just before the incident thereby serving new story. Keeping in view the facts and circumstances of the case, we are of the view that evidence of this chance witness appears to be tutored and developed after knowing the version of prosecution witnesses during the trial.

57. Explaining value of evidence of chance witness, the Hon'ble Supreme Court in **Harbeer Singh vs. Sheeshpal & Ors., (2016) 16 SCC 418**, held as under:-

"23. The defining attributes of a 'chance witness' were explained by Mahajan, J., in the case of Puran v. State of Punjab, AIR 1953 SC 459. It was held that such witnesses have the habit of appearing suddenly on the scene when something is happening and then disappearing after noticing the occurrence about which they are called later on to give evidence.

24. In Mousam Singha Roy and Ors. Vs. State of W.B., (2003) 12 SCC 377, this Court discarded the evidence of chance witnesses while observing that certain glaring contradictions/omissions in the evidence of PW2 and PW3 and the absence of their names in the FIR has been very lightly discarded by the Courts below. Similarly, Shankarlal Vs. State of Rajasthan, (2004) 10 SCC 632, and Jarnail Singh & Ors. Vs. State of Punjab, (2009) 9 SCC 719, are authorities for the proposition that deposition of a chance witness, whose presence at the place of incident remains doubtful, ought to be discarded. Therefore, for the reasons recorded by the High Court we hold that PW5 and PW6 were chance witnesses and their statements have been rightly discarded.

25. In the light of the above and other reasons recorded by the High Court, we hold that the evidence of the eye witnesses is not truthful, reliable and trustworthy and hence cannot form the basis of conviction. Their presence at the scene of occurrence at the time of the incident is highly unnatural as also their ability to individually and correctly identify each of the accused from a considerable distance, especially when it was dark at the alleged place of occurrence, is itself suspect."

58. The next circumstance relied upon by the prosecution for connecting the accused with the offence of dacoity with murder was disclosure statement made by them before Investigating Officer and consequent to that, recovery of incriminating articles pertaining to the offence. Before discussing the question of admissibility of evidence of prosecution witnesses in this regard, it will be proper to refer to certain provisions of law.

59. Section 25 of the Evidence Act, 1872 (hereinafter referred to as the "Act of 1872") mandates that no confession made to a police officer, shall be proved against a person accused of an offence. Similarly, Section 26 of the Act of 1872 provides that confession made by an accused while in custody of a police cannot be proved against him. However, to the aforesaid rule of Section 25 and 26 of the Act of 1872, there is an exception carved out by Section 27 of the Act of 1872 based on the view that in effect, if some fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly, it was safely allowed to be given in evidence.

60. The scope and ambit of Section 27 of the Act were illuminatingly stated in **Pulukuri Kottaya and others v. Emperor, AIR 1947 PC 67**, which has become locus classicus wherein it was held that Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceeding Sections and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the Section into operation is that discovery

of fact in consequence of information received from a person accused of any offence in custody of police officer must be deposed to and thereupon so much of information as relates distinctly to the fact thereby discovered may be proved. As observed in this case and various judicial pronouncements of Apex court and various High Courts, the well enunciated position of law is that for applicability of section 27 of Act, two conditions are prerequisite viz.

i Information must be such as has caused discovery of fact.

ii. Information must relate 'distinctly' to the fact discovered.

61. Under Section 27 of the Act of 1872, only so much of information as distinctly relates to the fact discovered thereby is admissible. While deciding applicability of Section 27 of the Act of 1872, the court has also to keep in mind, the nature of presumption under illustrations of Section 114 of the Act of 1872. The Court can, therefore, presume the existence of a fact which it thinks likely to have happened, regard being had to common course of natural events, human conduct, and public and private business, in their relation to the facts of a particular case. Keeping in view the above discussed position of law in mind, it is to be seen as to whether the accused are proved to have made the disclosure statements and further to have demarcated the place of occurrence.

62. According to PW7, accused Chhattra Pal and Kallu made disclosure statements respectively in presence of Jagdish Kumar, Ramji and Kumari Shail and recovery of two golden bangles, one hand watch and a danda was effected at the instance of accused Chhattra Pal, while used clothes of children and a danda were recovered at the instance of accused Kallu in the presence of independent witnesses vide recovery memo Ex. Ka 8 and Ka.9 respectively. Subsequent thereto, accused Khushi Ram was arrested by PW8 inspector Suryanath and on the basis of disclosure statement made by him, two silver bangles were recovered at his instance, in presence of independent witnesses vide recovery memo Ex. Ka. 10. Lastly, accused Omkar was arrested on 09.06.2005 by PW 6 Inspector Davender Mishra and on the basis of his disclosure statement made by him, a pair of silver anklets was recovered at his pointing out vide recovery memo Ex. Ka.6. Admittedly, no separate memo of disclosure statement allegedly made by appellants have been prepared by either of the Investigating Officers nor the alleged recovery and preparation of recovery memo has been proved during trial. Even the prosecution has not adhered to examining the independent witnesses to the recovery memo. PW-1 & PW-2, in whose presence the alleged articles were said to be recovered and identified, have testified that neither alleged articles were recovered at the pointing out of accused, nor the same were placed before them for identification. Therefore, entire chain of circumstances speak itself that the alleged recovery cannot be taken adversely against accused persons.

63. In the case of **Subramanya v. State of Karnataka, 2022 SCC online SC 1400**, Hon'ble Supreme Court in para number 84 observed that in case the accused, while in custody, on his own freewill and volition makes a statement that he would lead to the place where he had hidden the weapon of offence, then the first thing that the investigating officer should do is to call for two independent witnesses, and in their presence, the accused should be asked to make an appropriate statement as to whether he desires to point out the place where he has hidden the weapon of offence, etc. Where the accused, while in custody, makes such a statement before the two

independent witnesses, the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of Panchnama that the investigating officer may draw in accordance with law. The first part of Panchnama for the purpose of Section 27 of the Act of 1872 is always drawn at police station in presence of independent witnesses so as to lend credibility to that particular statement being made by accused in police custody. **Reliance can also be placed on the case of Bobby v. State of Kerala 2023,(1) S.C.R 335**, wherein Hon'ble Supreme Court refused to rely on recovery of articles pertaining to offence, in the absence of non-recording of confessional statement of accused under Section 27 of Act of 1872.

64. In **Wahid** (supra), the Hon'ble Apex Court had made the following observations regarding the standards for appreciating the evidence in cases where FIR is lodged against unknown persons:

"14. In cases where the FIR is lodged against unknown persons, and the persons made accused are not known to the witnesses, material collected during investigation plays an important role to determine whether there is a credible case against the accused. In such type of cases, the courts have to meticulously examine the evidence regarding (a) how the investigating agency derived clue about the involvement of the accused in the crime; (b) the manner in which the accused was arrested; and (c) the manner in which the accused was identified. Apart from above, discovery/ recovery of any looted article on the disclosure made by, or at the instance of, the accused, or from his possession, assumes importance to lend credence to the prosecution case."

65. Considering the entire facts and circumstances, the learned trial court did not find the evidence regarding the allegedly recovery to be convincing and reliable and rejected the recovery and convicted the accused solely on the basis of eyewitness account. However, after scrutiny of evidence available on record and entire surrounding circumstances, we find that no strong, cogent or reliable evidence has come up on record to show that the eyewitnesses were able to identify the accused. Principles of law very clearly entail that if the case of the prosecution is not proved beyond reasonable doubt, the benefit thereof shall be given to the accused.

66. It is the pious duty of the police officers and the concerned investigation agency that where a heinous offense is alleged involving the death of three individuals and a fourth individual is seriously injured, then in such a case, the police should conduct the investigation with utmost diligence and all the steps must be taken in a timely manner to ensure that no piece of evidence is lost due to the laxity and lackadaisical attitude of the investigating officers. However in this case, this court is constrained to observe that there has been a serious lapse in investigation and the police has not followed its duties properly. The investigation is marred by defects such as failure to obtain a forensic report despite there being recovery of blood stained clothes and lathis, ante timed FIR, delay in arrest by the police authorities, improper recovery memos, disputed time of arrest, failure on the part of the police authorities to call PW1 and PW2 for identification of accused as well as recovered items, among others.

67. Lastly, it was the submission of learned counsel of appellants that learned trial court erred in convicting the three accused persons under Section 396 of IPC whereas the sine qua non for invoking Section 396 IPC is the involvement of five or more persons. In light of this submission of

appellants, the prosecution case must be judged on the touchstone of ingredients of offence of Section 396 of IPC.

68. Admittedly, the chargesheet was filed against three persons under Sections 396/412 of IPC and after committal of the case to the court of sessions, the charge was also framed initially against three accused. However, on subsequent development thereto, two more accused were added to face trial. After conclusion of trial and having heard both parties, the learned trial court convicted four accused, who are now appellants, while one was acquitted of the charges framed against him. The question arises for consideration before us is whether learned trial Court was in error in having convicted four appellants under section 396 IPC. For the purpose, Section 391 of IPC which defines dacoity and Section 396 of IPC are being reproduced herewith:

"391. **Dacoity**.-When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

396. **Dacoity with murder**.-If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

69. The appellants have emphatically relied on the judgment of the Hon'ble Supreme Court in **Manmeet** (supra) wherein the Court had made the following observations with regards to the essentials of Section 396 of IPC:

"33. The above pronouncements do acknowledge the extension of the concept of collective culpability enshrined in section 149, IPC in section 396, IPC contemplating murder with dacoity. An assembly of five or more persons participating in the offence is thus the sine qua non for an offence under section 396, IPC permitting conviction of any one or more members thereof even if others are acquitted for lack of their identity. In absence of such an assembly of five or more persons imbued with the common object of committing dacoity with murder, any member thereof cannot be convicted for the said offence irrespective of his/her individual act of murder unless independently and categorically charged for that offence.

34. As adverted to hereinbefore above, the prosecution has completely failed in the instant case to either prove the participation of five or more persons in the commission of the offence or establish their identity. In that view of the matter having regard to the above principle of law as authoritatively laid down by this Court and in absence of a singular charge under section 302, IPC against the appellant sans the assembly, we are of the unhesitant opinion that his conviction for dacoity with murder punishable under section 396, IPC, in the facts and circumstances of the case, cannot be sustained in law. The attention of the courts below we understand had not been drawn to this vital and determinative facet of the case."

(Emphasis by Court)

70. Further, the appellants have relied on Raj Kumar (supra) wherein the Hon'ble Court had held as under:

"15. Having heard learned counsel for the parties, in our opinion, the appeal deserves to be allowed. It is not in dispute that charges were framed against six persons but even the trial Court was not convinced with the prosecution evidence about complicity of all the accused and granted benefit of doubt to two of them. It may be stated that the trial Court did not record a finding that there were six persons who committed dacoity and out of them, two accused could not be identified but the remaining four were identified and came to the conclusion that it was proved that there were six accused and all of them committed the offence of dacoity but in view of insufficient evidence as to identity, two of them were required to be acquitted. In such case, conviction of less than five accused can be sustained as in accordance with law. But, once the Court doubts the presence and participation of two out of six accused and grants benefit to them, there are less than five persons and no conviction can be recorded for an offence under Section 396, IPC against them. Let us consider the legal position on this aspect.

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21. It is thus clear that for recording conviction of an offence of robbery, there must be five or more persons. In absence of such finding, an accused cannot be convicted for an offence of dacoity. In a given case, however, it may happen that there may be five or more persons and the factum of five or more persons is either not disputed or is clearly established, but the Court may not be able to record a finding as to identity of all the persons said to have committed dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons or even one can stand. But in absence of such finding, less than five persons cannot be convicted for an offence of dacoity.

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35. In the instant case, as observed earlier, there were six accused. Out of those six accused, two were acquitted by the trial Court without recording a finding that though offence of dacoity was committed by six persons, identity of two accused could not be established. They were simply acquitted by the Court. In our opinion, therefore, as per settled law, four persons could not be convicted for an offence of dacoity, being less than five which is an essential ingredient for commission of dacoity. Moreover, all of them were acquitted for an offence of criminal conspiracy punishable under Section 120B, IPC as also for receiving stolen property in the commission of dacoity punishable under Section 412, IPC. The conviction of the appellant herein for an offence punishable under Section 396, IPC, therefore, cannot stand and must be set aside."

(Emphasis by Court)

71. Thus, to constitute an offence under section 396IPC, it is essential that five or more persons must come together for commission of dacoity and during the course of commission of dacoity, one or more of said five persons has committed murder within the

meaning of section 302 of IPC. From a perusal of the impugned judgement passed by learned trial Court, it is apparent that the learned trial court has not recorded any finding regarding the involvement of five or more persons in the subject crime and without recording such finding, convicted the appellants under Section 396 of IPC, which is clearly against the settled principles of law and does not satisfy the essentials of Section 396.

72. It is a settled principle that the prosecution has to prove its case beyond reasonable doubt and if the accused succeeds in creating reasonable doubt in the story of the prosecution, then the benefit will be averted to accused. However strong the doubt may be but it cannot take place of the evidence. From the analysis of all facts, circumstances and evidence on record, it is established beyond reasonable doubt that an offense did occur, but it has not been proved beyond reasonable doubt that the alleged offense was committed by the accused.

Conclusion:-

73. Upon judging the prosecution case on the touchstone of totality of the facts and circumstances, it does not generate the unqualified and unreserved satisfaction indispensably required to enter a finding of guilt against the appellants. Having regard to the evidence available on record as a whole, this court unhesitatingly holds that charges levelled against appellants have not been proved beyond reasonable doubt. The findings of the trial court are unnaturally stretched in favour of the prosecution by overlooking many irreconcilable inconsistencies, anomalies and omissions, thereby rendering the prosecution case unworthy of credit. This court is of opinion that prosecution has failed to prove the charges against the appellants to the hilt as obligated in law, and therefore, they are entitled to be given benefit of doubt.

74. Accordingly, the appeals filed by appellants are **allowed**. Impugned judgement of conviction dated 13.10.2009 and order of quantum of sentence dated 13.10.2009 passed by learned Additional Sessions Judge, court no.5, Unnao, are **set aside**. The appellants are acquitted of the offences punishable under Section 396 of IPC. The appellants be released forthwith from the custody, if not wanted in any other case, upon execution of bonds to the satisfaction of the learned trial court, which shall remain in force for a period of six months in terms of Section 437A of CrPC.

75. All the pending criminal miscellaneous application(s), if any, stand **disposed of**.

76. Let a copy of this judgement along with the trial court record be sent forthwith to the trial court. A copy of judgement, if applied for, shall be also made available to the appellants.

77. We appreciate the assistance rendered by Mr. Harish Chandra, learned Amicus Curiae, and we direct for payment of Rs.30,000/- (Thirty Thousand Only) towards his remuneration forthwith.

(2026) 1 ILRA 672
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.01.2026

BEFORE

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

Jail Appeal No. 143 of 2018

Sri Pal

...Appellant

Versus

State of U.P.

...Respondent

ISSUE FOR CONSIDERATION

Whether, in the present case, the prosecution succeeded in establishing the chain of circumstances leading to an inescapable conclusion that the accused-appellant had committed the crime, and whether the contradictions and omissions were of such magnitude as to materially affect the trial.

HEADNOTE

Indian Penal Code, 1860, Sections 302, 498-A & 201 – Dowry Prohibition Act, 1961, Sections 3/4 – Case entirely based on circumstantial evidence – Homicidal death of the deceased proved by medical evidence – Cause of death asphyxia due to ante-mortem strangulation – Reliance on “last seen” evidence – Witness unable to specify date, time and place – Time gap not sufficiently proximate – Material contradictions and omissions in testimonies of prosecution witnesses – Conduct of informant in lodging FIR doubtful – Admission that report dictated by village Pradhan – Possibility of false implication cannot be ruled out – Circumstances not forming a complete chain – Suspicion, however grave, cannot take the place of proof – Evidence lacking quality and credibility – Conviction unsafe – Benefit of doubt. (E-5)

HELD:

The deceased was married to the accused-appellant about seven years prior to the incident. On 29.08.2011, a written report was given by the informant, P.W.-1 (father of the deceased), stating that the deceased along with her children were missing and suspecting that they had been done to death by the accused-appellant. During investigation, the body of the deceased was recovered. According to the medical evidence, the cause of death of the deceased was asphyxia due to ante-mortem strangulation. The deceased suffered a homicidal death. The case of the prosecution was entirely based on circumstantial evidence. In order to prove its case, the prosecution mainly relied upon the following circumstances: (i) that the death of the deceased was homicidal in nature; and (ii) that the deceased was last seen with the accused-appellant going towards the jungle.

PW-10 (sister of the deceased) was unable to recollect the date, time and place when she allegedly saw the accused-appellant with the deceased and admitted in cross-examination that she had seen the deceased going with the accused-appellant 8–9 days prior to the death. The time gap was not sufficiently proximate to form a complete link in the chain of circumstances. The alleged extra-judicial confession was not corroborated by any reliable evidence. There were material contradictions in the statements of PW-1 and PW-10 regarding the information conveyed and the alleged dowry demand. In view of the discrepancies, the prosecution witnesses were found to be unreliable. The conduct of the informant in not lodging the first information report at any of the police stations situated on the way and admitting that certain portions of the report were written on the dictation of the village Pradhan created serious doubt. False implication of the accused-appellant at the behest of the village Pradhan could not be ruled out.

The evidence produced by the prosecution lacked quality and credibility and it would be unsafe to rest conviction upon such evidence. The prosecution failed to establish a complete chain of circumstances leading to an inescapable conclusion that the accused-appellant had committed the crime. The evidence on record was not sufficient to bring home the guilt of the appellant beyond reasonable doubt. Accordingly, the conviction and sentence were set aside. The appeal was allowed and the appellant was directed to be released forthwith unless wanted in any other case.

CASE LAW CITED

Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622;
Hanumant Govind Nargundkar v. State of M.P., AIR 1952 SC 343;
Padala Veera Reddy v. State of A.P., 1989 Supp (2) SCC 706;
C. Chenga Reddy v. State of A.P., (1996) 10 SCC 193;
Ramreddy Rajesh Khanna Reddy v. State of A.P., (2006) 10 SCC 172;
Sattatiya v. State of Maharashtra, (2008) 3 SCC 210;
State of Goa v. Pandurang Mohite, (2008) 16 SCC 714;
Laxman Prasad @ Laxman v. State of M.P., 2023 (3) SCC (Cri.) 27;
R. Sreenivasa v. State of Karnataka, (2024) 17 SCC 426;
State of U.P. v. Ashok Kumar Srivastava, 1992 Cri LJ 1104;
State v. Saravanan, AIR 2009 SC 152;
State of Rajasthan v. Rajendra Singh, (2009) 11 SCC 106;
Mahendra Pratap Singh v. State of U.P., (2009) 11 SCC 334.

List of Acts

Indian Penal Code, 1860;
Dowry Prohibition Act, 1961;
Code of Criminal Procedure, 1973.

List of Keyword

Circumstantial evidence; Last seen theory; Homicidal death; Ante-mortem strangulation; Extra-judicial confession; Material contradictions; Benefit of doubt; Suspicion not proof; Incomplete chain of circumstances; False implication.

CASE ARISING FROM

Judgment and order dated 17.05.2017 passed by the Additional Sessions Judge, Fast Track Court No. 3, Muzaffarnagar in Sessions Trial No. 131 of 2012 arising out of Case Crime No. 260 of 2011.

Appearances for Parties

Advs For Petitioner: From Jail; Saurabh Pandey
Advs For Respondents: A.G.A.

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

1. The instant Criminal Appeal has been sent from jail by the accused-appellant (Sripal) against a judgment and order dated 17.05.2017 passed by the Additional Sessions Judge, Fast Track Court No. 3, Muzaffar Nagar in Sessions Trial No. 131 of 2012 arising out of Case Crime No. 260 of 2011, under Sections 498-A, 302, 201 IPC and of Dowry Prohibition Act, PS Chhappar, district Muzaffar Nagar whereby the learned Judge convicted and sentenced the accused-appellant as under:

(a) Life imprisonment and a fine of Rs. 20,000/- for the offence under Section 302 IPC.

(b) Seven years imprisonment and a fine of Rs. 7,000/- for the offence under Section 201 IPC and in case of default in payment of fine, four months additional imprisonment.

(c) Three years imprisonment and a fine of Rs. 3,000/- for the offence under Section 498-A IPC and in case of default in payment of fine, two months additional imprisonment.

(d) Five years imprisonment and a fine of Rs. 15,000/- for the offence under Section 3 of Dowry Prohibition Act and in case of default in payment of fine, six months additional imprisonment.

(e) Two years imprisonment and a fine of Rs. 10,000/- and in case of default in payment of fine, five months additional imprisonment.

However, all the sentences were directed to run concurrently.

Brief facts

2. In short compass, the facts giving rise to the present criminal appeal are that a written report was given by the informant, Prem Chandra, son of Umrao Singh Prajapat, resident of village Puser, police station Dohghat, district Baghpat to the Station House Officer, Chhapar, district Muzaffarnagar, that his daughter Smt. Suman (hereinafter referred to as the deceased) was married to Sripal Prajapat (hereinafter referred to as the accused-appellant) about seven years ago. After some years of marriage, dispute arose between the deceased and the accused-appellant, due to which from time to time deceased used to come her maternal home, but she went to her matrimonial home after her husband and her father-in-law came to take her. It is further alleged in the First Information Report that a year before the occurrence, the accused-appellant made a demand of dowry and kicked her out of her matrimonial home. However, after the intervention of some venerable persons of the society, the matter was settled and accused-appellant took the deceased to his home. The First information further recounts that on 29.08.2011, another daughter of the informant who was married in the same family, informed the informant that accused-appellant has told her that the deceased along with both the children are missing from home. On receiving the said information, the informant rushed to the house of the deceased and found the door locked and nobody was present at the house. On enquiry from the villagers, he was told that accused-appellant along with his wife, the deceased and her children had gone to fetch wood. The informant made a hectic search for his daughter, the deceased, but in vain. Thereafter, he gave a written report at the police station making a suspicion that his daughter along with her children had been done to death by the accused-appellant.

3. On the basis of the aforesaid report (Ext. Ka-1) a case was registered against the appellant at Case Crime No. 260 of 2011, under Section 498-A, 364 IPC and of Dowry Prohibition Act, police station Chhapar, district Muzaffarnagar.

4. After the registration of the First Information Report, the law set into motion and investigation of the case was entrusted to PW-7, SI Dulare Lal, who copied the FIR and recorded the statements of scribe (Chik writer) of the FIR Clerk-Constable 685 Chhotey Lal Pathak and

informant Prem Chandra in the case diary and left the police station along with police force for the search of the deceased and her children. After receiving an information that the body of the deceased was lying near the bank of Ganga, he rushed there and recovered the body. Thereafter, the inquest was conducted by PW-4, Nayab Tehsildar Karan Singh, which was marked as Ext. Ka-2 and sent the dead body for post-mortem examination.

5. PW-7, SI Dulare Lal further deposed in his examination-in-chief that on 04.9.2011 he recorded the statement of accused, who confessed to his crime and stated that due to non-fulfilment of demand of dowry, he has committed the crime. After this statement of the accused, Section 304-B IPC was added. He also prepared site plan on the pointing out of the accused, which was marked as Ext. Ka-10. He also inspected the place from where the dead body of the deceased was recovered and prepared site plan (Ext. Ka-11). At 13:10 hrs on 04.09.2011, he arrested the accused (Ext. Ka-12). As Section 304-B IPC was also added, the investigation of the aforesaid case was transferred to C.O Sadar Shri Rajesh Kumar Singh.

6. PW-8, Rajesh Kumar Singh in his examination-in-chief, has deposed that investigation of case crime No. 260 of 2011, under Section 498-A, 364, 304-B IPC and of Dowry Prohibition Act was undertaken by him on 06.09.2011. He perused the Case Diary and directed the Station House Officer for tracing the missing children of the deceased. On 14.09.2011 he also copied the Inquest and post-mortem reports in the case diary. On 07.10.2011, he recorded the statement of the informant. He also recorded the statements of witnesses Udai Veer, son of Kallu Ram, Mahipal, son of Prem Chandra, Yashpal, son of Dharmpal. As the incident took place after seven years of marriage of the accused with the deceased, Sections 304-B IPC and of Dowry Prohibition Act were deleted and the case was converted to one under Section 302 IPC. As the case was not a dowry death, the investigation of the case was transferred to PW-9, SHO Bharat Lal Shah on 12.10.2011.

7. PW-9, SI Bharat Lal Shah, in his examination-in-chief, deposed that on 20.10.2011 he was posed as Station House Officer at police station Chhapar. He perused the case diary and other related papers and recorded the statements of witnesses of inquest namely Bhagat Singh, Monu, Satpal, Narendra. On 16.1.2011, he recorded the statement of Constable Virendra Singh, Constable Narendra Singh Verma, Veer Singh and Nayab Tehsildar Karan Sinh.

8. After culmination of investigation, the investigating officer submitted charge sheet against the accused under Section 498-A, 302, 201 IPC and Section of Dowry Prohibition Act, which was marked as Ext. Ka-13. The investigation officer also sent the viscera of the deceased to the Forensic Science Laboratory, Agra, which was marked as Ext. Ka-14.

9. However, no poison was found in the viscera report dated 12.07.2013.

10. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, where case was registered as ST No. 131 of 2012. Learned Sessions Judge, Muzaffar Nagar vide order dated 27.03.2012 framed the charges against the accused under Sections 498-A, 302, 201 IPC and of Dowry Prohibition Act, which were read over and explained to the accused in Hindi, who pleaded not guilty and claimed to be tried.

11. To bring home guilt of the accused-appellant beyond the hilt, the prosecution has examined as many as 10 witnesses. PW-1, Prem Chandra, is the first informant and father of the deceased, PW-2, Mahipal, PW-3 Udai Veer are the witnesses of facts and also the inquest witnesses. PW-4, Karan Singh, Nayab Tehsildar, who got the inquest conducted and sent the body for post mortem examination. PW-5, Dr. Pawan Kumar Jain, who conducted the post mortem on the cadaver of the deceased. PW-6, Chhotey Lal Pathak, who scribed the FIR. PW-7, SI Dulare Lal, the first investigating officer of the Case. PW-8, C.O. Rajesh Kumar Singh, the second investigating officer of the Case. PW-9, Bharat Lal Shah, Station House Officer, police station Chhapar, the third investigating officer, who submitted charge sheet and PW-10, Kusum, wife of Sonu, who is also the sister of the deceased and has been examined as witnesses of fact and last seen of the deceased in the company of the accused-appellant

12. PW-1, Prem Chandra, who is the first informant and father of the deceased in his examination-in-chief has reiterated the versions given in the First Information Report. He further deposed that dead bodies of his two maternal grandson namely Ansh and Vansh aged about 5 and 1-1/2 years are yet to be recovered. Dead body of his daughter Suman (deceased) was recovered on the same day, when he made application/lodged FIR, from canal inside the Jungle. He recognized the dead body of his daughter. His daughter, her sons Ansh and Vansh have been done to death by the accused for non-fulfilment of demand of dowry.

13. PW-2, Mahipal, in his examination-in-chief, which was recorded on 19.11.2013, deposed that Prem Chandra, the first informant, live in the same Mohalla in which he resides Prem Chandra got his daughter-Suman (deceased) married in the year 2004 to Sripal (accused-appellant). He also participated in the marriage. He was told by Prem Chandra, the first informant that his son-in-law has made his daughter and her sons disappear. Dead body of his daughter (deceased) has been recovered, but her both sons are still untraceable.

14. PW-3 Udai Veer in his examination-in-chief, which was recorded on 03.03.2014, deposed that first informant Prem Chandra was the resident of village Pushar, district Baghpat, but he along with his father Umrao Singh and other family members have settled in Khedi prior to the incident. Daughter of the first informant was married to accused-appellant Sripal. This witness also participated in the marriage. In the marriage, the first informant has given dowry according to his status. After the marriage accused and his father used to torture and beat the deceased for bringing additional dowry, which was told by the deceased to the first informant and other members of the family in his presence. Deceased had two children. The elder daughter (Kusum) of first informant is also married in the same village in which the deceased was married. This witness further deposed that on 29.08.2011 Kusum informed her father over phone that deceased along with her both sons were made to disappear by the accused and his father. On the aforesaid information Prem Chandra and Mahipal went to Baseda where they came to know that deceased and her sons are untraceable whereas accused-Sripal and his father Kaluram were not at home. Thereafter, information was given at the police station Chhapar. This witness further deposed that after hectic search, body of deceased was found near Ganga Nahar, Jauli which was identified by this witness and first informant Prem Chandra. Thereafter, police of police stations Chhapar and Bhopa came there and prepared inquest. He also put his signature on the inquest report, which was marked as Ext. Ka-2.

15. PW-4, Karan Singh, in his examination-in-chief, which was recorded on 03.07.2014, deposed that on 03.09.2011, he was posted in Tehsil Jansath as Nayab Tehsildar. On that day, he received an information from police station Bhopa that between the villages Bakhedi and Sikheda in Ganga Nahar, a dead body of a woman was recovered. On getting information from Tehsil, he visited the spot. On reaching there, he came to know that the dead body is of Suman, wife of Sripal, resident of Baseda, police station Chhapar, district Muzaffarnagar. On that date, under his supervision, inquest report, letter for RI, letter to the Chief Medical Officer, Photo Lash, challan Lash were prepared by the Sub-Inspector. He also put his signatures on all pages of inquest report, which was marked as Ext. Ka 2.

16. PW-5, Dr. Pawan Kumar Jain, conducted post-mortem examination on the cadaver of the deceased. In his examination-in-chief, he deposed that on 04.09.2011, he was deputed on post-mortem duty in district Muzaffar Nagar. On the same day at 2:00 PM, he along with Dr. J.P. Tyagi conducted post-mortem examination on the cadaver of the deceased jointly. Following injuries were found on the body of the deceased:

"1. Abrasion in the shape of a circle measuring 6 x 5 c.m. and located directly on the outside of the forearm.

2. Lacerated wound measuring 0.5 c.m. X 0.5 c.m. X muscle deep. Located on the inside of the left elbow.

3. There were four small lacerated wounds measuring 13 c.m. X 1 c.m. on the front of the middle part of the left leg, measuring 0.5 c.m. X 0.5 c.m. and deep to the muscle deep flesh.

4. There were numerous abrasion marks on both sides of the nect, measuring from 2.5 c.m. X 2.0 c.m. To 1.50 c.m. X 1.00 c.m."

In the opinion of the doctors, the cause of death of the deceased was asphyxia due to ante-mortem strangulation.

17. The evidences of PW-6, Chhotey Lal Pathak, who scribed the FIR, PW-7, Dulare Lal, the first investigating Officer, PW-8, Rajesh Kumar Singh, the second investigating officer and PW-9, Bharat Lal Shah, the third investigating officer, who submitted charge sheet have already been discussed above.

18. PW-10, Smt Kusum, wife of Sonu, who is the elder daughter of the first informant Prem Chandra, in her examination-in-chief, which was recorded on 06.10.2016, deposed that her sister (deceased) was married to Sripal (accused) about 12-13 years ago. Deceased had two sons, namely Vansh, aged about 5 years and Ansh, aged about 2-1/2 or 3 years. She further deposed that on the date of occurrence, she saw Sripal (accused), Suman (deceased) along with both the sons going towards Jungle. Thereafter, she had not seen her sister and her sons Vansh and Ansh. When she enquired from Sripal (accused) as to where is Suman and her sons, he replied that he has done them to death. She informed her father about the incident. Thereafter, first information report was

lodged. After four-five days of lodging of the case, dead body of the deceased was recovered. Her both the hands were tied. Sripal used to beat her sister for bringing insufficient dowry.

19. After the closure of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C., in which he denied the charges levelled against him. He further stated that Sonu, husband of Kusum is employed with Pradhan Bhupendra Jaat and witness Kusum is also working in his house. Pradhan Bhupendra Jaat has forcibly grabbed his house and at his instance he has been falsely implicated in this case.

20. Learned Additional Sessions Judge, FTC No. 3, Muzaffarnagar after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellant as indicated herein above.

21. Hence, this appeal.

Submissions on behalf of the appellant

22. Learned counsel appearing on behalf of the accused-appellant has submitted that this is a case of circumstantial evidence and chain of evidence is missing in this case. In support of his submission, he has placed reliance upon the judgments of Hon'ble Apex Court in the case of **Laxman Prasad @ Laxman vs. State of M.P.; 2023 (3) SCC (Cri.) 27, Bheem Singh Vs. State of Uttarakhand; 2015 AIR (SCW) 1118, P.15, Dinesh Kumar Vs. State of Haryana; 2023 SCC On-line SC 564, P.15 and Shail Kumari Vs. State of Chhatisgarh; AIR 2025 (SC) 3646** and has submitted that it is settled proposition of law that the chain of circumstantial evidence must be completed.

23. Learned counsel for the appellant has next submitted that there are material contradictions in the statement of PW-1 (informant) and PW-10, Kusum, which make the entire prosecution story doubtful.

24. Learned counsel for the appellant next submitted that the appellant has been falsely dragged in the present case at the behest of Pradhan Bhupendra Jaat.

25. Learned counsel for the appellant lastly submitted that the impugned judgement is based on conjecture and surmises without there being any evidence on record and that the prosecution has totally failed to bring home guilt of the appellant beyond reasonable doubt. The appellant has been in jail since 05.09.2011.

Submissions on behalf of the State

26. Per contra, Mr. Neeraj Kumar Tiwari, learned Additional Government Advocate vehemently opposed the aforesaid contentions and submitted that the prosecution has proved its case beyond reasonable doubt, which is evident from the depositions of PW-1 and PW-10. He further submitted that in her statement PW-10 (Kusum), has specifically stated that she made a complaint regarding the harassment for demand of dowry to the police station, therefore, it is

wrong to say that there are no motive available for harassing the deceased by the accused-appellant. He has further submitted that since the parents of the deceased could not fulfil the demand of dowry, due to which, accused-appellant has killed his wife.

27. It is further submitted that there are no major contradictions in the statements of PW-1 and PW-10. It is further submitted that medical report and doctors opinion have also supported the prosecution case. As per doctors opinion, deceased was killed 4-6 days before the date of the post mortem i.e. the date when she was seen with the accused and the children by PW-10.

28. Learned counsel appearing on behalf of the State has submitted that since all the witnesses examined by the prosecution, have supported the prosecution case and prosecution has proved it's case beyond reasonable doubt and completed the entire chain of circumstances, as such the trial court has rightly convicted the accused-appellant under the aforesaid sections and there is no error in the impugned judgment and order, therefore, the appeal is devoid of merit and is liable to be dismissed.

Analysis and conclusion

29. The case of the prosecution is entirely based on the circumstantial evidence. In a case based on circumstantial evidence, settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete forming a chain and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused totally in consistent with his evidence. It has been consistently laid down by the Hon'ble Apex Court that where a case rests on circumstantial evidence, the inference of the guilt can be justified only when all the incriminating facts and circumstances are found to be in compatible with the innocence of the accused or guilt of any other person.

30. In **Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR (1984) (SC) 1622**, the Hon'ble Apex Court has framed five golden principles for the circumstantial evidence, which are as under;

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

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

(iii) The circumstances should be of conclusive nature and tendency

(iv) They should exclude every possible hypothesis except the one to be proved and,

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

31. In *State of U.P. Vs. Ashok Kumar Srivastava, (1992) CrL. L.J. 1104*, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in the favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have fully established and cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

32. In the case of *Hanumant Govind Nargundkar v. State of M.P., AIR 1952 SC 343*, Hon'ble Apex Court observed as under:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

33. In the case of *Padala Veera Reddy v. State of A.P., 1989 Supp (2) SCC 706*, Hon'ble Apex Court opined as under:

"10. Before advertng to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

*(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See *Gambhir v. State of Maharashtra, (1982) 2 SCC 351*)"*

34. In the case of **C. Chenga Reddy & Ors. v. State of A.P.**, (1996) 10 SCC 193, Hon'ble Apex Court while considering a case of conviction based on the circumstantial evidence, held as under:

"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence."

35. In the case of **Ramreddy Rajesh Khanna Reddy v. State of A.P.**, (2006) 10 SCC 172, Hon'ble Apex Court again considered the case of conviction based on circumstantial evidence and held as under:

*"26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See **Anil Kumar Singh v. State of Bihar**, (2003) 9 SCC 67 and **Reddy Sampath Kumar v. State of A.P.**, (2005) 7 SCC 603)."*

36. In the case of **Sattatiya v. State of Maharashtra**, (2008) 3 SCC 210, Hon'ble Apex Court held as under:

"10. We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances." This Court further observed in the aforesaid decision that:

*"17. At this stage, we also deem it proper to observe that in exercise of power under Article 136 of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court--**Bharat v. State of M.P.**, (2003) 3 SCC 106. "*

37. In the case of **State of Goa v. Pandurang Mohite**, (2008) 16 SCC 714, Hon'ble Apex Court reiterated the settled law that where a conviction rests squarely on circumstantial evidence,

the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

38. The decision in **Sharad Birdichand Sarda** (Supra) has recently been followed by Hon'ble Supreme Court in catena of judgement including **Laxman Prasad alias Laxman Vs. State of Madhya Pradesh**, 2023(3) SCC (Cri) 27 and **R. Sreenivasa Vs. State of Karnataka** (2024) 17 SCC 426.

39. In the light of the above pronouncements of Hon'ble Apex Court, we shall now consider whether in the present case, the prosecution succeeded in establishing the chain of the circumstances leading to an inescapable conclusion that the accused-appellant had committed the crime. In the present case, the prosecution, in order to prove its case mainly relied on the following circumstances:

(1) The death of the deceased Suman was homicidal in nature.

(2) Deceased-Suman was last seen with the accused-appellant Sripal going towards Jungle 8-9 days before the murder of Suman.

40. The autopsy on the body of the deceased was conducted by PW-5, Dr. Pawan Kumar Jain. According to him following injuries were found on the dead body:

"1. Abrasion in the shape of a circle measuring 6 x 5 c.m. and located directly on the outside of the forearm.

2. Lacerated wound measuring 0.5 c.m. X 0.5 c.m. X muscle deep. Located on the inside of the left elbow.

3. There were four small lacerated wounds measuring 13 c.m. X 1 c.m. on the front of the middle part of the left leg, measuring 0.5 c.m. X 0.5 c.m. and deep to the muscle deep flesh.

4. There were numerous abrasion marks on both sides of the neck measuring from 2.5 c.m. X 2.0 c.m. To 1.50 c.m. X 1.00 c.m."

41. In the opinion of the doctors, the death occurred 4 to 6 days prior to the date of post-mortem. The hyoid bone was also found fractured. Doctor further opined that the cause of death of the deceased was asphyxia due to ante-mortem strangulation.

42. On the basis of the ante-mortem injuries of the deceased, it has been opined by the doctor that the cause of death of the deceased Suman was due ante-mortem strangulation. According to the medical evidence, it is clear that deceased Suman suffered a homicidal death.

43. So far as the last seen evidence is concerned, PW-10, Kusum deposed that her sister (deceased) was married to Sripal (accused) about 12-13 years ago. Deceased had two sons, namely Vansh, aged about 5 years and Ansh, aged about 2-1/2 or 3 years. She further deposed that on the date of occurrence, she saw Sripal (accused), Suman (deceased) along with both the sons going towards Jungle. Thereafter, she had not seen her sister and her sons Vansh and Ansh. When she enquired from Sripal (accused) as to where is Suman and her sons, he replied that he has done them to death. In her cross-examination, PW-10-Kusum deposed that she saw the deceased going with the accused-appellant 8-9 days before the death of the deceased. Thereafter again accused-appellant met her 2-3 days and told her that he has eliminated the deceased. However, PW-10, Kusum could not specifically tell as to where accused-appellant met her and at what distance she saw the accused going with the deceased. Further PW-10 Kusum was unable to recollect date, time and year when she saw the accused-appellant with the deceased. Even she was not able to specify the place where she met with the accused. Moreover, she was not able to produce the said mobile phone and also could not recollect her mobile number.

44. From the above deposition of PW-10, Kusum, it would be unsafe to hold that chain to circumstantial evidence is complete and after the recovery of dead body and post-mortem report she has cooked up this false story to implicate the accused-appellant.

45 Now coming to the next submission of learned counsel for the appellant that there are material contradictions in the depositions of PW-1, Sripal (first informant) and PW-10, Kusum.

46. Before appreciating the next contention of learned counsel for the appellant that there are material contradictions in the statements of the witnesses, it would be useful to refer certain pronouncements of Hon'ble Supreme Court:

47. In State represented by **Inspector of Police Vs. Saravanam and another, AIR 2009 SC 152**), Hon'ble Supreme held that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Trial Court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons.

48. In **State of Rajasthan Vs. Rajendra Singh**, (2009) 11 SCC 106 held as under:

“Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. “

49. In **Mahendra Pratap Singh Vs. State of Uttar Pradesh**, (2009) 11 SCC 334) held as under:

“ The discrepancies in the evidence of eye-witnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that prosecution proved its case beyond reasonable doubt.”

50. In the light of the aforesaid observations of Hon'ble Supreme Court, we will now consider whether the contradictions/omissions had been of such magnitude that they may have materially affected the trial

51. PW-10, Kusum deposed that she has informed her father, PW-1 about the death of the deceased, whereas the first information report has been lodged by PW-1, Prem Chandra on 29.08.2011 in which it has been clearly stated that PW-10, Kusum has informed him on telephone that she has been told by accused-appellant that deceased-Suman is missing for the last two days along with children. Further, PW-10 in her deposition stated that a written report has been lodged in respect of demand of motorcycle by accused-appellant as additional dowry, whereas PW-1, Prem Chandra deposed that he has not made any application in respect of demand of dowry or torture of the deceased either to any police officer or Women Commission or Human Rights Commission. Moreover, PW-1, in his examination-in chief has deposed that he has received an information from his daughter Kusum-PW-10 that deceased is missing, whereas in his cross-examination he has stated that information in respect of death of the deceased has been given by PW-10. Moreover, the first informant has mentioned in the FIR making suspicion that his daughter has been done to death by the accused-appellant.

52. In view of the above discrepancies, it can be held that the prosecution witness are not reliable.

53. So far as the submission of learned counsel for the appellant that the appellant has been falsely implication in the present case at the instance of Pradhan Bhupendra Jaat is concerned, it is to be noted that accused-appellant in his statement under Section 313 Cr.P.C. has stated that Sonu, husband of Kusum, PW-10 is employed with Pradhan Bhupendra Jaat and witness Kusum is also working in his house. Pradhan Bhupendra Jaat has forcibly grabbed his house and at his instance he has been falsely implicated in this case. PW-1, Prem Chandra, the first informant has specifically deposed in his cross examination that after getting the information in respect of death of his daughter, the deceased, he left for the house of the deceased, which is 3 kms away. Police station is also situated near the house of the deceased. From Doghar, he left for Budhana, where police station Kotwali is also situated. Thereafter, he left Budhana for Shahpur and from Shahpur to Muzaffarnagar and from Muzaffarnagar to Chhappar and thereafter to Baseda. Although, police station were situated at all the places, but he (PW-1, the first informant) did not care to lodge the first information report at any of the police station.

54. He further deposed that after reaching Baseda, he stayed at the house of Pradhan Bhupendra Jaat for 3-4 days and got the first information report lodged at police police Chhappar. PW-1 has also stated that “ after the marriage there was dispute between the accused-appellant and the deceased for certain reasons “ has been written on the dictation of Pradhan, who was standing

besides the Constable (Deewan Ji) and dictating the report. He also deposed that accused-appellant was caught by Udai Veer and Bhupendra Jaat and was brought to Baseda. Thereafter, police was informed, who came there and arrested the accused.

55. From the above deposition of the first informant, PW-1, false implication of the accused-appellant at the best of Pradhan Bhupendra Jaat cannot be ruled out.

56. This Court is of the view that the evidence produced by the prosecution has neither quality nor credibility and it would be unsafe to rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in the case is not sufficient to bring home guilt of the appellant.

57. Accordingly, the order dated 17.5.2017 passed by the Additional Sessions Judge, Fast Track Court No. 3, Muzaffarnagar in ST No. 131 of 2012 arising out of Case Crime No. 260 of 2011, under Sections 498-A, 302, 201 IPC and of Dowry Prohibition Act, PS Chhapar, district Muzaffarnagar is set aside.

58. Consequently the appeal is allowed.

59. Appellant Sripal is in jail. He shall be released forthwith unless wanted in any other case.

60. Appellant is directed to comply with the provision of Section 437-A Cr.P.C./ 481 of BNSS.

61. Office is directed to transmit a copy of this order along with trial court record to the court concerned for compliance and compliance report be submitted to this Court within two months.

(2026) 1 ILRA 685
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.01.2026

BEFORE

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

Criminal Appeal No. 398 of 2018

Girraj Singh

...Appellants

Versus

State of U.P.

...Respondent

Issue for consideration

The present matter relates to a criminal appeal challenging the conviction of the appellant under section 302 IPC for the alleged murder of deceased. The deceased was last seen with the appellant and his dead body was later found with an electric wire around his neck inside the appellant's house.

Headnotes

Indian Penal Code,1860-Section 302-Criminal Procedure Code,1973-Section 374(2)- Murder-Circumstantial evidence-Last seen theory-Recovery of dead body from appellant's house-Material witnesses including mother and brother of deceased turned hostile-PW-1(informant) testimony not corroborated by independent evidence-No motive established-Significant time gap between alleged last seen and probable time of death-Chain of circumstances not complete-Conviction unsustainable-Acquittal justified.(Para 43 to 51) (E-6)

Held

The court held that Section 106 of the Evidence Act cannot be invoked to shift the burden on the accused unless the prosecution first proves foundational facts. Since the prosecution failed to discharge its primary burden, the conviction under section 302 IPC unsustainable. Appeal allowed.

Case law Cited

Sujit Biswas Vs State of Assam (2013) 12 SCC 406, Raj Kumar Singh alias Raju alias Batya Vs State of Rajasthan (2013) 5 SCC 722, Ramreddy Rajesh Khanna Reddy & Anr. Vs State of A.P. (2006) 10 SCC 172 & Kali Ram Vs State of H.P. (1973) 2 SCC 808
 State of M.P. Vs Balveer Singh (2025) INSC 261, Chetan Vs State of Karnataka , 2025 INSC 793, Sharad Birdhichand Sarda Vs State of Maharashtra, AIR (1984) (SC) 1622, Padala Veera Reddy Vs State of A.P. 1989 Supp (2) SCC 706, Gambhir Vs State of Maharashtra, (1982) 2 SCC 351", State of U.P. Vs Ashok Kumar Srivastava , (1992) Cri. L.J. 1104, C.Chenga Reddy & Ors Vs State of A.P. (1996) 10 SCC 193, Ramreddy Rajesh Khanna Reddy & Anr. Vs State of A.P. (2006) 10 SCC 172, Anil Kumar Singh Vs State of Bihar , (2003) 9 SCC 67 & Reddy Sampath Kumar Vs State of A.P., (2005) 7 SCC 603), Sattatiya Vs State of Maharashtra, (2008) 3 SCC 210, Rambraksh alias Jalim Vs State of Chhatishgarh, 2016 (12) SCC 251, Krishnan alias Ramasamy & Ors Vs State of Tamil Nadu, (2014) 12 SCC 279, In Kanhaiya Lal Vs State of Rajasthan, (2014) 4 SCC 715, Khujji alias Surendra Tiwari Vs State of M.P. 1991(3) SCC 627, State of U.P. Vs Ramesh Prasad Misra, Selvamani Vs State represented by the inspector of Police 2024 SCC OnLine SC 837, Sawal Das Vs State of Bihar , (1974) 4 SCC 193, Gargi Vs State of Haryana, 2019(3) SCC (Cri) 785-referred to.

List of Acts

Indian Penal Code,1860, Criminal Procedure Code,1973.

List of Keywords

Murder, circumstantial evidence, last seen theory, Hostile witness, burden of proof, Presumption, Motive, Recovery of dead body, Adverse inference, Chain of circumstance, Benefit of doubt.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 398 of 2018 14.01.2026

Girraj Singh Vs. State of U.P.

From the Judgment and order dated 14.01.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-

Shiv Shanker Yadav, Shivam Dwivedi

Adv. for Respondent(s):-

A.G.A.,

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

1. This criminal appeal has been filed against the judgement and order dated 14.12.2017 passed by Additional District and Sessions Judge, Court No.13, Agra in Session Trial No. 380 of 2012, arising out of Case Crime No. 320 of 2012, under Section 302 IPC, Police Station Sikandara, District Agra whereby the learned Judge convicted and sentenced the appellant to life imprisonment and a fine of Rs. 50,000/- under Section 302 IPC and in case of default in payment of fine, the appellant was further directed to undergo six months additional imprisonment.

Brief facts

2. The facts that formed the bedrock of the instant criminal appeal are that a written report was given on 29.04.2012 by the first informant Ram Khiladi written by one Mukesh Kumar at the police station Sikandara, district Agra that he is resident of Haat Maidan, police station Raja Kheda, district Dhaulpur and is presently residing in Mohalla Vinayak Nagar, police station Sikandar. At about 2.00 PM on 28.04.2012, when he along with his son Rakesh aged about 24 years and his elder son Raju were present at his house, at that time Girraj (hereinafter referred to as "the appellant") son of Deewan Singh, resident of Shiva Kunj Colony, K.K. Nagar, police station Sikandara, district Agra came there and took his son-Rakesh (hereinafter referred to as "the deceased") with him. When Rakesh did not return till 10:00 PM, the first informant went to the house of Girraj to enquire about Rakesh, whereupon Girraj told him that Rakesh has gone to Dargah. The first informant along with other persons made a hectic search for Rakesh, but in vain. The first information report further alleges that when the first informant again went to the house of Girraj, he was not present and when he looked in through the window, his son was lying dead on the cot and electric wire was wrapped around his neck. The first informant suspected that his son was murdered by Girraj.

3. On the basis of the aforesaid written report, a case was registered at case crime No 320 of 2012, under Section 302 IPC by PW-6, Constable 1351 Awadhesh Kumar.

4. After the registration of the case, the investigation of the case was taken up by PW-11, Rajiv Yadav. On 29.04.2012, he copied the contents of relevant documents and took into possession electric wire and one quarter country liquor and recorded the statement of the first informant and inspected the spot on the pointing out of the first informant. He also recorded the statement of witnesses Ram Kumar and Babu Lal and prepared site plan, Ext. K-10. On 30.04.2012, he copied the copy of the inquest report and the postmortem report. He also recorded the statement of Raju, son of Ram Khiladi, the first informant and Smt Maya Devi. After culmination of investigation and completing necessary formalities, the investigating officer submitted charge sheet dated 06.05.2012 against the appellant under Section 302 IPC, Ext. Ka-11.

5. To bring home guilt of the appellant beyond the hilt, the prosecution has examined as many as eleven witnesses. PW-1, Ram Khiladi (the first informant) and father of the deceased, PW-2, Smt Maya Devi, mother of the deceased, PW-3, Babu Lal, PW-4, Raj Kumar, PW-5, Raju, the brother of the deceased, PW-6, Constable Awadhesh Kumar, who prepared Chik FIR, PW-7, Dr. Ajit Baba, who conducted autopsy on the cadaver of the deceased, PW-8, Bhura alias Jalaluddin, PW-8A, Ramdeen, PW-9, Kunwar Pal Singh, PW-10, SI Manikant Sharma, PW-11, Rajiv Yadav, the investigating officer of the case.

6. PW-1, Ram Khiladi, the first informant of the case in his examination-in-chief has deposed that accused used to come to his house. On the date of occurrence, accused came to his house when his wife, son-Rakesh (deceased) and Raju were present. Accused took the deceased on the pretext of attending Bhandara. When the deceased did not return till 09:00 PM, he went to Girraj to enquire about the deceased, who told that he has gone to drive Tempo. Thereafter, he went to Dargah in search of the deceased, but in vain. He further deposed that when the first informant again went to the house of Girraj at 7:00 AM, next day, he was not present and his and his door was locked and when he looked in through the window, his son was lying dead on the cot and electric wire was wrapped around his neck.

7. PW-2, Smt. Maya Devi, who is the mother of the deceased and wife of first informant, PW-3, Babu Lal, PW-4, Raj Kumar, PW-5, Raju, who is the son of the first informant and brother of the deceased, PW-8, Bhura alias Jalaluddin, PW-8A, Ramdeen, PW-9, Kunwar Pal Singh, who have been examined as witnesses of facts have not supported the prosecution case and have been declared hostile and prosecution were permitted to cross-examine them.

8. PW-7, Dr. Ajit Baba has conducted postmortem on the cadaver of the deceased. He found ligature mark of 30 cm x 1-1/2 cm around the neck of the deceased around 6 cm below the chin. In the opinion of the doctor, the cause of death of the deceased was strangulation.

9. After the closure of the prosecution evidence, the statement of the accused-appellant was recorded under Section 313 Cr.P.C., in which he denied the charges levelled against him and claimed to be tried.

10. Learned Additional Sessions Judge, Court No. 13, Agra after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellant as indicated herein above.

11. Hence, this appeal.

Submissions on behalf of the appellant

12. Learned counsel for the appellant submits that the learned trial court, while convicting the appellant, committed a grave error in appreciating the last seen theory. It is contended that the trial court failed to consider that in his examination-in-chief, PW-1, Ram Khiladi deposed that the appellant had asked the deceased to accompany him to attend a Bhandara on 28.04.2012 at about 02:00 PM. PW-1 also stated that the appellant had come to his house in the presence of his wife (Smt. Maya Devi, PW-2 and son (Raju, PW-5), but, neither PW-2, Smt. Maya Devi nor PW-5, Raju supported the prosecution case that the appellant had come to their house to take the deceased to attend the said Bhandara.

13. It is further submitted that it is a settled proposition of law that if the statement of a hostile witness is relied upon for the purpose of convicting an accused, such statement must be corroborated by other reliable evidence, either ocular or documentary. In the present case, the statement made by PW-1, Ram Khiladi in his examination-in-chief has not been corroborated by

any other witness or independent evidence. Therefore, the trial court, while convicting the appellant, has committed a manifest error by arriving at a conclusion contrary to the principles laid down by the Hon'ble Supreme Court as well as the High Courts.

14. It is further submitted that no recovery has been made from the possession of the appellant. Whatever recoveries have been shown by the prosecution were effected only from the alleged vacant house of the appellant and not at the instance or from the possession of the appellant himself.

15. Learned counsel for the appellant also submitted that even if the deposition of PW-1 is assumed to be correct that the appellant had come to his house and had taken the deceased along with him at about 02:00 PM on 28.04.2012 to attend a Bhandara, there is a gap of more than 12 hours between the alleged time of last seen and the probable time of death as opined by the doctor (P.W.-7)." Such a long time gap completely breaks the proximity required to apply the last seen theory. It is further submitted that the entire prosecution case rests solely on circumstantial evidence. Therefore, it was incumbent upon the prosecution to establish a complete and unbroken chain of circumstances pointing only towards the guilt of the appellant. However, the prosecution has miserably failed to do so. It is further submitted that there is no evidence of motive for committing the alleged offence. There was no enmity or dispute between the deceased and the appellant. On the contrary, the deceased and the appellant were friends. It has come in evidence through PW-2, Smt Maya Devi and PW-5, Raju, i.e. wife and son of the informant that the appellant had handed over the key of his house to the deceased for taking care of the vacant house.

16. It is further submitted that on the date of the alleged incident, the appellant was residing at his in-laws' house, as his wife was staying there. The place of occurrence and the place where the appellant was residing are about 22 kms. This fact further weakens the prosecution case. Learned counsel for the appellant further submits that when motive is completely absent, the last seen theory is not supported by the witnesses, and there exists a substantial time gap of more than 12 hours between the alleged last seen and the time of death, the prosecution case becomes highly doubtful. All material witnesses have turned hostile, and even the examination-in-chief of P.W.-1 has not been corroborated by any independent evidence. Consequently, the prosecution has failed to complete the chain of circumstantial evidence. It is further submitted that the appellant was not present at the spot, the house was admittedly vacant, and the key of the house was with the deceased for the purpose of looking after the same. This fact has also been stated by P.W.-2 and P.W.-5 in their cross-examination. Thus, the appellant has sufficiently discharged his burden under Section 106 of the Indian Evidence Act.

17. It is further submitted that the examination-in-chief of P.W.-1 itself is unreliable, as he stated that he saw the dead body of the deceased through the window of the room, however, a bare perusal of the site plan reveals that there is no window in the said house. This material contradiction clearly shows that the testimony of P.W.-1 is not trustworthy and is not supported by documentary evidence. Learned counsel for the appellant further submits that since the entire prosecution case is based on circumstantial evidence and the chain of circumstances is incomplete, and all the material witnesses have turned hostile. The conviction of the appellant based solely on presumption under Section 106 of the Indian Evidence Act, without any credible or clinching

evidence, is unsustainable in the eyes of law. Therefore, the impugned judgment and order passed by the learned trial court are liable to be set aside and the present appeal deserves to be allowed. In support of his submission, learned counsel has placed reliance upon the judgements of Hon'ble Supreme Court in the cases of *Sujit Biswas Vs. State of Assam* (2013) 12 SCC 406, *Raj Kumar Singh alias Raju alias Batya Vs. State of Rajasthan*" (2013) 5 SCC 722, *Ramreddy Rajesh Khanna Reddy and another Vs. State of A.P.* (2006) 10 SCC 172 and *Kali Ram Vs. State of Himanchal Pradesh* (1973) 2 SCC 808.

Submissions on behalf of the State

18. Per contra, S.K. Ojha, learned Additional Government Advocate has vehemently opposed the appeal and submitted that there is no error or illegality in the impugned judgment and order passed by the learned trial court. It is further contended that the trial court has taken into consideration the entire evidence and material available on record and has rightly come to the conclusion that the prosecution has proved its case beyond reasonable doubt by establishing a complete chain of circumstantial evidence. It is further submitted that in his examination-in-chief, PW-1, Ram Khiladi has clearly stated that the appellant came to his house at about 02:00 PM and asked the deceased to accompany him to attend a Bhandara, after which the deceased was missing. Thereafter, when he went to the house of the appellant, he found the deceased lying dead inside the house.

19. Learned Additional Government Advocate further submits that the appellant has failed to explain as to what happened after he took the deceased with him to attend the Bhandara and thereafter left for his in-laws' house. The appellant has also failed to disclose the time and place when both parted company. It is further submitted that since the dead body of the deceased was recovered from the house of the appellant, the burden lies upon the appellant to explain the circumstances under which the deceased was found dead inside his house. The appellant has failed to discharge this burden.

20. Learned Additional Government Advocate also submits that the appellant has not examined any defence witness to establish that at the relevant time he was either present elsewhere or was residing at his in-laws' house. Therefore, the trial court has rightly drawn an adverse inference against the appellant and the conviction recorded does not call for any interference.

21. Learned A.G.A., relying upon the observations made by the learned trial court, further submitted that the appellant has failed to discharge the burden cast upon him under Section 106 of the Indian Evidence Act. It is submitted that as per Section 106 of the Evidence Act, when any fact is especially within the knowledge of an accused, the burden of proving such fact lies upon him. According to the prosecution case, the dead body of the deceased was recovered from the house of the appellant. Therefore, it was incumbent upon the appellant to come forward with a cogent explanation to establish that he was not involved in the commission of the crime and to explain the circumstances under which the deceased was found dead inside his house, including his absence or non-involvement at the relevant time. However, the appellant has failed to offer any such explanation. In support of his submission, learned Additional Government Advocate placed reliance upon the judgment of the Hon'ble Supreme Court in *State of Madhya Pradesh Vs. Balveer*

Singh (2025), INSC 261, wherein it has been held that when incriminating circumstances are within the special knowledge of the accused, failure to explain such circumstances permits the court to draw an adverse inference under Section 106 of the Evidence Act.

22. Learned Additional Government Advocate submitted that the deposition of P.W.-1 clearly established the "last seen" theory and that the recovery of the dead body from the house of the appellant remains unexplained. The appellant has failed to explain how the deceased reached his house or under what circumstances the deceased died therein. In support of his submissions, learned Additional Government Advocate has also relied upon the judgment of the Hon'ble Supreme Court in ***Chetan vs. State of Karnataka, 2025 INSC 793***, to contend that once the prosecution establishes the chain of circumstantial evidence and the accused fails to discharge the burden under Section 106 of the Evidence Act, the conviction is justified. It is thus submitted that the entire chain of circumstantial evidence stands duly established by the prosecution, and the appellant has failed to discharge the burden cast upon him under Section 106 of the Evidence Act. Therefore, there is no illegality or infirmity in the impugned judgment and the present appeal is liable to be dismissed.

Analysis and conclusion

23. There is no eyewitness to the alleged crime. The appellant has been convicted and sentenced on the basis of circumstantial/last seen evidence alone, which, in the considered view of the trial court, forms a complete and unbroken chain so as to rule out every hypothesis other than the guilt of the appellant and excludes the possibility of any other person having committed the offence.

based on circumstantial evidence, settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete forming a chain and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused totally in consistent with his evidence. It has been consistently laid down by the Hon'ble Apex Court that where a case rests on circumstantial evidence, the inference of the guilt can be justified only when all the incriminating facts and circumstances are found to be in compatible with the innocence of the accused or guilt of any other person.

25. ***Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR (1984) (SC) 1622*** is the celebrated judgement on the point, wherein Hon'ble Apex Court has framed five golden principles for the circumstantial evidence, which are as under;

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

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

(iii) *The circumstances should be of conclusive nature and tendency*

(iv) *They should exclude every possible hypothesis except the one to be proved and,*

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

26. In the case of **Padala Veera Reddy v. State of A.P., 1989 Supp (2) SCC 706**, Hon'ble Apex Court opined as under:

"10. Before advertng to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Gambhir v. State of Maharashtra, (1982) 2 SCC 351)"

27. In **State of U.P. Vs. Ashok Kumar Srivastava, (1992) CrI. L.J. 1104**, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in the favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have fully established and cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

28. In the case of **C. Chenga Reddy & Ors. v. State of A.P., (1996) 10 SCC 193**, Hon'ble Apex Court while considering a case of conviction based on the circumstantial evidence, held as under:

"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present

case the courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence."

29. In the case of **Ramreddy Rajesh Khanna Reddy v. State of A.P., (2006) 10 SCC 172**, Hon'ble Apex Court again considered the case of conviction based on circumstantial evidence and held as under:

*"26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See **Anil Kumar Singh v. State of Bihar, (2003) 9 SCC 67** and **Reddy Sampath Kumar v. State of A.P., (2005) 7 SCC 603**)."*

30. In the case of **Sattatiya v. State of Maharashtra, (2008) 3 SCC 210**, Hon'ble Apex Court held as under:

"10. We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances." This Court further observed in the aforesaid decision that:

*"17. At this stage, we also deem it proper to observe that in exercise of power under Article 136 of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court--**Bharat v. State of M.P., (2003) 3 SCC 106**."*

31. In **Rambraksh alias Jalim Vs. State of Chhatisgarh, 2016(12) SCC 251**, Hon'ble Supreme Court observed that the last seen theory applies only when the time gap between the last seen point and the discovery of the death is so small that no one else could have committed the crime. Even then, this circumstance alone is insufficient and the prosecution must establish a complete chain of circumstances proving the accused's guilt. The Court further held as under:

"It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last

alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused."

32. In **Krishnan alias Ramasamy and others Vs. State of Tamil Nadu, (2014)12 SCC 279**, Hon"ble Supreme relying on its earlier decision in *Arjun Marik Vs. State of Bihar, 1994 Supp (2) SCC 372*, held as under

"Thus, the evidence that the appellant had gone to Sitaram in the evening of 19.07.1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive . Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But, it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."

33. In **Kanhaiya Lal Vs. State of Rajasthan, (2014) 4 SCC 715**, Hon"ble Supreme Court held that evidence of last seen together is a weak evidence and conviction only on the basis of last seen together without there being any other corroborative evidence against the accused will not be sufficient to convict the accused for an offence under Sections 302 and 201 IPC.

34. In the light of the above pronouncements of Hon'ble Apex Court, we shall now consider whether in the present case, the prosecution succeeded in establishing the chain of the circumstances leading to an inescapable conclusion that the accused-appellant had committed the crime.

35. PW-1 Ram Khiladi is the first informant of the case. He is not an eyewitness of the case. He deposed that the appellant used to visit his house. He visited his home one day before the occurrence and took his son with him in the presence of his wife, PW-2, Smt Maya Devi and his son, PW-5, Raju. He further deposed that in the night when he went to the house of the appellant to enquire about the deceased, he was told that the deceased has gone to drive Tempo. Thereafter, he searched the deceased near Dargah, but in vain. He further deposed that when he visited the house of the appellant next day in the morning, the house of the appellant was locked and when he looked in through the window, his son was lying dead on the cot.

36. PW-2, Maya Devi is the mother of deceased and is not an eye witness of the occurrence. She deposed that she does not know the accused-appellant. He had not come to her house to call her son, the deceased. She further deposed that neither she went to search the accused nor she saw the occurrence. She also does not know the accused-appellant. On the aforesaid deposition, she was declared hostile and have not spoken a single word against the appellant.

37. Similarly, PW-3, Babu Lal, PW-4 Raj Kumar, PW-5, Raju, brother of the deceased, PW-8, Bhoola alias Jalaluddin, PW-8A, Ramdeen and PW-9, Kunwar Pal Singh have not supported the prosecution case and they have been declared hostile.

38. It is settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of either the prosecution or the accused. It would rather have to be subjected to closer scrutiny and that portion of the evidence, which is consistent with the case of the prosecution or defence may be accepted.

39. In **Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh, 1991(3) SCC 627**, Hon"ble Supreme Court held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny.

40. In **State of U.P. Vs. Ramesh Prasad Misra, (1996)10 SCC360**, Hon"ble Supreme Court held as under:

"Evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon."

41. Hon"ble Supreme Court in **Selvamani Vs. State represented by the Inspector of Police, 2024 SCC OnLine SC 837**, after considering a catena of decision held that law on the point can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law can be used by the prosecution or the defence.

42. In this case, PW-2, Smt. Maya Devi, who is the wife of the first informant and mother of the deceased in her deposition has totally denied the prosecution case. Moreover, PW-3, Babu Lal, PW-4 Raj Kumar, PW-5, Raju, brother of the deceased, PW-8, Bhoora alias Jalaluddin, PW-8A, Ramdeen and PW-9, Kunwar Pal Singh have also not supported the prosecution case. None of the witnesses in their deposition have made any whisper about participation of the accused-appellant in the instance case. Even PW-2, Maya Devi, who is the wife of the first informant and mother of the deceased and PW-5, Raju brother of the deceased have not uttered a single word against the appellant. Moreover, PW-2, Maya Devi in her cross-examination has stated that her husband, the informant has wrongly got the name of the appellant written in the FIR and that the appellant has not taken the deceased with him. In her cross-examination, she has further deposed that appellant resides in his in-laws" house and key of his house was with the deceased. The evidence of PW-1, Ram Khiladi has not been corroborated by any other reliable witnesses either in the form of ocular or documentary. Even PW-1, the informant, in his cross-examination, which was done on 18.01.2016 has specifically deposed that on the date of occurrence, his both sons namely Rakesh (deceased) and Raju-PW-5 went to tent house, where they were working. Raju-PW-5 returned in the evening, but he did not tell about the whereabouts of Rakesh. PW-1 also stated that he did not know as to what was written in the first information report. The contents of the FIR was not read over to him. He also does not know Mukesh, who has written the report. The report was got written by the Constable in the police station. The dead body of his son was lying on the road.

43. From the conjoint reading of deposition of PW-1, Ram Khiladi, it is apparent that neither he was the witness of last seen, nor he witnessed the dead body of the deceased as alleged by the prosecution.

44. We also find that there was no motive for the appellant to commit the murder of the deceased. Further, there was no dispute or enmity of the deceased with the appellant, rather they were close friends and key of the house of the appellant was with the deceased as deposed by PW-2, Maya Devi and PW-5 Raju that the appellant had handed over the key of his house to the deceased for taking care of his vacant house.

45. So far as the contention of learned Additional Government Advocate that it was incumbent upon the appellant to come forward with a cogent explanation to establish that he was not involved in the commission of the crime and to explain the circumstances under which the deceased was found dead inside his house. This contention of learned Additional Government Advocate has no leg to stand in the facts of the present case inasmuch as not a single prosecution witness in his testimony has deposed that the dead body was recovered from the house of the appellant and that the appellant has taken the deceased for attending Bhandara, and they do not support the prosecution case of last seen theory.

46. It is a cardinal principle of criminal jurisprudence that Section 106 of the Evidence Act shall apply and the onus to explain would shift on to the accused only after the prosecution succeeds in establishing the basic facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. In the instant case, we find that the prosecution has totally failed to shift the onus on the accused to explain the basic facts.

47. In **Sawal Das Vs. State of Bihar, (1974) 4 SCC 193**, Hon"ble Supreme Court held as under:

Neither an application of Section 103 nor of 106 of the Evidence Act, could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or, which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused.

8. Hon"ble Supreme Court in **Gargi Vs. State of Haryana, 2019(3) SCC (Cri) 785**, held thus:

Insofar as the "last seen theory" is concerned, there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt of the appellant is to be drawn. The Trial Court and the High Court have proceeded on the assumption that Section 106 of the Indian Evidence Act of the Indian Evidence Act directly operates against the appellant. In our view, such an approach has

also not been free from error where it was omitted to be considered that Section 106 of the Indian Evidence Act does not absolve the prosecution of its primary burden.

49. We have carefully scrutinized and assessed the evidence of all the prosecution witnesses. This Court is of the view that the evidence produced by the prosecution has neither quality nor credibility and it would be unsafe to rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in the case is not sufficient to bring home guilt of the appellant.

50. Accordingly, the order dated 14.12.2017 passed by Additional District and Sessions Judge, Court No.13, Agra in Session Trial No. 380 of 2012 arising out of Case Crime No. 320 of 2012, under Section 302 IPC, Police Station Sikandara, District Agra is set aside.

51. The appeal is allowed.

52. Appellant Girraj Singh is in jail. He shall be released forthwith unless wanted in any other case.

53. Office is directed to transmit a copy of this order along with trial court record to the court concerned for compliance and compliance report be submitted to this Court within two months.

(2026) 1 ILRA 697
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 13.01.2026

BEFORE

THE HON'BLE ACHAL SACHDEV, J.

Criminal Appeal No. 452 of 2021

Bhagwat Kushwaha

...Appellant

Versus

State of U.P.

...Respondent

Issue for Consideration

The appellant challenged the conviction passed by the Special Judge (POCSO) for offences under sections 366 and 376 IPC.

Headnotes

A. Indian Penal Code,1860-Sections 366, 376- Criminal Procedure Code, 1973-Section 374(2)- Juvenile Justice (Care and Protection of Children) Act, 2015-Section 94-Protection of Children from Sexual Offences Act,2012-Section 3/4,29-Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989-Section 3(2)(v)-Rape-Consent-Major prosecutrix-Love-affair-Statement under section 164 CrPc admitting voluntary departure-Subsequent improvement alleging forcible abduction and rape-Absence of injuries- Medical evidence not supporting sexual assault-Ossification test-Margin of error-Absence of documentary proof-Prosecutrix treated as major-Testimony suffers from material inconsistencies and not

corroborated by medical evidence-Benefit of doubt to accused-Conviction unsustainable.(Para 25 to 70) (E-6)

Held

The court ruled that the prosecutrix was rightly held to be major. In absence of documentary evidence regarding age, reliance on ossification test with permissible margin of error was proper in view of the principles laid down in Jarnail Singh Vs. St.of Haryana and Mahadeo Vs. Maharastra. Appeal allowed. Conviction and sentence set aside.

Case law Cited

Jarnail Singh Vs State of Haryana, 2013 AIR SC 3467, Mahadeo Vs State of Maharashtra, (2013) 14 SCC 637 and Jaimala Vs Secretary (Home), State of J&K, AIR 1982 SC,Kaini Rajan Vs State of Kerala, (2013) 9 SCC 113,State (GNCT of Delhi) Vs Vipin @ Lalla, 2025 SCC OnLine SC 78,Vijaya Singh & Anr. Vs State of Uttarakhand, 2024 SCC Online SC 3510-referred to.

List of Acts

Indian Penal Code,1860, Criminal Procedure Code, 1973, Juvenile Justice (Care and Protection of Children) Act, 2015, Protection of Children from Sexual Offences Act,2012, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989.

List of Keywords

Age determination, Ossification test, Major, Minor, Consent, Voluntary elopement, Contradictory testimony, Medical evidence, Benefit of doubt, Burden of proof, Section 164 Statement.

Case Arising From

CRIMINAL JURISDICTION:_CRIMINAL APPEAL No. – 452 of 2021

Bhagwat Kushwaha Vs. State of U.P.

From the Judgment and Order dated 13.01.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-

Abhishek Mayank, Abhishek Srivastava, Arbaz Danish, Vipin Kumar, Zia Naz Zaidi

Advs. for Respondent(s):-

G.A., Rajesh Kumar Singh, Vinay Kumar Singh

(Delivered by Hon'ble Achal Sachdev, J.)

1. Heard Sri Abhishek Mayank, learned counsel for the appellant, Sri Vinay Kumar Singh, learned counsel for the informant and Sri Sanjay Singh, learned A.G.A.-I for the State.

2. This criminal appeal has been filed by the appellant against the judgement and order dated 05.09.2019 and sentence order dated 06.09.2019 passed by Special Judge (POCSO), Additional Sessions Judge, Court No.07, District- Jhansi, in Special Sessions Trial No. 41 of 2015 (State of U.P. Vs. Bhagwat Kushwaha) arising out of Case Crime No. 64 of 2015, Police Station- Sakrar, District- Jhansi, whereby the appellant has been convicted and sentenced to undergo five years imprisonment and fine of Rs.10,000/- u/s 366 I.P.C. and ten years imprisonment and fine of Rs.20,000/- u/s 376 I.P.C. along with default stipulation.

3. The facts of the case in brief, as per the prosecution case are that on 28.05.2015 at 12:25 pm, a written report was made by the informant Ramswaroop, son of Ghanshyam, resident of village- Luhari, Police Station- Sakrar, District- Jhansi stating that his daughter had gone missing since 3:00 am on 28.05.2015 and then they realized that their daughter had been kidnapped by Bhagwat, son of Munnu Kushwaha, of their village.

4. The police registered a criminal case as Case Crime No. 64 of 2015 dated 28.05.2015 on the basis of the information against the appellant, Bhagwat under Sections 363, 366 and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes Act (hereinafter referred to as the S.C./S.T. Act) and commenced investigation.

5. The victim was recovered by the police on 29.05.2015 from Mauranipur railway station by the police and her statement was recorded and medical examination was conducted on 30.05.2015 and ossification test for determination of age was done on 02.06.2015 wherein the victim was found to be aged 17 years. The statement of the victim was recorded before the Magistrate on 04.06.2015. The accused/appellant was arrested on 04.06.2015. The Investigating Officer, after completion of evidence, filed charge-sheet against the accused/appellant under Sections 363, 366 and 376 I.P.C., Section 4 of Protection of Children from Sexual Offences Act (hereinafter referred to as the POCSO Act) and Section 3(2)(v) of the S.C./S.T. Act.

6. The trial court, after taking cognizance of offences described in the charge-sheet, after giving the appellant an opportunity of being heard, framed charge under Sections 363, 366 and 376 I.P.C., Section 3/4 POCSO Act and Section 3(2)(v) of the S.C./S.T. Act.

7. The prosecution examined 8 witnesses to prove their case and has proved 8 documents in documentary evidence. The list of witnesses examined is as follows :-

S.No.	Name of witness	Category	Document proved
PW-1	Ramswaroop	Informant (father of victim & witness of fact)	Exhibit Ka 11 (Written Report)
PW-2	Rajkumari	mother of victim & witness of fact	Exhibit Ka 1 & 2 (statement of victim under s.164 Cr.P.C.)
PW-3	Victim designated X	Victim	
PW-4	Dr. Rashmi Singh Kushwaha	Medico Legal (Formal witness)	Exhibit Ka 3 (Medico Legal Examination report) Exhibit Ka 4 Supplementary report
PW-5	Dr. M.S. Rajput	Pathologist	Exhibit Ka 5 (Vaginal smear examination report)
PW-6	Dr. Rajendra Singh	Radiologist (formal witness)	Exhibit Ka 6 (Ossification test report)

PW-7	Jitendra Kumar Dubey	Investigation officer	Exhibit Ka 7 (Charge Sheet) Exhibit Ka 8 (site plan)
PW-8	Constable Magan Singh	Constable clerk	Exhibit Ka 9 (FiR) Exhibit Ka 10 (General Diary entry no.25)

8. Their testimony, in brief, is enumerated hereunder

(i) PW-1 Ramswaroop is the informant of the case and father of the victim. The informant is not an eye witness. The informant, in his evidence before the court, in his examination in chief, has stated that on 28.05.2015, they were sleeping inside their house and their daughter, the victim was also sleeping on rooftop of the house. They were sleeping under neem tree. That at around 3:00 hrs at night, when his wife woke up, she found that their daughter (victim) was missing and she had been taken away by Bhagwat Kushwaha. On a previous occasion as well, the appellant took away his daughter and in relation to that incident, an F.I.R. was registered against him and the case is pending. His wife told him that Bhagwat was seen roaming around the house at night prior to the incident. In cross-examination, the witness states that his daughter was recovered after two days. For the sake of convenience, the written application filed by PW-1 Ramswaroop at Police Station- Sakrar, District- Jhansi, is being reproduced hereunder :-

" निवेदन है कि प्रार्थी रामस्वरूप S/O घनश्यामदास अहिरवार निवासी लुहारी थाना सकरार झांसी विनीता D/O रामस्वरूप 12.00 बजे रात्रि में घर पर थी इस कारण हम लोग सो गये माँ रात्रि में तीन बजे जगी तो बच्ची नहीं मिली तो हमें ऐहसास हुआ तो भगवत S/O मन्नु कुशवाहा का लड़का लेकर भाग गया 28/5/2015 की तारीख थी।

अतः श्री मान् जी से निवेदन है कि उचित कानूनी कार्यवाही करने की कृपा की जाय।"

(ii) PW-2 Rajkumari is mother of the victim and is not an eye witness.

(iii) PW-3 X is the victim and she in her examination-in-chief has stated before the court on oath that the incident took place at about 1 year from today at 12 at night. Then the accused Bhagwat came to her house and forcibly took her with him and on the way in a field, he raped her. Then he took her to Mauranipur and from there, he took her to Jhansi by bus and after two days, he brought her back to Mauranipur from Jhansi and at Mauranipur Railway Station, the police had apprehended them and then brought them back to the police station and on 02.06.2015, she was brought to Mahila Thana where the police recorded her statement in which she had stated that Bhagwat had forcibly raped her in the field and on the same day, she was taken to the district hospital where her medical examination was conducted in the presence of her mother to which she has consented. The police produced her in the court where her statement was recorded by the Magistrate. The witness has proved the statement as Ext.Ka.2. In her examination-in-chief, the witness has stated that . she forgot to tell the Magistrate about rape. In her cross-examination, the witness states that her father is a homeguard and further states that she does not remember the date of incident and she does not remember the month or year of the incident. Bhagwat came at 12 in the night to take her along with him and he had her open the door of the house and forcibly took her

away. She raised an alarm but nobody heard it. Her father and mother were at home. The police recovered her after two days from Mauranipur. She further states that she went to Mau with Bhagwat and they reached Mau at 3 in the morning by bus and from there, he took her to Jhansi by bus. She raised an alarm but nobody heard it. Her statement was recorded in the Court u/s 164 Cr.P.C. in which she did not tell that she loved Bhagwat and went along with him on her own will. The Magistrate has recorded wrong statement. She had told the Magistrate about her age being 18 years. The Magistrate recorded her incorrect statement. She did not tell the Magistrate about rape. Therefore, he did not write it in her statement. She raised alarm in Mau and she did not raise any alarm in Jhansi. She did not go along with Bhagwat of her own free will. She got married about one year back in Gwalior of her own free will and consent. Her father was on duty at the time of the incident. She is literate but did not take admission in school.

(iv) PW-4 is the doctor who had medically examined the victim on 30.05.2015 and had referred her for ossification test and had also obtained the vaginal swabs of victim to have them checked for presence of live or dead spermatozoa. The doctor did not find any external marks of injury on the body of the victim. On medical examination of the victim, he found that hymen of victim had old tear that had healed and after going through pathological examination report of vaginal smear, the doctor did not find any evidence of recent sexual activity.

(v) PW-5 Dr. M.S. Rajput conducted the pathological examination of vaginal smear and did not find any live or dead spermatozoa in the slides.

(vi) PW-6 Dr. Rajendra Singh conducted ossification test and took x-ray of the victim on 01.06.2015 in order to determine the age of the victim and opined the victim to be 17 years of age on following grounds :

Epiphyses around the elbow joint have fused, Epiphyses of lower ends of radius & ulna bones have lines of fusion seen, Epiphyses of inner ends of both clavicles have not fused, Epiphyses around the knee joint have fused, secondary ossification centre of iliac crest have not fused.

The X-Ray plates have not been produced in evidence by the prosecution.

(vii) PW-7 Jitendra Kumar Dubey is the Investigating Officer of the case.

(viii) PW-8 Constable Magan Singh was Constable clerk at Police Station- Sakrar.

9. After recording prosecution evidence, statement of appellant was recorded under Section 313 Cr.P.C. wherein the appellant alleged false implication and the witnesses were inimical due to village rivalry.

10. However, the appellant did not produce any evidence in his defence.

11. After hearing the arguments of prosecution and defence, the trial court acquitted the accused/appellant of charge under Section 363 I.P.C., Section 3 read with 4 of the POCSO Act and Section 3(2)(v) of S.C./S.T. Act.

12. The trial court found the appellant guilty of offence under Section 366 I.P.C. and convicted the appellant to imprisonment for a term of 5 years and fine of Rs.10,000/- and in default, the appellant had to undergo further imprisonment for a term of 3 months.

13. The trial court found the appellant guilty of offence under Section 376 I.P.C. and convicted the appellant to rigorous imprisonment for a term of 10 years and fine of Rs. 20,000/- and in default, the appellant had to undergo further imprisonment for a term of 6 months.

14. Hence the present appeal.

15. Heard learned counsel for the appellant, learned A.G.A. and learned private counsel for the victim and perused the record of the case.

16. Learned counsel for the appellant submits that despite the fact that the trial court itself had held the victim to be a major, it ignored the medical evidence produced by the prosecution which does not support prosecution case and failed to apply judicial mind diligently when holding the appellant guilty of offence under Section 363 I.P.C. and Section 376 I.P.C. The appellant has been falsely implicated.

17. Learned A.G.A. and learned counsel for the informant have submitted that the trial court judgment does not suffer from any irregularity and the trial court has rightly convicted the appellant of the offences charged after correct appreciation of evidence on record.

18. Perused the record.

19. The informant of the case PW-1 is father of the victim. The First Information Report was registered at the police station on 28.05.2015 at 12:25 hrs and the victim was recovered by the police on 29.05.2015 and the victim was medically examined on 30.05.2015. An ossification test for determination of age was conducted on 02.06.2015 wherein the victim was held to be 17 years old. The ossification report has been proved as Exhibit Ka 6 by radiologist PW-6 Jitendra Kumar Dubey. The appellant/accused was arrested on 04.06.2015.

20. As per the evidence of the radiologist PW-6, the victim was 17 years old and a minor.

21. The Hon ble Supreme Court, in the case of **Jarnail Singh Vs State of Haryana, 2013 AIR SC 3467, in para 22 & 23**, has outlined the procedure to be adopted for the determination of the age of a minor victim :-

..22. On the issue of the determination of the age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The aforementioned 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Rule 12 referred to hereinabove reads as under :

12. Procedure to be followed in the determination of age.

(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be, the Committee, shall decide the juvenility or otherwise of the juvenile or the child or as the case may be, the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining (a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat; (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing an appropriate order in the interest of the juvenile in conflict with law.

23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with the law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has an overriding effect over an option expressed in a subsequent clause. The highest-rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), a matriculation (or equivalent) certificate of the child concerned is the highest-rated option. In case the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid that Rule 12(3) postulates the determination of the age of the child concerned, on the basis of medical opinion.

22. Section 94 of the Juvenile Justice (Care & Protection of Children) Act, 2015 provides-

"94. (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination by seeking evidence by obtaining

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of a person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person. (emphasis supplied)”

23. Before proceeding further, the provisions of law involved in this appeal must be referred to :-

Section 27 of the POCSO Act -

"27. Medical examination of a child. (1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973 (2 of 1973).

(2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

(4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution."

Section 164 of the Code of Criminal Procedure, 1973 (as amended) --

164A. Medical examination of the victim of rape -

(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely :

- (i) the name and address of the woman and of the person by whom she was brought;*
- (ii) the age of the woman;*
- (iii) the description of material taken from the person of the woman for DNA profiling;*
- (iv) marks of injury, if any, on the person of the woman;*
- (v) general mental condition of the woman; and*
- (vi) other material particulars in reasonable detail.*

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf. Explanation. For the purposes of this section, "examination" and "registered medical practitioner" shall have the same meanings as in section 53.

Section 29 of The Protection Of Children From Sexual Offences Act, 2012 -

"29. Presumption as to certain offences - Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved."

Section 2(12) of the Juvenile Justice (Care and Protection of Children) Act, 2015 defines a child means a person who has not completed eighteen years of age;

24. Section 34 of The Protection Of Children From Sexual Offences Act, 2012 prescribes the authority and procedure for the determination of the age of a minor in conflict with law/minor victim.

34. Procedure in case of commission of offence by a child and determination of age by the Special Court -

(1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000).

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person, and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person determined by it under sub-section (2) was not the correct age of that person.

25. In **Rishipal Singh Solanki, (2022) 8 SCC 602**, this Court, while dealing with an appeal filed by the father of the deceased, noted the difference between the Rules 2007 and the JJ Act 2015. It was observed:

"29. The difference in the procedure under the two enactments could be discerned as under:

29.1. As per the JJ Act, 2015, in the absence of the requisite documents as mentioned in clauses (i) and (ii) of Section 94(2), there is a provision for the determination of the age by an ossification test or any other medical age-related test to be

Conducted on the orders of the Committee or the JJ Board as per Section 94 of the said Act; whereas, under Rule 12 of the JJ Rules, 2007, in the absence of relevant documents, a medical opinion had to be sought from a duly constituted Medical Board which would declare the age of the juvenile or child.

29.2. With regard to the documents to be provided as evidence, what was provided under Rule 12 of the JJ Rules, 2007, has been provided under sub-section (2) of Section 94 of the JJ Act, 2015 as a substantive provision.

29.3. Under Section 49 of the JJ Act, 2000, where it appeared to a competent authority that a person brought before it was a juvenile or a child, then such authority could, after making an inquiry and taking such evidence as was necessary, record a finding as to the juvenility of such person and state the age of such person as nearly as may be. Sub-section (2) of Section 49 stated that no order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order had been made is not a juvenile and the age recorded by the competent authority to be the age of person so brought before it, for the purpose of the Act, be deemed to be the true age of that person."

26. The trial court, in its judgement, in absence of any documentary evidence produced by the prosecution relating to age of the victim, placing reliance on ratio given in the case of **Mahadeo Vs. State of Maharashtra, (2013)14 SCC 637** and **Jaimala Vs. Secretary (Home), State of J&K, AIR 1982 SC**, while considering the ossification test report, held that the victim was above

18 years of age and was a major at the time of the incident. The finding of trial court on point of victim being a major has not been assailed by way of appeal and in absence of any documentary evidence in regard to age of the victim on record and in light of ratio of various case law of Hon ble Supreme Court, the finding of trial court needs no interference.

27. Because the victim was major at the time of incident, the finding of trial court acquitting the appellant of charge under Section 363 I.P.C. and Section 3/4 POCSO Act need not be interfered with.

28. The trial court has held that the charge under Section 3(2)(v) of the S.C./S.T. Act is not made out on the basis of evidence on record and has acquitted the appellant of charge under Section 3(2)(v) of the S.C./S.T. Act. The finding needs no interference.

29. Now the question that crops up in the mind is whether the victim was abducted and raped by the appellant ?

30. Insofar as charge under Section 366 I.P.C. and 376 I.P.C. is concerned, consent is a fundamental aspect to constitute an offence under Section 366 and 375 of the Indian Penal Code (I.P.C.).

31. Legally, consent refers to an unequivocal, voluntary, and informed agreement to engage in a specific act. Within the framework of Section 375 I.P.C., consent must be given freely without any form of coercion, manipulation, or deception. The Supreme Court of India has emphasized that consent must involve an active and willing participation from the woman, rather than mere submission or acquiescence resulting from fear or pressure.

32. Section 366 of the Indian Penal Code, 1860 qualifies as minor offence of kidnapping, abducting, or inducing a woman to compel her marriage or engage her in illicit intercourse with someone other than her husband. This provision has played a significant role in the freedom given to women. Furthermore, it has been a deterrent to those heinous crimes that violate fundamental rights and dignity.

33. **Section 366 of the I.P.C.** :- Kidnapping, abducting or inducing woman to compel her marriage, etc. states :

“ Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

34. Section 366 I.P.C. incorporates specific elements that must be established to constitute an offence. These elements are :

“ Such accused must be found guilty of having actually committed the act of either kidnap or abduction as defined sections 359 and 362 of IPC. Kidnapping refers to the act of taking a minor away without the consent of the natural guardian, whereas abduction, on the other hand, implies forcing a person to move from one place to another by threat, deceit, or coercion.”

35. Section 375 I.P.C. defines offence of Rape and Section 376 I.P.C. provides the punishment for offence of Rape .

36. Section 375 of the Indian Penal Code is one of the most crucial provisions in the context of sexual offences, specifically defining the crime of rape. This section outlines the conditions under which a sexual act is considered rape, emphasizing the lack of consent as the central element. The legal definition provided by Section 375 I.P.C. is vital for several reasons.

37. First and foremost, Section 375 I.P.C. offers a clear and precise definition of rape, helping to eliminate ambiguities that could otherwise lead to misinterpretation and miscarriage of justice. By specifying conditions such as against her will and without her consent, the law delineates the boundaries of lawful and unlawful sexual conduct, thereby protecting the bodily autonomy and dignity of individuals.

38. Secondly, addressing and understanding the legal definition of rape is essential for ensuring justice for survivors of sexual violence. Clear legal provisions aid in the prosecution of offenders and provide a framework for the judicial system to deliver appropriate penalties. Moreover, it fosters a legal environment where survivors feel supported and are more likely to come forward to report offences.

39. Furthermore, the importance of Section 375 I.P.C. extends beyond the legal realm, influencing societal attitudes towards sexual violence. It underscores the severity of rape as a crime and promotes a culture of respect for consent and personal boundaries. By doing so, it plays a crucial role in the broader fight against gender-based violence and in fostering a society that upholds the rights and dignity of all individuals.

40. Section 375 of the Indian Penal Code (I.P.C.) defines the offence of rape in India. The legal text reads as follows :-

“ A man is said to commit rape who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

1. Against her will.

2. Without her consent.

3. *With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.*

4. *With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.*

5. *With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.*

6. *With or without her consent, when she is under sixteen years of age.*

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception: Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape."

41. This legal definition outlines the conditions under which sexual intercourse is considered rape, emphasizing the importance of consent and the circumstances that nullify it.

42. To understand the legal framework of Section 375, it is crucial to delve into the elements that constitute the crime of rape :

-Against Her Will: This element implies that the woman has not agreed to the sexual act under any circumstances. It focuses on the lack of voluntary participation.

- Without Her Consent: This highlights the absence of the woman's approval or agreement. Consent must be explicit, and its absence constitutes rape.

- Consent Obtained Under Fear: If a woman's consent is obtained through threats of death or hurt to her or someone she cares about, it is considered coerced and invalid.

-Consent Under Misconception of Identity: When a woman consents believing the man to be her husband, but he is not, the consent is deemed invalid.

- Consent Given Under Unsound Mind or Intoxication: If a woman is incapable of understanding the nature and consequences of her consent due to intoxication, unsoundness of mind, or influence of drugs, the consent is considered invalid.

-Age Factor: Sexual intercourse with a girl under sixteen years, with or without consent, is considered rape. This age limit underscores the protection of minors from sexual exploitation.

The phrases against her will and without her consent are pivotal in understanding the crime of rape under Section 375 :-

- **Against Her Will:** This means that the act was done despite the woman's resistance. It indicates force or threat, rendering the woman's lack of agreement evident. The absence of willingness is a clear indicator of non-consent.

- **Without Her Consent:** This encompasses situations where the woman may not actively resist due to fear, confusion, or manipulation, but does not give voluntary, affirmative, and informed agreement to the act. Consent must be an active, enthusiastic, and informed decision, not just the absence of a no.

43. Understanding these elements is crucial for comprehending the nuances of Section 375 and recognizing the importance of consent in sexual relations. It helps in ensuring that the legal framework protects individuals from sexual violence and upholds their autonomy and dignity.

44. The Hon'ble Supreme Court of India in the case of Kaini Rajan Vs. State Of Kerala, (2013) 9 SCC 113, in paragraph 12 has explained the essential ingredients of offence of rape where doubts persist as to whether the victim had consensual sexual relation with the offender. The paragraph 12 of the aforementioned judgment is being reproduced

"..12. Section 375 IPC defines the expression rape, which indicates that the first clause operates, where the woman is in possession of her senses, and therefore, capable of consenting but the act is done against her will; and second, where it is done without her consent; the third, fourth and fifth, when there is consent, but it is not such a consent as excuses the offender, because it is obtained by putting her on any person in whom she is interested in fear of death or of hurt. The expression against her will means that the act must have been done in spite of the opposition of the woman. An inference as to consent can be drawn if only based on evidence or probabilities of the case. Consent is also stated to be an act of reason coupled with deliberation. It denotes an active will in the mind of a person to permit the doing of an act complained of. Section 90 IPC refers to the expression consent. Section 90, though, does not define consent, but describes what is not consent. Consent, for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances."

45. Several scenarios can invalidate consent under Section 375, rendering any sexual act committed under these circumstances as rape. These include:

- **Under Threat or Coercion:** If consent is obtained by putting the woman or someone she cares about in fear of death or serious harm, it is considered coerced and invalid.

46. Learned counsel for the appellant has drawn attention of the Court towards the finding given by the trial court on point that the victim was a minor at the time of alleged offence. The learned counsel for the appellant further submits that the victim had a consensual sexual relation

with the appellant and the victim, in her statement recorded before the Magistrate under Section 164 Cr.P.C., has admitted the fact that the victim was in love with the appellant and she went along with the appellant on her own volition. The Investigation Officer (PW- 7), in his cross examination before the Court has also lend credence to the aforesaid fact when he stated that victim never stated in her statement before the Magistrate that she was raped by the appellant. Learned counsel for the appellant has further submitted that the trial court, despite noting the anomalies in evidence of the victim where she clearly resiled from her statement before the Magistrate, and the medical evidence does not support the prosecution story that the victim had been raped by the appellant/accused but the trial court relied on the improbabilities prosecution in evidence while holding the appellant guilty.

47. For the sake of convenience, the statement of the victim recorded u/s 164 Cr.P.C. is being reproduced hereunder :-

"नाम-विनिता उम्र-18 वर्ष पुत्री रामस्वरूप नि०-लुहारी थाना सकरार जिला झांसी ने बयान दिया कि दिनांक 28/5/15 को सुबह 05.00 बजे भगवत निवासी लुहारी के साथ झांसी आ गई वहां से मऊ गई मऊ में रात भर स्टेशन पर रही। भगवत को मैं प्रेम करती थी इसलिए अपनी मर्जी से चली गई। मार्कशीट में उम्र 14 वर्ष है। उम्र कम लिखाई थी। मैं अहिरवार जाति की हूँ।

प्रमाणित किया जाता है कि बयान उपरोक्त पीड़िता विनिता के बोलने पर शब्द ब शब्द खुले व खाली न्यायालय में लिखे एवं पढ़कर सुनाया गया।"

48. Such a crime can include anything- criminal intimidation, abuse of authority, or compulsion of any other genre, which creates an atmosphere for the woman to go against her free will and act as per the whims and fancy of the accused. Criminal intimidation, as defined in Section 503 I.P.C. includes threats causing a reasonable apprehension in the mind of that person towards harm in order to get that person to act.

49. Consent plays a crucial role in cases of Section 366 cases. If a woman is kidnapped or induced against her will, the act is punishable. The law aims to ensure that any compulsion, force, or abuse of authority to undermine consent is addressed.

50. The victim, in her evidence before the trial court as PW-3, in her examination in chief, has stated that the accused Bhagwat came to her house and forcibly took her with him and on the way, he forcibly raped her in the field and then he took the victim to Mauranipur and from there, he took the victim to Jhansi by bus.

51. The victim, in her cross examination, has stated that the accused Bhagwat came at 12:00 at night and she had opened the door; that he forcibly took her; that she had raised alarm but no one listened; that her mother and father were at home. The victim, in her cross examination, has averred to the fact that she raised alarm at Mauranipur but did not raise any alarm at Jhansi.

52. The trial court, instead of analyzing the evidence of the victim on point of consent and as reliable witness, has chosen to cast burden on accused that the counsel for the accused/appellant failed to put question to the witness other than the fact that she did raise alarm but nobody came and on that ground alone, the evidence of victim cannot be disbelieved. The trial court, in regard to

victim resiling from facts in her statement before the Magistrate under Section 164 Cr.P.C. that the victim was in love with the accused/appellant and went along with him on her own volition, has held that the statement of victim before a Magistrate is only a corroborative piece of evidence and not substantive evidence, ignored the circumstances prevalent at the time of recording of her statement before the Magistrate. The statement of the victim given to the doctor at the time of her medical examination is of paramount importance wherein the victim nowhere stated that she was forcibly taken away by the appellant from her father s house or that the appellant had deceived her into leaving her house on the day of the incident.

53. In a criminal trial, the burden of proof initially rests with the prosecution and the prosecution is duty bound to discharge the initial burden before the accused can be cast upon the accused to lead evidence of his innocence. It is not expected of a trial court to base its finding on accused not asking a particular set of questions, but the court has to see that the prosecution has successfully discharged its burden before accused may be expected to answer the same.

54. The judgment passed by the trial court is founded on sole testimony of the victim. The informant (PW-1) and mother of the victim (PW-2) are not the eyewitnesses.

55. The Hon ble Supreme Court, in the case of **State (GNCT of Delhi) Vs. Vipin @ Lalla, 2025 SCC OnLine SC 78**, in para 10, has observed that :-

“10. Although it is absolutely true that in the case of rape, conviction can be made on the sole testimony of the prosecutrix as her evidence is in the nature of an injured witness which is given a very high value by the Courts. But nevertheless when a person can be convicted on the testimony of a single witness the Courts are bound to be very careful in examining such a witness and thus the testimony of such a witness must inspire confidence of the Court. The testimony of the prosecutrix in the present case thus has failed to inspire absolute confidence of the Trial Court, the High Court and this Court as well.”

56. The victim, in her examination in chief, has stated that the appellant, at 12:00 hrs at night, made her open the door and forcibly took her and her mother and father were asleep. That she raised alarm but nobody listened. The victim, in her cross examination , has stated that at the time of the incident, she was sleeping on the roof top of her house and her mother and father were sleeping below. The victim further states that she had opened the door of the house and when appellant was forcibly taking her away, she had raised an alarm but nobody listened. PW-1 Ramswaroop, in his evidence, has stated that he was sleeping under a neem tree at the time of the incident at his home. It seems highly probable that when the victim was being forcibly abducted from her house and she had raised an alarm, the mother and father of the kept on sleeping and did not respond to alarm raised by their daughter and they realized that their daughter had been kidnapped at 3:00 hrs when they woke up at 3:00 hrs and did not find their daughter at home. The informant in her cross-examination states that her daughter was recovered on the 29th whereas the victim in her statement has stated that she was recovered by the police from Mauranipur after two days i.e. not before 30th June and she was taken by the police of Police Station- Mahila Thana on 02.06.2015 and on the same day, she was taken to hospital for medical examination. The medical examination report of the victim is paper Ext.Ka.3 on record which is dated 30.05.2015. There are

inherent contradictions in the statement of the victim and the informant as to the date on which police recovered her/she came back home but the trial court has failed to take these points into consideration.

57. The victim, in her statement before the Magistrate under Section 164 Cr.P.C., has stated that she was in love with the appellant and went along with him on her own volition. The victim, in her statement given to the doctor PW-4, has stated that she was sleeping on top of the roof of her house and she and the appellant went to Jhansi. The statement of the victim as recorded in Exhibit Ka 3 is being reproduced below--

.. “27-28 मई की रात में मैं अपने घर की छत पर सो रही थी। जहाँ से मैं भागवत नाम के एक लड़के के साथ झाँसी चली गयी। वहाँ से मैं मऊ चली गयी। जहाँ मैं उस लड़के के साथ किसी जगह रुकी। जहाँ अगले दिन उस लड़के और मुझे पुलिस ने पकड़ लिया... “.

58. The victim, has made statement before the doctor in presence of her mother and undoubtedly, the victim was free from control and influence of the appellant. In the statement, the victim nowhere states that she was forcibly taken away from her house by the appellant and the appellant raped her in a field on the way. The statement is corroborated by statement of the victim made to the Magistrate under Section 164 Cr.P.C. but the fact has been ignored and unexplained in the impugned judgment of the trial court as to why the victim, while free from influence and control of the appellant, did not support the prosecution case regarding her abduction and rape by the appellant.

59. The victim, in her examination-in-chief has stated that on 02.06.2015, the police brought her to Mahila Thana where her statement was recorded wherein she told the police that Bhagwat had raped her and had forcibly made physical relations with her and on the same day, she was taken to district hospital for medical examination and her mother was there with her. The witness, in her examination-in-chief has admitted the fact that her statement before the Magistrate was recorded. In her cross-examination, the victim states that she did not tell the Magistrate that she loved Bhagwat and she went with him on her own will and the Magistrate has wrongly recorded the above statement. The victim, in her cross-examination, has stated that she did not tell the Magistrate that she was raped and the Magistrate has not recorded the same due to this reason. The prosecution evidence nowhere states the reason for the Magistrate to record a statement of the victim that is in contradiction of statement made by the victim before the trial court.

60. Perusal of record shows that the medical examination of the victim was held on 30-05-2015 and the victim has wrongly stated that her medical examination was conducted on 02-06-2015. The victim, in her cross-examination, has admitted that she did not tell the Magistrate at the time of her statement about she being raped by the appellant. The trial court, in its judgment has failed to take into consideration the crucial aspect that the victim did not tell the doctor at the time of her medical examination that the appellant forcibly took the victim away. The statement made before the doctor was the earliest statement in point of time and the medical report also contains the finding that the hymen of the victim had old tear and was healed and there was no sign of bleeding or discharge and there was no external injury found on the examination of the victim. There is no possibility of the victim being tutored by her parents or police at the relevant point before the

doctor. The doctor is an independent authority and the prosecution has concealed the fact that the victim made such a statement before the doctor.

61. Indeed, the finding of trial court is correct that the statement of victim recorded before a Magistrate is not substantive piece of evidence, but resiling from statement before a Magistrate under Section 164 Cr.P.C. casts shadow of doubt over integrity of witness whilst under examination on oath before the court and the prosecution must explain the circumstances under which statement of victim was recorded before the Magistrate, where the victim, at an earlier point of time, has given statement to the doctor in regard to the incident wherein the victim did not support the prosecution case. The evidence of PW-4 Rashmi Singh Kushwaha, at this juncture assumes importance.

62. The victim was medically examined on 30-05-2015 at 3:00 pm. The medical examination report is Exhibit Ka 4. The examining doctor has, on examination, found that the hymen had old tear and was healed. The victim has stated before the doctor, that she was sleeping on roof and then she went along with the appellant to Jhansi. The prognosis of the examining doctor was that it was healed and there was no evidence of recent sexual activity. The trial court, in its judgment, in regard to opinion given in the medical report, has held that the incident took place on 25-05-2015 at 12:00 and the victim was medically examined after 5 days. The above finding of trial court is beyond the record as the FIR was registered on 28.05.2015 at 12:25 pm on application of informant Exhibit Ka 1 dated 28.05.2015. The finding of trial court on page 20 of the judgment has held that the medical examination of the victim was conducted on 30.05.2015 and the date of incident is 25.05.2015 at 12:00. The medical examination was conducted after 5 days. The finding of court while disbelieving the argument put forward by counsel that the medical examination report and vaginal smear report do not support the prosecution case against appellant, is perverse and condemnable and seems to be a deliberate attempt to conceal evidence favouring appellant in order to secure his conviction and is against the basic tenets of criminal law that the prosecution must discharge the burden before any opinion can be expressed on the merits of the case.

63. In rape cases under Section 376 of the Indian Penal Code (now Bharatiya Nyaya Sanhita), the burden of proof rests entirely on the prosecution to establish the accused's guilt beyond reasonable doubt. This principle stems from the ****presumption of innocence****, a fundamental tenet of criminal jurisprudence. The accused bears no obligation to prove their innocence unless a specific statutory provision shifts the burden (e.g., certain exceptions under the IPC or other laws). In rape prosecutions (not falling under aggravated forms listed in Section 376(2)), the prosecution must prove all elements of the offence, including:

- Sexual intercourse
- Lack of consent

The accused has no duty to lead evidence or disprove these elements. But a limited shift occurs under Section 114A of the Indian Evidence Act, 1872, applicable only to prosecutions under specified clauses of Section 376(2) I.P.C. (aggravated rape, e.g., by a person in authority). Here, if the prosecution proves sexual intercourse and the victim states in evidence that she did not consent,

the court shall presume absence of consent, shifting the burden to the accused to rebut this presumption. Even then, the overall burden to prove the offence remains on the prosecution. Section 114A does not reverse the general presumption of innocence or require the accused to prove innocence in absent proof of the basic offence.

64. The Hon ble Supreme Court rulings reinforce that unless a specific law imposes a negative burden, the accused need not lead evidence to prove innocence. The prosecution must establish guilt beyond reasonable doubt. The prosecution must prove the accused's guilt beyond reasonable doubt, while the accused enjoys the presumption of innocence and bears no burden to prove innocence.

65. Even in cases under Protection of Children from Sexual Offences Act, the burden of proof differs significantly from standard criminal law due to statutory presumptions that protects child victims, though the prosecution retains key responsibilities. Sections 29 and 30 of the POCSO Act introduce mandatory presumptions for offences under Sections 3 (penetrative sexual assault), 5 (aggravated penetrative sexual assault), 7 (sexual assault) and 9 (aggravated sexual assault) but even under the POCSO act, the presumptions do not absolve the prosecution entirely and the Courts consistently hold :

1. Prosecution must first prove "foundational facts" (basic elements like the victim's age being under 18, occurrence of the act, and identity of the accused) beyond reasonable doubt.

2. Only after these are established do the presumptions under Sections 29 and 30 activate.

3. Once activated, the burden shifts to the accused to rebut them (e.g., prove innocence or lack of culpable intent), typically on a balance of probabilities (preponderance of probability), not beyond reasonable doubt.

4. If foundational facts are not proven beyond reasonable doubt, presumptions cannot apply, and the accused must be acquitted. Supreme Court rulings reinforce that presumptions aid conviction where evidence is credible but do not replace the need for strong prosecution proof of basics and conviction cannot rest solely on presumptions without foundational evidence.

66. In non-POCSO rape cases (e.g., under IPC/BNS), the burden remains fully on the prosecution with no such mandatory presumptions (except limited ones like Section 114A Evidence Act for aggravated forms). POCSO's stricter approach reflects the vulnerability of child victims.

67. The Hon ble Supreme Court, in the case of **Vijaya Singh & another vs. State of Uttarakhand, 2024 SCC Online SC 3510**, in paras 26, 27 and 31, has observed that a statement under Section 164 Cr.P.C. cannot be discarded on a mere statement of the witness that it was not recorded correctly and has observed further that a judicial satisfaction of the Magistrate, to the effect that the statement being recorded is the correct version of the facts stated by the witness, forms part of every such statement and a higher burden must be placed upon the witness to retract from the same. The court has observed further that to permit retraction by a witness from a signed statement recorded before the Magistrate on flimsy grounds or on mere assertions would effectively negate the difference between a statement recorded by the police officer and that recorded by the Judicial Magistrate.

68. On the basis of evidence of victim before the court, her statement before the Magistrate under Section 164 Cr.P.C. and medical examination report, it can safely be concluded that the victim and the appellant were in relationship and the victim had left her father s house on 28.05.2015 on her own volition and there is no evidence on record from which it can be concluded that the victim had been enticed to go away from her father s house against her will or without her consent. There is no evidence on record, barring statement of victim before the trial court, that appellant forcibly imposed himself upon the victim and committed rape on her. The finding of trial court that the victim was a major at the time of occurrence makes the victim a consenting party and no criminal liability can be affixed upon the appellant where the victim herself, of her own volition ,had left her fathers house to go along with the appellant. The medical examination report and the vaginal smear report negates the prosecution version that the victim had been abducted and was forcibly raped by the appellant. The trial court has failed to appreciate the effect of totality of evidence on record and by misreading the date of incident to be 25.05.2015 instead of 28.05.2015, and thereby disbelieved the medical evidence on record, has committed a serious error in judging the appellant being guilty of offence under Sections 366 and 376 I.P.C.

69. In the light of the above discussion, the judgment and order of conviction passed by the trial court is not sustainable and is liable to be set-aside.

70. Hence, criminal appeal filed by appellant, Bhagwat Kushwaha, is **allowed**.

71. The judgment and order dated 05.09.2019 and sentence order dated 06.09.2019 are set-aside.

72. The appellant, Bhagwat Kushwaha, is in custody and lodged in jail. He is directed to be released forthwith, if not wanted in any other case. Before being released, the appellant shall execute personal bond in the sum of Rs.25,000/- under Section 481 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of Cr.P.C.) for his appearance, in the event of an appeal being preferred against his acquittal.

73. Let a copy of this judgment and order be sent to the trial court along with the trial court record for information and necessary compliance.

(2026) 1 ILRA 717
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.01.2026

BEFORE

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

Criminal Appeal No. 460 of 1989

Shailendra & Ors.

State

...Appellants

Versus

...Respondent

Issue for Consideration

The prosecution case arose out of an incident on 11.06.1987, during a Teeka ceremony, an altercation took place between one of the accused and certain invitees. The trial court convicted the accused. The surviving appellant challenged the conviction on the ground of absence of common intention.

Headnotes

A. Indian Penal Code, 1860-Sections 302,307, 34-Criminal Procedure Code,1973-Sections 374(2)-Murder and Attempt to murder-Common intention- Premeditated armed attack-Firing and bomb blast-Ocular testimony of PW-1 and PW-2 found reliable and corroborated by medical evidence and recovery of cartridges and bomb materials-Conviction affirmed.(Para 15 to 34) (E-6)

Held

The court ruled that common intention need not be proved by direct evidence, it can be inferred from conduct, surrounding circumstances and participation in the criminal act. Ocular testimony of eyewitnesses was reliable and fully corroborated by medical evidence. The trial court properly appreciated the evidence and committed no illegality. The appeal dismissed.

Case law Cited

Ashok Kumar Vs State of Punjab: AIR 1977 Supreme Court 109, Babulal Bhagwan Khandare Vs State of Maharashtra; AIR 2005 Supreme Court 1460, Virendra Singh Vs State of M.P.: (2010) 8 Supreme Court Cases 407-referred to.

List of Acts

Indian Penal Code, 1860, Criminal Procedure Code, 1973

List of Keywords

Murder, Attempt to murder, common intention, Section 34 IPC, Premeditation, Joint Liability, Bomb Blast Injury, Firearm injury, Ocular evidence, Abatement of appeal.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 460 of 1989

Shailendra & Ors. Vs. State

From the Judgment and Order dated 08.01.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties***Advs. for Appellant(s):-***

Apul Misra, P.N. Mishra

Adv. for Respondent(s):-

SC

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

1. In light of the office report dated 24.11.2025, the appeal is declared to have abated so far as it concerns accused-appellant Nos. 1 and 2, namely, Shailendra alias Rannu and Arvind Kumar. The appeal survives for adjudication only in respect of appellant No. 3, Sanjiv Kumar alias Munmun.

2. This criminal appeal has been filed against the judgment and order dated 17.02.1989 passed by the Special Judge, Shahjahanpur in Sessions Trial No. 383 of 1987 (State versus Shailendra alias Rannu and others), arising out of Case Crime No. 155 of 1987, under Section 302/307 IPC, Police Station- Powayan, District- Shahjahanpur. By the impugned judgment and order, the Special Judge, Shahjahanpur convicted and sentenced the accused-appellants, namely, Shailendra alias Rannu, Arvind Kumar and Sanjiv Kumar alias Munmun under Sections 302/34 IPC to life imprisonment along with a fine of Rs. 100 each, and in default of payment, a further three months' rigorous imprisonment. The Special Judge, Shahjahanpur also convicted the accused-appellants, namely, Shailendra alias Rannu and Sanjiv Kumar alias Munmun under Section 307/34 IPC, and the accused-appellant Arvind Kumar under Section 307 IPC, sentencing each of them to three years' rigorous imprisonment and a fine of Rs. 100, with a further three months' rigorous imprisonment in default. All the sentences were directed to run concurrently.

3. As per the prosecution case, on the basis of a written report (Ex.Ka.1) dated 11.06.1987, submitted by the informant Ishwar Chandra (PW-1), an FIR dated 11.06.1987 (Ex.Ka.5) was registered against the accused-appellants, namely, Shailendra Kumar alias Rannu, Arvind Kumar and Sanjiv Kumar alias Munmun under Section 302/307 I.P.C. The prosecution case is that accused Arvind Kumar alias Lalla, Munmun, and Shailendra alias Rannu were known to the informant Ishwar Chandra prior to the incident. All the accused lived nearby and were familiar with the deceased, Dr. Suresh Chandra Pandey, who was the uncle of the informant (PW-1). On 11.06.1987, during the Teeka ceremony of Pawan Kumar Pandey at Mohalla Kasbhara, P.S. Powayan, a quarrel took place between accused Shailendra alias Rannu and Balesh. After some time, Shailendra returned along with co-accused Arvind Kumar alias Lalla and Munmun, all were armed with country-made pistols and hand bombs. When the deceased Dr. Suresh Chandra Pandey, uncle of the informant Ishwar Chandra, objected to their misconduct, accused Lalla fired at him from close range, as a result of which, he died at the spot. The accused also threw hand bombs. The accused further fired at Balesh and Anil and threw another bomb, resulting in injuries to guests Rajiv, Rajneesh and Krishnanand. Somehow, Balesh and Anil escaped. The incident occurred around 10:45 p.m. in the presence of the informant and others under adequate electric lighting. An unknown caller informed the police, who reached the spot immediately.

4. Investigating Officer Mahesh Narayan Singh (PW-6) took charge of the investigation. He inspected the place of occurrence and prepared the site plan. The Investigating Officer (PW-6) collected various incriminating materials and objects from the scene of the incident, including empty cartridges, bullets, *tikli*, pieces of glass, slippers, etc., and prepared Exhibit Ka-2. He further sent the collected incriminating materials for chemical examination to the *Vidhi Vigyan Prayogsala*, Agra, Uttar Pradesh. The Investigating Officer (PW-6) also collected blood-stained & plain soil, five *tiklis* of 12-bore cartridges from the place of occurrence and prepared Exhibit Ka-3.

5. The Investigating Officer (PW-6) also recorded the statements of the prosecution witnesses under Section 161 Cr.P.C. After completing all formalities of the investigation, he submitted the charge-sheet against the accused-appellants, namely, Shailendra alias Rannu, Arvind Kumar, and Sanjiv Kumar alias Munmun, before the Court of the concerned Magistrate.

6. The concerned Magistrate committed the case to the Court of Session for trial, as the offences involved were exclusively triable by the Sessions Court.

7. Charges were framed against the accused persons. The accused persons denied the charges levelled against them and claimed trial.

8. After the prosecution had examined all its witnesses, the statements of the accused persons were recorded under Section 313 Cr.P.C. The accused persons denied all the incriminating circumstances put to them under Section 313 Cr.P.C. and further stated that they were not present at the place of occurrence at the time of the alleged incident.

9. The learned Trial Court, after examining the oral and documentary evidence available on record, found the accused guilty of the offences alleged against them. Consequently, the Trial Court convicted and sentenced the accused-appellants, namely, Shailendra alias Rannu, Arvind Kumar, and Sanjiv Kumar alias Munmun under Sections 302/34 and 307/34 I.P.C., awarding them life imprisonment.

10. Aggrieved by the judgment and order of conviction and sentence dated 17.02.1989 passed by the Trial Court, the accused-appellants, namely, Shailendra alias Rannu, Arvind Kumar, and Sanjiv Kumar alias Munmun, preferred the present criminal appeal before this Court. During the pendency of the appeal, accused-appellant Nos. 1 and 2, Shailendra alias Rannu and Arvind Kumar, expired, and accordingly, the appeal stands abated so far as they are concerned. The appeal, therefore, survives for adjudication only in respect of the surviving appellant No. 3, Sanjiv Kumar alias Munmun.

11. Learned counsel for the surviving appellant No. 3, namely, Sanjiv Kumar alias Munmun, submitted that the accused-appellant No. 3 had no common intention to commit the alleged crime. He further submitted that the so-called desi bombs alleged by the prosecution to have been thrown by the appellant did not target either Balesh or Anil. According to the prosecution itself, surviving appellant, namely, Sanjiv Kumar alias Munmun did not attack the deceased, Suresh Chandra Pandey. From the evidence brought on record by the prosecution, no pre-plan or pre-meditation has been established by prosecution.

12. Learned counsel for the surviving appellant further submitted that for convicting any person with the aid of Section 34 IPC, the prosecution must prove pre-plan, pre-meditation, and participation in the crime. In the present case, the prosecution has completely failed to prove the elements of pre-plan, pre-meditation, or participation on the part of surviving accused-appellant No. 3, namely, Sanjiv Kumar alias Munmun. Despite this, the Trial Court, without properly appreciating the evidence produced by the prosecution, wrongly held surviving accused-appellant, Sanjiv Kumar alias Munmun guilty under Sections 302/34 and 307/34 IPC. Hence, the judgment and order of conviction and sentence dated 17.02.1989 passed by the Trial Court, is liable to be set aside.

13. Per contra, learned Additional Government Advocate (AGA) argued that accused Sanjiv Kumar alias Munmun, with premeditation, actively participated in the crime along with two other

accused, firing a country-made pistol and throwing bombs, which resulted in the death of Suresh Chandra Pandey and injuries to Rajiv, Rajneesh, and Krishnanand. The prosecution evidence, according to the learned AGA, clearly establishes the involvement of the surviving accused-appellant, Sanjiv Kumar alias Munmun, thereby justifying the conviction and sentence imposed by the Trial Court under Sections 302/34 and 307/34 IPC. The order of conviction and sentence dated 17.02.1989 is supported by both evidence and law and, therefore, requires no interference.

14. Having considered the arguments advanced by learned counsel for the surviving accused-appellant and the learned AGA for the State, we have examined all the oral and documentary evidence on record, as well as the order of conviction and sentence dated 17.02.1989 passed by the Trial Court.

15. From perusal of the written report (Ex.Ka.1), it is evident that the informant, Ishwar Chandra (PW-1), promptly reported the incident to the police, identifying accused Sanjiv Kumar alias Munmun, along with two other appellants now deceased, as the perpetrators of the crime.

16. Informant Ishwar Chandra (PW-1) deposed in court, corroborating the account recorded in the written report (Ex.Ka.1). He stated that on 11.06.1987 during the Teeka ceremony of Pawan Kumar Pandey, the son of the deceased Suresh Chandra Pandey, an altercation took place between Shailendra alias Rannu and Balesh and Anil. Subsequently, the accused, Shailendra alias Rannu, Arvind Kumar and Sanjiv Kumar alias Munmun, returned with country-made pistols and bombs and attacked Suresh Chandra Pandey and others, causing injuries to Rajiv, Rajneesh, and Krishnanand. The testimony of PW-1 is consistent with the written report and contains no major contradictions, rendering his evidence reliable and trustworthy.

17. The evidence of the informant, PW-1, establishes that he was a natural eyewitness to the incident, being both a family member of the deceased, Suresh Chandra Pandey, and an invitee to the ceremony. He deposed that Shailendra alias Rannu fired at and threw a bomb towards the deceased, while Arvind Kumar and Sanjiv Kumar alias Munmun threw bombs and fired at Balesh and Anil, who fortunately escaped without injury, but fire from country-made pistols and hand bombs struck the deceased-Suresh Chandra Pandey, Rajiv, Rajneesh, and Krishnanand.

18. The evidence of Ishwar Chandra (PW-1) is reliable and trustworthy, being corroborated by the fact that the firing by the accused caused injuries to Suresh Chandra Pandey, Krishnanand, Rajneesh, and Rajiv. No error, discrepancy, embellishment, or concoction has been detected in his testimony, thus, rendering it credible.

19. The prosecution case is further corroborated by the testimony of Balesh Kumar alias Baleshwar (PW-2), who fully supported the account recorded in the written report. His testimony is consistent with that of PW-1, Ishwar Chandra, and is found to be reliable and trustworthy, containing no discrepancies or embellishments.

20. The prosecution case is well-supported by the evidence of Ishwar Chandra (PW-1) and Balesh Kumar alias Baleshwar (PW-2), which corroborates the written report (Ex.Ka.1). The evidence establishes that on 11.06.1987, an altercation between Shailendra alias Rannu and Balesh

and Anil escalated, leading to an attack by the accused, including Arvind Kumar and Sanjiv Kumar alias Munmun, using country-made pistols and bombs. This attack resulted in the death of Suresh Chandra Pandey and injuries to Rajiv, Rajneesh, and Krishnanand.

21. The evidence indicates that the attack was pre-planned and premeditated. On 11.06.1987, the accused persons reached on the spot at about 10:45 PM, armed with country-made pistols and bombs, and launched the attack on the victims. The Trial Court has recorded reasoned findings supported by evidence, including the medical reports prepared by Dr. Amar Lal (PW-5), which confirm injuries sustained by Rajiv Kumar, Rajneesh, and Krishnanand. Dr. Amar Lal (PW-5) reported following injuries on the body of injured Rajiv Kumar:-

- (i) Lacerated wound 1.05 cm x 0.75 cm x muscle deep on the inner part of left fore arm at middle.
- (ii) Lacerated wound 1.5 cm x 0.5 cm x muscle deep over the left side back lower part.
- (iii) Lacerated wound 1 cm x 0.75 cm x muscle deep on the inner side of right ankle joint.
- (iv) Lacerated wound 0.5 cm x 0.75 cm x muscle deep on the left sole.
- (v) Lacerated wound 1 cm x 0.75 cm x skin deep on the outer side upper part of left leg.

Dr. Amar Lal (PW-5) reported following injury on the body of injured Rajneesh:-

- (i) Blast injury (lacerated wound) 1.5 cm x 1.5 cm x muscle deep on the back and upper part of leg (left).

Dr. Amar Lal (PW-5) reported following injuries on the body of injured Krishnanand:-

- (i) Blast injury lacerated wound 0.5 cm x 0.5 cm x muscle deep on the lower part of left leg back.

22. Dr. Amar Lal (PW-5) specifically noted injuries suffered by all injured persons and opined that these were blast injuries. The opinion of PW-5 that injuries were caused by a bomb blast is further corroborated by the recovery memo, which records the recovery of empty cartridges, tikles, bullets, and parts of glass from the place of occurrence, indicating that a bomb blast had indeed occurred. Thus, we find that oral evidence found support from medical evidence. In other words, oral and medical evidence corroborate each other.

23. Dr. S.C. Gupta (PW-8) conducted post-mortem of deceased, Suresh Chandra Pandey and prepared post-mortem report (Ex.Ka.21) and found following ante-mortem injuries on the body of deceased:

- (i) Gun shot wound of entry 4cm x 2cm with lacerated and inverted margins x brain cavity deep. On the left side of the neck 2cms below and behind the left ear. There is no blacking

and behind the left ear. There is no blacking, tattooing & scorching around the wound. The direction is rightward and slightly upward.

(ii) Gun shot wound of entry 2cm circular brain deep with lacerated and inverted margins on the left side of face. 3 Cm in front of left ear, blackening and tattooing was present around the wound but there is no charring section of wound was rightward and slightly upward.

(iii) Gun shot wound of entry 1cm circular with lacerated and inverted margins oval cavity deep on the left side of the face 1cm in front of injury no.1 blacking present around the wound. The direction of wound was rightward.

(iv) Gun shot wound of entry 2,1/2cm circular with lacerated & inverted margins x chest cavity deep on the left side of the root of the neck. Just behind the left clavicle middle part. There is no blacking, tattooing & scorching around the wound. The direction of the wound is backward & slightly downward.

(v) Blacking from right nose present.

(vi) Multiple gun powder burns all over the back of left lower limb.

(vii) Abrasion 1/2cm x 1/2cm on the back of right leg in the middle.

(viii) Lacerated wound 1/2cm x 1/2cm skin on the back of the left arm 8 cms above the elbow.

(ix) Lacerated wound 1/2cm x 1/2cm on the back of left arm 4cm below the shoulder joint.

(x) Abrasion 1cm x 1/2cm on the back of chest left side lower part.

24. From perusal of the post-mortem report (Ex.Ka.21), it is evident that Dr. S.C. Gupta (PW-8) recovered 104 small metallic pellets and one conical shaped metallic bullet & wadding pieces from the body of the deceased, Dr. Suresh Chandra Pandey. Dr. S.C. Gupta (PW-8) opined that the death was due to coma as a result of ante mortem injuries. The injuries found on the body of the deceased, Dr. Suresh Chandra Pandey clearly show that he was attacked with fire arms and bombs, resulting in multiple firearm and bomb blast injuries on his body.

25. The evidence collected by Investigating Officer, Mahesh Narayan Singh (PW-6), including the recovery of empty cartridges, tikles, bullets and glass parts, corroborates the use of firearms and country-made bombs by the accused persons in the commission of alleged crime. The evidence and circumstances clearly establishes the fact that the surviving accused, Sanjiv Kumar alias Munim along with other appellants who are now dead, had made a pre-planned and premeditated attack, and actively participated in the alleged crime.

26. The Hon'ble Apex Court in the case of **Ashok Kumar v. State of Punjab**; AIR 1977 Supreme Court 109 has held on Section 34 IPC that:

"the existence of a common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision."

27. In the case of **Babulal Bhagwan Khandare v. State of Maharashtra**; AIR 2005 Supreme Court 1460, the Hon'ble Apex Court in paragraph nos. 20 & 23 has held that:

"20. Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section 34 be it pre-arranged or on the spur of moment; but it must necessarily be before the commission of the crime. The true contents of the Section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself.

23. The Section does not say "the common intention of all", nor does it say "and intention common to all". Under the provisions of Section 34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section 34, when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them."

28. In the case of **Virendra Singh v. State of M.P.; (2010) 8 Supreme Court Cases 407**, the Hon'ble Apex Court in paragraph nos. 15, 16 and 17 has held that:

"15. Ordinarily, a person is responsible for his own act. A person can also be vicariously responsible for the acts of others if he had the common intention to commit the offence. The words "common intention" implies a pre-arranged plan and acting in concert pursuant to the plan. It must be proved that the criminal act was done in concert pursuant to the pre-arranged plan. Common intention comes into force prior to the commission of the act in point of time, which need not be a long gap. Under

this section a pre-concert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. Though common intention may develop on the spot, it must, however, be anterior in point of time to the commission of the crime showing a pre-arranged plan and prior concert. The common intention may develop in course of the fight but there must be clear and unimpeachable evidence to justify that inference.

16. The essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. Undoubtedly, it is difficult to prove even the intention of an individual and, therefore, it is all the more difficult to show the common intention of a group of persons. Therefore, in order to find whether a person is guilty of common intention, it is absolutely necessary to carefully and critically examine the entire evidence on record. The common intention can be spelt out only from the evidence on record.

17. Section 34 is not a substantive offence. It is imperative that before a man can be held liable for acts done by another, under the provisions of this section, it must be established that there was common intention in the sense of a pre-arranged plan between the two and the person sought to be so held liable had participated in some manner in the act constituting the offence. Unless common intention and participation are both present, this section cannot apply."

29. Upon re-examining the evidence in light of the Hon'ble Supreme Court's case laws as referred above, it is clear that prosecution witnesses Ishwar Chandra (PW-1), Balesh Kumar alias Baleshwar (PW-2), Dr. Amar Lal (PW-5), and Dr. S.C. Gupta (PW-8) confirm that accused-appellants Sanjeev Kumar alias Munmun, Shailendra Kumar alias Rannu, and Arvind Kumar arrived at the place of occurrence at about 10:45 PM, armed with country-made pistols and bombs. The accused appellants opened fire and threw bombs, targeting Suresh Chandra Pandey, Balesh, and Anil. Balesh and Anil escaped, but Rajnish, Rajiv, Krishnanand, and Suresh Chandra Pandey received injuries from firearms and bomb blasts. Suresh Chandra Pandey succumbed to his injuries and died on the spot. The prosecution evidence clearly establishes that surviving appellant, Sanjeev Kumar alias Munmun, along with other appellants now deceased, had a pre-planned and pre-meditated act, and all participated in the commission of alleged crime. The ingredients of Section 34 IPC are fully established, making all accused liable. The defence arguments lack merit in light of the evidence and also in light of the decisions of the Supreme Court.

30. We have also examined the judgment of conviction and sentence dated 17.02.1989 passed by the learned Trial Court, which thoroughly analyzed the prosecution evidence and emphasized the premeditation and active participation of the accused-appellants in the crime. A perusal of the judgment clearly reflects that the surviving accused-appellant, Sanjiv Kumar alias Munmun, along with the other now-deceased appellants, were hardened criminals. Owing to this circumstance, Pawan Kumar Pandey alias Guppu, the son of the deceased Dr. Suresh Chandra Pandey as well as the injured witnesses, namely Rajiv, Rajneesh, and Krishnanand, did not appear before the Court to depose as prosecution witnesses.

31. Thus, from the above discussion, we find no force or merit in the arguments advanced by the learned counsel for the surviving appellant, Sanjiv Kumar alias Munmun. We further hold that the learned Trial Court has rightly appreciated the evidence adduced by the prosecution and correctly found the appellant, Sanjiv Kumar alias Munmun, along with the other now-deceased appellants, guilty under Sections

302/34 and 307/34 IPC. We do not find any illegality or infirmity in the Trial Court's appreciation of evidence.

32. The judgment of conviction and sentence dated 17.02.1989, passed by the learned Trial Court under Sections 302/34 and 307/34 IPC, is fully supported by the evidence available on record. The evidence conclusively establishes the participation of the surviving appellant, Sanjiv Kumar alias Munmun, in the crime with premeditation and prior planning, along with the deceased co-accused.

33. Thus, from the above discussions, it is evident that the essential ingredients of Section 34 of the IPC, namely, pre-planning, premeditation and participation, stand fully established and proved against the surviving accused-appellant, Sanjiv Kumar alias Munmun. Since the prosecution evidence has conclusively proved the existence of pre-plan, premeditation and active participation on the part of the accused-appellant, Sanjiv Kumar alias Munmun, he is consequently liable to be convicted for the offence and charge levelled against him by the prosecution.

34. Accordingly, the present criminal appeal lacks merit and is hereby *rejected*.

35. The accused-appellant, Sanjiv Kumar alias Munmun, is presently on bail. His personal bond stands cancelled, and his sureties are discharged from their liabilities. He is directed to surrender before the Chief Judicial Magistrate, Shahjahanpur, within one month from today, to undergo the remaining sentence awarded by the Trial Court vide order dated 17.02.1989.

36. In the event the accused-appellant, Sanjiv Kumar alias Munmun, fails to surrender before the Chief Judicial Magistrate, Shahjahanpur, within the stipulated period of one month, the Chief Judicial Magistrate Shahjahanpur, shall issue a non-bailable warrant to secure his arrest. Upon arrest, he shall be sent to jail to serve the remaining sentence in accordance with the Trial Court's order dated 17.02.1989.

37. The Chief Judicial Magistrate, Shahjahanpur, is directed to intimate this Court regarding compliance of this order.

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

(2026) 1 ILRA 726
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 06.01.2026

BEFORE

THE HON'BLE RAJIV GUPTA, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Criminal Appeal No. 866 of 1988

Vishwa Nath Tewari & Ors.

State of U.P.

...Appellants

Versus

...Respondent

Issue for Consideration

The prosecution case arose out of an incident on 20.10.1986. The seven accused entered informant's house, assaulted inmates and committed dacoity. Trial court convicted all accused under section 396 IPC.

Headnotes

A. Indian Penal Code,1860-Section 396, Criminal Procedure Code,1973-Dacoity with murder-Injured witnesses-Evidentiary value-not wholly reliable due to material contradictions-inconsistency regarding source of light-contradiction in number of shots fired-Hostile independent witnesses-no corroboration available-medical evidence-injury report and post-mortem report not proved by examining doctor-recovery-no looted articles recovered-no empty cartridges recovered-evidence indicates possibility of assault arising out of political rivalry-benefit of doubt-conviction unsustainable.(Para 42 to 73) (E-6)

Held

The court ruled that where independent witnesses turned hostile and injured witnesses gave inconsistent statement regarding number of assailants, source of light, specific role of surviving accused. non-proof of medical evidence weakened prosecution. role of surviving appellants not specifically established. Conviction set aside. appeal allowed.

Case law Cited

Abdul Sayeed Vs State of M.P., (2010) 10 SCC 259, Ramji Lal & Anr. Vs State of U.P.,

List of Acts

Indian Penal Code,1860, Criminal Procedure Code,1973.

List of Keywords

Dacoity, Injured witnesses, hostile witness, Political enmity, non-proof of medical evidence, benefit of doubt, vicarious liability, reversal of conviction, surviving appellants.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 866 of 1988

Vishwa Nath Tewari & Ors. Vs. State of U.P.

From the Judgment and Order dated 06.01.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-

S.K. shukla, Ashok Kumar Verma, Manju Gupta, Pradeep Kumar Tripathi, Ripu Daman Shahi

Adv. for Respondent(s):- G.A.,

(Delivered by Hon'ble Pramod Kumar Srivastava, J.)

1. Heard Shri R.D. Shahi, learned counsel for the appellant no. 3 Mangoo Lal & appellant no. 5 Maqbool, Ms. Manju Gupta, learned counsel for the appellant no. 2 Bhai Lal, and Shri H.P. Maurya, learned AGA for the State.

2. At the very outset, it was brought to our notice by the learned counsel for the appellants that appellant Nos. 1, Vishwa Nath Tewari, 4, Lallu, and 6, Jagatoo, have since died. Therefore, the appeal against them has already been abated vide order dated 17.02.2022. This appeal, therefore,

survives and is being adjudicated only in respect of the three surviving appellants: appellant nos. 2 Bhai Lal, 3 Mangoo Lal, and 5 Maqbool.

3. The instant appeal has been preferred against the impugned judgment and order dated 17.12.1988 passed by the learned I Additional Sessions Judge, Lakhimpur Kheri, in Sessions Trial No. 40 of 1988 (State Vs. Vishwa Nath Tewari and others), arising out of Case Crime No. 123 of 1986 dated 21.10.1986, under Section 396 IPC, Police Station Isha Nagar, District Lakhimpur Kheri, whereby the learned Trial Court convicted the accused appellants for the offence under Section 396 IPC and awarded the sentence of imprisonment for life.

Factual Matrix

4. The brief facts of the case are that the prosecution case is based on the FIR lodged by the informant, Brij Mohan (PW-1). The incident is stated to have occurred on the night of 20.10.1986 at about 08:30 PM at the informants house in Village Hasanpur-Katauli, Police Station Ishanagar, District Kheri. The family was taking dinner when a group of seven accused persons, including the appellants, all residents of the same village and well-known to the informant, forcibly entered the house. The house was illuminated by a lantern and a " (small kerosene oil lamp). The accused were allegedly armed with deadly weapons, specifically Banka (curved knife), Lathi (stick), Danda (cudgel), and a Tamancha (country-made pistol). It is alleged that accused Shesh Tiwari opened fire on the informant's father, Puttu Lal, and inflicted a fatal blow with a Banka on Smt. Munni (informant's mother), who tragically succumbed to her injuries. The informant, Brij Mohan, and his son, Rajendra Prasad (PW-5), also sustained injuries. It is also alleged that the miscreants proceeded to loot valuable items, including a silver 'Kardhani' (waist chain), other silver jewellery, and a nose ring. The informant claimed to have clearly identified all the miscreants in the available light of the lantern, , torches, and moonlight.

5. On the very next day, 21.10.1986, informant Brij Mohan (PW-1) presented a written report (Tehrir, Exhibit Ka-1) regarding the incident before the Police Station Isha Nagar. The FIR (Exhibit Ka-2) was consequently lodged on 21.10.1986 at 08:15 AM (8:15 hours) against the seven accused persons, namely: Shesh Tiwari, Vishwa Nath Tewari, Mangoo Lal, Bhai Lal, Jassu, Lallu, and Maqbool.

6. During the course of the investigation, the Investigating Officer (I.O.) prepared the Inquest Report (Exhibit Ka-4) and sent the deceased, Smt. Munni's body for post-mortem. The I.O. also visited the place of occurrence, collected blood-stained, simple earth and prepared (Memo Exhibit Ka-5), and prepared the Site Plan (Exhibit Ka-6). The lantern (Memo Exhibit Ka-7) and a torch (Memo Exhibit Ka-8) were taken into possession. The injured, Rajendra Prasad (PW-5), Brij Mohan (PW-1), and Puttu Lal, were medically examined.

7. The following injuries were found on the person of the injured Brij Mohan:

1. Incised wound 8 Cm. x 1 cm. x bone. 6 Cm. of the root of the nose.
2. Abraded contusion of 3 cm x 1.5 cm on left mastroid regions.

3. Contusion of 8 cm x 2 cm below lateral aspect of left fore arm .10 cm below the elbow joint.

8. On the same date, another injured, Rajendra (PW-5), was also examined, and the following injuries were found:

1. Incised wound 9 cm x 2 cm x bone above post skull 7 cm above right mastroid.
2. Incised wound 5 x 5 cm x 1 cm x bone on postero right skull 1 cm.
3. Incised wound 6.5 cm x 1.5 cm x bone post.
4. Incised wound 5 cm x 1.5 cm x bone 2 cm. above mastoid right skull.
5. Incised wound 5 cm x 2 cm x bone on dorsum of right.
6. Incised wound 6.5 cm x 2 cm x muscle deep on post. Right.
7. Incised wound 13 cm x 6 cm x bone deep on back of right elbow.

All the injuries were kept under observation and advice was given for an X-Ray. The Doctor's opinion was that all injuries were caused by a sharp-edged weapon and duration was half to one day old.

9. As per the autopsy report, the following injuries were found on the body of the deceased Smt. Munni:

1. Incised wound: 9 cm x 2 cm x bone deep, on the front side of the head, 4 cm above the right eyebrow, extending obliquely towards the upper end of the right ear. The underlying right frontal bone was cut, and the underlying membrane was also found cut.

2. Incised wound: 1.5 cm x 0.5 cm x bone cutting wound 1.5 cm deep, on the aspect of the left index finger in the middle and distal part, passing through the hand, which resulted in the finger hanging.

3. Lacerated wound: 3 cm x 1 cm x bone deep, on the back right side of the upper arm, 4 cm from the top of the shoulder, and the underlying humerus (arm bone) was found fractured.

The cause of death was opined to be due to haemorrhage and shock as a result of the ante-mortem injuries.

10. Puttu Lal Giri also sustained the following injuries:

1. Incised wound: 7 cm x 1.8 cm x Muscle deep on the left side, on the circle of the jaw, with clotted blood present.

2. Firearm wound of entry: 3.5 cm x 2 cm on the dorsum of the right hand, 1 cm below the wrist.

3. Firearm wound of exit: 6 cm x 2.6 cm on the palmar side of the right hand, laterally situated.

4. Contusion: 7 cm x 2 cm on the back of the chest, left side, 12 cm below the left Scapula.

11. The Doctor opined that all injuries were ante-mortem, being about half to one day old. Specifically, Injury No. 1 was caused by a sharp weapon, Injury No. 2 by a firearm, and Injury No. 3 by a blunt object.

12. The Investigating Officer prepared the site plan recorded the statements of the witnesses and, after concluding the investigation, a charge sheet (Exhibit Ka-21) was submitted against the seven accused persons under the relevant sections before the Court.

13. Upon the submission of the charge sheet, the learned Chief Judicial Magistrate, Lakhimpur Kheri, vide his order dated 21.01.1988, took cognizance of the offence. Finding the case to be exclusively triable by the Court of Session, the same was committed to the Sessions Court, where it was registered as Sessions Trial No. 40 of 1988 and made over to the court of the 1st Additional Session Judge, Kheri, for trial.

14. The learned Trial Court framed the charges against the accused-appellants under Section 396 IPC. The said charge was read over and explained to the accused persons, but they denied the charges leveled against them, pleaded not guilty, and claimed to be tried.

15. On the commencement of the trial, in order to prove the case against the accused persons, the prosecution examined the following witnesses:

PW-1 Brij Mohan (Informant/Injured), PW-2 Kripa Ram (Hostile Public Witness), PW-3 Bahori Lal (Hostile Public Witness), PW-4 Turri (Hostile Public Witness), PW-5 Rajendra Prasad (Injured Son), PW-6 Smt. Shyama Devi (Wife of PW-1)

16. Prosecution also adduced the following documentary evidence:

Exh. Ka-1: Written Report (Tehrir), Exh. Ka-2: FIR (Copy of General Diary), Exh. Ka-3: GD Carbon Copy, Exh. Ka-4: Inquest Report, Exh. Ka-5: Memo of Collecting Simple and Blood-Stained Earth, Exh. Ka-6: Site Plan, Exh. Ka-7: Memo of Lantern and , Exh. Ka-8: Memo of Torch, Exh. Ka-9: Letter to CMO, Exh. Ka-10: Challan Form, Exh. Ka-11: Photo Lash (Panchayatnama), Exh. Ka-12: Sample of Seal Unit, Exh. Ka-13 to Exh. Ka-20: Memo of Attachment of Property and other reports. & Exh. Ka-21: Charge Sheet. Injury Report of Rajendra (PW-5): Exhibit Ka-22, Injury Report of Brij Mohan (PW-1): Exhibit Ka-23, Injury Report of Puttu Lal: Exhibit Ka-24, Post-Mortem Report of deceased Munni: Exhibit Ka-25.

Testimony of PW-1 Brij Mohan Lal

17. PW-1, Brij Mohan Lal, is the first informant and the son of the deceased, Smt. Munni, is as follows: He deposed that the accused persons are residents of his village. He knows Buddha Singh. He further stated that he runs a betel shop and Buddha Singh often used to come to his shop. Buddha Singh had enmity with Lallu and Shesh Tiwari. Accused Lallu and Shesh Tiwari objected and asked him that Buddha Singh should not be allowed to come, on this, he stopped Buddha Singh from coming to his place, and thereafter Buddha Singh did not come to his shop.

18. He further stated that on October 20, 1986, at midnight, dacoits in came to his house. At that time, he was sitting in the verandah (baramda in local language) at the door. A small lamp (dibri) was illuminating the area, and his mother and father were present inside the house. He further stated that his son, Rajendra, was present at the door. There were two lanterns illuminating inside the house. The night was bright, and moonlight was spreading all around.

19. He further stated that seven miscreants entered into his house to commit dacoity, and they were villagers of his village. He had seen all the dacoits. Accused Shesh Tiwari was carrying a Katta (country-made pistol) and a Banka (a type of curved weapon), while accused Vishwanath was carrying a firearm and a Banka. The other accused were carrying Lathi (sticks), Banka, and Gupti (swordstick).

20. He further stated that the accused persons opened fire. When he resisted their entry into the house, accused Vishwanath inflicted a blow with the Banka on his head, and thereafter, the accused entered the house.

21. He further stated that accused Shesh Tiwari opened fire on his father. When his mother rushed to rescue him, Shesh Tiwari assaulted her with the Banka. Due to sustaining these injuries, his mother succumbed. He further stated that accused Shesh Tiwari inflicted a Banka blow on Rajendra.

22. After hearing the hue and cry, neighbors Bahori Lal, Kripa Ram, and Turri arrived there. He further deposed that when the witnesses scolded them, the accused persons ran away with the looted articles. He deposed that he had seen and recognized the accused persons in the light of the torch and moonlight.

23. He also stated that some of miscreants was carrying a torch in their hand, and when they were moving from one room to another, they were flashing the torch. He also stated that one injured, Puttu Lal, is unable to move due to paralysis and is not able to give evidence.

24. Testimony of PW-2 Kripa Ram

Another witness of fact, Kripa Ram (PW-2), deposed that at the time of the alleged incident, at about 910 PM, he was staying in his house. He had heard the hue and cry and the sound of firing. He stated that he did not see the dacoits. He further stated that when the dacoits fled away, he

arrived at Puttu's house. He further stated that when most of the people in the village had arrived, he also rushed there. He did not support the prosecution version and turned hostile.

25. Testimony of PW-3 Bahori Lal

Another witness, PW-3 Bahori Lal, deposed that he did not know who infact committed dacoity in Puttu's house. He categorically stated that the accused persons Shesh Tiwari, Vishwanath, Mangoo Lal, Jattoo, Lallu, and Maqbool did not commit the dacoity. He also turned hostile.

26. Testimony of PW-4 Turri

Another witness, PW-4 Turri, also deposed that he did not know who committed dacoity in Puttu's house. He categorically stated that the accused persons Shesh Tiwari, Vishwanath, Mangoo Lal, Jattoo, Lallu, and Maqbool did not commit the dacoity. He also turned hostile.

27. Testimony of PW-5 Rajendra

PW-5, Rajendra, who is the injured son of the informant Brij Mohan Lal, deposed that at about 8:30 to 9:00 PM, dacoity was committed in his house. At that time, he was awake. His father, Brij Lal, was sitting on the south side at the door, and a small lamp was illuminating inside the door. The door was open on the north side. He further deposed that some dacoits entered the house. Among them, Shesh Tiwari, Vishwanath, Bhai Lal, Mangu, Maqbool, Jagatu, and Lallu were villagers, had no means of light.

28. He further deposed that accused Shesh Tiwari was carrying a Banka and a Katta, while accused Vishwanath was carrying a Banka, Mangu was carrying a Lathi, and Bhai Lal was carrying a Gupti. He further stated that Shesh Tiwari inflicted blows with the Banka on him. Thereafter, Shesh Tiwari inflicted blows upon Brij Mohan, and Shesh Tiwari opened fire on the deceased, who was his grandmother. After sustaining injuries, she died instantaneously. He also deposed that the dacoity continued for 2 to 2 and a half hours. Upon his screaming, witnesses Kripa Ram, Bahori Lal, and Turri arrived there, who were carrying torches. He further stated that at the time of the occurrence, there was moonlight. He further stated that he recognized the accused persons in the light of the torch, lantern, small lamp, and moonlight.

29. Testimony of PW-6 Smt. Shyama Devi

PW-6, Smt. Shyama Devi, the wife of the informant Brij Mohan, deposed that at about 89 PM, dacoits had committed dacoity in her house. At that time, a small lamp was illuminating at the door and inside the house. The night was bright. Accused persons Shesh Tiwari, Vishwanath, Mangoo, Lallu, Jattu, Maqbool, and one other accused entered her house. Shesh Tiwari was carrying a fire arm weapon and a Banka in his hands, while Vishwanath was carrying a Banka, Mangoo was carrying a Lathi, and other accused persons were also carrying Lathi.

30. She further deposed that the accused persons started to loot goods as they entered the house. Shesh Tiwari inflicted blows on the deceased, Munni Devi and she succumbed. She further

deposed that Shesh Tiwari also opened fire over her father-in-law and also inflicted a Banka blow on Rajendra. She also stated that the dacoits committed dacoity in her house for one hour. When the villagers arrived there, the dacoits fled away. The dacoits were armed. She also stated that the accused fired shots at the door to terrorize the villagers.

31. Testimony of PW-7 S.I. Ved Prakash Chaturvedi

PW-7, S.I. Ved Prakash Chaturvedi, who conducted the investigation, deposed that on the basis of the written report (tahreer), Ex. Ka 1, the checked FIR was lodged by Head Muharrir Kaushlendra Sharma, who was posted with him, and the same was entered into the General Diary (GD) by the Head Muharrir.

32. He further stated that he had recorded the statement of the informant, Brij Mohan. After reaching the place of occurrence, he had recorded the statement of the injured, Rajendra Kumar and Puttu Lal, and thereafter sent them for medical examination along with an official letter (Majroobi Chitthi). He further deposed that he had conducted the inquest of the body of the deceased, Munni, and thereafter sent the dead body for post-mortem through Constable Daya Ram Trivedi.

33. He further stated that he visited the place of occurrence and collected the sample of blood-stained and simple earth from the spot. After getting them sealed, he prepared the seizure memo (Fard). He also deposed that the lantern and small lamp were also inspected by him and had given the same to the informant for its safekeeping (supurdagi), and a memo was prepared in this respect. He also testified to the Police papers which were prepared at the time of the inquest.

34. He further deposed that during the investigation, he recorded the statements of witnesses Brij Mohan, Kripa Ram, Bahori Lal, Turri, Rajendra, Smt. Shyamu, and others. He also stated that due to the absconding of the accused persons, he had executed the process of attachment/confiscation (Kurki) against them. He further deposed that after January 24, 1986, the investigation was handed over to SHO V.K. Rai, who had made entry of the injury report and post-mortem report in the case diary. After concluding the investigation on November 14, 1986, he had submitted the charge sheet, Ex. Ka 21, against the accused persons.

35. Upon the closure of the prosecution evidence, the statement of the accused persons under Section 313 of the Code of Criminal Procedure, 1973, was recorded. All the accused persons denied the prosecution's case and maintained that they were innocent and had been falsely implicated due to existing political rivalry. The accused, Vishwanath Tiwari, also stated that he suffered a paralysis attack in his right hand, and therefore, he can neither hold nor eat anything with his right hand.

36. At the stage of defence evidence, the accused persons did not produce any oral or documentary evidence.

37. Having heard the learned counsel for both the parties, the trial court considered the evidence adduced by the prosecution, the statements given by the accused persons, and the material available on record, found that the accused-appellant had committed dacoity. The court further

found that the prosecution had succeeded in proving the charge under Section 396 of the IPC against the accused person beyond reasonable doubt hence convicted them for the offence under Section 396 of the IPC and consequently sentencing them to imprisonment for life.

38. Being aggrieved by the impugned judgment and order, this instant Criminal Appeal No. 866 of 1988 has been preferred by the six appellants, namely Vishwa Nath Tewari, Bhai Lal, Mangoo Lal, Lallu, Maqbool, and Jagatoo. However, during the pendency of the appeal, three appellant accused, namely Vishwa Nath Tewari, Lallu, and Jagatoo, have already passed away, and their appeals have abated vide order dated 17.02.2022. Now, the instant appeal survives only for the three remaining accused appellants, namely Bhai Lal, Mangoo Lal, and Maqbool. It is notable that Shesh Tiwari, who was said to be armed with a Katta (country-made pistol) and a Banka (curved knife) is not an appellant in this appeal. The appeal now survives against the three accused persons (Bhai Lal, Mangoo Lal, and Maqbool) against whom it is alleged that they were armed with a Lathi (stick).

39. It is expedient to mention that the prosecution did not examine the doctor who prepared the medico-legal report of the injured and the doctor who conducted the autopsy of the deceased Munni Lal. Nevertheless, the learned trial court proceeded to rely upon the unproven medical and post mortem report.

40. Submission of the appellants

(i). Learned counsel for the appellants submitted that the entire prosecution story is unnatural, highly improbable, and concocted, primarily due to political enmity stemming from the recent Pradhan election, which provided a strong motive for the complainant's family to falsely implicate their opponents. It was argued that the object of the miscreants who entered the house, Shesh Tiwari and Vishwanath, appeared to be marpeet (assault) rather than robbery, suggesting the intention was to wreak vengeance and to settle scores arising from the feud, and making the allegation of looting a mere embellishment to attract the graver Section 396 IPC.

(ii). Learned counsel for the appellants further submitted that the appellants are not hardened criminals should be accepted, making the open-face dacoity allegation by known door neighbours is entirely unnatural and unbelievable. This lack of precaution is considered a significant factor that creates a rational doubt in the prosecution's version of the facts.

(iii). Learned counsel for the appellants further submitted that the prosecution's case loses all its credibility because the key independent witnesses named in the FIRPW-2 Kripa Ram, PW-3 Bahori Lal, and PW-4 Turriall turned hostile. They clearly deposed that they did not recognize the accused persons, as they arrived at the house only after the dacoits had run away. Furthermore, the statements of the injured prosecution witnesses regarding the source of light are contradictory, noting that PW-5 Rajendra stated in his cross-examination that the lantern was extinguished.

(iv). Learned counsel for the appellants further submitted that the charge of dacoity is critically weakened by the absence of recovery of any looted articles and the overall defective investigation. Moreover, the learned Trial Court made a fundamental error by admitting and relying

upon the Injury Reports and Post-Mortem Report even though they were not lawfully proved by the Doctor who prepared them empty cartridge were also not recovered.

(v). Learned counsel for the appellants further submitted that if the sole object of the miscreants was to commit dacoity and rob the informants, it remains an unexplained factor why they should have spared the deceased, Smt. Munni Devi, who was wearing silver and gold jewellery. This contradiction is highly perverse, suggesting the primary motive was vengeance (or murder) rather than dacoity, and the principles governing dacoity under Section 396 IPC should not have been attracted.

(vi). On the basis of aforesaid submission, learned counsel for the appellants submitted that the impugned judgment and order passed by the Trial Court is not sustainable in the eyes of law and is liable to be set-aside by this Court.

41. Submission of the respondent

(i). Per contra, learned AGA vehemently countered the submissions raised by the appellants' counsel, asserting the correctness of the Trial Courts judgment. He emphasized the settled legal position that the testimony of the injured witnesses (PW-1 Brij Mohan, PW-5 Rajendra, and PW-6 Smt. Shyama Devi) stands on a higher pedestal in law, as their presence at the scene is guaranteed by their injuries, which acts as an in-built guarantee of their presence. He argued that the deposition of the injured witness should be relied upon unless there are strong grounds for its rejection based on major contradictions and discrepancies, which he contended are absent in this case.

(ii). Learned AGA further submitted that non-support of the independent public witnesses, such as Kripa Ram (PW-2), Bahori Lal (PW-3), and Turri (PW-4), should not be allowed to demolish the entire prosecution case, contending that their failure to support is often attributable to the fear, pressure, and terror generated by the accused party in the village.

(iii). He further submitted that the argument regarding the non-concealment of identity is not absolute. He argued that this incident was driven by deep-seated enmity and village rivalry, turning it into a desperate act of vengeance, and that when the accused are highly inimical, they may act like "daredevils" without concealing their identity.

(iv). He next submitted that the identification of the accused was instantaneous and clear because they were well-known neighbours and were seen in the available light. The light from the lantern, dibri, torches, and moonlight was sufficient for recognizing known persons.

(v). Learned AGA further submitted that once the factum of dacoity by five or more persons is established, and a murder takes place during the commission of that dacoity, all the participants are vicariously liable for the murder under Section 396 IPC.

(vi). He further submitted that the discrepancies pointed out by the defense regarding the number of fires or who stood outside are minor and natural deviations that do not go to the root of

the matter or detract from the essential prosecution story, which is consistently supported by the three injured eyewitnesses.

(vii). On the basis of above, learned AGA submitted that the learned Trial Court has rightly and in accordance with law convicted and sentenced the appellants. The impugned order does not suffer from any illegality or error which may call for any interference by this Court.

42. On the basis of the facts and the submissions advanced by the learned counsel for the parties, we formulate the following Points of Determination:

(A) Whether the prosecution has proved its case beyond reasonable doubt?

(B) Whether the trial court is right in convicting the accused appellants?

43. **Point No. (A)** Whether the prosecution has proved its case beyond reasonable doubt- On the basis of this point, it has to be seen whether the prosecution has proved its case beyond a reasonable doubt?

44. At the outset, it is expedient to mention here that, as per the prosecution version, many villagers arrived after hearing a hue and cry. Out of them, the villagers named as eyewitnesses, namely Kripa Ram, Bahori Lal, and Turri, arrived at the place of occurrence.

45. The prosecution examined them, but they did not support the prosecution case and turned hostile. Therefore, the benefit/weight of their evidence cannot be extended to the side of the prosecution.

46. Now, there remain three witnesses of fact, and the prosecution strongly relies on their deposition, as two of them are said to be injured witnesses. It is the case of the prosecution that, being injured, the statements of PW-1 Brij Mohan, PW-2 Kripa Ram, and PW-5 Rajendra Prasad cannot be discarded. The law gives high value to the evidence of an injured witness, and the prosecution also relied on the cases of Honble Apex Court in **Abdul Sayeed Vs. State of M.P., (2010) 10 SCC 259** that injured testimony is important. However, the rule states such testimony must be discarded if there are strong grounds for major contradictions and discrepancies. The Honble Apex Court has emphasized that even injured testimony must be scrutinized for credibility. The relevant paragraph 30 of the said judgment is extracted herein below:

“30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

47. Here, it is to be made clear that the cited case law does not belong to the case of dacoity, although the principle is laid down regarding the testimonial valuation and veracity of the injured witness. In view of that, we proceed to analyze the statements given by the witnesses who are said to be injured in the alleged incident.

48. As per the testimony of Brij Mohan (PW-1), he has specifically stated in his examination-in-chief that the accused Shesh Tiwari and another accused, Vishwanath Tiwari were carrying Katta and Banka but with regard to the surviving appellant/accused, those witness has not stated specifically, the one who was having the lathi, and who was having the Banka, and one who was having the Gupti. From his evidence, it is also apparent that the deceased Smt. Munni Devi sustained the Banka injuries inflicted by Shesh Tiwari, and Shesh Tiwari also inflicted the blows of Banka on the person of injured Rajendra. Furthermore, Shesh Tiwari also opened fire on the person of the informant's father. The informant did not state any single word that the surviving appellant/accused person also inflicted blows with the Banka or any other weapon to the injured or deceased. Thus, there is a deviation from the core version of the F.I.R., where averment is made that all accused persons inflicted blows with lathis, Bankas, and a firearm.

49. Another witness Rajendra (PW-5), the son of the informant, whose examination-in-chief has already been elicited hereinabove on cross-examination he has stated that, except for Vishwanath Tiwari and Shesh Tiwari, Mangoo was armed with a lathi and Bhai Lal was armed with a gupti. However, he did not state that the surviving accused persons, namely Bhai Lal, Mangoo Lal, and Maqbool, had inflicted blows by using any of these weapons on the person of the injured or the deceased.

50. On his cross-examination in Paragraph 7, Rajendra (PW-5) has stated that he had not seen what weapon Mangoo was carrying. He specifically stated that none of the miscreants was carrying a lathi. Another witness of fact, Smt. Shyama Devi (PW-6), the wife of the informant Brij Mohan, whose statement has been elicited hereinabove, also restricted her testimony by stating that Mangoo and Bhai Lal were carrying a lathi. However, she also did not state that the surviving accused persons, namely Bhai Lal, Mangoo Lal, and Maqbool, participated in the commission of inflicting blows by using a lathi or with any other weapon on the person of the injured and deceased.

51. On her cross-examination also, she did not state a single word that the surviving accused person also inflicted blows. Thus, there are major contradiction in respect of the role attributed to the surviving accused persons in the FIR and the role attributed in the testimony of this witnesses of fact.

52. Now, we proceed to consider the other major contradictions in their statements, particularly with regard to the source of light and the absence of a role for miscreants who caused the occurrence.

53. On the perusal of the record, it transpires that the prosecution has examined Brij Mohan (PW-1) and Rajendra (PW-5) as injured witnesses. Brij Mohan (PW-1) has stated that all the accused persons are residents of his village. He also stated that he has a betel shop in his village,

where one Budhdha Singh, resident of Betigaon, used to come to chew betel. He admitted that there is enmity among Lallu, Shesh Tiwari, and Budhdha Singh. Lallu and Shesh Tiwari objected, and asked him to prevent Budhdha Singh to come to his shop. He further stated that on 20.10.1986, at about midnight, he was sitting in his Verandah (Baranda), which was on the North side, and a Dibri was illuminating inside the house. His mother and father were present, and Rajendra was present at the door. A lantern was illuminating inside the house, and no other source of light was outside the house, but the night was bright. He further stated that seven accused persons, who belong to the same place, came to his house to commit the dacoity. Shesh Tiwari was having a Lathi and a Banka, Vishwanath was also having one firearm and one Banka, and others were having a Lathi, Gupti, and Banka. He stated that two shots were fired from the firearms, and he resisted them from entering the house. Vishwanath inflicted a blow of Banka, and Shesh Tiwari opened fire on his father. When his mother rushed to rescue him, then Shesh Tiwari inflicted a blow of the Banka over his mother, and she succumbed (died). Shesh Tiwari also inflicted a Banka blow on Rajendra, who suffered injuries. Thus, the whole of the examination-in-chief of this witness reveals that the blow of Banka that caused the death was inflicted by accused Shesh Tiwari, and he also inflicted injuries through a Katta (firearm), and accused Vishwanath inflicted a blow with a Banka. With regard to other accused persons, he did not state a single word about who inflicted injuries, but he has stated that the accused persons committed dacoity and robbed the articles.

54. On his cross-examination, this witness stated that he has a licensed gun for his safety, and at the time of the alleged incident, his gun was kept in the house of Lallan Bihari. He also admitted that there is enmity between Lallan Bihari and Shesh Tiwari. He further stated that there was an election of Village Pradhan, where the accused persons were on the side of the winning contestant, Radhey Shyam, whereas Lallan Bihari was on the side of the defeated contestant, Guru Prasad; thereafter enmity had taken place between Lallan Bihari and the accused persons (Muljiman). He also admitted that after the incident, on the very next date, Lallan Bihari came into his house, and he told Lallan Bihari the names of the accused persons. Then Lallan Bihari asked him that only the names of those he has witnessed should be mentioned in the FIR. He also stated that his father's portion of the property was separate from his share. From the cross-examination, it reflects that he is a license holder of a firearm, and though he admitted he is a betel shop keeper, he did not disclose why he did not make any effort to obtain his licensed gun, which was kept in the house of Lallan Bihari, whose house is adjacent to his house at about 200 feet. But he admitted that all the accused persons did not wear any mask or cover their faces to conceal their identity, and their mouths were open. He further stated that only two accused persons entered the house, and the remaining were outside the house.

55. Thus, as per the statement given by this witness in examination-in-chief, accused Vishwanath and Shesh Tiwari entered inside the house, meaning thereby the present appellants (Bhai Lal, Mangoo Lal, Maqbool) did not make any effort to go inside the house nor inflicted any blow to any of the injured witnesses. Although this is a case of dacoity, there is no necessity for their common intention or common object because they conjointly committed the crime. Therefore, their presence is verified, then for the purpose of the charge leveled against them, their role would be considered sufficient. He also stated that he did not clarify in the statement which particular appellants were outside the house. Thus, from the injured witness, it shows that Shesh Tiwari and accused Vishwanath came into his house, and when they inflicted blows from a Katta, Lathi, and

Banka. From the statement of this witness, it does not reflect that the miscreants who came there first tried to commit robbery or theft or loot of household or jewelry, etc. It also reflects that the intention of accused Shesh Tiwari and Vishwanath was to commit Marpeet (assault), not to commit robbery, etc. Otherwise, the miscreants who entered would first look for valuable articles and money, and bearing that in mind, they would use violence, if resistance occurred. It also shows that the testimony of this witness also reflects that the events did not happen as such stated in the FIR.

56. Now we come to the evidence of another eye witness who is claimed to be injured, Rajendra Prasad, son of informant Brij Mohan, has been examined as PW-5. He has stated in his examination-in-chief that at the time of the incident, he was sitting on the Varandah, while his father Brij Mohan was sitting at the door, and there was light of a Lantern at the door, and inside the house, there was light of a Dibri. He stated that some miscreants entered his house, whose names are Shesh Tiwari and Vishwanath, Mangoo, Maqbool, Jattu, Lallu (All seven names), who are residents of his village. He stated that accused Shesh Tiwari inflicted blows with a Banka on his body. Thereafter Vishwanath inflicted blows on Brij Mohan, and Shesh Tiwari also opened fire on the deceased Grand Mother, and he also inflicted blows to the injured Puttu Lal (Grand Father). But the surprising fact is that this witness has stated that the incident of dacoity continued for two and a half hours. In cross-examination, he has stated that when the dacoits entered his house, the Lantern was not illuminating; it was Bujha Huwa (kept off). He further stated that the Dibri was also off, therefore he could not ascertain which one of the dacoits was in the house and which one was outside the house, but certainly, none of the dacoits was covering their face. Thus from his evidence, it transpires that he has deviated from his earlier version as in his cross-examination. One thing is also very surprising that as per his testimony miscreants had fired 10-12 shots, and villagers also fired 10-12 shots, but none of the empty cartridges was recovered by the Investigating Officer. As per the statement of the informant, only two fires were open, while this witness said 10-12 fires were opened by them. Thus, there is major contradiction in the testimony of this witness, which is not consistent with the statement of the informant witness, who is also alleged to be injured. Therefore, the testimony of the witnesses do not fall in the category of fully reliable witnesses.

57. Another witness of fact, Smt. Shyama Devi i.e wife of the informant, has been examined as PW-6. She has stated that at the time of the incident, her father-in-law and son Rajendra were sitting inside the house, and her husband was outside the house, and a Dibri was illuminating, but the night was bright. She also stated that miscreant Shesh Tiwari and (all seven names: Vishvanath, Mangoo, Bhai Lal, Jassu, Lallu, Maqbool) came and entered her house. In her cross-examination, she admitted that the persons who were inside the house could not be recognized and identified, and she also stated that the accused persons who are present before the court, did not enter the house. She also admitted that the accused persons were not covering their faces. She further stated that there were more than 7-8 miscreants outside the house, and another 7-8 persons were inside the house who were committing the loot. Total number of dacoits was 15-16. Thus, she sets up the new facts which is not corroborated by the testimony of injured witnesses. Thus the testimony of these witnesses is not of such quality that it may be called wholly reliable, as there is a contradiction in their evidence compared to other witnesses which could not be said to be minor in nature.

58. It is a settled proposition of law that where the evidence of such a witness is partly reliable in nature, then in that case, some corroborative evidence which may either be ocular or

documentary should be produced. As earlier we have discussed that other remaining ocular evidence who are the neighbours and claimed to have witnessed the incident have turned hostile, thus the evidence of these injured witnesses is not substantiated or not fortified with another independent witnesses.

59. Here one thing is more important that the injury report of the injured persons as available on record, which shows injuries on the person of Brij Mohan, Rajendra Prasad, and Puttu Lal. But these papers were not proved in a lawful manner, despite of the fact the trial court admitted them in evidence and relied upon them. Moresoover, there is a post-mortem report in the trial courts records, but it is also not proved by the doctor, even though it is relied upon by the trial court.

60. The documents which are not duly proved cannot be relied upon by the Court as documentary evidence. Thus, the injured statement in respect of sustained injuries on them is not substantiated by medical evidence.

(B) Whether the trial court is right in convicting the accused appellants?

61. Now we will consider the arguments advanced by both sides in respect of the identity of accused persons and the law cited by them in this regard. As it is apparent that PW-1, PW-5, and PW-6 unanimously deposed in their testimony that accused persons were not covering their face to conceal their identity.

62. The Honble Apex Court in various cases has laid down separate principles for assessing the evidence of the witnesses in the case of Dacoity and Murder. The very object of dacoity is to exhaust valuable property by force, being in fear of death or grievous hurt. During the exhaustion, nobody is spared by the accused, even death if one resists or creates obstruction in the exhaustion. The principle of dacoity is that no one commits dacoity without taking precautions to conceal his identity in the house of a known person. In the ordinary course of nature, known persons are not expected to commit dacoity without concealing their identity. In case somehow the identity of any dacoit is exposed to the inmates of the house where the dacoity is committed or to the witnesses, he will incur the risk of prosecution. However, in the case of Murder, the paramount object is to take revenge because of enmity. There may be cases where murder is committed, and any member of the assailant party takes away property also in a casual manner. In such a case, the nature of the offence should not be changed, and it will remain a case of Murder and not of the Dacoity, and hence the principles of dacoity will not be attracted. Sometimes certain portions of the evidence are fabricated to show that it was a case of dacoity and not of a murder, and the deceased and injured persons have sustained injuries during the course of dacoity.

63. Further the Honble Apex Court, in the case of **Ramji Lal and Another Vs. State of U.P.**, reinforces that the failure of local accused to conceal their identity is a fatal flaw in the dacoity charge. The relevant paragraph-7 of the said case is extracted herein below:

"7. The most striking feature of this case, so far as Ramjilal and Jagdish are concerned, is that they are residing within a distance of a few furlongs (two furlongs) from the scene of occurrence and are already well known to the witnesses... and inspite of that there is not a whisper

*in evidence to show that they even attempted to conceal their identity in any manner whatsoever. It is of course true that facts and circumstances of each case will have to be looked into and a general law can not be laid down to say that unless known persons try to conceal their identity, they can never be expected to take part in a dacoity in their own village or in the neighbouring village. Generally when a dacoity takes place... the persons of the neighbourhood who take part in it, take every precaution to conceal their identity so that they may not be Identified and implicated in the case afterwards... When a known person is desperate and very much inimical, he can go to commit dacoity without taking the usual precaution of covering his face. It was so held in the case of **Siyaram v. State of Bihar by the Supreme Court..**"*

64. The Hon'ble Apex Court, in the case of State of U.P. vs. Gokaran and others, has held that the applicability of the exception regarding non-concealment of identity in criminal acts "really depends upon the frame of the mind in which the participants were at the time of the incident." This ruling confirms that the argument of known neighbours committing an offence without concealing their faces may only be accepted when such an extraordinary degree of criminal audacity and desperation is demonstrably established by the prosecution's evidence.

65. We find that this principle is inapplicable to the facts of the instant appeal, as the prosecution has failed to establish that the present appellants were persons of such desperate character, making the non-concealment of their identity remain a most striking feature that casts a significant shadow of doubt on the veracity of the identification.

66. The claim of clear identification is further shattered by the contradiction noted in the statement of PW-5 Rajendra, who deposed that the lantern was extinguished.

67. In view of the above points of determination, we also find that the foundational charge of dacoity coupled with murder under Section 396 IPC is highly doubtful and unsustainable. It is an undisputed fact that the parties were involved in an intense political rivalry (partybandi), which renders the identification of the appellants who were known next door neighbours and did not conceal their faces extremely suspect, suggesting the primary motive was one of vengeance (marpeet) rather than robbery. This suspicion is reinforced by the highly improbable circumstance that the miscreants, if their intent was genuinely dacoity, would have spared the deceased's jewellery (including a silver 'Kardhani') which was allegedly being worn. A clear and fatal factor that further diminishes the prosecution's case is the complete failure of the Investigating Officer to recover any looted article from the accused or even empty cartridges from the spot, despite the clear allegation of dacoity. The legal principle is well-established that when the primary motive of dacoity is shrouded in high doubt, particularly when the identification is questioned due to pre-existing enmity, the grave charge under Section 396 IPC must necessarily fail, resulting in the appellants being entitled to the benefit of the doubt.

68. The entire investigation appears defective, necessitating judicial intervention. Since the foundational crime of dacoity is not proven and the identification of the Appellants is highly questionable given the deep-rooted political enmity, the Appellants are legally entitled to the benefit of the doubt. Furthermore, because the primary element of dacoity is not conclusively established, the question of punishing all co-accused for the murder under the vicarious liability

and deeming fiction of Section 396 IPC does not arise or operate. Consequently, the findings of the learned trial court are deemed perverse, being based on an incorrect appreciation of evidence.

69. On the consideration of material available on record and the facts in their entirety, it is revealed that the genesis and origin of the prosecution version have been suppressed and the true version has been prevented from coming into the FIR. In this respect, it is settled law that when the prosecution has not produced the true version of the events, the Court cannot create a new case for the prosecution in support of an unreliable prosecution story. The Honble Apex Court observed that if the genesis and origin of the occurrence are suppressed by the prosecution, then the accused person will be entitled to the benefit of the doubt.

70. It is notable that the main allegation of inflicting injuries with a Baka is against the accused since deceased and the allegation for opening fire and inflicting blows with a Baka is against accused Shesh Tiwari, who has passed away during the pendency of the appeal with regard to role of the surviving appellants, the evidence adduced by the prosecution is neither reliable, clinching, nor cogent, and also it does not inspire confidence.

71. In view of the above and considering the case in hand in the light of the law as discussed, this Court finds that the cumulative effect of the evidence leads to the undeniable conclusion that the prosecution has failed to prove the guilt of the appellants beyond all reasonable doubt. The conviction against the accused is not sustainable in the eyes of law due to the confluence of the admitted political enmity, the complete hostility of the independent witnesses, and the inherent improbability of open-face dacoity by known neighbours. The learned Trial Court erred fundamentally in ignoring these vital deficiencies. The hypothesis that the crime was committed by unknown miscreants and that the appellants were falsely implicated due to the ongoing political 'partybandi' is a highly probable and reasonable hypothesis that the prosecution has utterly failed to exclude from the realm of possibility. The entire investigation also appears defective. Since the identification is highly questionable and the underlying crime of dacoity itself is not proven, the appellants are legally entitled to the benefit of the doubt.

72. Thus, considering the overall facts, evidences and circumstances of the case, we are of the view that the impugned judgment and order dated 17.12.1988 passed by the Ist Additional Sessions Judge, Lakhimpur Kheri, in Sessions Trial No. 40 of 1988, convicting the appellants under Section 396 IPC and sentencing them to life imprisonment, is hereby

73. The appeal is, accordingly, **allowed**. Consequently, the judgment and order of conviction and sentence are set-aside. The appellants are acquitted of the charges levelled against them. The appellants, namely, Mangoo Lal, Maqbool, and Bhai Lal, are reported to be on bail. They need not surrender. Their bail bonds are stood cancelled, and sureties are stood discharged.

74. Let a copy of this judgment, along with the lower court record, be sent to the court concerned for immediate compliance and necessary action.

(2026) 1 ILRA 743
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 16.01.2026

BEFORE

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

Criminal Appeal No. 980 of 2001

Bhoolan & Ors.

...Appellants

Versus

State of U.P.

...Respondent

Issue for consideration

There was an old land dispute between the deceased and the accused persons. On 04.03.1993 accused persons armed with lathis and dandas assaulted the deceased and two injured witnesses. Trial court convicted accused u/s 304/34 IPC.

Headnotes

A. Indian Penal Code,1860-Sections 304/34, 325/34, 323/34, 504/34, 506(2)-Assault due to land dispute-deceased sustained multiple fractures and died due to shock and haemorrhage-Injured eye witnesses corroborated by medical evidence-Minor contradictions not fatal-Non-examination of independent villagers not fatal-Conviction sustainable when testimony of injured witnesses is trustworthy-Conviction affirmed.(Para 36 to 73) (E-6)

Held

The court ruled that non-examination of independent witnesses not fatal when injured witnesses are reliable and corroborated by medical evidence. Testimony of injured witnesses carries greater evidentiary value. minor discrepancies between ocular and medical evidence do not demolish prosecution case. Injuries were sufficient in ordinary course of nature to cause death. common intention under section 34 IPC proved. Conviction and sentence passed by trial court justified. Appeal dismissed.

Case law Cited

Hem Raj Vs State of Haryana, AIR 2005 SC 2110; H.P. Vs Pardeep Kumar (2018) 13 SCC 808; & Surinder Kumar Vs State of Punjab (2020) 2 SCC 563, Mohd. Wajid Vs State of U.P., (2023) 20 SCC 219, Fiona Shrikhande Vs State of Maharashtra (2013) 14 SCC 44-referred to.

List of Acts

Indian Penal Code,1860, Criminal Procedure Code,1973.

List of Keywords

Land dispute, assault, Lathi attack, injured witness, medical corroboration, common intention, culpable homicide, ocular evidence, shock and haemorrhage, life imprisonment, conviction.

Case Arising from

CRIMINAL JURISDICTION- CRIMINAL APPEAL No. – 980 of 2001 16.01.2026

Bhoolan & Ors. Vs. State of U.P.

From the Judgment and Order dated 16.01.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties***Advvs. for Appellant(s):-***

Shishir Pradhan, Kunwer Dhananjay Singh

Advvs. for Respondent(s):-

G.A., Onkar Singh, Rajesh Srivastava, Uma Kant Gupta

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

1. Heard Sri Akhilesh Kumar Mishra holding brief of Sri Kunwar Dhananjay Singh learned counsel for the appellant no. 2 and 3, Sri Shishir Pradhan learned counsel for the appellant no. 4, Sri Arunendra learned A.G.A for the State, and Sri Uma Kant Gupta learned counsel for complainant and perused the record.

2. The aforesaid criminal appeal arises out of order and judgement dated 15.10.2001 by VIIth Additional Sessions Judge, Raebareli in S.T. No. 210 of 1995 (State v. Bhoolan & others) arising out of Case Crime no. 13 of 1993, wherein the applicants have been convicted and sentenced to undergo life imprisonment u/s 304 IPC r/w 34 Indian Penal Code (in short IPC), one year rigorous imprisonment u/s 325 IPC r/w 34 IPC, six months rigorous imprisonment u/s 504, 323 r/w 34 IPC, one year rigorous imprisonment u/s 506(2) along with a fine of Rs. 2000/- each and in default of payment of fine six months rigorous imprisonment each. It has further been provided that all the sentences shall run

3. The appellant no. 1, namely, Bhullan, passed away during the pendency of the appeal, therefore, the appeal on behalf of the appellant no. 1 stands abated. The appeal survives only on behalf of appellants no. 2, 3 and 4.

Prosecution Story in Nutshell:

4. The prosecution story, in brief, is that the complainant Lalla Prasad, son of Jageshwar Pasi (deceased), resident of village Asharafpur, Police Station Nasirabad, District Raebareli, lodged a written report (Ext. Ka-1) stating that there exists an old land dispute between him and Bhullan and others of the village. On 04.03.1993, at around 8:00 PM, the complainant along with his father, Jageshwar (deceased), and companions; Om Prakash (vakil) and Hari Prakash, were returning home from Nasirabad. When they reached ahead of Asharafpur bridge, the accused persons namely, Bhullan (hereinafter referred as A1) son of Shivnath and the son s of Ram Dulare, namely Surajpal (hereinafter referred as A2), Brijlal (hereinafter referred as A3) and Jagatpal (hereinafter referred as A4), who were sitting there armed with lathis and dandas, stopped them and started hurling abuses. They then assaulted the father of the complainant, Jageshwar as well as Om Prakash with the lathi and danda.

5. Furthermore, when Hari Prakash attempted to intervene, he too was assaulted. On hearing the cries for help, villagers namely Vishram son of Sheetal, Gayadin son of Bechu, Udayraj son of Nattu, etc. reached the spot, whereupon the accused persons fled towards their houses after extending threats to kill. The father of the complainant sustained fractures on his arms and legs alongwith multiple other injuries on his body. He was brought on a charpai (cot) to the police

station by the complainant for lodging the report, whereas Om Prakash and Hari Prakash were carried home by their respective family members.

6. On the bases of the written report a FIR was registered under Section 323, Section 325, Section 504, and Section 506 of IPC (Ext. Ka-2) and the G.D. entry of the same was made (Ext. Ka-3). The injuries of Jageshwar, Om Prakash and Hari Prakash were examined by the doctor at the Primary Health Centre, Jais on 04.03.1993 (Ext. Ka-15, Ext. Ka-16, and Ext. Ka-17) and X-rays of Hari Prakash and Om Prakash were conducted on 05.03.1993 (Ext. Ka-10, 11 & Ext. Ka-12,13 respectively). Furthermore, Jageshwar died in the District Hospital, Raebareli, so the post-mortem of the deceased was conducted at the District Hospital, Raebareli (Ext. Ka-14) and when the information regarding this was received at the police station, the G.D. entry of the same was made (Ext. Ka-18). The investigation officer prepared the site-plan (Ext. Ka-9), inquest of the dead body (Ext. Ka-20), letter to R.I. (Ext. Ka-21), letter to C.M.O. (Ext. Ka-22), challan lash (Ext. Ka-23), sketch of the dead body (Ext. Ka-24), and the sample of the seal (Ext. Ka-25).

7. Upon completion of investigation, a charge-sheet under Section 323, Section 325, Section 304, Section 34, Section 504, and Section 506(2) IPC was submitted against all the appellants (Ext. Ka-8) and the case was committed to Sessions Court, Raebareli. All the appellants pleaded not guilty and denied participation or complicity in the incident.

8. To prove its case, the prosecution examined ten witnesses; PW-1 Lalla Prasad (complainant), PW-2 Om Prakash Khare, PW-3 Hari Prakash Khare, who are the witnesses of the fact, and PW-4 H.C.P. Ram Sahai Bhargav, PW-5 Devi Prasad Yadav, PW-6 Vinod Prakash, PW-7 Dr. S.S. Trivedi, PW-8 Dr. U.C. Sharma, PW-9 Dr. K.P.S. Chauhan, and PW-10 S.I. Sadhna Gupta, who are formal witnesses and have proved various steps in the investigation and medical evidence.

9. Appellants did not produce any oral evidence in their defence. In their statements under Section 313 CrPC, the appellants have offered no explanation and simply denied complicity in the case. They further stated that they have been falsely implicated in the case on the basis of an existing enmity. Thus, the appellants pleaded innocence.

10. Upon a comprehensive appraisal of the oral and documentary evidence on record, the learned Trial Court convicted all the appellants and sentence to undergo life imprisonment under Section 304 r/w 34 IPC, one year rigorous imprisonment under Section 325 r/w 34 IPC, six months rigorous imprisonment under Section 504 r/w 34, Section 323 r/w 34 IPC, one year rigorous imprisonment under Section 506(2) along with a fine of Rs. 2000/- each and in default of payment of fine six months rigorous imprisonment each. It has further been provided that all the sentences shall run concurrently.

Submission made by learned counsel for the accused-appellant :-

11. Learned counsel for the accused-appellants submitted that the trial court has decided the matter on mere presumption and the appellants have been falsely roped. It is further argued that the occurrence took place in the night, with no source of light, and none have seen the occurrence. It is

further argued that there exists no motive to commit the crime, as the land in the dispute belonging to Gram Sabha. It is further argued that there is contradiction between ocular and medical evidence. It is further argued that no independent witnesses have been examined and there exists no premeditation of mind to commit the crime. Thus the impugned judgment and order is not sustainable and liable to be set aside and appeal is liable to be allowed.

Submission made by learned A.G.A. :-

12. Per contra, learned A.G.A. has vehemently opposed the submissions advanced by the learned counsel for the appellants. He further submitted that the impugned judgment and order have rightly been passed by the learned trial court in accordance with law after considering the evidences and material available on record. Thus, learned A.G.A. submitted that the accused-appellants has rightly been convicted in accordance with law and sentenced accordingly. There is no illegality or error in the impugned judgment and order. It is further submitted that the appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

Oral Testimonies:

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

13. **PW-1 Lalla Prasad**, son of the deceased Jageshwar and the complainant, appeared before the trial court on 10.08.2000 and deposed that there existed an ongoing land dispute between his family and the appellants. He further deposed that on the date of incident, while returning home from Nasirabad along with his father Jageshwar, Om Prakash (vakil) and Hari Prakash, they were stopped and assaulted by the appellants with lathis and dandas. Initially, the appellants targeted his father and Om Prakash, but when Hari Prakash challenged, he was also assaulted. He further deposed that the incident occurred near Mattan Nala, about one kilometer from village Asharafpur. He further deposed that upon their cries for help, villagers namely, Vishram, Gayadin and Udayraj reached the spot, whereafter the accused fled towards the village hurling abuses and issuing threats to kill. He further deposed that his father sustained injuries on his left forearm and leg. He further deposed that he along with the villagers, carried his father on a charpai (cot) to the police station, while Om Prakash and Hari Prakash were taken to the village by others. A written report (Ext. Ka-1) was lodged at the police station. He further deposed that after lodging the report, his father was medically examined at Jais Hospital and, after receiving a preliminary treatment, was referred to the District Hospital Raebareli. He further deposed that his statement was recorded by the Investigating Officer and that his father succumbed to his injuries on 05.03.1993 at the District Hospital.

14. *During cross-examination, he deposed that the appellants were carrying lathis and dandas, and A1 was also armed with a kulhari (axe). He further deposed that the injuries suffered by his father on the left hand and left leg were caused by the said kulhari (axe), whereas Om Prakash and Hari Prakash did not receive kulhari (axe) blows. He further deposed that the villagers, namely Vishram, Gayadin, Udayraj, who arrived at the spot were unarmed and came from the direction of Asharafpur. He further deposed that the lungi of his father was torn and tied over the injuries. He*

further deposed that Om Prakash and Hari Prakash were left lying at the place of occurrence when he proceeded to the police station and he was unaware as to who brought them to the village later. He further deposed that the police station was about three kilometres away and he reached there around 9:00 PM. Around 1 2 hours thereafter, Om Prakash and Hari Prakash also arrived at the police station. He further deposed that the FIR was recorded in his presence while he was inside the police station. On the next date i.e. 19.08.2000, he deposed that the FIR was actually written outside the police station, 2 4 steps away from the gate and he resiled from his earlier version by stating that his deposition on the previous date was incorrect as he had been threatened for life. He further deposed that Ext. Ka-1 did not contain any second page. He further deposed that his father was the plaintiff in the land dispute, but there was no court hearing scheduled on the date of incident. He further deposed that he was unaware of the present status of that dispute, though he confirmed that his father used to visit Raebareli for pairvi. He further deposed that his father left for Nasirabad on the date of incident at approximately 3-4 PM in the evening where he (PW-1) accompanied him (father). He further deposed that due to the darkness around and his nervousness, he could not identify people gathered apart from the villagers namely Vishram, Gayadin and Udayraj. He further deposed that he and his father reached Nasirabad at around 5:00 PM and waited for Hari Prakash and Om Prakash at the Nasirabad bus stand chauraha for a couple of hours, as they were expected to return from Allahabad and Raebareli respectively. He further deposed that upon being assaulted, his father became unconscious, though later regained consciousness at the police station and his statement was also recorded. He further deposed that none of the appellants attacked him even though he was shouting. He further deposed that there was a pakka road being constructed leading to Nasirabad in the west of Mattan Nala, while the road leading to Asharapur was constructed of brick paved road with no stones or gravels nearby, although there are rocks to stop the flow of water near the bridge but there was none beneath. He further deposed that his shirt was not stained in blood while lifting and laying his father on the cot.

15. **PW-2, Om Prakash Khare**, advocate in the land dispute case, deposed that on 04.03.1993 at about 8:00 PM, while returning from Nasirabad to his village Asharapur along with Hari Prakash Khare (his brother), Jageshwar and Lalla Prasad, he was assaulted near the Mattan Nalla by the appellants. He further deposed that the appellants were armed with lathis and dandas, and injuries were sustained by him, his brother and Jageshwar. He further deposed that on hearing their cries, villagers namely, Vishram Paasi, Udayraj and Gayadin came to their rescue, whereupon the accused persons fled towards the village while hurling abuses and threats to kill. He further deposed that after the incident he was taken to his house by the villagers, whereas Jageshwar was taken to the police station. He further deposed that he along with Hari Prakash and other villagers subsequently reached the police station on a tractor. He further deposed that upon lodging of the FIR, they proceeded to the Jais P.H.C., from where they were referred to the District Hospital, where Jageshwar passed away, due to injuries, on 05.03.1993. He further deposed that the complainant was Lalla Prasad and that the assault by the appellants was due to the ongoing land dispute. He further deposed that the night of occurrence was bright.

16. During cross-examination, he further deposed that he was the counsel representing Jageshwar in his land dispute pending before the Court of Munsif Magistrate, Dalmau, which had commenced approximately six months prior to the incident. However, he did not know the appellants prior to the dispute, nor did he ever speak to them regarding the matter. He further

deposed that he used to travel daily to Raebareli and would usually return in the evening when it was dark, as only a single bus used to operate between Raebareli and Nasirabad. He further deposed that the date of the incident might have been a Thursday and that there was no weekly market on that day, the market being held usually on Tuesdays and Saturdays. He further deposed that his brother was a handwriting expert posted at Allahabad and used to reside there. He further deposed that the deceased and Lalla Prasad had come to Nasirabad by a bicycle and that the bicycle fell at the place of occurrence. He further deposed that Jageshwar was taken to the police station on a cot, but he could not recall who had brought the said (charpai) cot. He further deposed that he was first taken to Asharapur, and after receiving preliminary aid, he was taken to the police station on a tractor. He further deposed that Jageshwar regained consciousness at the police station and was able to speak. He further deposed that his statement and that of his brother were recorded by the Police Inspector at the District Hospital. He further deposed that A1 was carrying a lathi at the time of occurrence and not an axe. He further deposed that there was no retaliatory action by them (victims) during the occurrence. He further deposed that it would be incorrect to suggest that due to darkness the appellants could not be identified or that someone else had caused the injuries.

17. **PW-3, Hari Prakash Khare**, deposed that on 04.03.1993, at about 8:00 PM, when they (victims) were crossing the Mattan Nalla Bridge, while returning from Nasirabad to Asharapur, the appellants attacked them and caused injuries to Jageshwar, Om Prakash Khare (his brother) and himself. He further deposed that the accused belonged to Asharapur and that he knew them prior to the incident owing to their frequent meetings. He further deposed that Jageshwar was taken to the police station on a cot, whereas he and his brother were taken to the village on a bicycle; thereafter, upon receiving preliminary treatment, they proceeded to the Nasirabad Police Station on a tractor accompanied by other villagers. He further deposed that the same tractor was used to take them to the Jais P.H.C., where treatment was administered and their X-rays were conducted. He further deposed that he had no personal enmity with the accused and that they (victims) were assaulted as they resisted the appellants' actions.

18. During cross-examination, he further deposed that he had not sent any intimation regarding his arrival in Asharapur and that Jageshwar and Lalla Prasad were returning home from Nasirabad Market. He further deposed that although he met several persons en route and exchanged greetings, he did not meet the villagers namely Vishram, Gayadin and Udayraj between Nasirabad and Asharapur. He further deposed that upon his alarm for help, the said villagers arrived unarmed, followed by others, some of whom were carrying lathis, dandas and other weapons. He further deposed that none of the accused were carrying an axe at the time of the occurrence. He further deposed that no preliminary aid was administered to him or to Advocate Om Prakash at the village and after approximately 15-20 minutes they left for the Nasirabad Police Station. He further deposed that the incident occurred approximately 200-300 steps away from the Mattan Nalla Bridge on the road to Asharapur. He further deposed that he did not know the physical condition of Jageshwar or the time when he reached the police station. He further deposed that it would be incorrect to suggest that Lalla Prasad was not present at the spot or that the appellants were being falsely implicated on account of any prior animosity.

19. **PW-4 HCP Ram Sahai Bhargav**, Police Station Sauras, District Hardoi, deposed that on 04.03.1993 he was posted as Head Constable and on the same day at around 09:15 PM, on the basis

of a written complaint filed by Lalla Prasad, a case crime no. 13 of 1993 under Section 323, 325, 504, 506 IPC was registered against A1 and others on chik no. 10 of 1993 (Ext. Ka-2), and the corresponding entries were made in the G.D. report no. 33 (Ext. Ka-3). He further deposed that he had prepared injury letters for Jageshwar (Ext. Ka-4) and for Om Prakash and Hari Prakash (Ext. Ka-5 & Ext. Ka-6 respectively). He further deposed that on 07.03.1993, upon receipt of the post-mortem report submitted by Constable No. 315, Jarnadan Upadhyay of Police Station Kotwali, Raebareli, he amended the case so as to add Section 304 IPC and the corresponding entry was made through G.D. Entry No. 29 at about 07:15 PM (Ext. Ka-7).

20. During cross-examination, he deposed that he had amended the charges without receiving any order or report from a higher official or investigation officer and the said amendment was made on the basis of the post-mortem report and Panchnama, as it does not require the orders of any higher official. He further deposed that it is not necessary that the entry regarding the amendment of any crime is to be made in G.D. only, upon an order from the investigating officer. He further deposed that the injury letters of Om Prakash and Hari Prakash was prepared by Constable Om Prakash Tiwari and the same has not been recorded in the G.D. He further deposed that it would be wrong to say that the chik FIR, written report, and the FIR was falsely registered in collusion with the Station-in-charge Vinod Prakash Srivastava. He further deposed that the appellant no. 1, Bhullan, was posted as Chowkidar in station at that time.

21. **PW-5 Devi Prasad Yadav**, Station Head Kakarwai District Jhansi, deposed that on 19.03.1993, he was posted as Station Head, Police Station Deeh, District Raebareli. He further deposed that the investigation of the present case was initially being conducted by Sri V.V. Srivastava of Police Station Nasirabad, but the same was transferred to him on the orders of the Superintendent of Police. He further deposed that he recorded the statements of the witnesses mentioned in the Panchayatnama and noted the X-ray reports of the injured, namely Om Prakash and Hari Prakash, in the case diary. He further deposed that after recording the statements of the complainant and other witnesses, spot inspection was undertaken by him, and upon consideration of the materials collected during investigation, he submitted the charge-sheet (Ext. Ka-8).

22. During cross-examination, he deposed that he did not record the statements of the eye-witnesses, rather, he made inquiries relating to the case. He further deposed that he did not prepare any site plan and only inspected the place of occurrence. He further deposed that he made inquiries from the villagers but did not record their statements or names in the case diary. He further deposed that it would be incorrect to suggest that he submitted a false charge-sheet in collusion with the complainant or that a false colour was given to the incident by the earlier Investigating Officer by taking advantage of the darkness of the night and implicating the appellants in place of unknown persons.

23. **PW-6, Sri Vinod Prakash**, Station Outpost In-charge Head Karchhana Police Station, District Allahabad, deposed that on the date of the incident, he was posted as Station Head at Police Station Nasirabad. He further deposed that Case Crime No. 13 of 1993 under Sections 323, 325, 504 and 506 IPC was registered in his presence and that he took over the investigation. He further deposed that on 04.03.1993, he prepared the nakal chik FIR and nakal rapat on the basis of the statement of head constable Ram Sahai Bhargav. On 05.03.1993, he obtained the injury reports of

the injured persons and corresponding entries were made in the case diary. He further deposed that he took Constable Mahesh Prasad Dwivedi to the Orthopedic Department of District Hospital where the statements of injured witnesses, namely, Lalla Prasad, Advocate Om Prakash Khare, Hari Prakash Khare, as well as of Jageshwar and witness Vishram, were recorded. He further deposed that on their way back, he arrested accused persons, namely, Bhullan, Brij Lal and Jagat Pal, and recorded their statements. He further deposed that on 06.03.1993, accompanied by the said constable, he visited the place of occurrence and recorded the statements of witnesses Gayadin, Udairaj and tractor driver Mohd. Jahoor. At that time, the complainant also arrived and, on his pointing out, the site plan was prepared by him (Ext. Ka-9). He further deposed that on 07.03.1993, he received the post-mortem report of deceased Jageshwar and, on that basis, the offence was altered to Section 304 IPC through G.D. Entry No. 29 at about 19:15 PM and corresponding entry was made in the case diary. He further deposed that on 09.03.1993, he sought issuance of warrant from the Court of Munsif Magistrate, Dalmau, and on 16.03.1993, the copy of the Panchayatnama was entered in the case diary. He further deposed that upon permission of the Court, the statement of Suraj Pal was also recorded. He further deposed that subsequent thereto, the investigation was transferred to another Sub-Inspector.

24. During cross-examination, he deposed that Suraj Pal had admitted his guilt, whereas the other accused persons denied the allegations. He denied the suggestion that no report was sent to the Court regarding recording of the the confessional statement of Suraj Pal. He denied the allegation that he had colluded with the complainant to give a false colour to the incident or that the appellants were being falsely implicated due to enmity. He further deposed that the statement of the complainant and the injured could not be recorded earlier as they immediately proceeded to the hospital from where they were referred to District Hospital. He further deposed that he had no knowledge of any proceedings under Sections 107/116 Cr.P.C. against Advocate Om Prakash Khare. He further deposed that it would be incorrect to say that the area around the place of occurrence was full of pebbles and stones since the road there was brick paved road (khadanja road). He also denied the suggestion that the appellants were falsely implicated under the influence of Advocate Om Prakash Khare.

25. **PW-7, Dr. S.S. Trivedi**, Senior Radiologist, District Hospital Sitapur, deposed that on 10.03.1993 he was posted as Senior Radiologist at the District Hospital Raebareli. He further deposed that the injured witness Hari Prakash, who had been admitted on 05.03.1993, was referred for radiological examination by the Orthopedic Specialist. His X-Ray plates were prepared under his supervision by the X-Ray Technician, and on examining the same, he found a fracture of the shaft of the tibia bone in the left leg and fractures of the shafts of both tibia and fibula in the right leg (X-Ray reports are marked as Ext. Ka-10 and Ext. Ka-11 respectively). He further deposed that the X-Ray examination of injured Advocate Om Prakash was also conducted under his supervision and upon examination of the X-ray he found a fracture of the shaft of radius bone on the right forearm and fractures of the shaft of fibula bone and of the patella on the left leg (X-ray reports are marked as Ext. Ka-12 and Ext. Ka-13 respectively). He further deposed that on the same day, the X-Ray plate of the left hand of Om Prakash was also prepared, which revealed fractures in the 2nd, 3rd and 4th meta-carpal bones.

26. During cross-examination, he stated that such fractures could also be caused by a fall from a height of about 20-25 feet on a rough surface containing pebbles and stones.

27. **PW-8 Dr. U.C. Sharma**, Senior Specialist District Hospital Raebareli, deposed that on 07.03.1993 he was posted as Senior Dermatologist at District Hospital Raebareli and on the same day at around 3:00 PM, post-mortem examination of the deceased Jageshwar was conducted. He further deposed that the dead body was sealed and was sent by station-in-charge, police station Nasirabad. He further deposed that Jageshwar died on 06.03.1993 at around 5:40 AM in the District Hospital Raebareli. The deceased's physique was normal, his head was bandaged, both the forearms and arms were bandaged. He further deposed that the bandage extended from the left foot to the middle of the thigh. He further deposed that the rigor mortis had passed in the upper part but was present in the lower part, both the eyes were closed, and the clothes on the body were stained with blood. The injuries before the death were as follows:

Injury No. 1- Lacerated wounds measuring 6 cm X 0.5 cm, scalp deep on the left side of the skull 7 cm above the left eyebrow. There was a bandage on the injury.

Injury No. 2- Contusion with scratches measuring 1cm X 5cm on the right ring finger of proximal phalanx.

Injury No. 3- Stab wound measuring 1.5cm X 0.5 cm, deep to the flesh, 5cm behind the right elbow, obliquely on the back of the right forearm.

Injury No. 4- Stab wound measuring 1cm X 5cm deep to the muscle on the, 3cm above the right wrist, obliquely on the back of the right forearm.

Injury No. 5- Stich wound with three stitches, measuring 6cm X 2cm, bone deep, on the medial side of the left arm, 2.5cm above the right wrist. The bone below the injury were broken and protruding from the wound.

Injury No. 6- Lacerated wounds measuring 3cm X 2cm, bone deep, fracture below the injury and protruding from the wound. Injury was on the left leg. 4 cm above the left heel on the front side.

28. On the internal examination, it was found that blood clots were present below the Injury No. 1 and above the central part of the brain. He opined that the cause of death was shock and haemorrhage caused by injuries sustained before the death. He further deposed that the injuries sustained by the deceased were sufficient to cause death. He further deposed that except injuries no. 3 and 4, the remaining injuries could have been caused by lathis or dandas. He further deposed that injuries no. 3 and 4 could have been caused by a sharp object opening on the possibility of the use of a sharp danda. Upon being inquired by the court, he deposed that he is unaware about hura and if it was sharp it could have caused such injuries.

29. During cross-examination, he deposed that injuries no. 3 and 4 cannot be caused by a broad-edged weapon, but they can be caused by a sharp-edged weapon. He further deposed that the

stab wounds, injury no. 3 and 4, could have been caused by a sharp pointed weapon and if the weapon is not sharp then stab wounds could not have occurred. He further deposed that injury no. 3 and 4 could have been caused by falling on a sharp stone. He further deposed that he is unaware of the fact whether injured Jageshwar was treated at Jais P.H.C Raibareli before his death or not and the same has not been mentioned in post-mortem report and neither had he come across it in any medical report. He further deposed that Jageshwar died in District Hospital Raebareli. He further deposed that such stab wounds could have been caused during treatment, if the doctor uses a sharp instrument to operate. He further deposed that the injury report of the deceased was prepared by a doctor at P.H.C. Jais on 04.03.1993 and the medical report lists four injuries and no stab wounds.

30. **PW-9, Dr. K.P.S. Chauhan**, Leprosy Officer Palia District Lakhimpur, deposed that on 04.03.1993 he was posted as Medical Officer in P.H.C Jais and on the same day at around 10:45 PM he had treated the injuries of Jageshwar, who was brought by Constable 345 Shyam Sankar Singh, Police Station Nasirabad. The following injuries were found:

Injury No. 1- Compound fracture measuring 6cm X 8cm X 2cm , deep in the lower part of the right leg, 5 cm above the ankle joint, from which fresh blood was oozing. It was kept under observation.

Injury No. 2- Contusion measuring 8cm X 5cm on the upper part of the right palm in which pain and swelling was present. Red in colour. It was kept under observation.

Injury No. 3- Compound fracture measuring 5cm X 3cm X 2cm, deep located, 5cm above the left wrist joint from which fresh blood was oozing.

Injury No. 4- Lacerated wound 3cm X 1cm X 5cm deep on the left side of the head, 4 cm hairline, on the left side of the forehead.

He further deposed that injury no. 1 could have been caused by a blunt object and X-ray of the left leg was advised. He further deposed that injury no. 2, 3 and 4 could have been caused by a blunt instrument and X-ray for all the four injuries was advised (injury report is marked as Ext. Ka-15). He further deposed that the injuries were fresh and could have been caused around 8 o clock at night on 04.03.1993 and the injuries could have been caused by a blunt instrument like a stick.

31. He further deposed that on the same day, the injuries of the injured Om Prakash were medically examined at around 11:00 PM, who was brought by the same constable as mentioned above. The following injuries were found and examined:

Injury No. 1- Contusion measuring 8cm X 5cm mark on the right knee which was swollen and injured complained of pain. Colour was red. Injury was kept under observation.

Injury No. 2- Lacerated wound measuring 6cm X 1cm X 2cm deep was on the right leg, 18 cm below the right knee, from which fresh blood was oozing.

Injury No. 3- Torn wound measuring 3cm X 1cm X 2cm deep on right leg located 3 cm inside from injury no. 2, from which fresh blood was oozing.

Injury No. 4- Contusion measuring 8cm X 3cm on the outside of the right palm in which there was pain and swelling. The colour was red. It was kept under observation.

Injury No. 5- Torn wound 1 cm X 5cm X 2cm deep on the outer side of left palm, from which fresh blood was oozing.

Injury No. 6- Contusion measuring 5cm X 3cm on the left hand, 5cm above the wrist, in which pain and swelling was present. Colour was red.

He further deposed that injury no. 1 to 6 could have been caused by a blunt instrument, for example by lathi-danda. Injury no. 2, 3, and 5 were simple. He further deposed that X-ray was advised for injury no. 1 and 6. He further deposed all these injuries were fresh and could have been caused around 8:00 PM on 04.03.1993 (the injury report is marked as Ext. Ka 16).

32. He further deposed that on the same he had also examined the injuries on the body of Hari Prakash, at around 11:10 PM, and following injuries were found:

Injury No. 1- Contusion measuring 10 cm X 8 cm on the right leg, 8 cm above the right ankle, in which pain and swelling was present. Colour was red.

Injury No. 2- Contusion measuring 5cm X 2cm on the left leg, 12 cm above the left ankle, in which pain and swelling was present. Colour was red in.

He further deposed that injury no. 1 and 2 were possible by a blunt object, such as a stick. He further deposed that X-ray was advised for both the injuries and both the injuries were fresh. He further deposed that injuries could have occurred around 8:00 PM on 04.03.1993 (injury report is marked as Ext. Ka-17)

33. During cross-examination, he deposed that the injuries could have caused between 8:00 PM-10:00 PM. He further deposed that injuries of all the three persons could have been caused if they had fallen after hitting the stones lying on the bank of the river and in the similar situation if there are big stones or pieces of stones lying on a road, then such injuries could have been caused by falling forcefully on them. He further deposed that injury no. 4, mentioned in the injury report of deceased Jageshwar (Ext. Ka 15) was 3 cm X 1 cm X 0.5 cm deep. He further deposed that the injury was not as deep as 0.5 cm X scalp deep. He further deposed that the injury no. 4, as he had mentioned in the injury report, was not 7 cm above the hairline but was 4 cm above and he could not find any contusion mark on it.

34. **PW-10, S.I. Sadhna Gupta**, Sub-Inspector Ghazipur Police Station, District Lucknow, deposed that on the date of occurrence she was posted as Sub-Inspector Police Station Raebareli.

She further deposed that she had received Nakal Rapat No. 11 along with the aamad memo and memo of death of Jageshwar from the District Hospital, Raebareli at about 8:10 PM. She thereafter prepared the panchayatnama of the deceased (Ext. Ka-19). She further deposed that she had also prepared the requisite papers for conducting the post-mortem examination of the deceased, namely, the letter addressed to the R.I. (Ext. Ka-21), the letter addressed to the C.M.O. (Ext. Ka-22), the Challan Lash (Ext. Ka-23), the sketch of the dead body (Ext. Ka-24) and the copy of seal (Ext. Ka-25).

35. During cross-examination, she stated that at the time of preparation of the Panchayatnama, bandages were tied on the injuries of the injured and his entire head was bandaged. She further stated that she had mentioned that the bandages are tied but not mentioned that entire head was bandaged.

Court Analysis

Effect of non-examination of independent witnesses:

36. It is to be considered as to whether the prosecution case is vitiated on account of non-examination of independent witnesses. The learned counsel for the appellants argued that since the villagers who allegedly reached the spot namely, Vishram, Gayadin and Udayraj were not produced in evidence, an adverse inference ought to have been drawn and the testimony of the related and injured witnesses should not be relied upon.

37. The legal position on this aspect stands well settled. The prosecution is not required to multiply witnesses, and mere non-examination of all persons cited in the FIR or present at the spot does not ipso facto cast any doubt on the prosecution case. What is essential is the quality, and not the quantity, of evidence. Where the testimony of injured eye-witnesses is consistent, natural and inspires confidence, the absence of independent witnesses is not fatal. The Supreme Court through *Hem Raj v. State of Haryana*, AIR 2005 SC 2110; *H.P. v. Pardeep Kumar* (2018) 13 SCC 808; and *Surinder Kumar v. State of Punjab* (2020) 2 SCC 563 has consistently held that no universal rule can be framed that failure to examine independent witnesses necessarily leads to rejection of the prosecution version. The Court is required to assess whether the witnesses examined are trustworthy and whether their version is corroborated by the medical and other material evidence on record.

38. In the present case, PW-2 Advocate Om Prakash and PW-3 Hari Prakash are injured witnesses, who sustained injuries in the same incident. Their presence at the spot stands fully established by their medical examination at Jais P.H.C. the same night, with fresh injuries found on their body, which fully corresponds to the time of occurrence. The ocular version of these injured witnesses has been found cogent, consistent and wholly natural. Their statements also find substantial corroboration from the medical evidence, including the injury reports (Ext. Ka-15, Ka-16, Ka-17), the X-ray reports, as well as the post-mortem report of the deceased.

39. Merely because the prosecution did not produce other villagers who had arrived after the assault, the entire prosecution story cannot be discarded. It is well settled that the testimony of

injured witnesses stands on a higher pedestal, as they are least likely to shield the actual assailants and substitute them with innocent persons. In the present case the injured witnesses have consistently deposed that the appellants were armed with lathis and dandas, had assaulted and caused injuries to the deceased Jageshwar, PW-2, and PW-3. Their presence at the spot being natural and fully explained, testimonies of PW-2 and PW-3 cannot be doubted merely on the ground of relationship.

40. It is often observed that villagers often hesitate to come forward and depose in Court, especially when the accused persons belong to the same locality. Thus, the mere omission of the prosecution to examine these villagers cannot be treated as fatal to its case, particularly when trustworthy and corroborated evidence of injured witnesses is available.

Motive, Premeditation and Nature of Offence (Section 304 IPC vis- -vis Section 325 IPC)

41. Learned counsel for the accused-appellants contended that the prosecution has failed to establish any motive or premeditation on the part of the appellants and that, even if the prosecution version is accepted in its entirety, the case would not go beyond the ambit of Section 325 IPC. It was urged that there was neither intention nor knowledge attributable to the appellants that the injuries inflicted would result in the death of the deceased.

42. The law on the question of motive is well settled. Motive is not a sine qua non for proving an offence when there is clear, cogent and reliable ocular evidence. Proof of motive assumes significance mainly in cases resting on circumstantial evidence. Where direct evidence of eye-witnesses, particularly injured witnesses, is available and inspires confidence, the absence or inadequacy of motive does not weaken the prosecution case. At the same time, if motive is established, it lends further assurance to the prosecution version.

43. In the present case, the prosecution has not only led direct evidence of injured eye-witnesses but has also established the existence of motive. PW-1 Lalla Prasad, PW-2 Om Prakash Khare and PW-3 Hari Prakash have consistently deposed about an ongoing land dispute between the deceased Jageshwar and the appellants. The said dispute was subsisting much prior to the date of the incident and has been admitted in substance even during cross-examination. PW-2, an advocate by profession, has specifically stated that he was representing the deceased in the said dispute, which was pending before the competent court. The existence of prior enmity, therefore, stands proved on record.

44. The manner in which the incident occurred also reflects a clear element of premeditation. The evidence shows that the appellants were already present near the Mattan Nala, armed with lathis and dandas, and were lying in wait. As soon as the deceased and the injured witnesses reached the spot, the appellants stopped them, abused them and launched a concerted assault. The attack was not momentary or accidental; rather, it was directed initially against the deceased and PW-2 thereafter against PW-3 when he attempted to intervene. The nature, number and gravity of injuries inflicted on the deceased, including multiple fractures, clearly demonstrate that the assault was deliberate and brutal.

45. The conduct of the appellants before, during and after the incident further reinforces the inference of premeditation. The appellants acted in concert, armed themselves in advance, assaulted the victims in a coordinated manner and fled from the spot only after villagers arrived, while extending threats. Such conduct is wholly inconsistent with a sudden or unpremeditated occurrence.

Alleged contradictions between Medical and Ocular Evidence

46. It has been argued and stressed upon by the learned counsel for the appellants, that there have been contradictions observed between the medical and ocular evidence on record. It is a well-settled principle of criminal jurisprudence that when the ocular testimony of trustworthy witnesses is fully consistent with and duly corroborated by the medical evidence, the prosecution case stands significantly strengthened. Medical evidence is primarily opinionative in nature and is meant to assist the Court in appreciating the direct evidence available on record. It can only discredit ocular testimony when there exists a direct and irreconcilable conflict between the two. In the absence of such contradiction, the ocular version must be given due primacy. (*as per Mahavir Singh v. State of M.P.*, (2016) 10 SCC 220)

47. The submission advanced on behalf of the appellants that there exists a material contradiction between the ocular version and the medical evidence, particularly with reference to Injury Nos. 3 and 4, has been carefully examined by this Court.

48. The occurrence is stated to have taken place on 04.03.1993 at about 8:00 p.m., and the deceased later succumbed to the injuries sustained therein. The post-mortem examination was conducted at 3:00 p.m. on 07.03.1993 by PW-8, Dr. U.C. Sharma, Senior Specialist, District Hospital, Raebareli, who proved the post-mortem report and deposed in detail regarding the injuries found on the body of the deceased. The condition of the body, the ante-mortem nature of the injuries, and the internal findings recorded during post-mortem are fully consistent with the time and manner of occurrence as established by the prosecution witnesses. No material discrepancy has been pointed out by the defence so as to discredit the medical timeline.

49. The principal emphasis of the appellants has been laid upon Injury Nos. 3 and 4, which have been described in the post-mortem report as stab wounds. The Trial Court has dealt with these injuries with due care. Both injuries are situated on the posterior aspect of the forearm, a classical site for injuries sustained as a result of a fall, particularly when a person collapses after receiving forceful blows. Such a location is not ordinarily targeted in cases of intentional stabbing. Moreover, the dimensions and nature of these injuries also lend support to the conclusion drawn by the Trial Court. While the width of the wounds is comparatively small, measuring approximately 0.5 cm and 1 cm respectively, the length is irregular and the orientation oblique, suggesting a sliding impact rather than a direct penetrating force. Importantly, the post-mortem report does not describe any clean-cut margins, tailing, or marginal abrasions which are ordinarily associated with injuries caused by sharp-edged weapons.

50. Furthermore, PW-8, Dr. U.C. Sharma, in his testimony, has not categorically opined that injury no. 3 and 4 were caused by any sharp-edged weapon. On the contrary, his evidence does not

rule out the possibility that such injuries could have been sustained due to a forceful fall on a hard surface containing stones and pebbles. In the present case, where the assault occurred on a brick paved road (khadanja road) and the deceased was subjected to multiple lathi blows, the inference drawn by the Trial Court that the deceased may have fallen forcefully on the ground, thereby sustaining injury no. 3 and 4, cannot be said to either improbable or perverse.

51. It is also relevant to note that although an attempt was made by the defence to introduce the use of a khulhari (axe), the same does not find corroboration either from the ocular testimony of PW-2 and PW-3 or from any recovery made during investigation. The Trial Court has rightly discarded this suggestion, and this Court finds no reason to take a different view.

52. Further, the cause of death, as opined by PW-8, was the cumulative effect of multiple injuries caused by blunt force trauma. Injury Nos. 3 and 4 were not stated to be individually sufficient to cause death in the ordinary course of nature. Therefore, even assuming some ambiguity with regard to the precise manner in which these two injuries were sustained, the same does not undermine the prosecution case, as the cause of death stands established independently of those injuries.

53. The Trial Court has undertaken a careful and holistic appreciation of both ocular and medical evidence and has rightly concluded that there was no use of any sharp-edged weapon in the commission of the offence. The finding that Injury Nos. 3 and 4 were accidental in nature, sustained as a result of a fall after the deceased received blunt force injuries, is based on sound medical reasoning and does not suffer from any illegality or perversity.

54. Moreover, the reliance placed by the learned counsel for the appellants on Krishnegowda & Ors. v. State of Karnataka, (2017) 13 SCC 98, Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 and Darbara Singh v. State of Punjab, (2012) 10 SCC 476 is misconceived, as the principles enunciated therein apply only where the medical evidence completely rules out the ocular version or where material contradictions strike at the root of the prosecution case, a situation which does not arise in the present matter where the ocular testimony is consistent, credible and duly corroborated by medical evidence.

55. In view of the settled legal position that ocular evidence ordinarily prevails unless medical evidence completely rules it out, and having regard to the fact that the medical evidence in the present case lends due corroboration to the ocular version, this Court finds no merit in the contention of the appellants regarding alleged contradiction between the medical and ocular evidence. The findings recorded by the Trial Court on this aspect are accordingly affirmed.

Occurrence at night alleged impossibility of identification and false implication

56. The learned counsel for the appellants has contended that the occurrence took place during night hours and, therefore, there was no sufficient source of light to enable the witnesses to identify the assailants. On this premise, it was argued that the appellants have been falsely implicated due to prior enmity and that the conviction based on such identification is unsustainable.

57. At the outset, it is relevant to note that the time of occurrence has consistently been stated to be around 8:00 8:30 PM. The prosecution witnesses have not described the incident as having taken place in pitch darkness. On the contrary, PW-2 Om Prakash Khare has categorically stated in his testimony that the night of occurrence was bright. This assertion has not been effectively dislodged in cross-examination.

58. The learned Trial Court has dealt with this aspect in detail and has taken judicial notice of the Panchang of the year 1993, which indicates that the date of occurrence, i.e., 04.03.1993, was *Ekadashi of Shukla Paksha*. On that night, there was sufficient moonlight. The trial court has rightly observed that in such conditions, identification of known persons is not only possible but natural. This Court finds no perversity or legal infirmity in the said reasoning. It is well settled that identification in moonlight cannot be discarded merely because the incident occurred at night, particularly when the accused persons are known to the witnesses from before.

59. In the present case, the appellants and the witnesses are residents of the same village. PW-3 Hari Prakash has specifically stated that he knew the accused persons prior to the incident due to frequent interactions. Similarly, PW-1 and PW-2 have also deposed about the prior acquaintance and existing land dispute with the appellants. Where the assailants are known persons, the requirement of a strong or artificial source of light is considerably diluted, as recognition does not depend merely on visual features but also on voice, stature, gait and overall familiarity.

60. Moreover, the plea of false implication also does not inspire confidence. The incident resulted in grievous injuries to three persons and ultimately in the death of Jageshwar. In such circumstances, it is highly improbable that the injured witnesses would spare the real assailants and falsely implicate the appellants merely on account of prior enmity, particularly when the appellants are co-villagers and well known to them.

61. Thus, considering the totality of the facts and circumstances, the availability of sufficient moonlight, the prior acquaintance between the parties, the consistent ocular testimony of injured witnesses, and the immediate conduct of the accused, this Court is of the considered view that the identification of the appellants stands firmly established. The finding recorded by the learned Trial Court on this issue is based on sound appreciation of evidence and does not call for any interference.

62. Moreover, argument that the offence would not go beyond Section 325 IPC is also misconceived. The distinction between Section 325 IPC and Section 304 IPC lies not merely in the nature of injuries but in the knowledge and likelihood of death resulting from the act. It is not necessary that there should be a deliberate intention to cause death in order to attract Section 304 IPC. What is required is the knowledge that the act is likely to cause death, which has to be inferred from the totality of circumstances.

63. In the present case, the deceased, 46-year-old, was subjected to a brutal assault by multiple assailants using hard and blunt weapons. The injuries sustained were grievous in nature, necessitating repeated medical intervention and ultimately culminating in his death. The chain of events from the time of assault till the death of the deceased establishes a clear and proximate

nexus between the injuries inflicted and the fatal outcome. The death was not due to any intervening cause but was the direct consequence of the injuries sustained in the incident.

64. The Trial Court has, therefore, rightly concluded that the appellants, by their acts, had the requisite knowledge that such an assault was likely to cause death and that the offence committed could not be diluted to one under Section 325 IPC alone. The finding recorded by the Trial Court is based on a correct appreciation of evidence and settled principles of law and does not suffer from any infirmity warranting interference.

Applicability of Section 504 IPC

65. The learned counsel for the appellants has further contended that the conviction of the appellants under Section 504 IPC is wholly unsustainable in law, inasmuch as the essential ingredients of the said offence are absent from the prosecution evidence.

66. The scope and ambit of Section 504 IPC stand authoritatively settled. The Hon ble Supreme Court in ***Mohd. Wajid v. State of U.P., (2023) 20 SCC 219***, has held:

“29. Section 504 IPC contemplates intentionally insulting a person and thereby provoking such person insulted to breach the peace or intentionally insulting a person knowing it to be likely that the person insulted may be provoked so as to cause a breach of the public peace or to commit any other offence. Mere abuse may not come within the purview of the section. But, the words of abuse in a particular case might amount to an intentional insult provoking the person insulted to commit a breach of the public peace or to commit any other offence. If abusive language is used intentionally and is of such a nature as would in the ordinary course of events lead the person insulted to break the peace or to commit an offence under the law, the case is not taken away from the purview of the section merely because the insulted person did not actually break the peace or commit any offence having exercised self-control or having been subjected to abject terror by the offender.”

67. Similarly, in ***Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44***, the Hon ble Supreme Court has held:

“13. Section 504 IPC comprises of the following ingredients viz. (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC.”

68. Applying the aforesaid principles to the facts of the present case, this Court finds that the prosecution has failed to establish the offence under Section 504 IPC. A careful perusal of the written report as well as the testimonies of PW-1, PW-2 and PW-3 reveals that, although a general allegation of abuses being hurled by the appellants has been made, neither the complaint nor the oral evidence discloses the specific words allegedly used, nor does it describe the nature, tenor or context of the alleged abusive language. There is no material on record to indicate that the words allegedly uttered were of such a nature as would, in the ordinary course of events, provoke the person insulted to commit a breach of public peace or any other offence.

69. The allegations in this regard are vague, omnibus and wholly lacking in particulars. The prosecution has not established that the alleged abuse was intentional, targeted, or calculated to provoke a breach of peace, nor that the appellants possessed the requisite intention or knowledge contemplated under Section 504 IPC. Mere use of abusive or discourteous language, without disclosure of its nature and without proof of the consequential provocation envisaged by law, does not satisfy the statutory requirements of Section 504 IPC.

70. In the facts and circumstances of the present case, where the prosecution has failed to specify the abusive language allegedly used and has not demonstrated that such language was of such gravity as to provoke a breach of public peace, the conviction of the appellants under Section 504 IPC cannot be sustained. The learned Trial Court, in convicting the appellants under Section 504 IPC, appears to have proceeded on a general allegation of abuse, without examining whether the essential legal ingredients of the offence stood fulfilled. Accordingly, this Court is of the considered view that the offence under Section 504 IPC is not made out against the appellants. The conviction and sentence of the appellants under Section 504 IPC are, therefore, set aside.

Conclusion

71. Upon a comprehensive reappraisal of the entire evidence on record and for the reasons recorded hereinabove, this Court is of the considered view that the prosecution has successfully established beyond reasonable doubt that the appellant no. 2 Suraj Pal, appellant no. 3 Brij Lal and appellant no. 4 Jagat Pal, in furtherance of their common intention, assaulted deceased Jageshwar and the injured witnesses, which ultimately resulted in the death of Jageshwar. The findings of guilt recorded by the learned Trial Court in respect of the offences punishable under Sections 304 IPC read with Section 34 IPC, Sections 325 IPC read with Section 34 IPC, Sections 323 IPC read with Section 34 IPC and Section 506(2) IPC are based on cogent, reliable and trustworthy evidence and do not suffer from any perversity, illegality or material irregularity warranting interference by this Court.

72. However, insofar as the conviction under Section 504 IPC is concerned, this Court finds that the essential ingredients of the said offence are not made out in the facts and circumstances of the present case, inasmuch as the prosecution has failed to establish any intentional insult of such a nature as would provoke a breach of peace or commission of any offence. Consequently, the conviction and sentence of the appellants under Section 504 IPC are hereby set aside.

73. Accordingly, the appeal is **partly allowed**. The conviction of the appellant no. 2 Suraj Pal, appellant no. 3 Brij Lal and appellant no. 4 Jagat Pal under Section 504 IPC is set aside, while their conviction under Sections 304 IPC read with Section 34 IPC, Sections 323 IPC read with Section 34 IPC, Sections 325 IPC read with Section 34 IPC and Section 506(2) IPC is affirmed.

74. As regards the question of sentence this Court has taken into consideration that the occurrence relates to the year 1993, that the appeal has remained pending for more than two decades, and that all the surviving appellants are either around or above the age of fifty years.

75. Keeping in view the overall facts and circumstances of the case and balancing the demands of justice with considerations of equity, this Court is of the view that the sentence imposed by the learned Trial Court deserves to be modified. Accordingly, while maintaining the conviction of the appellants under the aforesaid provisions, they are sentenced to undergo rigorous imprisonment for a term of ten years each for the offence punishable under Section 304 IPC read with Section 34 IPC, with the sentences imposed for the remaining offences to run concurrently.

76. Furthermore, in order to provide adequate succour to the families of the victims, this Court is of the view that the fine as imposed by the Trial Court of Rs. 2,000/- each shall be enhanced to Rs. 20,000/- upon each surviving appellants and the aggregate of the fine i.e. Rs. 60,000/- shall be distributed equally as a compensation to the legal heirs of Jageshwar (deceased), after due identification and verification. In the event of the default of payment of fine, the concerned appellant shall undergo additional rigorous imprisonment for a period of one year.

77. The appellants are presently on bail. They are directed to surrender before the court concerned within 15 days from today, failing which, the appellants shall be taken into custody by the court concerned and sent to jail to serve out the sentence. The bail bonds shall stand cancelled and sureties stand discharged.

78. Let a copy of this judgment, along with the trial court record, be transmitted forthwith to the court concerned for information and compliance.

(2026) 1 ILRA 761
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 30.01.2026

BEFORE

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

Jail Appeal No. 1377 of 2012

Sobran Lal
State of U.P.

...Appellant
Versus
...Respondent

Issue for Consideration

Matter pertains to whether the appellant Sobran Lal committed the offence of "culpable homicide amounting to murder" under S. 300 I.P.C. punishable under S. 302 I.P.C., during an attempted robbery in a public market; whether the case falls under any of the exceptions to S. 300 I.P.C. so as to attract S. 304 I.P.C.; and whether the sentence of imprisonment for remainder of natural life imposed by the Trial Court warrants interference or modification. (Paras 1, 5-14, 20, 58-69, 73-75) (E-7)

Headnotes

Criminal Law - Indian Penal Code, 1860 - Ss. 302, 307, 393 - Arms Act, 1959 - S. 3/25 - Attempted robbery resulting in murder - Testimony of injured eye-witness - Credibility - Broad daylight firing in busy marketplace - Evidence - Injured eyewitness - Reliability - Evidentiary value - Related witness - Not equivalent to "interested witness" - F.I.R. - Prompt lodging - Not required to be encyclopedic

Motive - Absence of - Effect - Ballistic / forensic evidence - Non-production - Effect

Minor contradictions - Immaterial discrepancies - S. 300 I.P.C. - Intention - Premeditation - Sentence - Life imprisonment - Power of High Court to impose fixed-term sentence.

Held: The prosecution has proved beyond reasonable doubt that the appellant, along with co-accused, attempted to commit robbery and in furtherance thereof intentionally fired a gunshot causing the death of Manoj Soni, squarely attracting S. 300 I.P.C. - P.W.-1 (Neeraj Kumar Soni) is an injured eyewitness, whose presence at the spot is natural and whose testimony is corroborated by P.W.-3 and P.W.-4, medical evidence and documentary exhibits - merely because P.W.-1 is the brother of the deceased, he cannot be termed an "interested witness"; distinction between "related" and "interested" witness reiterated - absence of motive is not fatal where the case rests on direct ocular evidence of reliable eyewitnesses; motive is not a sine qua non for murder - minor inconsistencies regarding motorcycle number, clothes of the deceased, or non-recovery of stolen articles do not affect the core prosecution case - non-production of ballistic or forensic evidence is not fatal when the prosecution case is supported by consistent eyewitness testimony and prompt recovery of arms at the spot - the act of the appellant was premeditated, the weapon was carried not merely for intimidation but to cause death, and the case does not fall under any exception to S. 300 I.P.C. - while the conviction under S. 302 I.P.C. is affirmed, the sentence of imprisonment for remainder of natural life imposed by the Trial Court is unsustainable in law; the High Court, exercising constitutional powers, may impose a fixed-term life sentence - the sentence under S. 302 I.P.C. is modified to 18 years rigorous imprisonment without remission, while other convictions and sentences are affirmed. (Paras 50 -76)

Case Law Cited

Saudan Singh v. State of U.P., (2023) 17 SCC 446; *Atul Thakur v. State of Himachal Pradesh*, (2018) 2 SCC 496; *Arvind Sharma v. State of U.P.*, 2017 (3) JIC 787 (All); *Kusha Laxman Waghmare v. State of Maharashtra*, (2015) 1 SCC (Cri) 100; *State of Andhra Pradesh v. Rayavarpu Punnayya*, AIR 1997 SC 45; *Jagroop Singh v. State of Haryana*, AIR 1981 SC 1552; *Tukaram & Ors. v. State of Maharashtra*, (2011) 4 SCC 250; *Balu Sudam Khalde v. State of Maharashtra*, 2023 SCC OnLine SC 355; *Abdul Sayeed v. State of Madhya Pradesh*, (2010) 10 SCC 254; *Md. Rojali Ali v. State of Assam*, AIR 2019 SC 1128; *Dalip Singh v. State of Punjab*, 1954 SCR 145; *Bipin Kumar Mondal v. State of West Bengal*, (2010) 12 SCC 91; *Shiva Kumar @ Shiva v. State of Karnataka*, (2023) 9 SCC 817.

List of Acts

Indian Penal Code, 1860; Arms Act, 1959; Code of Criminal Procedure, 1973

List of Keywords

injured eyewitness; attempt to robbery; broad daylight; ocular evidence; minor discrepancies; absence of motive; life imprisonment; public market.

Case Arising From

APPELLATE JURISDICTION: Against the common judgment and order dated 04.08.2012 passed by the Special/Additional Sessions Judge, Lakhimpur Kheri, in Sessions Trial No. 854 of 2008 and Sessions Trial No. 855 of 2008.

Appearances for Parties

Advs. for the Appellant:

Jail Appeal in Person, Nirmal Singh Yadav, Ms. Smriti

Advs. for the Respondents:

Shri S.P. Singh, Learned A.G.A.

(Delivered by Hon'ble Abdhesh Kumar Chaudhary, J.)

1. The present Jail Appeal has been preferred by the **appellant/ accused- Sobran Lal** against the common judgment and order dated 04.08.2012 passed by the Special/Additional Sessions Judge, Lakhimpur Kheri in (i) Sessions Trial No. 854 of 2008 arising out of Crime No. 201 of 2008 (*State V/s Hari Om alias Bantu and Another*), whereby the appellant was convicted and sentenced for the substantive offences under Section 302 I.P.C. for the punishment of life imprisonment along with fine of Rs. 10,000/- and fine stipulation, under Section 307 I.P.C. for 10 years rigorous imprisonment along with fine of Rs. 5,000/- and fine stipulation, under Section 393 I.P.C. for 07 years rigorous imprisonment along with fine of Rs. 3,000/- and fine stipulation, and (ii) Sessions Trial No. 855 of 2008 arising out of Crime No. 203 of 2008 (*State V/s Sobran Lal*), under Section 3/25 Arms Act for 03 years rigorous imprisonment along with fine of Rs. 5,000/- and fine stipulation. All sentences were directed to run concurrently in view of Section 427 of the Code of Criminal Procedure (hereinafter referred as to "Cr.P.C.").

CASE OF THE PROSECUTION

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

2.1 As per the version of the complainant- Neeraj Kumar Soni (**P.W.-1**), on the day of the incident i.e. on 29.02.2008 at 5.30 PM, when he was sitting at his jewellery shop situated on Gulauli Road, two persons riding a motorcycle attempted to rob his elder brother-Manoj Soni and tried to snatch the bag in which his brother was carrying jewellery and cash while returning home.

2.2 On raising alarm, local residents of the neighborhood including Saur Alam (**P.W.-3**), Narendra Kumar Verma (**P.W.-4**), Surendra Chandra Gupta, Sanjay Mishra etc. gathered at the spot and challenged the miscreants. Thereupon, one of the miscreants took out a pistol from his pant and fired at his elder brother- Manoj Soni with intent to kill, which hit his brother on the left side of his body, causing a fatal gunshot injury. When the informant/complainant tried to save his brother and intervened, the the other miscreant assaulted him with a knife several times with the intent to kill him, causing injury to his shoulder and hands.

2.3 Somehow, with the assistance of the neighborhood, both the miscreants were apprehended at the spot with a pistol, live cartridge, empty cartridge, and a knife along with their motorcycle bearing number UP25U3803, chassis No. DSVBME34762.

2.4 On being questioned, one of the aforesaid miscreants told his name as Hari Om alias Bantu, son of Shriram Sharma, resident of Nai Basti, in front of Power House, G.T Road, Kasba and Police Station Fatehganj East and the other told his name as Sobran Lal Yadav (Appellant), son of Omkar Yadav, resident of Saidpur Manjha, Police Station Fatehganj East, District Bareilly.

2.5 Subsequently, his injured brother- Manoj Soni was taken to the Government Hospital at Mohammadi by the neighbours and his younger brother Pankaj Soni (**P.W.-2**), where he was declared dead. The said incident became a cause of terror in the entire neighborhood of Mohammadi, resulting in panic and closure of shops and the entire market in the locality, causing disturbance of public order.

2.6 Based on the aforesaid written information (**Exhibit-Ka-1**) given by the complainant- Neeraj Kumar Soni (**P.W.-1**) an F.I.R. No. 62/2008 (**Exhibit Ka-14**) under Section 393, 302, 307 I.P.C. was lodged on 29.02.2008 at 18:15 PM relating to the said incident, against (i) Hari Om alias Bantu and (ii) Sobran Lal Yadav. The entry regarding the aforesaid F.I.R. was also made in G.D. (**Exhibit Ka-15**). The investigation for the aforesaid incident was entrusted to Inspector (In-charge)- Devi Dayal Singh (**P.W.-7**).

2.7 Based on the above information, the Investigating Officer, Police Station - Incharge Devi Dayal Singh (**P.W.-7**) reached the spot immediately on 29th January, 2008 at 18:35 PM and found that the nearby people were apprehending the said two miscreants.

2.8 When Inspector (In-charge) Devi Dayal Singh inquired into the incident, the complainant- Neeraj Kumar Soni (**P.W.-1**), stated that the convict - Sobran Lal (**Appellant**) pulled out a pistol and fired at his brother-Manoj Soni, with the intention of kill him, whereupon his brother fell down. When the complainant attempted to reach and rescue his brother, co-accused Hari Om stabbed him with a knife and inflicted injuries. Upon hearing the commotion, various people gathered at the crime spot, and with their assistance, the complainant- Neeraj Kumar Soni (**P.W.-1**) and others apprehended both Sobran Lal and Hari Om at the scene of occurrence along with a pistol, live cartridges, and a knife. Complainant's brother, Manoj Soni, subsequently succumbed to the gunshot injuries sustained in the incident.

2.9 In the presence of witnesses- Narendra Kumar Verma (**P.W.-4**) and Sanjay Kumar, the accused persons Sobran Lal and Hari Om, were arrested at the spot. From the possession of the convict " Sobran Lal, one country-made pistol of .315 bore, one live cartridge, and one empty cartridge, used in the incident, were recovered. From the possession of Hari Om, one country-made pistol of .315 bore, one live cartridge, and a knife, which he picked up from the ground, were recovered. After taking in possession the recovered articles, recovery memo (Exhibit Ka-3) was prepared and duly sealed. Thereafter, the recovered items along with the accused persons were brought to and lodged at the concerned police station.

2.10 On the basis of the recovery memo, a separate F.I.R. No. 64/2008 (**Exhibit- Ka-20**) was registered at Police Station- Mohammadi on 29.02.2008 at 20:25 PM under Section 3/25 and 4/25 of the Arms Act against both Sobran Lal and Hari Om alias Bantu. Corresponding entries regarding

registration of Case Crimes were made in the G.D. **(Exhibit Ka-21)** and S.I.-Vijai Singh Solanki **(P.W.-6)** was appointed as the Investigating Officer of the case.

2.11 During the course of investigation, the Investigating Officer-Inspector (In-charge)- Devi Dayal Singh **(P.W.-7)** prepared the "*Panchnama*" **(Exhibit Ka-2)** and other relevant papers. He also collected samples of blood-stained soil and the plain soil from the place of occurrence and prepared the recovery memo in respect thereof **(Exhibit Ka-4)**. In furtherance of the investigation, and on the pointing out of the witnesses, the Investigating Officer prepared the Site plan of the crime-spot **(Exhibit Ka-6)** as well as the site-plan relating to the recovery of arms/pistol from the crime spot **(Exhibit Ka-16)**.

2.12 Upon completion of the investigation, and after recording the statements of several witnesses under Section 161 Cr.P.C. and collecting various materials and documents, the police submitted a charge-sheet before the Court concerned under Section 302, 307, 393 I.P.C **(Exhibit-Ka-7)**. The charge-sheet was accompanied by the post-mortem report of deceased Manoj Soni **(Exhibit-Ka-23)** and the injury report of the Informant/complainant-Neeraj Soni **(Exhibit-Ka-5)**. A separate charge-sheet under Sections 3/25 and 4/25 of the Arms Act **(Exhibit-Ka-17)** was also filed against Sobran Lal and Hari Om in connection with the recovery of pistol from their possession.

PROCEEDINGS BEFORE THE TRIAL COURT

3. The Charge-Sheet named two accused persons, namely Sobran Lal (the Appellant) and Hari Om alias Bantu. Thereafter, the case came to be committed to the Sessions Court vide order dated 01.10.2008. Charges were framed against the accused-Sobran Lal vide order dated 21.01.2009, to which he pleaded not guilty and claimed Trial. It is pertinent to mention here that vide an order dated 10.06.2011, due to the continuous abscondence of co-Accused-Hari Om, his Trial was separated, and proceedings were ordered to be initiated against the said Hari Om under Section 82/83 of the Criminal Procedure Code, 1973.

4. The prosecution, in order to prove its

P.W.-1	Neeraj Kumar Soni	Complainant/brother of the deceased
P.W.-2	Pankaj Soni	Eye witness
P.W.-3	Saur Alam	Eye witness
P.W.-4	Narendra Kumar Verma	Eye witness
P.W.-5	Dr. S.U.P. Sinha	Posted at the relevant point of time at Primary Health Centre, Mohammadi
P.W.-6	Vijai Singh	Investigating Officer
P.W.-7	Devi Dayal Singh	Investigating Officer

P.W.-8	Head Constable Sri Ram Chaudhary	Recorded the statement of the witnesses and proved the Site plan and Charge sheet
P.W.-9	Ramayan Singh	Proved chik report and General Diary.
P.W.-10	P.W.-10	Dr. R.R. Agnihotri Conducted the postmortem of the deceased -Manoj Soni.

4.1 In addition to the oral evidence adduced by the prosecution, various documentary exhibits were also proved by the prosecution running from *Exhibit Ka-1 to Exhibit Ka-23*. The Forensic Science Laboratory report was also brought on record and forms part of the case file as *Report 71-Ka*.

4.2 After the conclusion of the Prosecution Evidence, the statement of the Appellant- Sobran Lal was recorded under Section 313 of the Cr.P.C. on 25.06.2012, wherein he denied the prosecution case in toto. He denied all the allegations, recoveries, and the testimony of the prosecution witnesses, asserting that he and the co-accused had been falsely implicated. He further claimed that the alleged incident has never taken place, contending that he and the other co-accused had already been arrested three days ago, prior to the purported incident.

4.3 The appellant- Sobran Lal has not produced any defense witness in support of his defence.

4.4 Upon appreciation of the oral and documentary evidence available on record, the learned Trial Court returned a finding that the prosecution had successfully proved the charges beyond reasonable doubt against the Appellant- Sobran Lal Yadav and accordingly convicted the appellant under Sections 302, 393 and 307 I.P.C. read with Section 3/25 of the Arms Act, vide the impugned judgment dated 04.08.2012.

4.5 On the point of sentencing, despite the plea of mitigation that the Appellant had a dependent 70 years old widow mother, wife and four children, two being daughters, amongst them to support, however, the Ld. Trial Court, considering the gravity of the offence committed and its societal impact, sentenced the Appellant for life imprisonment along with fine stipulation under Section 302 I.P.C. and Rigorous Imprisonment for 10 years with fine stipulation under Section 307 I.P.C, 07 years Rigorous Imprisonment under Section 393 I.P.C along with fine stipulation, and 03 years with fine stipulation under Section 3/25 Arms Act.

PROCEEDINGS BEFORE THIS COURT

5. Being aggrieved by the conviction and sentence, owing to financial constraints, the Appellant preferred the present Jail Appeal, inter ali, on various grounds including, (i) inconsistencies in the statement of the witnesses, (ii) defense of the Appellant that he actually pledged his jewellery with the deceased for some money due to medical reasons, however the deceased did not return him the jewellery inspite of receiving the money and falsely implicated him

as someone in the crowd had fired at the deceased causing his death, (iii) Appellant and the other co-accused were beaten and severely hurt by the crowd collected at the jewellery shop, (iv) there are inconsistencies in the statements of P.W.-1 (Neeraj Kuamr), P.W.-2 (Pankaj), P.W.-3 (Saur Alam) and P.W.-4 (Narendra Kr. Verma) in proving the incident, (v) the impugned judgment was not in the interest of justice.

5.1 Initially, the Ld. Counsel for the Appellant stated that the appellant has undergone incarceration for more than 17 years and 8 months and sought bail in the light of dictum of Hon'ble Apex Court in the case of *Saudan Singh Vs. State of U.P., reported in (2023) 17 SCC 446*.

5.2 However, keeping in view the prolonged pendency of the Appeal since 2012 and readiness of the paper book, this Court urged both the parties to address their arguments on the merits of the Appeal. Learned counsel for both sides agreed to address this Court on the merits of the Appeal itself. This Court acknowledges the effort of both Ms. Smriti and Shri S.P. Singh, learned A.G.A., who acceded to the request of this Court and have addressed their arguments on the Appeal itself, on short notice.

5.3 Both the parties were also granted liberty to file their respective written argument/submissions along with the relevant case laws.

SUBMISSION ON BEHALF OF THE PARTIES

6. Heard Ms. Smriti, learned Counsel for the appellant and Sri S.P. Singh, learned Additional Government Advocate (A.G.A.) for the State.

7. Learned Counsel for the appellant has vehemently argued that the impugned conviction is unsustainable, as it suffers from grave factual inconsistencies, evidentiary infirmities, and failure on the part of the prosecution to establish motive or mens rea on part of the Appellant. It was argued that the prosecution rests upon interested witness and unreliable testimony, particularly of P.W.-1, who is the eye-witness and the real brother of the deceased, and that the genesis of the entire prosecution version, is inherently doubtful.

8. The next argument preferred by the learned counsel for the appellant is that the prosecution failed to establish any motive for the alleged crime against the appellant. In the absence of proof of motive, especially in a case based on circumstantial and interested evidence, the advantage and benefit of doubt should accrue in favour of the appellant.

9. Drawing attention to contradictions in the prosecution case, learned counsel submitted that although the F.I.R. mentions motorcycle No. UP25U3803 with a specific chassis number claiming to have belonging to the accused; however, later, the prosecution later admitted that the motorcycle was unrelated to the accused, and even the chassis number was not visible on inspection, thereby seriously denting the credibility of the prosecution's case.

10. It was contended that during inquest proceedings, none of the panch witnesses attributed any role to the appellant or stated that he had fired upon the deceased. Further discrepancies

between the statements of P.W.-1, the Doctor, and the Investigating Officer regarding the clothes worn by the deceased reflect uncertainty, suggesting that the prosecution has failed to establish even the basic facts.

11. Learned counsel further argued that the charge of robbery remained unproved, as no bag, jewellery, or cash was ever recovered, exhibited or proved through witnesses. It was emphasized that although the Doctor (P.W.-10) claimed recovery of a bullet from the body, neither the bullet nor the relevant X-ray plate was produced before the Court. The absence of ballistic, forensic, and scientific evidence, coupled with uncertainty as to which weapon was used, undermines the prosecution's case. Two country-made pistols were shown to be recorded during trial, and the police themselves could not ascertain which weapon was allegedly used for the murder of the deceased person. Further, the injuries sustained by P.W.-1 were opined by the doctor to be simple and possibly self-inflicted. The Forensic Report on blood-stained soil was inconclusive, and even the Site plan failed to depict the position of the witnesses and accused.

12. Learned Counsel for the appellant further vehemently submitted that the appellant, in his statement under Section 313 Cr.P.C., alleged illegal detention for three days prior to the incident, raising serious doubts on the fairness of investigation. On merits, it has been argued that the essential ingredients of Section 302 I.P.C. are not made out, as the prosecution has failed to establish any motive or mens rea.

13. In the alternative, it was contended by the leaned Counsel that even if the prosecution's case is accepted, the incident occurred in a sudden situation without premeditation, and, a single shot was fired out of fear due to a gathering of crowd. The case, at best, would attract Section 304 Part I or II I.P.C. Reliance has been placed on the judgments of the Hon"ble Supreme Court in *Atul Thakur v. State of Himachal Pradesh*, reported in (2018) 2 SCC 496; wherein similar circumstances warranted conversion of conviction from Section 302 to Section 304. Furthermore, reliance has been placed upon several Supreme Court's judgments i.e. *Arvind Sharma Vs State of U.P.*, reported in 2017 (3) JIC 787 All; *Kusha Laxman Waghmare Vs. State of Maharashtra* reported in (2015) 1 SCC (Cri) 100; *State of Andhra Pradesh Vs Rayavarpu Punneya* reported in AIR 1997 SC 45; *Jagroop Singh Vs State of Haryana*, reported in AIR 1981 SC 1552; and *Tukaram & Others Vs State of Maharashtra*, reported in (2011)4 SCC 250; to support her contention of converting the conviction from 302 to 304 I.P.C. Reliance has also been placed upon the judgment of this Court, in the case of *Rahul vs. State of U.P.*, reported in *Neutral Citation No.- 2023:AHC-LKO;69130-DB*; on the similar issue.

14. Lastly, it has been argued that since the prosecution having failed to prove the charges beyond reasonable doubt, therefore, the appellant is entitled to benefit of doubt, which ought to result in acquittal of the appellant; in the alternative, the conviction deserves modification to a lesser offence under Section 304 of the I.P.C.

15. *Per contra*, Shri S.P. Singh, learned Additional Government Advocate (A.G.A.) appearing for the State, supported the impugned judgment and opposed the contentions advanced by learned Counsel for the appellant. He contended that the impugned judgment reflects a proper, careful, and meticulous appreciation of the entire prosecution evidence. It was submitted that the Trial Court

correctly evaluated the testimonies of the prosecution witnesses, including their cross-examinations, as well as the investigative material on record, before recording the appellant's conviction. It has been further submitted that the Trial Court duly considered the appellant's statement under Section 313 Cr.P.C. and the defence version in their correct perspective. According to the learned A.G.A., the impugned judgment is founded on sound and cogent reasoning, wherein the appellant's presence at the spot, along with co-accused, stands conclusively established, and the appellant intentionally fired upon the deceased fully satisfies the ingredients of Section 300 of the I.P.C.

16. Learned Counsel for the State further contended that the act of the appellant does not fall within any of the exceptions to Section 300 I.P.C. It was submitted that the murder was committed in broad daylight in a public market after the appellant failed in his attempt to snatch a bag containing jewellery and cash. The act was deliberate, pre-planned, and wholly unconnected with any claim of self-defense or sudden provocation. It was further urged that the appellant is a habitual offender with acriminal antecedent, having been convicted in Case Crime No. 426/2008 under Section 2/3 of the Uttar Pradesh Gangster and Anti-Social Activities (prevention) Act, 1986 and Case Crime No. 629 of 2007 under Sections 2/3 of the U.P. Gangster Act. His criminal history justifies the Trial Court's observation regarding his dangerous propensity.

17. Learned A.G.A. has further contended that the Trial Court has also rightly observed that the killing of a jeweller in a crowded marketplace created an atmosphere of fear and insecurity among the business community. It was submitted that showing any undue leniency to such an offender would adversely undermine public confidence in the justice system. With regard to the sentence imposed, it was urged that although the Trial Court refrained from awarding the death penalty, it correctly sentenced the appellant to imprisonment for the remainder of his natural life, considering the gravity of the offence and its profound societal impact. The Jail Superintendent's letter dated 05.10.2025 was also relied upon to submit that the benefit of remission is not applicable in such cases.

18. The learned A.G.A. has heavily placed his reliance on the principles laid down by the Hon"ble Supreme Court in the case of *Shiva Kumar @ Shiva @ Shivamurthy v. State of Karnataka, reported in (2023) 9 SCC 817*; wherein the Apex Court reaffirmed that the Constitutional Courts are empowered to impose a sentence of life imprisonment for a fixed term such as fourteen, thirty or more years, in cases involving heinous offences, particularly where undue leniency would erode public confidence in the justice system.

19. Lastly, learned A.G.A. has submitted that the findings of guilt recorded by the Trial Court are well-supported by cogent and reliable evidence, that the sentence imposed is lawful, justified, and proportionate, and that the present appeal therefore deserves to be dismissed, with the judgment of conviction and sentence passed by the Learned Trial Court being affirmed and upheld.

ANALYSIS AND FINDINGS

20. This Court has heard the learned Counsel for the parties at length and has carefully perused the entire material on record.

21. As per the F.I.R., the incident occurred at about 5:30 PM and the F.I.R. came to be lodged at about 6:25 PM on the same day i.e 29.02.2008. As per the version of the said F.I.R., the offence of murder was committed by fire-arms during attempted robbery by snatching of a bag containing jewellery and cash from the deceased by one of the assailant"s and when the informant went to save the deceased, he was also attacked by knife, causing him injury by another assailant.

22. P.W.-1(Neeraj Kumar Soni), the informant and injured eyewitness, supporting the prosecution case has stated that on 29.02.2008 at about 5:30 PM, he was sitting in his jewellery shop. Since, it was time for closing the shop, his elder brother- Manoj Soni was leaving for home with jewellery and cash in his bag, when two motorcycle borne assailants, attempted to snatch the said bag. He and his elder brother-Manoj started shouting, wherein persons from the neighborhood namely Narendra Verma, Suresh Gupta etc. immediately reached and challenged the assailants. On being challenged, one assailant fired upon Manoj Soni causing a fatal injury, hitting him on the left side of his back, due to which he fell on the floor. Thereafter, the informant tried to save his elder brother, however, he was also attacked by the other assailant with a knife with intention to kill. Manoj Soni was immediately taken to the Mohammadi Hospital, wherein he was declared dead. The people present at the crime-spot apprehended both the assailants along with firearms and knife, wherein one of the assailants disclosed his name as Sobran Lal and another Hari Om alias Bantu. One .315 bore pistol and one blank cartridge was recovered from Sobran Lal and one Knife and .315 bore pistol and one cartridge stuck in the barrel was recovered from Hari Om. The said P.W.-1 has also stated he had the complaint written by one Gaurav Pathak and lodged the same with the police station and got the Motorcycle recovered to the police from the crime-spot. The said witness has proved the Tahrir as "Exhibit-Ka-1".

23. The ocular version of P.W.-1 (Neeraj Kumar Soni) is corroborated by P.W.-2 (Pankaj Soni), P.W.-3 (Saur Alam) and P.W.-4 (Narender Kumar Verma), who are independent shopkeepers from the neighbourhood and witnessed the occurrence.

24. P.W.-5 (Dr. S.U.P Sinha) medically examined P.W.-1 and proved the injury report "Exhibit-Ka-5" has stated in his examination-in-chief that he was posted at Primary Health Center, Mohmmaddi on 01.03.2008 and has examined the injured " Neeraj Kumar Soni and found the following injury on his body:

"(1) I/w of size 1 cm x 0.4 cm x muscle deep on (Lt) shoulder region, 3 cm medial to (Lt) Acromion process, margins are clean cut, bright scab present.

(2) I/w of size 3 cm x 0.5 cm x muscle deep on dorsum of (Lt) hand, 6 cm below the (Lt) wrists joint, margins are clean cut, bright scab present.

Opinion- The above injuries (1) and (2) are simple in nature and are caused by some sharp-edged object. Duration is about 12 hours to 24 hours old."

25. P.W.-6 (S.I. Vijay Singh) has proved the Panchnama as "Exhibit-Ka-2" and other contemporaneous police papers prepared immediately after the incident and deposed that Manoj Soni (deceased) was killed around 5:30 PM in the evening on 29.02.2008. After lodging of the

F.I.R., he along with the S.H.O.- Devi Dayal Singh and other police officer reached the crime-spot, where there was huge crowd. On the instructions of Devi Dayal Singh he prepared the Panchama and other police papers.

26. P.W.-7 (Devi Dayal Singh) is the Investigating Officer of the case and he has deposed that on the Tehrir of P.W.-1(Neeraj Soni) a crime case under Section 302, 393, 307 I.P.C. was registered against the accused Sobran Lal and Hari Om alias Bantu and he went to the crime-spot and recorded the statement of P.W.-1 and got the panchnama prepared of the deceased. He got the site-plan made on the pointing out of the informant/P.W.-1 and prepared other police documents. He proved the Panchnama (*Exhibit-Ka-2*), Site-Plan (*Exhibit- Ka-6*), Recovery memo of the blood stained and plain earth from the crime-spot (*Exhibit Ka-4*), Recovery of fire-arms 315 bore Pistol, khoka cartridge, live cartridge, 315 bore pistol (*Exhibit Ka-3*), Charge-sheet (*Exhibit-Ka-7*), One live cartridge, one empty cartridge, pistol and knife, (*Exhibit-1 to 6*). Photos, sample seal, police forms 13 and 33, Letter CMO and R.I. (*Exhibit Ka-8*) and (*Exhibit Ka-13*), chik F.I.R. (*Exhibit Ka-14*) and G.D. (*Exhibit Ka-15*).

27. P.W.-8, H.C. SriRam Chaudhary, presented on behalf of the prosecution, has testified that the investigation of Case No. 64/2008 dated 29.02.2008 was handed over by Sub-Inspector P.K. Srivastava on 01.03.2008. Thereafter, this witness took over the investigation and recorded the statements of the witnesses. Prepared the map. The witness has proved the map Exhibit Ka-16, charge sheet *Exhibit Ka-17, Exhibit Ka-18, Exhibit Ka-19*.

28. P.W.-9, Ramayan Singh, presented on behalf of the prosecution, in his sworn statement, has proved Chik F.I.R. No. 64/2008 (*Exhibit Ka-20*) to be in his own writing and signature and photocopy of G.D. (*Exhibit Ka-21*) as secondary witness and prosecution recommendation (*Exhibit Ka-22*) has also been proved by the said witness.

29. The proximate time of death, as opined by the doctor (P.W.-10/ Dr. R.R. Agnihotri), was approximately half a day prior to the conduct of the post mortem examination. The inquest proceedings were conducted on 29.02.2008 and commenced at about 18:15 PM. In the relevant column of the inquest report describing the cause of death, it was recorded that the deceased had died due to fire-arm injury sustained by him. Upon completion of the inquest, at about 18:30 PM, the body was sent for post-mortem examination to ascertain the exact cause of death.

30. As per the Doctor, examined as P.W.-10, the post-mortem report was prepared in his own handwriting and bears his signature; the same was proved and marked as "Exhibit-Ka-23". In the examination-in-chief, while describing the injuries sustained by the deceased, P.W.-10 opined that the cause of death was "*due to shock & hemorrhage as a result of ante mortem firearms injuries*". In his cross-examination, he stated that the death might has occurred approximately half a day prior to the post-mortem examination, which was conducted at 6:30 AM in the morning of 01.03.2008. He also confirmed that the death of the deceased might have occurred around 5:30 PM on the previous evening. He also stated that the bullet recovered from the deceased was not presently in his possession. He further deposed that there was no requirement of writing in the X-Report that the bullet was searched in the body of the deceased after conducting his X-Ray, nor was it necessary to exhibit that X-Ray plate.

31. This Court finds that among the witnesses of fact, P.W.-1 (Neeraj Kumar Soni), who is the real brother of the deceased, is an eyewitness to the incident. He is also an injured witness, having sustained injuries in the same occurrence. His injury report is exhibited Ka-5 and stands duly proved by P.W.-5 (Dr. S.U.P. Sinha). Further, P.W.-1 is also the informant of the case and has explained that, owing to the injured sustained by him, the written complaint was scribed by one Gaurav Pathak at his instance. In his cross-examination, his testimony remained consistent and unshaken. Although an attempt was made to raise doubt relating to the factum of jewellery and money in the bag allegedly sought to be snatched by the convict from the deceased, however this Court finds such doubt to be immaterial, as the prosecution is required to establish not the incident of robbery but an attempt to robbery and death of the deceased-Manoj Soni. In any case, P.W.-2 (Pankaj Soni) in his cross-examination has very well explained that it was he who had lifted the bag containing the jewellery and cash from the crime-spot and took back home and subsequently, when the Investigating Officer sought for the said bag, jewellery and cash, he produced the same, which was thereafter released to him on Superdari.

32. Further, this Court cannot be oblivious to the law that the testimony of the injured witness generally carries significant evidentiary weight and is ordinarily entitled to a higher degree of credence, unless the deposition suffers from substantial discrepancies or contradiction. Upon a careful reading of the testimony of P.W.-1, this Court does not find any such material discrepancy. Therefore, the suspicion sought to be raised by the appellant regarding the genesis of the prosecution case is wholly unfounded. The Supreme Court in the case of **Balu Sudam Khalde & Anr. V/s State of Maharashtra**, reported in **2023 SCC Online SC 355**; has substantially delineated the treatment ought to be meted to the testimony by an injured eye-witness in the following words:

"26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."

33. Further, the testimony of an injured eye witness is kept on a higher pedestal and is accorded a special status in law as injury itself guarantees presence and truthfulness, as held by the Hon'ble Apex Court in "**Abdul Sayeed vs. State of Madhya Pradesh**, reported in (2010) 10 SCC 254; reproduced as follows:

"The law on the point can be summarized to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

34. In any case, we do not find any substantial discrepancies or contradictions in the deposition of the injured witness with the other ocular witnesses, therefore, this Court is not persuaded by the arguments of the learned counsel for the appellant that the deposition of the injured witness ought not to be believable. Minor discrepancies, if any, are natural and do not affect the core of the prosecution case. Thus this Court finds no reason to doubt P.W.-1.

35. The second ground for not believing and doubting the testimony of the P.W.-1 as argued by the learned Counsel for the Appellant is that the deceased is the real brother of the P.W.-1/informant and he is an interested witness and as such his testimony according to the learned Counsel must be examined with certain circumspection. No doubt, the informant/P.W.-1 is the real brother of the deceased-Manoj Soni, however he is also an injured witness, whose testimony cannot be lightly discarded. The contention that PW-1 is an "interested witness" is misconceived. Further, there is a marked difference between interested witness and related witness as a related witness is not necessarily an interested witness. The law on this aspect is settled by the Hon'ble Supreme Court in "**Md. Rojali Ali v. The State of Assam**" reported in **AIR 2019 SC 1128**; has held that:

"10. As regards the contention that all the eye-witnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an 'interested' witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between 'interested' and 'related' witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see "State of Rajasthan v. Kalki, (1981) 2 SCC 752; "Amit v. State of Uttar Pradesh, (2012) 4 SCC 107; and "Gangabhavani v. Rayapati Venkat Reddy, (2013) 15 SCC 298). "Recently, this difference was reiterated in "Ganapathi v. State of Tamil Nadu, (2018) 5 SCC 549, in the following terms, by referring to the three-Judge bench decision in "State of Rajasthan v. Kalki"(supra):

"14. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be "interested" ..."

36. It has to be understood that in criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural, like in the present case. The presence of PW-1, being the younger brother of the deceased and co-owner of the jewellery shop is natural. It was also natural for the deceased to take some jewellery and cash back to his home for safety reasons as the shop used to be closed between 5:30-6 PM in the evening. The timing of the incidence is also 5:30 PM. Nothing incongruence has come on record to the effect that the shop did not belonged to the deceased or the informant or that the closing time of the shop was not 5:30- 6:00 PM or that the shop was closed that day or it was not a shop of jewellery at all. Infact, it is the contrary as not only the site-plan (Exhibit-Ka-6) has been proved, but the testimony of the other eye-witness, who are owners of neighboring shops namely PW-2 (Pankaj Soni), PW-3 (Saur Alam) and PW-4 (Narender Kumar Verma) corroborated the testimony of PW-1. In any case, the evidence of such a witness cannot automatically be discarded by labelling the witness as interested."There is no evidence of prior enmity or motive for false implication. Indeed, one of the earliest statements with respect to "interested witnesses" in criminal cases was made by the Supreme Court in the case of "**Dalip Singh v. State of Punjab** reported in **1954 SCR 145**; wherein the Hon"ble Supreme Court has observed:

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person..."

37. In view of the consistent ocular evidence, corroborated by medical and documentary evidence and in light of the above and on a minute and purposeful reading of their testimony, this court finds that P.W.-1/informant (Neeraj Kumar Soni), P.W.-2 (Pankaj Soni), P.W.-3 (Saur Alam) and P.W.-4 (Narender Kumar Verma), are natural, reliable and trustworthy witnesses and they cannot be termed as interested witnesses, nor can their testimonies be discarded merely on the ground of relationship.

38. The next contention advanced by the learned Counsel on behalf of the appellant is that the prosecution failed to establish any motive for the crime, on the part of the appellant. In this regard it has been vehemently argued that since there was an absence of motive, the chain of events could not be completed and as such the appellant ought to have been given the benefit of doubt. This argument is devoid of merit. First and foremost, it has to be understood that the present case rests on direct "ocular evidence" and not "circumstantial evidence". It is well settled that while motive may assume significance in cases based on circumstantial evidence, its absence is not fatal where the prosecution has led reliable and trustworthy eyewitness testimony. Motive does assume great importance, but to say that the absence of motive would dislodge the entire prosecution story is

giving this one factor an importance which is not due. Motive operates in the realm of the accused's mind and is often difficult to establish and can seldom be fathomed with any degree of accuracy. Time and again the Courts have held that motive plays an additional link in the chain of circumstances, however, presently the case is absolutely different as it is based on the account of "eye witness". In respect of non-establishment of motive, it has been held by the Hon'ble Supreme Court that motive, is not a sine qua non," when there is trustworthy direct evidence regarding commission of a crime. Therefore, failure to establish motive does not dislodge the prosecution case. It is relevant to point out the following paragraphs from the judgment in the case of **"Bipin Kumar Mondal v. State of West Bengal"** reported in (2010) 12 SCC 91, which gives an insight to the said understanding of this Court:-

"19. It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance. (Vide Hari Shankar v. State of U.P., (1996) 9 SCC 40; "Bikau Pandey and Ors. v. State of Bihar, (2003) 12 SCC 616; and Abu Thakir and Ors. v. State of Tamil Nadu, (2010) 5 SCC 91).

20. In a case relating to circumstantial evidence, motive does assume great importance, but to say that the absence of motive would dislodge the entire prosecution story is giving this one factor an importance which is not due. Motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy. (Vide Ujagar Singh v. State of Punjab, (2007) 13 SCC 90)."

39. Thus, the submission advanced by the learned Counsel for the appellant that the prosecution has failed to establish the motive for the commission of the murder is devoid of merit. It is a settled principle of criminal jurisprudence that motive is not an essential ingredient of the offence of murder, as grievous crimes are often committed on trivial or sudden considerations. Evidence relating to motive, where available, is generally of a subsidiary nature. The mere existence or non-existence of motive cannot, by itself, either establish or negate the guilt of the accused. The mere fact that the accused had a motive to cause the death of the deceased is not a fact which would dispense with the proof of points that the accused had got a suitable immediate occasion for committing the crime and of actually committing it. Where there is clear, cogent, and reliable evidence demonstrating that the accused had the immediate opportunity and actually committed the offence, the absence of proof of motive becomes immaterial. The proof of motive is not necessary to sustain a conviction on a murder charge when there is clear evidence and where the prosecution has proved beyond reasonable doubt that the deceased was done to death by the accused in broad daylight and in full public gaze. The failure to prove the motive does not in any manner weaken the prosecution case or vitiate the conviction. In other words, when the facts establishing the charge are clear it is immaterial that the motive has not been proved.

40. The next ground raised by the learned Counsel for the appellant is relating to the mention of motorcycle No. UP25U3803 in the F.I.R. and the subsequent finding during investigation that the said vehicle was not connected with the appellant. In this regard, it is apposite to first appreciate

the legal concept and scope of an F.I.R. As a matter of fact, that First Information Report (F.I.R.) is neither defined in the Code of Criminal Procedure, 1973 nor is it expressly used therein, albeit Section 154 of the Cr.P.C. refers to the information relating to the commission of a cognizable offence to be given to the officer-in-charge of a police station, which, if given orally, it mandates to be reduced in writing. At this preliminary stage of providing information of a cognizable offence, the law merely mandates only the furnishing of information regarding commission of a cognizable offence. It does not require the informant to disclose the name of the accused or to even to be stated by any eye-witness or exhaustive narration of all facts. Any person can give such an information and the F.I.R. need not be an encyclopedia disclosing all facts and details relating to the offence in precision.

41. It is well settled that the information furnished in the F.I.R. is always subject to verification by the Police and it is the police or the Investigating Officer, who would find out those details during the course of investigation and collect necessary evidence, ascertain correct facts and identify the persons involved. In short, F.I.R. merely sets in motion the investigating machinery so as to enable the police to investigate the offence and take action in accordance with law.

42. Viewed in this backdrop, the mention of wrong number so provided by the informant in the F.I.R. subsequently found to be unrelated to the accused are meaningless and does not, by itself, affect the veracity of the prosecution case. At best, such a discrepancy may cast a doubt on the veracity on the informant account and can be used to corroborate or contradict the informant's evidence in the Court, but it cannot be elevated to a ground to discard the otherwise cogent and reliable prosecution evidence.

43. In the present case, this Court finds that the factum of motorcycle at the crime-spot has been consistently testified by P.W.-1, P.W.-2, P.W.-3, P.W.-4 and P.W.-7 (Investigating Officer). More importantly, the presence of the appellant at the scene of the crime and the use of fire-arms cannot be disputed and stands firmly established through the consistent and categorical testimony of P.W.-1, P.W.-2, P.W.-3 and P.W.-4, who all are eye-witnesses of the incident. Further, P.W.-7 in his testimony has deposed that he has arrested the appellant from the crime-spot and the site-plan has been prepared on his pointing. He has also stated that a motorcycle used in the commission of the crime has been recovered at the crime spot.

44. In these circumstances, there is not a shred of doubt about the presence of the Motorcycle of the appellant at the crime-spot. Whether the motorcycle belonged to the appellant, or whether the exact registration number mentioned in the F.I.R. was accurate, is wholly meaningless and irrelevant to the core issue involved. Such a discrepancy does not in any manner dilute the prosecution case or effect the culpability of the appellant, as it does not affect the propensity of crime committed by the Appellant. An F.I.R. is not expected to be an encyclopedia of all facts. Its primary object is to set the criminal law in motion. Any discrepancy in the description of a vehicle does not affect the prosecution case, particularly when the presence of the appellant at the scene, along with firearms, stands proved by multiple eyewitnesses and the Investigating Office.

45. The non-mentioning of the name of the appellant as an accused in the inquest proceedings is also immaterial as the panchnama/Inquest is relating to the status of the deceased body and the

apparent cause of death and not a compendium of facts prior or post lodging of a F.I.R. or to determine the identity of the assailant. As far as the inconsistency in the statement of P.W.-10, Doctor and the Investigating Officer relating to the clothes being worn by the deceased is concerned are normal errors of memory due to lapse of time or mental disposition of a witness and do not affect the core of the prosecution case. Such minor variations are natural and have been held to be insignificant by this Court recently in **Jitendra Pal Vs State of Uttar Pradesh**, reported as **2025:AHC-LKO:79401-DB**; had an occasion to deal with minor discrepancy in the statement of witnesses recorded in the Court after a periodic lapse of time of occurrence of incident. This Court has held in paragraph no.17 as follows:

"17. No doubt, discrepancies or inconsistencies in prosecution evidence is a short fall from which no criminal case is free. However, this court cannot be oblivious to the fact that while considering the deposition of a witness, this Court has to take into consideration the process in which the facts are perceived and testified by a witness. Time and again, it has been held in a catena of judgments that when an incident occurs, a witness perceives facts according to his intelligence and experience in life and subsequently when he or she is called upon to recollect those facts, after a long gap of time, his or her memory may help or deter him/her in recollection of those facts and he/she may flounder on the precise time, place and sequence of events. This human process brings discrepancy in the deposition of a witness, which may be termed as normal. The testimony of PW-4 as far as the timing relating to having seen the deceased and the appellant together on the fateful day at 6 PM in the evening is an outcome of such a discrepancy. However, when this discrepancy is weighed and marshalled along with other evidence, which has come on record, it can be safely deduced that both the deceased and the appellant were last seen together on the said fateful day. Further, it cannot be discounted that this kind of discrepancies in time, especially in a village, may occur on account of errors of observation of facts, normal errors of memory due to lapse of time or mental disposition of a witness. These discrepancies are those which are normal and expected of a normal person and cannot be termed as any material discrepancies, which may affect the substratum of the story itself. When the discrepancies, highlighted by the learned Counsel for the appellant are being considered, whether it is relating to the time when PW-4 last saw both the deceased and the appellant together on a motor-cycle or the time-line given by these witness, this court is of the opinion that these are normal and not material discrepancies. Thus, it is concluded that the inconsistencies in the prosecution case, as far as the presence of the appellant during the course of day on the date of incident on 09.03.2015 is immaterial and do not have any impact on the facts, deposed by the witnesses. Thus, the presence of the appellant at Sheetal Kheda on 09.03.2015 stands proved by a co-joint reading of the evidence of PW-2, PW-3 and PW-4 and even the last seen together evidence of PW-4 could not be impeached by the defense, although the said witness was subjected to intense cross-examination."

(Emphasis Supplied)

46. In view of the above, the inconsistency in the statement of P.W.-1-Doctor and the Investigating Officer relating to the clothes on the body of the deceased at the time of investigation are normal and can be very much expected by a normal person and cannot be termed as any material discrepancies, so as to be failed to the prosecution case.

47. As far as the argument of learned Counsel for the appellant relating to no evidence relating to recovery of bag containing jewellery and cash is concerned is equally untenable. P.W.-2, who is also an eye-witness, who has clearly stated in his cross-examination that he was present at the crime-spot at the time of incident and saw the said bag lying on the ground and some items scattered therein, which he collected and put the same in the said bag and kept it in his house. He also withstood the extensive cross-examination in stating that these facts were told to the Investigating Officer and even the said Officer, when requisitioned the said bag, it was him, who had produced the said bag before the Investigating Officer and subsequently the said bag was returned to him on supurdari. He also stated that the bag was lying about one or one and half feet from the shop. His testimony remained unshaken in cross-examination and sufficiently explains the alleged discrepancy. Thus, as to the suspicion raised by the learned Counsel for the appellant relating to recovery of bag, the same is misconceived and does not hold any water in view of the deposition, which has come on record.

48. The learned Counsel has also raised doubt relating to the bullet, which was recovered from the body, but the same was never produced before the Court, nor any ballistic, forensic, or scientific evidence has been produced to prove the said bullets having been fired from the pistol of the appellant, especially when there were two country-made pistols shown during Trial. First and foremost, it has to be understood that the present case set-up by the prosecution is on the basis of ocular witnesses as the gun-shot was made in public gaze. No doubt the ballistic report or the scientific report plays a very crucial role in pairing and/or patching the bullet with the gun, especially in a case of circumstantial evidence, however in a case of ocular witness, the significance fades to a large extent. It has come on record that the gun-shot was made by the appellant while snatching a bag from the deceased, wherein an alarm was raised by him and PW-1 and various people from the nearby shops rushed to the spot. Thus, it has come on evidence that not only P.W.-1 i.e. injured witness, but even P.W.-3 (Saur Alam) and P.W.-4 (Narender Kumar Verma) have witnessed the said incidence of shooting of the deceased by the appellant. Further, it has come on record that it was the public at large, who had apprehended the appellant and other co-accused (Hari Om) along with the crime-weapon i.e. country-made pistol and knife. Therefore, the non-production or absence of the ballistic or forensic report linking the bullets to the weapon used by the appellant is not fatal in the present case. The prosecution case is founded on direct eyewitness account of a shooting in broad daylight, corroborated by medical evidence. In such cases, non-production of ballistic evidence does not make any difference or weaken the prosecution story, particularly when the accused was apprehended at the spot along with firearms immediately after the incident.

49. Learned Counsel for the appellant has vehemently argued that the appellant, in his statement under Section 313 Cr.P.C. has stated that he had also been illegally detained for three days which according to her creates a cloud of suspicion on the fairness of the investigation. No doubt the said statement has been recorded by the appellant in his statement under Section 313 Cr.P.C. however, this Court finds that the learned Trial Court has extensively dealt with that said aspect in the impugned judgment and held that although the appellant were provided adequate opportunity to prove the said aspect, however, they failed to lead any evidence on the said point and the defence story although had been suggested to P.W.-1 in his cross-examination, however, this Court finds that the said witness has not only denied the said suggestion but has also kept the

prosecution version intact. Thus, the learned Trial Court in view of the Section 114(g) of the Indian Evidence Act, has rightly drawn an adverse inference against the appellant relating to withholding of the said evidence, if any, by the Appellant.

50. Having heard learned Counsels for the parties and perused the record, as regard to the place of occurrence of the incident and the manner in which the incident had occurred, this Court has no hesitation in holding that they stand conclusively proved from the consistent testimonies of the prosecution witnesses and other material circumstances and supporting documentary evidence on record. Further, the presence of the injured witness(P.W.-1) and independent eye-witnesses (P.W.-3 and P.W.-4) at the spot is natural and cannot be doubted. Moreover, P.W.-4 has also proved the Inquest report (*Exhibit- Ka-2*) and the recovery memo of country-made pistol and bullets (*Exhibit-Ka-3*). It is proved that the written report (*Exhibit- ka-14*) has been filed by narrating the occurrence, on the dictation of the injured eye-witness (P.W.-1), after the police reached the spot of the occurrence. The occurrence of the incident resulting in the homicidal death of deceased Manoj Soni at the door-step of his shop is fully established and proved beyond doubt. It is also proved that the appellant herein namely Sobran Lal Yadav is the perpetrator of the crime and the death was caused in furtherance to cause robbery by snatching a bag of jewellery and cash from the deceased-Manoj Soni. The written report was lodged promptly on the dictation of P.W.-1 after the police reached the spot. The presence of the appellant at the crime-spot and his role in the incident has not been denied, although he had a different version. All the suggestions given by the defence that it was an accident, are found without any substance and rightly rejected. The defence failed to prove any animosity on record, to show as to why these eye-witness could had deposed against him. After minutely going through the deposition of the witness, this Court is of the view that the gravamen of the case, brought over the record by the witnesses, remained unaffected. The minor inconsistencies in the prosecution case are immaterial and do not have any impact on the facts, deposed by the witnesses. Thus, the culpability of the appellant stands proved beyond reasonable doubt.

51. The next line of argument poised by the learned Counsel for the appellant is in the nature of an alternative argument, wherein she had tried to buttress that even assuming the prosecution's case to be true, the incident occurred in a sudden situation, and at best, a single shot was fired out of fear due to a gathering crowd and as such according to her, since there is no evidence of premeditation, the present case would, at its highest, fall under Section 304 Part I or II of the I.P.C. Reliance has been placed on the judgment of *Atul Thakur v. State of Himachal Pradesh*, reported in (2018) 2 SCC 496; *Arvind Sharma Vs State of U.P.*, reported in 2017 (3) JIC 787 All; *Kusha Laxman Waghmare Vs. State of Maharashtra* reported in (2015) 1 SCC (Cri) 100; *State of Andhra Pradesh Vs Rayavarpu Punnaayya*, reported in AIR 1997 SC 45; *Jagroop Singh V/s State of Haryana*, reported in AIR 1981 SC 1552; and *Tukaram & Others V/s State of Maharashtra*, reported in (2011) 4 SCC 250; to support her contention that the act occurred in a sudden situation and without intention to kill. Reliance has also been placed upon the judgment of this Court, in the case of *Rahul vs. State of U.P.*, reported in Neutral Citation No.- 2023:AHC-LKO;69130-DB; on the similar issue.

52. Before, this Court dwells into the aforesaid proposition to determine the culpability of the appellant under Section 302 I.P.C. or 304 I.P.C., it would be pertinent to have a quick glance on the

legal principles governing the distinction between the provisions under Sections 302 of the Indian Penal Code on the one hand and culpable homicide not amounting to murder Section 304 Part I and Part II of the Code, on the other.

53. Section 299 and 300 of the Indian Penal Code which deals with the definition of culpable homicide and murder respectively, inter-alia states:

299. Culpable homicide. "

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

300. Murder. "

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

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

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

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

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1. " When culpable homicide is not murder. " Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos: "

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

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

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

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

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

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

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3. " Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

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

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

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

Illustration

A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

54. Therefore, in terms of Section 299, 'culpable homicide' is described as an act of causing death: - (i) with the intention of causing death, or (ii) with the intention of causing such bodily injury as is likely to cause death, or (iii) with the knowledge that such an act is likely to cause death. The concepts of intention and knowledge denote distinct mental states. As is clear from the reading of this provision, the first part of it emphasizes on the expression "intention" while the

latter upon "knowledge". Simply stating, "Intention" denotes about the purpose behind an act (volition), whereas "Knowledge" signifies about the awareness of the act's likely to effect (Cognition). To simply put, intention relates to purposeful volition, whereas knowledge refers to awareness of the likely consequences. Recently, Hon'ble Supreme Court in ***Nand Kumar @ Nandu Manilal Mudaliar V/s State of Gujarat***, reported in **2025 SCC OnLine SC 2374**; has explained the fine distinction between "intention" and "knowledge" in criminal law to mean that in "intention" the person wanted to cause death, whereas "knowledge" means the person was aware that his act could likely cause death, even if he did not desire it.

55. As has been noted in various precedents, both these words denote positive mental attitudes of different degrees. The mental element in "culpable homicide", i.e. the mental attitude towards the consequences of conduct is one of intention and knowledge. Once death is caused in any of the above three stated manners, with either intention or knowledge as envisaged under Section 299, the offence amounts to "culpable homicide".

56. Section 300, however, deals with "murder". Though there is no clear definition of "murder" in Section 300 of the Code but as has been held by the Apex Court and reiterated in ***Rampal Singh vs. State of Uttar Pradesh***, reported in **(2012) 8 SCC 289**; "culpable homicide" is the genus and "murder" is its specie and all "murders" are "culpable homicides" but all "culpable homicides" are not "murder".

57. Dealing with a matter, wherein the question for consideration was whether the offence established by the prosecution against the appellant therein was "murder" or "culpable homicide not amounting to murder", the Apex Court in ***Vineet Kumar Chauhan vs. State of Uttar Pradesh***, reported in **(2007) 14 SCC 660**; after considering its various earlier decisions held that, whenever a Court is confronted with the question whether the offence is "murder" (Punishable under Section 302 I.P.C.) or "culpable homicide not amounting to murder" (Punishable under Section 304 Part I or Part II); on the facts of a case, it will be convenient for it to approach the problem in three stages:-

(i) the question to be considered, at the first stage, would be whether the accused has done an act by doing which he has caused the death of another;

(ii) proof of such connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is *prima facie* found in the affirmative, the stage for considering the operation of Section 300 I.P.C. is reached;

(iii) the third stage is to determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of "murder" contained in Section 300. If the answer is in the negative the offence would be "culpable homicide not amounting to murder", punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable.

58. Further, if this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the first part of Section 304 I.P.C. It was, however, clarified therein that these were only the broad guidelines to facilitate the task of the Court and not cast iron imperative.

59. In guidance to the aforesaid judgment passed by the Hon^{ble} Supreme Court and principle laid thereby, in the facts of the present case, the first step would be to examine as to whether the appellant had committed an offence punishable under the substantive provisions of Section 300 of the Code, i.e. "murder".

60. In treading on the path to find out as to whether the act of the appellant by which the death is caused of the deceased, would fall in any of the four Clauses of Section 300 I.P.C., it may be noted that admittedly both the accused person had come to commit the offence of robbery of the bag containing jewellery and cash from the deceased person. The timing of the occurrence is of considerable significance, as apparently it seems both the assailants were aware of the routine of the deceased, Manoj Soni, particularly the time at which he would collect the jewellery and cash in his bag to take back to his home after closing his shop. Therefore, the choice of time for executing the robbery is significant and points towards prior planning.

61. The categorical statement of injured eyewitness, P.W.-1, duly corroborated by the other eye-witnesses (P.W.-3 and P.W.-4), establishes that both the appellant and the co-accused attempted to snatch the bag containing jewellery and cash from the deceased. Upon his resistance and scream, which made P.W.-1 to rush at the spot along with P.W.-2, P.W.-3 and P.W.-4, the appellant took out a .315 bore country-made pistol and fired a shot at the deceased, inflicting a fatal injury. Interestingly, the co-accused was also armed with a loaded .315 bore country-made pistol; however, he did not discharge his firearm and merely assaulted P.W.-1 with a knife, causing injuries but not death.

62. The very act of carrying a firearm, coupled with the manner of its use, unmistakably indicates the "intention" of the appellant to commit the offence of murder and from the overt act of firing at the deceased clearly demonstrates that that the said pistol was not taken by him for intimidating or putting the deceased on threat of bodily injury for committing robbery but was taken by him to cause such bodily injury, as was likely to result in death. The said fact can be understood from a different angle also, in as much as even the co-accused (Hari Om) was carrying .315 bore country- made pistol, however even if he was put on some kind of fear/agony by P.W.-1, he did not fire any gunshot but attacked P.W.-1 with a knife. Thus, the argument that the gun was carried solely for intimidating and was not fired with any premeditated mind in a fallacy and wholly untenable. On a holistic appraisal of the evidence on record, this Court has no hesitation in mind in holding that the Appellant acted with a premeditated intention to commit murder of the deceased, a conclusion that stands firmly supported by the consistent and credible testimony of the various prosecution witnesses brought on record.

63. As per the various suggestive question put by the appellant during the cross examination of P.W.-1, which although had been denied by the said witness, an alternative narrative was sought to

be projected, that the co-accused (Hari Om) was in need of some money and the deceased Manoj Soni had lent some money against some jewellery. It was suggested that although the said Hari Om had paid the entire money, however, the deceased- Manoj Soni did not return the pledged jewellery. It was suggested that both of the accused, including the appellant herein, actually had gone to the shop of deceased merely to request the return of the said jewellery.

64. First and foremost, it is to be noted that the said suggestion has been denied by P.W.-1. More importantly, the appellant did not lead any defence evidence to prove the said narrative, which resulted in drawing an adverse inference in terms of Section 114(g) of the Indian Evidence Act against the Appellant. Even otherwise, the said narrative sought to be advanced by the Appellant, instead of aiding his case, reinforces the prosecution version and comes very handy in determining the mental status of the Appellant. This Court is rather amused as to how on earth, when a person would go for requesting to return the jewellery, would go along with two persons and more importantly with two pistol and live bullets. On top of it, if at all, we give the concession that the pistol was carried to threaten the deceased, then it would logically have been carried by Hari Om, who, according to the appellant's own narrative, was the affected party, and not by the appellant herein.

65. The said inference is further fortified by the conduct of Hari Om, who, despite being in possession of a loaded firearm, as evidenced by the recovery memo (Exhibit ka-3), did not discharge it and instead attacked the injured witness-PW-1 with his knife. In stark contrast, the Appellant not only carried the pistol but also fired on the deceased causing fatal injury. The facts of the case clearly establish and prove that the act was neither the result of sudden provocation nor a sudden fight, particularly in the absence of any evidence showing injuries sustained by the Appellant or the co-accused. Consequently, the defence narrative stands wholly discredited and, on the contrary, lends further support to the conclusion that the appellant acted with a deliberate, lethal and culpable intent.

66. The statements of the eye-witnesses are consistent to the effect that when the deceased tried to resist the robbery and was shot from behind near the left shoulder, by the appellant causing the death of the deceased. It is important to note that the kind of weapon being carried i.e. the pistol, the place of the body at which the deceased was shot, the position i.e. back portion, which meant the deceased might have started running away after seeing the pistol (as he was shot at the back), all these events/points primarily towards a strong indication that the death was caused with a premeditated mind by the appellant, who had come prepared to cause death to the deceased. There was neither any provocation by the deceased as he was resisting the robbery and when showed the pistol, started running away to save himself. Further, the nature of the weapon, the part of the body targeted, and the fact that the deceased was shot while attempting to escape, clearly negate any plea of sudden fight, provocation, or right of private defence. These circumstances unmistakably point to premeditation.

67. In the above circumstances, the act of the appellant of 'culpable homicide' causing the death of the deceased falls under the definition of "murder", illustration (a), which says, "*A shoots Z with the intention of killing him. Z dies in consequence. A commits murder*". Here, A is the appellant and Z is the deceased-Manoj Soni.

68. This Court, thus, reaches at the answer to the first question that the appellant had committed an offence within the meaning of Section 300 I.P.C., i.e., "culpable homicide amounting to murder", which is punishable under Section 302 of the Code. The possession of the pistol and its subsequent firing, when committing the offence of robbery, was with a premeditated mind.

69. In view of the above discussion, we do not agree with the contentions of the learned Counsel for the appellant that the offence committed by the appellant would fall in the First or Second part of Section 304 I.P.C. and not under Section 302 I.P.C. Having held that the appellant is guilty of the offence under Section 302 I.P.C., we **uphold** the conviction as per the impugned judgment passed by the Learned Trial Court. However, the next question arises as to, whether this Court can reduce the appellant's sentence and if so, to what extent, as urged by the learned Counsel for the appellant, keeping in view the prayer of leniency in view of the period of incarceration of more than 17 years and the evidence brought on record.

70. This Court in the aforesaid aspect, recently had an opportunity to deal with such a situation, although for an offence under Section 304-B I.P.C. in the case of **Paras Nath Sahu and Another Vs. State of U.P.** reported as **2025:AHK-LKO:83391-DB**; wherein the appellant in that case was awarded with life imprisonment. This Court, while discussing the law on the subject has held herein under:

*"42. The Constitutional Bench of the Hon"ble Supreme Court, in the case of **Union of India v. V. Sriharan**, reported in (2016) 7 SCC 1; was dealing with on the issue, as to whether imprisonment for life in terms of Section 53 read with Section 45 of the I.P.C. means imprisonment for the rest of the life of the convict. The Constitutional Bench after referring to the various precedents, including **Swamy Shraddhananda (2) v. State of Karnataka**, reported in (2008) 13 SCC 767; has answered the same in paragraph nos. 104 and 105 of the **V. Sriharan (Supra)**, judgment which is quoted in verbatim herein below:*

"104."That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed."

(emphasis added)

"105."We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified

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

(emphasis added)

43. Furthermore, the Hon"ble Supreme Court in the case of *Shiva Kumar v. State of Karnataka*, reported in (2023) 9 SCC 817; after considering both of the aforementioned judgments of V. Sriharan (*Supra*) and Swamy Shraddananda (2) (*Supra*); in paragraph no. 14, has held that:

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

(emphasis added)

71. As far as the present case is concerned, considering the aforesaid proposition of law and the overall facts and circumstances, keeping in view the evidence brought on record, by virtue of which the appellant was convicted, we in our considered view need to weigh a balance between the culpability of the convict on the basis of evidence collected and brought on record on the one hand with the quantum of punishment being inflicted due to the said culpability. No doubt, the crime committed is one of the most heinous crime, the offence is grave and has serious societal impact, having been committed in a busy marketplace, instilling fear among shopkeepers and disturbing public order. Crimes of this nature strike at the foundation of civilized society and ordinarily does not calls for any leniency. However, this Court needs to strike a chord of justice to both the society at large by setting an example and the reformatory right of the individual convict and his apparent responsibilities.

72. This Court finds that, it has come on record that the appellant had fired the gunshot on the shopkeeper in the evening, when most of the shops were open and doing business. However, the gunshot not only put an end to the life of the deceased "Manoj Soni, but also forced other shop-keepers to close their shutter, not because as a matter of protest, but due to the terror and fear, which is not good for the progress of the business or the society at large. Business thrives on peace and safety. If the very safety is under risk, when anybody can come and shoot a gullible shopkeeper or commit robbery or snatch any bag, the peace of the area is bound to be jeopardized and people would be forced to live in a fear of terror. In any case, the said act cannot be accepted in a civilized society.

73. Notwithstanding the above, this Court finds that although the Appellant has been awarded the punishment for natural life imprisonment, however no reason has been given by the learned trial Court for taking such a harsh and drastic step. Moreover, we find that the punishment for natural life ordinary means imprisonment for the entirety of person's life without any remission etc, which is not in commensurate to the

recent judgment of the Hon'ble Supreme Court in the case of *Kiran Vs. State of Karnataka* reported as **2025 INSC 1453**; wherein their Lordships held that "the power of alternate sentencing to cover the hiatus between 14 years and death cannot be applied by the Sessions Court. Hence, the sentence of life imprisonment cannot be directed to be till the end of natural life, by the Sessions Court which direction would be in conflict with the provision of the Cr.P.C".

74. Keeping in view the overall facts and circumstances of the present case, this Court balancing the gravity of the offence with the principles of proportionality, reformation, and justice and need of the society to live in a peaceful, safe and congenial environment with chance of reformation and integrating the appellant both into the society, this Court is of the considered view that justice would be met, if the appellant is awarded a fixed term of imprisonment in the present facts and circumstances of the case. Accordingly, while maintaining the conviction under Section 302 I.P.C., the maximum sentence of life awarded to the appellant- **Sobran Lal** is reduced to a fixed term of 18 (Eighteen years) Rigorous Imprisonment, without any remission. However, the fine under Section 302 I.P.C. and the punishment and fine under Section 307, 393 of the I.P.C. and under Section 325 Arms Act is not being disturbed and are affirmed. The appeal is thus partly allowed to the modification of sentence only and thus being dismissed, to that extent.

75. Consequently, the present Appeal of **Sobran Lal** is *partly allowed*. While the conviction of the appellant is affirmed, the sentence of imprisonment for remainder of natural life awarded under Section 302 I.P.C. is modified and being converted to a fixed term of Eighteen Years Rigorous Imprisonment, without any remission, along with the fine as imposed by the learned Trial Court and stipulated in the impugned judgment of conviction and sentence dated 04.08.2012.

76. Having said so, it is directed that the appellant- Sobran Lal shall be released only after undergoing the aforesaid sentence of punishment of 18 years, Rigorous Imprisonment, without any remission, under the Trials being (i) Sessions Trial No. 854 of 2008 arising out of Case Crime No. 201 of 2008 (State V/s Hari Om alias Bantu and Another) and (ii) Sessions Trial No. 855 of 2008 arising out of Case Crime No. 203 of 2008 (State V/s Sobran Lal). The Jail Authorities are accordingly directed to compute the period of custody, extending to the appellant the benefit of Section 427 and 428 Cr.P.C. in accordance with law.

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

(2026) 1 ILRA 788
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.01.2026

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE SANJIV KUMAR, J.

Criminal Appeal No. 2096 of 1984

Satti Din & Anr.

...Appellants

Versus

State of U.P.

...Respondent

Issue for consideration

The case relates to a murder incident dated 09.08.1982 wherein the deceased was allegedly shot dead by co-accused Maiku after exhortation by the appellants due to prior enmity. The appellants were convicted under section 302/34 on the basis of eyewitness testimony and alleged common intention.

Headnotes

Indian Penal Code,1860-Section 302/34-Criminal Procedure Code,1973-Section 374(2)-Murder-Common Intention-Reliability of eyewitness-Ocular testimony of PW-1 and PW-3 suffering from material contradictions regarding genesis of occurrence and preparation of FIR-Medical evidence inconsistent with prosecution version regarding infliction of spear injury-Serious doubt as to manner of occurrence-Motive not proved-Possible alternative hypothesis not ruled out-Accused entitled to benefit of doubt-Conviction unsustainable.(Para 39 to 51)(E-6)

Held

The court held that the prosecution failed to prove the charge under section 302/34 IPC beyond reasonable doubt. The testimonies of the key eye witnesses did not inspire confidence and were inconsistent with medical evidence. Appeal allowed.

Case law Cited

Vadivelu Thevar Vs State of Madras (1957) AIR SC 614, Pankaj Vs State of Rajasthan (2016) 16 SCC 192, Bhagwan Sahai Vs State of Rajasthan (2016) AIR SC 2714, Kannaiya Vs State of M.P. (2025) INSC 1246, State of U.P. Vs. Kishore Gopal Das (1988) AIR SC 2154, Ramakant Rai Vs Madan Rai & Ors. (2003) 12 SCC 395; 2004 SCC (Cri) Supp 445, Goverdhan & Anr Vs State of Chhattisgarh (2025) 3 SCC 378, Jitendra Kumar Mishra @ Jittu Vs State of M.P. (2024) INSC 20, State of M.P Vs Shyamlal & Ors. (2025) INSC 377, Fatta & Ors Vs State of U.P. (1980) Supp (1) SCC 159, Swarn Singh Vs State of Punjab CRA-D-290-DB-2004 (O&M)-referred to.

List of Acts

Indian Penal Code, 1860, Criminal Procedure Code, 1973.

List of Keywords

Murder, Common Intention, Exhortation, benefit of doubt, ocular evidence, FIR discrepancies, Motive, Suppression of genesis of occurrence, eyewitnesses, Advanced age of accused, Contradictions in testimony.

Case Arising From

CRIMINAL JURISDICTION CRIMINAL APPEAL No. – 2096 of 1984

Satti Din & Anr. Vs. State of U.P.

From the Judgment and Order dated 21.01.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-

Ram Bahadur, Ramesh Prajapati S.K. Srivastava

Adv. for Respondent(s):-

A.G.A., D.g.a.

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

1. The instant Criminal Appeal has been preferred by the accused-appellants, namely, Satti Din and Dhani Ram alias Dhanaiyan against judgment and order dated 27.07.1984 passed by Additional Sessions Judge, Hamirpur in Sessions Trial No. 15 of 1983, whereby the learned Judge

convicted both the appellants for the offence under Section 302/34 I.P.C. and sentenced them to imprisonment for life.

2. Vide order dated 21.04.2018, the Co-ordinate Bench of this Court, taking into consideration the office report dated 04.10.2016, abated the criminal appeal qua appellant no. 1 namely Satti Din.

Brief Facts

3. Succinctly, the facts giving rise to the present criminal appeal are that on 09.08.1982, a written report was given by Raja Bhaiya son of Manvodhan, resident of Village Bhuwsi, Police Station Maudaha, District Hamirpur to the In-Charge Inspector, Police Station Maudaha, District Hamirpur mentioning therein that he (informant) and his elder brother Gunuwa (hereinafter referred to as the deceased) were returning home after fetching water from pond. Deceased was walking ahead of the informant. Maiku, who was armed with gun, came out along with the accused-appellants, namely, Satti Din and Dhani Ram. Satti Din was armed with spear (*ballam*), whereas Dhani Ram was armed with an axe (*farsa*). Satti Din and Dhani Ram exhorted Maiku to kill Gunuwa as he had once got his pistol seized and also taken away his six bighas of land. Due to previous enmity, Maiku approached the deceased from behind, aimed at him and made a fire shot at him. The bullet hit the deceased on his back, whereby he fell down and died. On the shriek of the informant and noise of gunshot, Rama, Kareylal, Mukando and Parma rushed toward the place of incident and tried to intervene. The accused persons ran towards the east. At the place of incident, an empty cartridge was found.

4. On the basis of the aforesaid written report (Ext.Ka-1), a case was registered against the appellants as Case Crime No. 140 of 1982, under Section 302 I.P.C., Police Station Maudaha, District Hamirpur.

5. After registration of the First Information Report, the law set into motion and investigation of the case was entrusted to PW-5, Sub Inspector Karuna Shankar Shukla. He in his deposition has stated that on 09.08.1982, he was assigned to investigate this case. He left to the spot to investigate the matter, but due to rain, he stayed in village Tola. On 10.08.1982 at 10:00 AM, he arrived at the place of incident, where the dead-body of the deceased was lying. Constable Vijay Singh along with informant Raja Bhaiya, Smt. Kidaya (wife of the deceased) and several other persons of the village were also present. He conducted inquest on the dead body and prepared photo lash and challan lash, which was proved by him and the same were marked as Ext.Ka.3 and Ext.Ka.5 respectively. The dead body of the deceased was sealed and sent for post-mortem examination by Constable Puran Chandra Sharma and Constable Vijay Singh. Thereafter, he recorded the statement of the informant Raja Bhaiya and witnesses namely Kareylal and Parma. He had also prepared a site plan, which was marked as Ext.Ka.6. Blood-stained soil and plain soil were collected and sealed in different boxes, which was marked as Ext.Ka.7. Blood soaked pellets were also found, which were taken into possession and marked as Ext.Ka.8. At the place of incident, an empty cartridge along with a clay pot were also taken into possession, which were sealed and marked as Ext.Ka.9 and Ext.Ka.10 respectively. The accused were searched but could not be found. On 12.08.1982, statement of Constable Kanhaiyalal and Constable Vijay Singh (PW-2) were recorded. On 18.08.1982, he received an information that accused-appellant Dhani Ram alias Dhaniya had

surrendered before the Court. On 29.08.1982, the property of accused Maiku was attached. On 10.09.1982, statement of witnesses, namely, Rama and Mukundi were recorded. He had also recorded the statement of witnesses of inquest. After culmination of investigation, he has submitted charge-sheet on 10.09.1982, which was marked as Ext.Ka.11.

6. Head Constable Kanhaiyalal was the scribe of the Chik F.I.R., which was marked as Ext.Ka.12. The said Chik F.I.R. was entered into G.D. vide Report No. 12 dated 09.08.1982 at 12:15 hours, which was marked as Ext.ka.13. After seeing a sealed bundle containing two boxes and a dhoti, which was brought to him from Maalkhana, he stated that these are the two boxes in which blood stained soil and plain soil were taken into possession and the said dhoti was worn by the deceased. The said dhoti was marked as Material Exhibit I, whereas both the boxes were marked as Material Exhibits II and III. Looking at two other sealed packets, he stated that one packet contains empty cartridges, which was marked as Material Exhibit IV, whereas the other one contains pellets, which was marked as Material Exhibit V. The materials which were recovered from the place of incident were submitted before the Police Station on 10.08.1982.

7. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, where case was registered as Sessions Trial No. 15 of 1983. Learned Sessions Judge, Hamirpur vide order dated 26.04.1983 framed charges against the accused appellants for the offence under Section 302 read with Section 34 I.P.C., which were read over and explained to the accused-appellants in Hindi, who pleaded not guilty and claimed to be tried.

8. To bring home the guilt of the accused-appellants beyond the hilt, the prosecution has examined as many as five witnesses i.e. PW-1 Raja Bhaiya (informant)/witness of fact, PW-2 Constable Vijay Singh, PW-3 Rama (witness of fact), PW-4 Daya Shankar (X-Ray Technician) and PW-5 S.I. Karuna Shankar Shukla.

9. PW-1 Raja Bhaiya, who is the first informant and brother of the deceased, in his examination-in-chief, which was recorded on 20.12.1983, has reiterated the version given in the First Information Report. He further deposed that both the accused-appellants namely Satti Din and Dhani Ram alias Dhanaiyan are real brothers and they both are from his village. He further stated that accused-appellant Satti Din ran towards the deceased and stabbed him on his chest with a spear.

10. PW-2 Constable Vijay Singh, in his examination-in-chief, has deposed that after the inquest of the dead body, the same was sealed in a cloth along with the relevant documents. On 10.08.1982, he along with Constable Puran Chandra Sharma were sent to the District Hospital Hamirpur, where doctor has conducted the post-mortem on the cadaver of the deceased on 11.08.1982.

11. PW-3 Rama, in his examination-in-chief, which was recorded on 22.12.1983 has deposed that he is well known to the accused-appellants who are real brothers. He also knew accused Maiku, who has been absconding since incident. Maiku is Satti Din s son. He knew the deceased well. The deceased was murdered about a year and quarter ago.

12. PW-4 Daya Shankar, X-Ray Technician, in his deposition, stated that on 11.08.1982, Dr. M.U. Khan had conducted the post-mortem on the cadaver of the deceased, which was proved by him. Recently, Dr. M.U. Khan has been shifted abroad and there is no possibility of him to return in near future.

13. As per the autopsy report, following ante-mortem injuries were found on the body of the deceased:-

1. Gun shot wound of entry 4cm x 4cm x cavity deep x left inferior scapular angle region. Blackening around the margin of wound present. Direction slightly upwards and anteriorly on left side chest medical to left nipple. The 5th and 6th ribs near the injury fractured.

2. Gun shot wound of exit 1cm x 1cm x circular on left side of chest 3cm medical to left nipple at 3 O clock position communicating with injury no. 1.

3. Gun shot wound of exit 1-1/2cm x 1cm x oval 4-1/2cm medical to left nipple and 1cm below injury no. 2 communicating with injury no. 1.

4. Gun shot wound of exit 1-1/2cm x 1cm x oval 6cm medical to left nipple, 1-1/2 cm below injury no. 3 communicating with injury no. 1.

5. Punctured wound 1/2cm x 1/2cm x cavity deep left side chest 8cm below the left nipple at 5 O clock position. Direction of the wound was from anterior to backwards and slightly upwards.

The third rib on the left side anteriorly fractured. The left apical and mid zone of lung and whole heart lacerated.

14. On internal examination, the pleura was found lacerated on left side, left lung was badly lacerated, pericardium was lacerated and all the chambers of the heart were lacerated. Abdomen was empty and faecal matter and gases were present in the intestine.

15. In the opinion of the doctor, the death of the deceased had resulted due to shock and hemorrhage caused by the said ante-mortem injuries.

16. After the closure of prosecution evidence, the statements of the accused-appellants namely Satti Din and Dhani Ram alias Dhanaiyan have been recorded under Section 313 Cr.P.C., who denied the charges levelled against them.

17. Learned Additional Sessions Judge, Hamirpur after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellants as indicated herein above.

18. Hence, the instant appeal.

Submission of learned counsel for the appellants

19. Mr. Anil Srivastava, learned Senior Advocate assisted by Mr. Ram Bahadur, learned counsel for the appellant vehemently submitted that appellant is a centenarian person aged about 100 years. He next submits that appellant is also frail and infirm and does not able to perform his routine work. It is further submitted that as per the prosecution case, the appellant has only been assigned the role of exhortation. The main accused person i.e. Maiku, who has caused fire arm injuries to the deceased, has never been arrested by the police. So far as injury no. 5 upon the body of deceased is concerned, the same has been caused by accused-appellant Satti Din by ballam (spear), which was stated by PW-1 Raja Bhaiya in his deposition. The appellant Dhani Ram alias Dhanaiyan was armed with an axe and as per post-mortem report, there was no injury of the same. The prosecution has failed to assign any direct role to the appellant to connect him with the commission of crime.

Submission of learned A.G.A.

20. Mr. S.N. Tiwari, learned Additional Government Advocate appearing on behalf of the State opposed the instant criminal appeal and submitted that the learned trial court, while convicting and sentencing the appellants for the offence punishable under Section 302 I.P.C., has not committed any error or illegality. However, learned A.G.A. also concedes that the accused-appellant is now 100 years old.

Analysis and Conclusion

21. Heard Mr. Anil Srivastava, learned Senior Advocate for the accused-appellant and Mr. S.N. Tiwari, learned Additional Government Advocate appearing on behalf of the State of U.P. Perused the documents on record.

22. The appellant challenged the conviction and sentence as above by preferring the instant criminal appeal. The first information report came to be registered in the police station concerned. As per the prosecution case, at about 10 AM, when the informant (PW-1) along with one Gunuwa (deceased) was returning to their house after taking water from the tank and as he crossed the room of Maiku, accused Maiku and co-accused Satti Din and Dhani Ram alias Dhanaiyan have came out from that room. At that time, accused Maiku was armed with a gun whereas Dhani Ram @ Dhanaiyan with a farsa and Satti Din with a *ballam*. Accused Satti Din and Dhani Ram @ Dhanaiyan have exhorted the accused Maiku to kill Gunuwa, whereupon Maiku had fired at Gunuwa after reaching behind him.

23. PW-1 Raja Bhaiya, in his cross-examination, has stated that the FIR was written at about 11 AM and he had put his thumb impression on it with the same ink with which it was written by Sheo Charan. However, the ink of the thumb impression is royal blue and the ink with which the FIR was was written is blue-black. PW-3 Rama, in his cross-examination, has stated that he had remained on the spot for about two hours. Until he remained there, Sheo Charan who was the scribe of the FIR (Ext.Ka.1) had not reached there. In view of the aforesaid contradictions, we are of the

opinion that, the FIR might be prepared after the arrival of the investigating officer with due consideration.

24. The medical evidence is discrepant from the version given by the witnesses. Injury no. 5 of the deceased, which was a punctured wound on the left side of the chest, was found from anterior to backward and slightly upward and keeping in view its direction, it could not be caused when the deceased had fallen on the ground. PW-1 Raja Bhaiya as well as PW-3 Rama have stated that the deceased Gunuwa had fallen on the ground facing it. The dead body of the deceased was lying in the same position. According to Rama (PW-3), the accused Satti Din had pierced his chest with a spear/*ballam*, when he was fallen on the ground after suffering the fire-arm injuries. Taking into the consideration of aforesaid discussion/observation, it is not probable that the said injuries would have been caused in this position.

25. The PW-1, in his cross-examination, states that his another brother Deewan was also murdered prior to that occurrence and Jai Karan, Lalaee and Jagdev, who were accused in that murder case, were convicted and the deceased Gunuwan was a witness against them. He further stated that all accused persons were released after completion of sentences awarded to them about 4-5 years prior to this occurrence. PW-3 (Rama) has also admitted this fact, and therefore, there are high probability that deceased Gunuwa might be murdered by Jai Karan etc. cannot be ruled out. Raja Bhaiya (PW-1), in his cross-examination, has also stated that deceased Gunuwa had only one daughter namely Kausi and has expressed his ignorance about the fact that he wanted to give his property to her daughter Kausi which Rama (PW-3) had also admitted in his cross-examination that the land of Gunuwa has been inherited by him and also that when Gunuwa was alive, he used to say that he would give his land to his daughter after his death and therefore the probability of the false implication of the appellant by these witnesses in the instant case cannot be ruled out. The motive behind the commission of the said offence by the appellant are also not proved.

26. The core issue before this Court is whether *the conviction of the appellant, based on the testimonies of aforesaid two witnesses which were riddled with irreconcilable contradictions and improbabilities, could be sustained in law.*

27. The Supreme Court in **Vadivelu Thevar vs. State of Madras**¹ has classified witnesses into three categories:

- (i) wholly reliable
- (ii) wholly unreliable
- (iii) Neither wholly reliable nor wholly unreliable.

The Court emphasized that the law is concerned high quality of evidence, not its quantity. A conviction can be based on the testimony of a single witness, if it is found to be wholly reliable. Conversely, if a witness is found to be wholly unreliable, their testimony must be discarded entirely. For witness falling in the third category, the Court must seek corroboration in material particulars before acting upon their testimony.

28. We have meticulously dissected the evidence of two aforesaid key witnesses and other documentary evidences, and found their testimonies to be fundamentally untrustworthy for several reasons:

- (i) Contradiction in the genesis of occurrence.
- (ii) Conduct unbecoming of an eye witnesses.
- (iii) Omission in the FIR.
- (iv) Inherent improbabilities.

29. The Supreme Court in the case of **Pankaj vs. State of Rajasthan**² has held that when the genesis and the manner of the incident is doubtful, the accused cannot be convicted. It also referred to **Bhagwan Sahai vs. State of Rajasthan**³ which states that once the prosecution is found to have suppressed the origin of the occurrence, the only proper course is to grant the benefit of doubt.

30. In the case of **Kannaiya vs. State of Madhya Pradesh**⁴ the Supreme Court set aside a murder conviction because the eye witnesses provided conflicting versions regarding the location of the crime and the meeting of the people present. The Court ruled that such conflicting versions cannot co-exist within a credible narrative.

31. The standard of proof statutorily requirement as per Section 3 of the Indian Evidence Act, 1872 (Evidence Act) is one of the *preponderance of probability*. Section 3 does not speak of anything about proof beyond reasonable doubt though the degree of proof required in a criminal case in India is higher than *preponderance of probability*. Preponderance of Evidence is succinctly explained in Black's Law Dictionary, 1891 6th Abridged Edition 1991, as follows:

“Preponderance of evidence is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.”

The word “*proved*” means that a fact is said to be proved when after considering the matters before it, the Court either believes it to exist, or considers it's evidence so probable that a prudent man ought under circumstances of the case to act upon the supposition that it exists. No conclusive proof is required to state that a fact is proved. The process involved is one of weighing the probabilities. Hence *preponderance of probability* is the basis for a decision in civil case. But even without Section 3 of the Evidence Act, prescribing any higher degree of proof for a decision in criminal cases, Criminal Court in India have been insisting for degree of proof which is higher than the one required for decision in civil cases.

32. We have followed the common law of England, where the criminal courts insist such a degree of proof in deciding criminal cases which is definitely higher than the one required to decide a civil case. Even in England, their Evidence Act does not prescribe any higher degree of proof to decide a criminal case. But over a period of time, several judicial pronouncements have insisted

proof beyond reasonable and that is how even in India, we have been insisting proof beyond reasonable doubt .

33. Francis Wharton, a celebrated writer on criminal law in the United States has quoted from Judicial pronouncements in his book Wharton s Criminal Evidence, which reads as under:-

It is difficult to define the phrase reasonable doubt . However, in all criminal cases a careful explanation of the term ought to be given. A definition often quoted or followed is that given by Chief Justice Shaw in the Webster Case Commonwealth vs. Webster⁵ . He says:

It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that consideration that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge .

34. In the case of **State of U.P. vs. Kishore Gopal Das**⁶, the Supreme Court has succinctly explained the concept reasonable doubt , which is as under:

“.....There is an unmistakable subjective-element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common-sense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the accused-persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice.”

35. In the case of **Ramakant Rai vs. Madan Rai and Others**⁷, the Supreme Court has held as under:

“24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common-sense. It must grow out of the evidence in the case.”

36. The aforesaid judgment has recently been followed by the Supreme Court in the case of **Goverdhan and Another vs. State of Chhattisgarh**⁸ wherein, the Court has held as under:-

“20. As per Section 3 of the Indian Evidence Act, 1872, a fact can be said to have been proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act up on the supposition that it exists. The court undertakes this exercise of

examining whether the facts alleged including the particular criminal acts attributed to the accused are proved or not.

21. It is also to be noted that the law does not contemplate stitching the pieces of evidence in a watertight manner, for the standard of proof in a criminal case is not proof beyond all doubts but only beyond reasonable doubt. In other words, if a clear picture emerges on piecing together all evidence which indicates beyond reasonable doubt of the role played by the accused in the perpetration of the crime, the court holds the accused criminally liable and punishes them under the provisions of the penal code, in contradistinction to the requirement of proof based on the preponderance of probabilities as in case of civil proceedings.

22. It will be relevant to discuss, at this juncture, what is meant by reasonable doubt . It means that such doubt must be free from suppositional speculation. It must not be the result of minute emotional detailing, and the doubt must be actual and substantial and not merely vague apprehension. A reasonable doubt is not an imaginary, trivial or amerey possible doubt, but a fair doubt based upon reason and common sense.”

37. The Supreme Court in the case of **Jitendra Kumar Mishra @ Jittu vs. State of Madhya Pradesh⁹**, has held as under :

“17. We are conscious of the fact that the appellate court should be slow in interfering with the conviction recorded by the courts below but where the evidence on record indicates the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and that a plausible view, different from the one expressed by the courts below can be taken, the appellate court should not shy away in giving the benefit of doubt to the accused persons.

38. For all the reasons, when we evaluate the testimony of PW-1 and PW-3 carefully and with due caution, as is required in the facts of the case, we find that their testimony do not inspire our confidence to sustain the conviction. The Courts before accepting the same as gospel truth, without testing it on the anvil of settled legal principles, result in grave nuisance of justice. We, therefore, conclude that prosecution has failed to prove it s case beyond reasonable doubt against the appellant.

39. This Court has decided the present criminal appeal on its merits and held as above. Even otherwise, it deserves to be noticed that occurrence in the present case is more than four decades old. The appellant remained was enlarged on bail vide order dated 01.08.1984. He has been continued on bail during the pendency of the present criminal appeal for nearly 40 years. It is not in dispute that the appellant is now of extremely advanced age, stated to be about 100 years old.

40. The Supreme Court has recognized that prolonged pendency of criminal proceedings and the advanced age of an accused constitute relevant considerations while moulding relief in criminal appeal. The extraordinary delay in disposal of criminal appeals, coupled with the advanced age of the accused and long periods of liberty on bail, constitutes a relevant and weighty consideration while moulding relief.

41. In the case of **State of Madhya Pradesh vs. Shyamlal and Others**¹⁰, the Supreme Court has observed that while dealing with an incident of the year 1989, the High Court had converted the conviction under Section 302 IPC to Section 304-II IPC and had let off the accused with the sentence already undergone, inter alia, noticing that the first-accused was nearly eighty years old and the other accused were above seventy years of age. The Supreme Court declined to interfere and took note of the fact that the appeal was being considered after more than three decades and that the accused had remained on bail during the pendency of the proceedings.

42. Similarly in **Fatta and Others vs. State of U.P.**¹¹, the Supreme Court observed that where the appellants had served only three to four months of sentence and had remained on bail for about 10 years, it would not be conducive in the interests of justice to send them back to jail after a lapse of ten years, and accordingly reduced the sentence to the period already undergone.

43. Though in this case, the conviction itself is being set aside on merits on account of failure of the prosecution to prove the charge beyond reasonable doubt. The aforesaid circumstances extraordinary delay in disposal of the appeal, uninterrupted liberty for several decades, and the present advanced age of the appellant, furnish additional reinforcement to the conclusion that no useful purpose would be served by directing any further custodial consequences.

44. Accordingly, while allowing the appeal and acquitting the appellant of the charge under Section 302 I.P.C., it is observed that the prolonged pendency of the criminal appeal and the advanced age of the appellant constitute relevant contextual factors which further persuade this Court against any remand or continuation of penal consequences.

45. Guidance may also be drawn from the recent decision dated 22.01.2026 passed by the Division Bench of the Punjab and Haryana High Court in the case of **Swarn Singh vs. State of Punjab**¹², wherein similar observations were made. The occurrence in this case was of the year 2000, and the appeal came to be decided in January, 2026. The Court noticed that, as per the charge-sheet, the accused was aged about seventy years in the year 2001, and therefore, was more than ninety four years old at the time of appellate consideration. It was further recorded that the appellant had faced the agony of investigation, trial and appeal for over twenty five years and had already undergone more than six years of actual incarceration, with total custody including remissions exceeding eleven years. Taking these circumstances into account, the Court while modifying the conviction to Section 304-I IPC has reduced the sentence to the period already undergone, expressly keeping in view the advanced age of the appellant and the prolonged passage of time. This decision reinforces the principle that extreme old age coupled with inordinate delay in conclusion of criminal proceedings constitutes a relevant mitigating circumstance in the moulding of relief.

46. Criminal law undoubtedly exists to vindicate societal interest, but it also proceeds on the foundational premise that punishment must remain rationally connected to its legitimate purpose which are deterrence, retribution, and reformation. Where the passage of time has been so extraordinary that an accused has spend a larger part of his remaining life under the shadow of a pending criminal case, the punitive function of the law inevitably loses much of its practical and moral force.

47. Justice is not an abstraction divorced from human conditions. The law cannot be oblivious to the reality that advancing age brings with its physical fragility, dependence and a narrowing horizon of life. When a person stands before the Court at the twilight of existence, the insistence on penal consequences, after decades of procedural delay, risks transforming justice into a ritual divorced from the purpose it intends.

48. Delay of such magnitude is not a mere administrative lapse, rather it becomes a substantive factor affecting fairness. A criminal process that stretches across generation ceases to be only a mechanism of accountability and assumes, in itself, the character of punishment. The anxiety, uncertainty and social consequences suffered over decades cannot be ignored while assessing what justice now demands.

49. The constitutional promise of fair and reasonable procedure does not end with trial. It permeates the entire life cycle of a criminal case, including appeal. When the system itself has been unable to deliver finality within a reasonable time, Courts are justified in adopting a tempered, human approach while fashioning relief.

50. Ultimately, the legitimacy of criminal justice lies not in the severity of its outcomes but in their moral coherence. Where guilt itself is not established beyond reasonable doubt and the accused has survived under the weight of accusation for four decades, the only outcome consistent with justice, fairness, and human dignity is complete exoneration, with conscious recognition that prolonged pendency and extreme age further militate against any residual penal consequences.

51. For all the foregoing reasons, the instant criminal appeal succeeds and is hereby **allowed**.

52. The impugned judgment and order dated 27.07.1984 passed by Additional Sessions Judge, Hamirpur are hereby set aside. The appellant is acquitted of all the charges levelled against him.

53. The appellant - Dhani Ram alias Dhanaiyan is already on bail. His bail bonds shall stand discharged.

54. The trial court record be sent back.

(2026) 1 ILRA 799
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 16.01.2026

BEFORE

THE HON'BLE SIDDHARTH J.
THE HON'BLE PRASHANT MISHRA-I, J.

Criminal Appeal No. 2480 of 1987

Om Prakash

State Of U.P.

...Appellant

Versus

...Respondent

Issue for Consideration

The prosecution case arose out of an incident on 15.02.1987, the deceased was staying alone in house of her relatives, she was found dead with incised neck injury, medical evidence indicated rape prior death. Trial court convicted accused under section 302,376 IPC.

Headnotes

A. Indian Penal Code,1860-Sections 302,376-Criminal Procedure Code,1973-Section 374(2), 313,161-Circumstantial evidence-Murder-Rape-Chance witness-Credibility-Strict Scrutiny required-Last seen theory-five golden Principles-investigative lapses-Benefit of doubt-Acquittal.(Para 26 to 57) (E-6)

Held

The court held that where prosecution case rests entirely on circumstantial evidence, circumstances must be fully established, consistent only with hypothesis of guilt, and must form a complete chain excluding every possibility of innocence. In absence of complete chain conviction unsustainable.

Case law Cited

Sharad Birdhichand Sarda Vs State of Maharashtra, AIR 1984 SC 1622, Shivaji Sahebaro Bobade Vs State of Maharashtra 1973 CriL1783, Joseph Vs State of Kerala [(2000) 5 SCC 197], Padala Veera Reddy Vs State of A.P (AIR 1990 SC79) in C.Chenga Reddy & Ors Vs State of A.P, AIR 1996 SC 3390, State of U.P. Vs Ashok Kumar Srivastava, [(1992) 2 SCC 86], State of Rajasthan Vs Kashi Ram (2006) 12 SCC 254, Ganesh Lal Vs State of Rajasthan (2002) 1 SCC 731, State of Maharashtra Vs Surash (2000) 1 SCC 471 & State of Tamil Nadu Vs Rajendran (1999) 8 SCC 679, Ujjagar Singh Vs State of Punjab, (2007) 13 SCC 90: (2009) 1 SCC (Cri) 272, Arjun Marik & Ors Vs State of Bihar 1994 Supp (2) SCC 372, Godabarish Mishra Vs Kuntala Mishra and Anr. (1996) 11 SCC 264, Bharat Vs State of M.P. (2003) SCC 106; (2023) 2 SCC 352; Manoj & Ors Vs State of U.P. (2003) 2 SCC 353; Manoj & Ors State of M.P., Puran Vs State of Punjab (AIR 1953 SC 459). Darya Singh Vs State of Punjab (AIR 1965 SC 328), Jarnail Singh Vs State of Punjab (2009) 9 SCC 719], Satbir Vs Surat Singh (1997) 4 SCC 19 30 Harjinder Singh Vs State of Punjab (2004) 11 SCC 253, Acharaparambath Pradeepan & Anr. Vs State of Kerala (2006) 13 SCC 643 & Sarvesh Narain Shukla Vs Daroga Singh (2007) 13 SCC 360), Shankarlal Vs State of Rajasthan (2004) 10 SCC 632), Mahajan, J., in Puran Vs State of Punjab, AIR 1953 SC 459, Mousam Singha Roy Vs State of W.B., (2003) 12 SCC 377, Thangaiya Vs State of Tamil Nadu (2005) 9 SCC 650-referred to.

List of Acts

Indian Penal Code, 1860, Criminal Procedure Code, 1973.

List of Keywords

Circumstantial evidence, Murder, Rape, Chance witness, Credibility, Last seen theory, five golden Principles, investigative lapses-Benefit of doubt, Acquittal, hypothesis of guilt.

Case Arising from

CRIMINAL JURISDICTION:- CRIMINAL APPEAL No. – 2480 of 1987

Om Prakash Vs. State of U.P.

From the Judgment and Order dated 16.01.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties**Advs. for Appellant(s):-**

Krishna Kant Dubey(ac), A. Rathore Mahendra Pratap Singh

Adv. for Respondent(s):-

A.G.A.,

(Delivered by Hon'ble Siddharth, J.)

1. Heard Sri Krishna Kant Dubey, learned Amicus Curiae for appellant; Mrs. Manju Thakur, learned AGA-Ist for State-respondents and perused the trial court record.

2. The above noted criminal appeal has been preferred against the judgment and order dated 12.10.1987 passed by Sessions Judge, Kanpur Dehat, in Sessions Trial No.71 of 1987 convicting and sentencing the appellant for offence under Section 302 IPC to life imprisonment and under Section 376 IPC to 7 years rigorous imprisonment. All the sentences have been directed to run concurrently.

3. The facts of the case are that one, Raj Kumar, s/o Narain, lives in village Tarbiatpur, P.S. Bilhaur, Kanpur Mehat. The complainant, Sheo Kumar, is the real brother of Raj Kumar and he lives in village Chaubegahi P.S. Bilhaur. According to the statement of the complainant, Sheo Kumar, the distance between Tarbiatpur and Chaubegahi is about 2 km. The deceased, Km. Sudha, aged about 19 years, was the daughter of sister of Raj Kumar and Sheo Kumar. She was a resident of village Nekpur, P.S. Fatehgarh, Distt. Farrukhabad.. Raj Kumar, his wife Roop Rani, their son Rameshwar and his wife live in the house at Tarbiatpur. The occurrence took place on 15.2.87. It is alleged that Manorama, daughter of Raj Kumar, who was married in Mahmoodpur Deoria, P.S. Jahanabad, Distt. Farrukhabad, was ill, and Raj Kumar and his wife had gone to see her on 12.2.87. It is alleged that an operation of the eyes of Raj Kumar's wife had taken place and the wife of Rameshwar was shortly expected to deliver a child. For these reasons, Sudha was called to Tarbiatpur and was staying there in the house of Raj Kumar.

4. It is further alleged that on 15.2.87, at about 9 a.m., Rameshwar's wife developed labour pains and had to be taken to Bilhaur hospital. When Sheo Kumar heard about this, he also went to Bilhaur from Chaubegahi along with his wife. There, Rameshwar told Sheo Kumar that Sudha was alone in the house at Tarbiatpur and that he, therefore, had to return home early. Sheo Kumar said that he would also accompany him and would also see the fields on the way. Consequently Rameshwar and Sheo Kumar left for Tarbiatpur and when they reached near their house at about 2 p.m., they saw the accused, Om Prakash alias Nanhey s/o Baburam r/o village Tarbiatpur and one unknown person rushing out of their (Raj Kumar's) house. Sheo Kumar and Rameshwar immediately entered the house and saw that Sudha was lying dead on the Palang. There was a wound on her neck, and it appeared to them that rape had also been committed on Sudha. Sheo Kumar came to the conclusion that Om Prakash alias Nanhey and his associate had first committed rape on Sudha and thereafter committed her murder.

5. Sheo Kumar scribed a report regarding this occurrence and lodged it at P.S. Bilhaur on the same day at 16 hours. On the basis of this report, a case was registered under Section 302 and 376 I.P.C., and the investigation was entrusted to S.I. R.D. S. Yadav.

6. The Investigating Officer, after recording copies of the report etc., in the case diary, proceeded to the spot where he first recorded the statement of the complainant, Sheo Kumar, at 4.50 p.m. He then inspected the place of occurrence and prepared a site-plan, Ex. Ka 4. Thereafter, he prepared the Panchayatnama of the dead body of Sudha at 5.15 p.m. After preparing the challan

lash, photo lash and necessary letters, the dead body of Sudha was handed over in sealed condition, to constables, Brij Kishore and Mahabir, for being carried for post mortem examination.

7. The Investigating Officer also recovered from the place of occurrence one book and one post-card. The title of the book was Black Tiger and the post card was placed in this novel. This post-card was addressed to the accused Om Prakash by the Pradhancharya, Vidya Bhawan College, Araul.

8. The Investigating Officer thereafter prepared a Fard Ex. Ka11 in respect of the blood stained *Razai, chadar, Takia and chappal*. He also prepared a Fard of the Palang and Galeecha, Ex. Ka12. The Investigating Officer then conducted a search of the house of the accused, but nothing was found. The proceedings of investigation on 15.2.87 were closed at 11.15 p.m.

9. On 16.2.87 the Investigating Officer recorded the statement of P.W.-3 Lakshmi Shanker and some other witnesses. The statement of the head moharrir was recorded on 17.2.87.

10. The accused surrendered himself on 18.2.87. The statement of the accused was recorded by the Investigating Officer on 24.2.87. After completing the investigation, charge sheet was submitted on 17.3.87.

11. the post mortem on the dead body of Km. Sudha was conducted by Dr. H.C. Prasad on 16.2.87 at about 1:00 p.m.

12. The body of Sudha was of average huilt. The eyes were closed. Mouth was closed. Rigor mortis was present all over the body. Post-mortem staining was present on the back and buttocks. Abdomen was slightly distended.

13. Following ante-mortem injuries were founds:-

I. Incised wound 12 cmx 3.5 cm. x bone deep on right side neck 6.5 cm. below right ear. Margins were clean cut. Dried blood present round the wound and upper part of the chest. Wound was extending from just right side of mid line upto 8 cm. behind mastoid, trachea, sterno mastoid muscles, right carotid artery and jugular veins were clean cut and were visible through the wound.

II. Contusion 3 cm. x 2 cm. on horizontal ramus of right mandible.

III. Multiple abrasions on left side of the chest and left breast area in an area of 12 cm x 8 cm.

IV. Spots of dried semen present on the front of left thigh, perinium and medial side of right thigh. Pubic hair had been shaved.

V. White discharge present in the vagina was taken out and slide was prepared. One small about 1/2 cm. long abrasion, present on lateral wall of the right side vagina. Hymen was already ruptured and old tags were present.

Internal examination.

Trachea, right sterno mastoid were clean cut and haematoma was present around them.

Heart weighing 210 gms both chambers were empty.

Right Carotid artery and jugular veins were clean cut and haematoma was present around them.

Right lung had collapsed and left lung was normal. Time since death was about a day.

14. The doctor, who conducted the post-mortem, handed over 11 police papers, slides of vaginal discharge, semen spotted petticoat and other clothes etc., to the constables who had brought the dead body. According to the statement of P.W.1, Dr. H.C.Prasad, the death of Km. Sudha could have taken place on 15.2.87 at about 2 p.m. and injury no.1 was sufficient in ordinary course to cause death. He further stated that before the death of the deceased rape had been committed on her.

15. The case of accused, Om Prakash, was committed to the court of Session by the Chief Judicial Magistrate, Kanpur Dehat, on 26.5.87. Charges under Sections 376 and 302 I.P.C. were framed against the accused, Om Prakash on 6.7.87.

16. The prosecution in order to prove its case examined Dr. H. C. Prasad as P.W.-1; complainant, Sheo Kumar as P.W.-2; Laxmi Narain as P.W.-3; constable Brij Kishore as P.W.-4; R.D.S. Yadav as P.W.-5 and head constable, Babu Ram Awasthi as P.W.6.

17. P.W.1, Dr.H.C. Prasad stated about the post-mortem on the dead body of Sudha and proved the post-mortem report Ex.1.

18. P.W-2, Sheo Kumar, who is the complainant in this case, stated the entire prosecution case and proved the written report Ex. Ka2. He stated how he came to the place of occurrence along with his nephew Rameshwar and how he saw the accused and one other person coming out of the house of Raj Kumar. He stated further that he and Rameshwar then went into their house and saw that Sudha was lying dead and it appeared that her murder was committed after subjecting her to rape. He further stated that when he and Rameshwar raised an alarm, Soney Lal, Laxmi Shanker, Ram Sewak and many other persons of the village arrived there.

19. P.W.-3, Laxmi Shanker, stated that the murder of Sudha, Bhanji of Raj Kumar, had been committed on 15.2.87 at about 2 p.m. He stated that at that time he was in the room at the roof of his house and Ram Sewak and Soney Lal were also present with him. They were talking regarding the storage of potatoes in cold storage. He further stated that the roofs of his house and that of the house of Raj Kumar are adjoining. They heard shrieks coming from the house of Raj Kumar and rushed to the roof of the verandah of the house of Raj Kumar. From the roof of the verandah of the house of Raj Kumar, they saw that the accused Om Prakash and one unknown youngman, came out of the northern room of the house of Raj Kumar, the door of which opens towards south. They went

out through the Sadar Darwaza and then escaped towards north. He also stated that both, Om Prakash and his associate, had knives in their hands. He further stated that immediately thereafter, Sheo Kumar and Rameshwar came into the verandah and stated that Sudha was lying dead. Laxmi Shanker stated further that they then came down from the roof and saw that there was a wound on the neck of Sudha and her knees were bent and it appeared that she was subjected to rape and was thereafter murdered. He also stated that he was a witness of the Panchayatnama and he proved the Panchayatnama Ex. Ka3.

20. P.W.4, constable Brij Kishore, stated that he had brought the dead body for post-mortem in a sealed condition.

21. The Investigating Officer, Ram Dularey Singh Yadav, stated about the investigation of the case and proved the site-plan Ex.Ka4; challan Lash Ex. Ka5, photo Lash Ex. ab, letter to the R.I. for post-mortem Ex. Ka7, letter to the C.M.O.for post-mortem Ex. Kab and sample of the seal Ex. Ka9. He further proved the book. I and post-card Ex. II, which were recovered at the place of occurrence. He also proved the Fard Ex. Ka10 relating to the recovery of the book I and post-card Ex. II. He further proved the blood stained articles Ex. Ka11 and Fard of the Palang and Galeecha Ex. a12. He also proved fard relating to the search of the house of the accused which is Ex. Ka13. He also submitted the charge-sheet Ex.Ka14 and the chik F.I.R. Ex Ka15.

22. P.W-6, head constable, Babu Ram Awasthi, was the scribe of the general diary by which the case was registered and he proved its copy Ex. Ka16. He also stated that the supplementary report of this case was sent through constable, Krishna Murari and that an entry about this was made in the general diary at report No.29. He proved the copy of this report which is Ex. Ka17.

23. The accused was examined under Sec. 313 Cr.P.C. He pleaded not guilty. He alleged that although his house is situated in Tarbiatpur but it is not located in front of the house of Rameshwar and it is at some distance therefrom. He alleged that he had been falsely implicated on account of enmity. No evidence was adduced in defence.

24. Learned Amicus Curiae appearing for the appellant submitted that the circumstances of the case do not show that the murder of Sudha had been committed by Om Prakash. It was contended that Sudha was used to sexual intercourse as clear from her medico-legal examination report. Earlier, she used to live in Chaubegahi with Shiv Kumar for her studies but her studies had to be discontinued because of her character, and she was thereafter sent back to her parents place. Sheo Kumar accepted in his statement that Sudha used to live with him and was then shifted to her parents place. P.W.-1, Dr. H.C. Prasad, accepted in his statement that the hymen of Sudha was already ruptured and old tags were present, and as such, the deceased was used to sexual intercourse. It is not probable that Raj Kumar and his wife would have left the village in such a manner to see their daughter, particularly when the wife of Rameshwar was expected to deliver a child at any time. The departure of Raj Kumar and his wife from the house seems to have been shown only for the purposes of this case. Rameshwar had a son, and even that son was not left at the house and was shown to have gone to Bilhaur with his mother, who had gone there for delivery. It is not probable that the son of Rameshwar would also have left the house in the manner alleged by the prosecution. Everything seems to have taken place just by coincidence and even the

complainant, Sheo Kumar, has been shown to have arrived at the place of occurrence just by coincidence. Sheo Kumar belongs to Chaubegahi, and he came to the place of occurrence only after the information was sent to him regarding the death of Sudha. It is likely that some paramour of Sudha went away after committing sexual intercourse with her and when this was discovered by Rameshwar, he seems to have committed the murder of Sudha in anger; Sheo Kumar has stated that Raj Kumar had come back to the village the next day, on 16.2.87 after receiving information about the murder of Sudha. On the other hand, P.W.4, constable, Brij Kishore, has admitted in his statement that Raj Kumar was present in the village on 15.2.87 itself, and had also come to G. T. Road, where he had met him. He further stated that Sapurdiginama, Ex. Ka12 bears the signature of Raj Kumar thereby showing his presence in the village on 15.2.87. Thus, the statement of Sheo Kumar that Raj Kumar had come back the next day is incorrect. The prosecution has unnecessarily tried to remove the presence of all the inmates of the house from the place of occurrence, and it is likely that the male members of the house committed the murder of Sudha after having become disgusted with her conduct. It is also likely that P.W.3, Laxmi Shanker, may have committed this murder as his house adjoins the house of Raj Kumar and he was in a position to come down into the house of Raj Kumar from the roof of his house. It is not probable that Sheo Kumar and Rameshwar would have returned to the village after 2 p.m. after leaving Rameshwar's wife in hospital in Bilhaur who was to deliver child, and till then delivery had not taken place. It is also not probable that they would have stopped in the fields on the way. The conduct of P.W-2, Sheo Kumar and Rameshwar was stated to be unnatural. If they had seen Om Prakash coming out of their house, they would have immediately asked him wherefrom he was coming and why he had gone inside. Omission of putting such questions to Om Prakash clearly goes to show that the conduct of Sheo Kumar and Rameshwar was not natural; it has not been indicated in the F.I.R. that the complainant and Rameshwar had seen knife in the hands of the accused and his associate; the fact of presence of knife was introduced subsequently on 16.2.87 in the statement of Laxmi Shanker. (PW-3). If there would have been any knife in the hand of Om Prakash, it would have been seen by Sheo Kumar and he must have made a mention about it in the F.I.R. The conduct of none of the witnesses can be said to be natural and the case seems to have been fabricated and concocted by introducing chance witnesses. The house of Chaukidar is very close to the house of Raj Kumar but Chaukidar was not informed and the Chaukidar had himself come after sometime; Laxmi Shanker was present at the time of Panchayatnama. If he would have seen the accused with a knife in his hand, he would have told about it to the Investigating Officer on 15.2.87 itself at the time of Panchayatnama. Statement of Laxmi Shanker was recorded after a considerable delay on 16.2.87 and the theory of knife seems to have been developed on 16.2.87 when the statement of Laxmi Shanker was recorded. This also shows that the conduct of Laxmi Shanker was not natural. If he would have seen the knife in the hand of the accused, he would have told about it to the Inspector at the time of Panchayatnama itself, and there was no question of delaying disclosure of this fact on the next day. In any case, the delay in recording the statement of Laxmi Shanker is fatal to the prosecution case. The injury no.1 caused to the deceased cannot be caused by a knife; such deep and wide injury could have been caused by a heavy cutting weapon and not by a knife. If force would have been used for committing rape on Sudha, injuries would have been found at other parts of her body and not on the breast. It was argued that no bangle was found to have been broken; there seems to be no evidence of resistance by Sudha, and absence of resistance from her side suggests that she was not subjected to rape but she entered into a sexual intercourse with some other person. There could be no reason for the person who entered into sexual intercourse with her

to have committed her murder, Murder of Sudha was committed in anger by the inmates of the house after they discovered that she had entered into sexual intercourse with some one. The statement of Sheo Kumar does not go on to suggest that rape was committed on Sudha. Her legs were covered and her blouse was not torn. Laxmi Shanker (PW-3) had not stated that the body of Sudha was lying in a naked condition and his statement appears to be incorrect. The time has been changed in the Panchayatnama; there is cutting and overwriting in the time of Panchayatnama; the name of the accused has also not been mentioned in the Panchayatnama. It was made much after the time indicated in it and the papers seem to be ante-timed. Absence of the name of the accused in the Panchayatnama shows that the name of the accused was not known till Panchayatnama was prepared. F.I.R. and all other documents are ante-dated and ante-timed; it could not be decided upto 16.2.87 as to who should be implicated and that is why the statement of Laxmi Shanker was not recorded on 15.2.87, though he was, in fact, available on 15.2.87 as Panchayatnama is alleged to have been executed on that day. The statement of Sheo Shanker was recorded on 15.2.87, and the name of Laxmi Shanker had come to the knowledge of the Investigating Officer on 15.2.87 itself. If the Investigating Officer had come to know about the name of Laxmi Shanker, then why was his statement was not recorded on 15.2.87 itself. This delay in recording the statement of Laxmi Shanker is fatal to the prosecution's case. This delay shows that the investigation has not been fair. In the Panchayatnama the residence of Sheo Kumar was shown as Tarbiatpur but it was later changed to Chaubegahi after making cuts. There are many cuttings and overwriting in the Panchayatnama which indicate that the investigation has not been fair. The copy of the F.I.R. was sent to the S.D.M. and C.O. on the third day, even though their offices are situated inside the campus of the police station itself. In this case even the complainant Sheo Kumar is a chance witness and his testimony should be looked into with caution. The book Ex. I and post-card Ex. II do not bear the signature of any witness. The signatures of witnesses were also not obtained on the packet of these articles. These articles seem to have been planted by the prosecution in order to implicate the accused; these articles do not establish the presence of the accused at the place of occurrence. There were serious discrepancies in the conduct of the investigation, preparation of the Panchayatnama and the noting in the general diary. There was considerable delay in removing the dead body also. These defects indicate serious lapse in investigation and are fatal to the prosecution case. No explanation has been offered by the prosecution for the delay in sending the F.I.R. to the Magistrate and this suggests that the F.I.R. was lodged after a considerable time. No reliance should be placed on the testimony of chance witnesses, such as the complainant, Sheo Kumar. There was some enmity between the family of Sheo Kumar and the accused and Sheo Kumar has admitted in his statement that some litigation had taken place between the two families sometime back. No reliance should be placed on the testimony of a chance witness who is also inimically deposed against the accused. The credibility of the F.I.R. in this case has been completely shaken. If all the circumstances referred to in the arguments are taken into consideration, the charges under Sections 376 and 302 I.P.C. cannot be said to have been proved against the accused. It was finally argued that the prosecution has not been able to prove beyond reasonable doubt that the murder of Sudha was committed by Om Prakash after committing rape against her.

25. Learned AGA appearing for the State has opposed the submissions advanced by the learned counsel for the appellant and has submitted that, in this case the evidence establishes beyond doubt that it was Om Prakash who committed murder of Sudha after committing rape on her. He was seen coming out of the house of Raj Kumar immediately after the occurrence with a

knife in his hand. A book belonging to the accused and a post-card addressed to him was recovered from the place of occurrence and these articles prove it beyond any shadow of doubt that it was the accused, Om Prakash, who was present at the place of occurrence, and who committed the murder. The statement of P.W.2, Sheo Kumar and P.W.3, Laxmi Shanker establish beyond any doubt that the accused was seen coming out of the house of Raj Kumar immediately after the occurrence. P.W.3, Laxmi Shanker had seen the accused and his associate coming out of the room in which the murder of Sudha was committed. Laxmi Shanker and two others present at the roof of his house had heard shrieks from the house of Raj Kumar and they had immediately rushed to the roof of verandah of the house of Raj Kumar and from there they saw that the accused and his associate were coming out of the room in which Sudha was murdered and they went out of the Sadar Darwaza and then escaped towards north; Laxmi Shanker is an independent witness and his house adjoins the house of Raj Kumar and his immediate presence at the place of occurrence cannot be easily disbelieved. The statements of P.W.2, Sheo Kumar and P.W.3 Laxmi Shanker, establish that murder of Sudha was committed by Om Prakash and his associate. There is no such reason which may suggest that there could be a chance of false implication of the accused. The defence tried to find faults with the investigation but the evidence on record cannot be brushed aside on account of any infirmity in the investigation; if any, the defence has tried to show that there was delay in lodging of F.I.R., and the F.I.R. and other papers have been ante-timed. There was no delay in lodging the F.I.R. and there was no ante timing of papers; defence has tried to show that the Investigating Officer had done ante timing in the Panchayatnama and the connected papers, when evidence on record shows that no such ante timing was done and the dead body was sent for post-mortem within a reasonable time and without any delay. It was also pointed out that some delay had taken place in the arrival of the dead body at the Sadar, but the said delay has been explained by P.W. 4, Brij Kishore. In his cross-examination, he stated that the dead body was first brought to G.T. Road and then from G. T. Road it was taken in a tempo which became out of order on the way. The dead body was thereafter taken in another tempo from Uttaripura, leaving there at 6 a.m., and they arrived at the Police Lines at 10 am. The delay in the arrival of the dead body at the Sadar thus took place due to the fact that the first tempo had become out of order and another tempo had to be engaged for carrying the dead body. It was also argued that it becomes difficult to carry a dead body as many drivers do not agree to transport a dead body in their vehicles. Whatever delay took place in bringing the dead body to Sadar has therefore been duly explained. The charges against the accused, Om Prakash, have been proved beyond reasonable doubt and he cannot escape conviction under Sec. 376 and 302 I.P.C.. It was finally argued that the evidence on record leads to the only irresistible conclusion that it was the accused, Om Prakash, who committed the murder of Sudha.

26. After hearing the rival submissions, going through the material on record, and perusing the judgment and order of trial court, we find that there is no eye-witness account of the alleged incident and that the case is based on circumstantial evidence. It is well settled that though conviction can be based on circumstantial evidence alone, but for that purpose the prosecution must establish chain of circumstances which consistently points to the guilt of accused and accused alone, and is inconsistent with his innocence. It is further essential for the prosecution to cogently and firmly establish the circumstances from which inference of guilt of accused is to be drawn. These circumstances then have to be taken into consideration cumulatively. They must be complete to conclude that within all human probability, accused and none else has committed the offence. In

the landmark judgment of Supreme Court in *Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622*, Hon'ble Apex Court held as under:-

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

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

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be ' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved as was held by this court in *Shivaji Sahebaro Bobade V State of Maharashtra 1973 CriLJ1783* where the following observations were made:

Certainly, it is the primary principle that the accused must be and not merely may be guilty before a Court can convict, and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

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

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

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

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

27. In *Joseph vs. State of Kerala, [(2000) 5 SCC 197]*, court has explained under what circumstances conviction can be based purely on circumstantial evidence. It observed:-

"it is often said that though witnesses may lie, circumstances will not, but at the same time it must cautiously be scrutinized to see that the incriminating circumstances are such as to lead only to a hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. There can also be no hard and fast rule as to the appreciation of evidence in a case and being always an exercise pertaining to arriving at a finding of fact the same has to be in the manner necessitated or warranted by the peculiar facts and circumstances of each case. The whole effort and endeavour in the case should be to find out whether the crime was committed by the accused and the circumstances proved from themselves into a complete chain unerringly pointing to the guilt of the accused."

28. Similar view has been expressed in *Padala Veera Reddy v. State of Andhra Pradesh*, (AIR 1990 SC 79). In *C. Chenga Reddy and others v. State of Andhra Pradesh*, AIR 1996 SC 3390, the Court held:-

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

29. In *State of U.P. vs. Ashok Kumar Srivastava*, [(1992) 2 SCC 86], it was pointed out that great care must be taken in evaluating circumstantial evidence and if evidence relied on is reasonably capable of two inferences, the one in favour of accused must be accepted. It was also pointed out that circumstances relied upon must be found to have been fully established and cumulative effect of all the facts so established must be consistent only with the hypothesis of the guilt.

30. The same principle was reiterated in *State of Rajasthan v. Kashi Ram* (2006) 12 SCC 254, *Ganesh Lal v. State of Rajasthan* (2002) 1 SCC 731, *State of Maharashtra v. Suresh* (2000) 1 SCC 471 and *State of Tamil Nadu v. Rajendran* (1999) 8 SCC 679.

31. In *Varkey Joseph Vs. State of Kerala*, reported in AIR 1993 SC 1892, Court held that suspicion cannot take place of proof. The Court concluded as under:-

"12. Suspicion is not the substitute for proof. There is a long distance between 'may be true' and 'must be true' and the prosecution has to travel all the way to prove its case beyond all reasonable doubt.

32. From the aforesaid authorities, it is clear that in a case based on circumstantial evidence, Court is required to evaluate circumstantial evidence to see that the chain of events have been established clearly and completely to rule out any reasonable likelihood of innocence of the accused. Needless to say whether the chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted [See *Ujjagar Singh v. State of Punjab*, (2007) 13 SCC 90 : (2009) 1 SCC (Cri) 272]. The principle that emerges from the above discussed decisions is that conviction can be based solely on circumstantial evidence, but it should be tested on the touchstone of law relating to circumstantial evidence laid down by the Hon'ble Apex Court.

33. In *Arjun Marik and Ors. V. State of Bihar* 1994 Supp (2) SCC 372, it was reiterated by the Hon'ble Supreme Court that the solitary circumstance of the accused and the victim being last seen will not complete the chain of circumstances for the Court to record a finding that it is consistent only with the hypothesis of the guilt of the accused. No conviction on that basis alone can, therefore, be founded. So also in *Godabarish Mishra v. Kuntala Mishra and Another* (1996) 11 SCC 264, the Supreme Court held that the theory of last seen together is not of universal application and may not always be sufficient to sustain a conviction unless supported by other links

in the chain of circumstances. In *Bharat v. State of M.P* (2003) 3 SCC 106; two circumstances on the basis whereof the appellant had been convicted were (i) the appellant having been last seen with the deceased and (ii) Recovery of ornaments made at his instance. The Supreme Court held:

"Mere non-explanation cannot lead to the proof of guilt against the appellant. The prosecution has to prove its case against the appellant beyond reasonable doubt. The chain of circumstances, in our opinion, is not complete so as to sustain the conviction of the appellant."

34. Applying the aforesaid legal preposition in the present case, it is quite apparent that neither the chain of circumstances is complete nor the alleged circumstance of last seen has been established. Moreover the appellant was not even last seen with the deceased. He was only seen coming out of the house of Rameshwar, where deceased was residing with PW-2 and PW-3.

35. We further find that a chance witness is such a witness who is only planted by the prosecution to prove a point. In the instant case, if the eye-witnesses, PW-2 and PW-3 had been there on the spot and had they seen the incident, as they had narrated in their statements before the trial court, then they would themselves have taken action upon seeing the murder having taken place in the house of Raj Kumar, but since they had actually not seen the incident, they were planted by the prosecution to only prove the point that Om Prakash had actually committed the murder. Supreme Court in (2023) 2 SCC 352 : *Manoj and Ors. vs. State of U.P.* and has submitted that a chance witness cannot be taken to be a reliable witness and, therefore, the testimony of a chance witness cannot be, in any manner, used to convict the accused. As per the law laid down by the Supreme Court, a testimony of a chance witness should be utilized by the prosecution very cautiously. Evidence of the chance witness requires a very cautious and strict scrutiny and if there was any slackness in the explanation about the presence of the chance witness at the place of incident then his deposition ought to be rejected. Paragraphs 102, 103 and 104 of the judgment reported in (2003) 2 SCC 353 : *Manoj & Ors. vs. State of Madhya Pradesh*, the same are being reproduced here as under :-

"102. A chance witness is one, who appears on the scene suddenly. This species of witness was described in *Puran v. State of Punjab* (AIR 1953 SC 459), in the following terms:

Such witnesses have the habit of appearing suddenly on the scene when something is happening and then of disappearing after noticing the occurrence about which they are called later on to give evidence.

103. This court has sounded a note of caution about dealing with the testimony of chance witnesses. In *Darya Singh v. State of Punjab* (AIR 1965 SC 328), it was observed that:

where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, Courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence. If the criminal Court is satisfied that the witness who is related to the

victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised.

36. In *Jarnail Singh v. State of Punjab [(2009) 9 SCC 719]* again, this Court held that:

22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (*Satbir v. Surat Singh (1997) 4 SCC 192 30, Harjinder Singh v. State of Punjab (2004) 11 SCC 253, Acharaparambath Pradeepan and Anr. v. State of Kerala (2006) 13 SCC 643 and Sarvesh Narain Shukla v. Daroga Singh (2007) 13 SCC 360*). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide *Shankarlal v. State of Rajasthan (2004) 10 SCC 632*)."

37. The defining attributes of a "chance witness" were explained by *Mahajan, J., in Puran v. State of Punjab, AIR 1953 SC 459*. It was held that such witnesses have the habit of appearing suddenly on the scene when something is happening and then disappearing after noticing the occurrence about which they are called later on to give evidence.

38. In *Mousam Singha Roy v. State of W.B., (2003) 12 SCC 377*, this Court discarded the evidence of chance witnesses while observing that certain glaring contradictions/omissions in the evidence of PW 2 and PW 3 and the absence of their names in the FIR has been very lightly discarded by the courts below. Similarly, *Shankarlal v. State of Rajasthan, (2004) 10 SCC 632 and Jarnail Singh v. State of Punjab, (2009) 9 SCC 719*, are authorities for the proposition that deposition of a chance witness, whose presence at the place of incident remains doubtful, ought to be discarded. Therefore, for the reasons recorded by the High Court we hold that PW5 and PW6 were chance witnesses and their statements have been rightly discarded."

39. Conduct of the chance witness subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident. (vide *Thangaiya v. State of Tamil Nadu (2005) 9 SCC 650*).

40. After consideration of the above legal position regarding the cases of circumstantial evidence and the prosecution case based on chance witness, we find from the facts of the case that on the date of the incident, i.e., 15.02.1987 at about 09:00 a.m., Rameshwar's wife suffered labour pains and was taken from the house of Raj Kumar in village Tarbiatpur, to Bilhaur Hospital. Subsequently, Sheo Kumar, also went to Bilhaur from his village, Chaubegahi, along with his wife after coming to know that Rameshwar's wife was in labour pain. Rameshwar is son of Raj Kumar, who lived in village Tarbiatpur alongwith Raj Kumar. There were five members i.e., Raj Kumar, his wife, Roop Rani, Rameshwar, his wife and their son. On the fateful day, there was no one left in the house except Sudha, since Raj Kumar and his wife had gone to their daughter's house in Mahmoodpur, Deoria. The son of Rameshwar was also not in the house, and only Sudha was present in the house when the alleged incident took place. His son had also gone to Bilhaur along with his mother who was about to deliver a child and his father, Rameshwar, was also there.

41. The prosecution case is that Sheo Kumar and Rameshwar were at the hospital where the wife of Rameshwar was suffering from labour pains. It has not been stated anywhere by the prosecution that wife of Rameshwar had delivered a child when they left for the house of Raj Kumar at 02:00 p.m., on the pretext that Sudha was alone in the house of Raj Kumar. It was admitted that Rameshwar accompanied his wife to Bilhaur, while Sheo Kumar, P.W.-2, went to Bilhaur from his village, Chaubegahi, with his wife to see the pregnant wife of Rameshwar. Rameshwar and Sheo Kumar suddenly left for Tarbiatpur and reached the house of Rameshwar at 02:00 p.m. Sheo Kumar stated that he went back saying that he would see his fields on the way. When they reached the house of Rameshwar, they saw the appellant, Om Prakash, along with an unknown person rushing out of the house of Raj Kumar. They neither questioned Om Prakash nor the unknown person accompanying, who were subsequently alleged to be holding knives in their hands by P.W.-3 in his statement recorded on the second day of the incident i.e., 16.02.1987, under section 161 Cr.P.C., by the investigating officer. Rameshwar, son of Raj Kumar, did not appear in the witness box, although he was also a chance witness to the incident. Only Sheo Kumar, who was not a resident of village, Tarbiatpur and uncle of Rameshwar, appeared as P.W.-2 before the trial court and was treated as only a chance witness.

42. The law in this regard has already been considered by us and the courts have cautioned that testimony of a chance witness should be considered cautiously and subjected to strict scrutiny regarding his explanation about his presence at the place of incident.

43. On perusal of the statement of P.W.-2, we find that he only accompanied Rameshwar to his house in village Tarbiatpur on the pretext of seeing his fields on the way. However, in his evidence, it has not emerged that he stopped on the way and inspected his fields and thereafter proceeded to the house of Rameshwar. He reached there alongwith Rameshwar just at the relevant time when Om Prakash and another person were leaving the house. The justification for coming to the house of Rameshwar as set up by P.W.-2 before the court, was not proved. Rameshwar, who could have corroborated the testimony of PW-2 was not examined at all. Therefore, it appears that P.W.-2 was introduced in this case as a chance witness only to support the prosecution case.

44. Regarding the testimony of P.W.-3, we find that his conduct is also not natural. He is the next door neighbour of Raj Kumar/Rameshwar and he stated that he saw the appellant, Om Prakash, and an unknown young man coming out from the northern room of the house of Raj Kumar and leaving through the sadar darwaja (door) with knives in their hands. However, Raj Kumar neither questioned them nor raised any alarm. He further stated in his statement that at that very time, when Om Prakash and another young man were leaving the house of Raj Kumar, P.W.-2, Shiv Kumar and Rameshwar came to the house yet they never informed him that Sudha is lying dead. Thereafter Laxmi Shankar, P.W.-3, came down from his roof and found a wound on the neck of Sudha,

45. From the statement of P.W.-3, the entire prosecution case appears to be based on coincidence while P.W.-3 has explained lack of any action on his part against Om Prakash and his associate on the ground that as soon as he saw the incident, P.W.-2 and Rameshwar, came to the place of incident. Therefore justification was given that P.W.-3 had no occasion to raise any alarm or make effort to catch Om Prakash and his accomplice.

46. Therefore, we find that the prosecution case is based on suspicion only. Recovery of a book and a post card addressed to the appellant, could have been planted by the police. Since in the memo of the recovery of the book and post card, exhibit 1 and 2 there was no signature of any witness obtained thereon. Investigating officer prepared the memo of the blood stained rajai, chadar, takiya and chappal of the deceased and also palang and galicha of the deceased recovered from her room.

47. The next point of consideration is the injury caused to the deceased by the knives in the hands of Om Prakash and an unknown accused. In the post mortem of the deceased only incised wound is 12 c.m. x 3.5 c.m. x bone deep on right side neck 6.5 c.m. below right ear of the deceased and margins were clean cut.

48. We find that such a large injury having clear cut margins and bone deep cannot be caused by an ordinary knife. The doctor has found that the aforesaid wound was extending from just right side of mid line upto 8 c.m. behind mastoid, trachea, sterno, mastoid muscles, right carotid artery and jugular veins were clean cut and were visible through the wound. The injury of such magnitude could have been caused by some hard hitting and heavy weapon like axe, farsa, chapad and not by knife assigned to the appellant and an unknown accused, whose identify was never ascertained.

49. The prosecution has failed to explain how the injury of such magnitude was caused by knife allegedly assigned to the appellant. It is also notable that initially no weapon was assigned to the appellant, but on the next day of the lodging of the F.I.R., P.W.-3, a knife was assigned in the hands of the appellant and another young man.

50. The argument of the learned amicus curiae regarding the lapses committed by the investigating officer during investigation cannot be given much weight since it is settled law that the accused cannot get benefit of the same if other evidence led by the prosecution inspires confidence of the Court.

51. It is clear from the above consideration that no one has seen the actual incident being caused by the appellant nor the appellant was last seen with the deceased in her house. He was seen along with another person leaving the house of Raj Kumar by P.W.-2 and P.W.-3 while P.W.-2 has been found to be a chance witness. The conduct of P.W.-3 of not making any effort to question or stop Om Prakash while fleeing from the place of incident nor of raising any alarm seeing him armed with knife does not makes his testimony worth reliance.

52. The argument of defence that the deceased was murdered by her own relatives in her house after being seen with some one indulging in physical relationship is a possibility which cannot be ruled out since the enormity of the injury on her neck proves that she was brutally assaulted in anger by some heavy incised weapon which proved fatal to her life. The prosecution case of removal of all family members from the house of Raj Kumar at the time of incident lends credence to the fact that the alleged offence was committed in a planned manner. The statement of Rameshwar and P.W.-2 that they returned from the hospital at Bilhaur when they got worried about the Sudha being alone in the house of Raj Kumar points out two relevant queries as to why Sudha was left alone in the house at all when the prosecution case is that she was called to the house of

Raj Kumar/Rameshar only to look after the pregnant wife of Rameshwar. While all the male members left with the pregnant wife of Rameshwar, Sudha was left behind when during delivery of a woman, presence of another woman is more important than that of the male relatives.

53. It is settled law that where there are two views possible of the incident from the same set of facts and evidence on record, one in favour of accused should be adopted. The prosecution has failed to prove the chain of circumstances, so complete, as would discard any other view of the alleged incident. The chain of circumstances have not been completed by the prosecution in proving its case beyond reasonable doubts. The identity of the person accompanying the appellant was neither determined nor proved by the prosecution before the trial court.

54. Considering the totality of facts and circumstances we are of the view that the prosecution case does not inspire confidence and the appellant deserves to be extended benefit of doubt.

55. The judgment and order passed by the trial court is set aside.

56. The appellant is on bail, his bail bonds are cancelled and his sureties are discharged.

57. The above noted appeal is **allowed**.

58. Office is directed to send the trial court record to the trial court and also notify this judgment to the trial court.

59. We appreciate the assistance rendered Sri Krishna Kant Dubey, learned Amicus Curiae and it is directed that he shall be paid Rs 10,000/ (Rs ten thousands) towards his professional fees within a month from raising the bill.

(2026) 1 ILRA 814
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 09.01.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Criminal Appeal No. 4153 of 2025

Dr. Abdul Ghaffar

...Appellant

Versus

State of U.P. & Ors.

...Respondents

Issue for consideration

The appellant was accused of being a key member of a syndicate allegedly involved in facilitating illegal settlement of Rohingya and Bangladeshi nationals in India through forged documents and hawala transactions.

Headnotes

A. Indian Penal Code,1860-Sections 120-B, 419, 420, 467, 468, 471, 370-Criminal Procedure Code, 1973-Sections 438-National Investigation Agency Act,2008-Section 21(4)-Foreigners Act,1946-Section 14-Passport Act,1967-Sections 12(1), 12(2)-Anticipatory bail-rejection of appeal under NIA Act-National security-Alleged illegal settlement of Rohingya and Bangladeshi nationals-Hawala transactions-Funding through Society account-possibility of custodial interrogation cannot be ruled out-non-arrest for certain period does not dilute seriousness of allegations-no ground made out to interfere with rejection of anticipatory bail-Appeal dismissed.(Para 23 to 26) (E-6)

Held

The court held that prima facie material, including FSL report and supplementary case diary entries, indicates involvement of the appellant in the alleged conspiracy. Mere non-arrest of the appellant for a certain period or non-filing of charge-sheet against him does not automatically entitle him to anticipatory bail, particularly when coercive steps had earlier been taken. The possibility of custodial interrogation cannot be ruled out at this stage of investigation; therefore, grant of anticipatory bail would not be appropriate. The order of the special judge rejecting anticipatory bail does not warrant interference.

Case law Cited

Criminal Appeal No. 4564 of 2024, Asha Dubey Vs State of M.P, Petition for Special Leave to Appea (Crl.) No. 11234 of 2025, Gursewak Singh Vs State of Punjab,Siddharam Satlingappa Mhetre Vs State of Maharashtra & Ors, (2011) 1 SCC 694,P. Krishna Mohan Reddy Vs The State of A.P. MANU/SC/0737/2025;2025 SCC OnLine SC 1157-referred to.

List of Acts

Indian Penal Code,1860, Criminal Procedure Code, 1973, National Investigation Agency Act,2008, Foreigners Act,1946, Passport Act,1967.

List of Keywords

National security, Rohingya settlement, Hawala transactions, criminal conspiracy, forgery, custodial interrogation, proclamation, non-bailable warrant, FSL report, NIA Act, Anti –national activities.

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 4153 of 2025

Dr. Abdul Ghaffar Vs. State of U.P. Thru. Addl. Chif Secy./Prin Secy. Home Lko. & 2 Ors

From the Judgment and Order dated 09.01.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Appellant(s):-

Azizullah Khan, Mohammad Alishah Faruqi, Obaidullah, Pranjal Jain

Adv. for Respondent(s):-

G.A.,

(Delivered by Hon'ble Rajesh Singh Chauhan, J.
&
Hon'ble Pramod Kumar Srivastava, J.)

1. Heard Sri Purnendu Chakravarti, learned Senior Advocate, assisted by Sri Azizullah Khan as well as Ms. Aishwarya Saxena, learned counsels for the appellant and Sri S.N. Tilhari, learned AGA for the State- respondents.

2. Sri Anand Kumar Tiwari, Inspector/ Investigating Officer is present in person alongwith the case diary, some relevant extract thereof has been shown to the Court.

3. This criminal appeal has been filed under Section 21 (4) of the National Investigation Agency Act, 2008 against the order dated 19.11.2025 passed by the learned Special Judge, NIA/ Additional Sessions Judge, Court No.3, Lucknow rejecting the anticipatory bail application of the present appellant bearing Anticipatory Bail Application No.9065 of 2025 in Case Crime No.12 of 2023, under Sections 120-B, 419, 420, 467, 468, 471, 370 of IPC and Section 14 of Foreigners Act, Police Station- ATS Gomtinagar, District- Lucknow.

4. Sri Purnendu Chakravarti has submitted that the impugned FIR has been lodged on 11.10.2023 in Case Crime No.12 of 2023, under Sections 120-B, 419, 420, 467, 468, 471, 370 of IPC, Section 14 of Foreigners Act & Sections 12(1) & 12(2) of Passport Act, 1967, Police Station- ATS Gomtinagar, District- Lucknow against ten accused persons including the present appellant whose name finds place at serial no.9 in the FIR. Accused nos.1 to 7 have been implicated on the basis of their direct role whereas accused nos.8, 9 & 10 have been implicated on the basis of suspicion. He has further submitted that pursuant to the impugned FIR, the investigation commenced by the Investigating Agency and charge sheets have filed in regular intervals. To be more precise, first charge sheet was filed on 05.01.2024; second on 15.03.2024; third on 03.04.2024; fourth on 01.05.2024; fifth on 14.06.2024; sixth on 26.09.2024 and seventh on 24.02.2025 as those charge sheets have been enclosed with this appeal. No charge sheet has been filed against the present appellant and pursuant to the aforesaid charge sheets, the accused persons have been arrested and they have been enlarged on regular bail.

5. Sri Chakravarti has submitted that the appellant came to know that non-bailable warrants were issued against him on 13.03.2024 and on 13.02.2025. Vide order dated 23.09.2025, proclamation under Section 82/83 Cr.P.C. has been issued against the appellant. The aforesaid proclamation order dated 23.09.2025 was assailed by the appellant before this Court by filing Application U/S 482 No.10382 of 2025. The aforesaid application was disposed of by this Court vide order dated 11.12.2025 setting aside the order dated 23.09.2025 remanding back the issue to the Magistrate/ Court concerned i.e. Special Judge NIA/ASJ-3, Lucknow to pass fresh order as per law.

6. Sri Purnendu Chakravarti has further submitted that after lodging the FIR on 11.10.2023, the Investigating Agency did not initiate any steps to obtain search warrant of the premises of the office of the appellant, which is in the name of Sun Shine Health and Social Welfare Society having its office at 163 Phase 3rd J.J. Colony Madanpur Khadar, New Delhi- 110076 (hereinafter referred to as "the Society"). He has further submitted that though the Investigating Officer is said to have visited residential premises of the appellant from where he is said to have absconded but if the Investigating Agency was willing to investigate the issue, particularly ascertaining his culpability, the office premises of the Society should have been searched. There may be likelihood that no credible evidence might have been received by the Investigating Agency against the appellant during investigation and filing seven charge sheets, but such exercise seeking search warrant of the official premises of the appellant has not been undertaken.

7. Since in the proclamation order dated 23.09.2025, warrants and other coercive orders/ steps had been merged and the proclamation order dated 23.09.2025 has been set aside by this Court vide order dated 11.12.2025, so it may safely be presumed that presently, there is no coercive step of any kind whatsoever against the present appellant. Since till filing seven charge sheets against the co-accused persons, no proper steps have been taken by the Investigating Officer to apprehend the appellant, so custodial interrogation of the present appellant would not be required. He has further submitted that after the order dated 11.12.2025 having been passed in the petition under Section 482 Cr.P.C., no application has been filed by the prosecution before the learned Trial Court seeking fresh order, which makes it abundantly clear that the Investigating Agency is not initiating any coercive order against the present appellant. Therefore, Sri Chakravarti has stated that the appellant is ready to cooperate in the investigation and he shall appear before the Investigating Officer as and when his presence would be required and shall provide all materials and evidences, which are within his possession or knowledge, but he may not be taken into custody.

8. *Per contra*, Sri S.N. Tilhari has vehemently opposed the present appeal by submitting that serious allegations have been levelled against the present appellant and he is the main kingpin of the entire syndicate wherein the co-accused persons are indulged in extending the illegal and unwarranted help to Bangladeshi, Rohingya people and those people whose activities are against the nation.

9. Sri Tilhari has stated that even if the proclamation order dated 23.09.2025 has been set aside by this Court but the present appellant may be arrested by the Investigating Agency without any warrant since he has committed the cognizable offence having serious allegations. The accused persons including the present appellant have created a syndicate by opening different accounts taking cash by illegal means and by means of Hawala transactions from other countries to extend help to intruders and unauthorized persons, who are indulged in anti-national activities and those persons are mainly Bangladeshi persons, Rohingyas etc. Sri Tilhari has shown the relevant extract of supplementary case diary (SCD) no.32 wherein the relevant material has been indicated to the effect that the substantial amount of some Rohingya persons has been transferred to the account of the Society of the appellant. The amount so credited in the account of the Society of the appellant has been utilized to construct some houses, huts (Jhuggi Jhopari) etc. for Rohingya persons in India at certain places. SCD No.32 further reveals the conversation of the present appellant with co-accused Abdul Awwal wherein the reference and purpose of that transaction has been clearly indicated. The present appellant after concluding the conversation with co-accused Abdul Awwal has said to delete all conversations from both the sides, which shows his malafide intention and ulterior motive.

10. Sri Tilhari has also submitted that through secret information and inputs, Team of NIA/ATS came to know in the month of October, 2021 that anti-national activities are being carried out by some persons, more particularly by the so-called respected persons of the Society, and those persons are trying to manage to settle Rohingyas and illegal Bangladeshi persons in India to create unrest and disharmony in the country, so the phone calls of suspected persons were kept under surveillance. On the basis of such surveillance, the Investigating Agency came to know that the present appellant talked with some unauthorized and anti-national persons on 27.10.2021 including co-accused Abdul Awwal, then exercise of investigation was intensified at large scale

and on the basis of such investigation, the relevant facts, circumstances and incriminating information came to the notice, resultant thereof, the impugned FIR was lodged on 11.10.2023. There was another phone call of the present appellant on 27.10.2023 with Abdul Awwal and so as to verify such phone calls, FSL report was sought and the Investigating Agency received the FSL report on 02.02.2024. In such FSL report, it has been certified that the present appellant was having talks with not only Abdul Awwal but with other persons also and just after receiving the FSL report dated 02.02.2024, residential premises of the appellant was searched but he was not present in the house as he was absconding, so non-bailable warrant dated 13.03.2024 was issued. In the meantime, co-accused persons have been arrested and location of the appellant was traced out but to no avail as he was absconding from the clutches of law. Therefore, on 13.02.2025, another non-bailable warrant was issued but to no avail. Thereafter, proclamation order dated 23.09.2025 was issued by the Court concerned, however, the same has been set aside by this Court.

11. Considering the aforesaid submissions of Sri Tilhari, he and the Investigating Officer, who is present in the Court, have been confronted on a point that when culpability of the present appellant came to the notice before lodging the impugned FIR, as to why serious efforts have not been taken by the Investigating Officer(s) to apprehend the appellant as the allegations are so serious related to the safety and security of the country, Sri Tilhari has stated that all possible efforts have been taken, conversation of the appellant with other persons has been sent to the FSL and specific report was received on 02.02.2024. On the basis of aforesaid FSL report, coercive steps have been taken against the appellant. However, the Investigating Officer could not explain the reason as to why he did not file any appropriate application seeking search warrant against the official premises of the appellant where he might have received/ collected relevant materials/ evidences. The Investigating Officer could not explain any cogent reason as to why he has not filed any appropriate application before the learned Court concerned after the order dated 11.12.2025 having been passed in the petition under Section 482 Cr.P.C. of the appellant wherein direction was issued to the Magistrate/ Court concerned to pass a fresh order as per law.

12. We put on record our serious displeasure and anguish on the callous and careless approach of the Investigating Agency, particularly the Investigating Officer(s) for not taking appropriate and proper steps to apprehend the present appellant in a case where not only allegations are related for committing cognizable offences but on account of those offences the security, safety, peace and harmony of the country may likely be jeopardized, therefore, this fact must come to the notice of the Chief Secretary of the State of U.P., Additional Chief Secretary, Home, U.P., Principal Secretary/ Secretary of the Chief Minister of U.P. and Director General of Police, U.P., Lucknow for information and appropriate action/ orders.

13. Registry of this Court is directed to provide copy of this order to the aforesaid officers within three working days on the top priority basis for compliance.

14. On being confronted Sri Chakravarti on the point as to whether this is a case of false implication of the appellant or without having any material or evidence the investigating agency is harassing him, Sri Chakravarti has stated that even if there are some materials or evidences against the appellant, he will co-operate in the investigation.

15. Considering the aforesaid submission, we don't find that this is a fit case to grant anticipatory bail when the allegations are serious, credible evidences and materials are being collected by the investigating agency and there might be likelihood of custodial interrogation of the appellant.

16. Some more relevant material/ evidence has been shown to the Court by Sri Tilhari but those material/ evidence is not being referred in this order so as to ensure that the pending investigation is concluded independently without being influenced from any observation of this order and if police report is filed, trial is conducted and concluded independently without having any influence of the order of this Court.

17. Certain case laws have been cited by the learned counsel for the parties to strengthen their arguments, which are, briefly, being discussed herein below.

18. Placing reliance upon the judgment and order dated 12.11.2024 of the Apex Court in re; **Criminal Appeal No.4564 of 2024, Asha Dubey v. State of Madhya Pradesh**, Sri Purnendu Chakravarti has stated that since the present appellant is not absconder inasmuch as the coercive steps so taken against the appellant have been set aside, therefore, he may be granted anticipatory bail.

19. Placing reliance upon the judgement and order dated 03.09.2025 of the Apex Court in re; **Petition for Special Leave to Appeal (Crl.) No.11234 of 2025, Gursewak Singh v. State of Punjab**, Sri Purnendu Chakravarti has submitted that the Hon'ble Apex Court has observed in para-7 of the aforesaid judgement that if the Investigating Agency has not arrested the accused person for the last four years, then that would be sufficient ground to consider the anticipatory bail of the appellant. Sri Chakravarti has stated that in the present case, the FIR has been lodged on 11.10.2023 and more than two years' period has passed but the Investigating Agency has neither arrested the present appellant nor any charge sheet has been filed against him nor any serious effort has been taken to apprehend the appellant.

20. Sri Purnendu Chakravarti has referred para-93 of the judgment of the Apex Court in re; **Siddharam Satlingappa Mhetre v. State of Maharashtra and Others, (2011) 1 SCC 694**, which reads as under:-

"93. The Constitution Bench in the same judgment also observed that a person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

21. Therefore, Sri Purnendu Chakravarti has stated that the impugned order dated 19.11.2025 passed by the learned Special Judge, NIA/ Additional Sessions Judge, Court No.3, Lucknow rejecting the anticipatory bail application of the present appellant may be set aside and the present appellant may be granted anticipatory bail. The appellant undertakes that he shall cooperate in the investigation proceedings and shall not misuse the liberty of anticipatory bail, if granted by this Court.

22. Sri S.N. Tilhari has cited paragraphs no.19 to 25 and 55 of the judgement of the Apex Court in re; **P. Krishna Mohan Reddy v. The State of Andhra Pradesh, MANU/SC/0737/2025; 2025 SCC OnLine SC 1157**, which read as under:-

"19. Custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438. In corruption cases concerning influential persons, effective interrogation of the suspect is of tremendous advantage in disinterring many useful information and also materials which are likely to be concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such condition would reduce to a mere ritual. The High Court remained alive and very rightly to the apprehension of the investigating agency that the petitioners would influence the witnesses, considering particularly the high position they all held at one point of time.

20. Anticipatory bail to accused in cases of the present nature would greatly harm the investigation and would impede the prospects of unearthing of the ramifications involved in the conspiracy. Public interest also would suffer as a consequence.

21. It was sought to be argued that the petitioners have already joined the investigation and are fully cooperating with the investigating agency and therefore, there is no need for custodial interrogation.

22. The petitioners might have been cooperating with the investigation and they might have been interrogated also by the investigating agency so far but, at the same time, we should not overlook the fact that by grant of anticipatory bail, we may come in the way of the investigating agency if at all it wants custodial interrogation.

23. As held by this Court in Sumitha Pradeep v. Arun Kumar C.K., (2022) 17 SCC 391 that it would be preposterous as a proposition of law to say that if custodial interrogation is not required that by itself is sufficient to grant anticipatory bail. Even in cases where custodial interrogation may not be required the court is obliged to consider the entire case put up by the State, more particularly, the nature of the offence, the punishment provided in law for such offence etc.

24. It is needless to say that for the purpose of custodial interrogation, the investigating agency has to make out a prima facie case at the time when remand is prayed for. Whether any case for police remand is made out or not, it is for the Court concerned to look into.

25. In such circumstances, referred to above, we are of the view that we should not come in the way of the investigating agency at this point of time and the investigation should be permitted to proceed further.

55. Before we close this matter, we make it further clear that if the petitioners are ultimately arrested, remanded and thereafter sent to judicial custody and if any regular bail application is filed, the same shall be considered on its own merits in accordance with law. It is

needless to say that the principles of grant of anticipatory bail substantially differ from the principles of grant of regular bail. It is for the Court concerned to apply the correct principles of law so far as the grant of regular bail is concerned and decide the same accordingly."

23. Having heard learned counsel for the parties, having perused the material available on record and the case laws so cited by the learned counsel for the parties, with great respect with the case laws so cited, we are of the considered opinion that since the allegations so levelled against the present appellant are very serious in nature relating to the security, safety, integrity, harmony and peace of the country, as considered herein above in the preceding paragraphs of this order, prima facie, the offences are cognizable in nature; despite knowing the fact that the investigation is going on against the present appellant wherein non-bailable warrants and proclamation were issued against him though the same have been set aside by this Court but the present appellant did not appear before the Investigating Agency; on the basis of allegation, which is based on the material so collected by the Investigating Agency by filing seven charge sheets, there might be possibility of custodial interrogation of the present appellant, therefore, we are not inclined to grant anticipatory bail to the appellant by setting aside the order under challenge.

24. In the case in re; **Gursewak Singh** (supra), the offence related to Section 7 & 7A of the Prevention of Corruption Act and the accused person was not arrested for the last four years but in the present case, the allegations are so serious, as indicated herein above, the benefit of the aforesaid order may not extended to the present appellant as he has not been arrested in the last more than two years. Notably, coercive steps were taken against the appellant to apprehend him issuing non-bailable warrants on 13.03.2024 and 13.02.2025 and proclamation order dated 23.09.2025, which was set aside by this Court on technical ground remanding back the issue before the learned Trial Court to pass a fresh order, strictly in accordance with law.

25. We are respectfully following the observations of the Apex Court in re; **P. Krishna Mohan Reddy** (supra) in view of the facts and circumstances of the present case. 26. Accordingly, we hereby dispose of this criminal appeal finally at the admission stage, without interfering the impugned order dated 19.11.2025 passed by the learned Special Judge, NIA/ Additional Sessions Judge, Court No.3, Lucknow rejecting Anticipatory Bail Application No.9065 of 2025 in Case Crime No.12 of 2023 (supra), giving liberty to the present appellant to appear before the Investigating Officer concerned at the earliest, preferably within a week after receipt of this order to cooperate in the investigation and to provide all relevant materials/ evidences, which are within his possession or knowledge and shall continue to cooperate in the investigation till its conclusion and filing of the police report, if any. It is absolutely upto the Investigating Agency/ Officer to take custody of the appellant, if his custodial interrogation is required inasmuch it should be absolute subjective satisfaction of the Investigating Agency/ Officer to take the accused person into custody, if his custodial interrogation is at all required. In case the present appellant is taken into judicial custody for the purposes of custodial interrogation, he may file his regular bail application before the competent court of law and the same may be decided strictly in accordance with law providing proper opportunity of hearing to the prosecution but with expedition.

BEFORE

Criminal Appeal No. 10170 of 2025

Issue for consideration

Headnotes

Held

Case law Cited

List of Acts

List of Keywords

Case Arising from

CRIMINAL JURISDICTION: CRIMINAL APPEAL No. – 10170 of 2025

From the Judgment and Order dated 08.01.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties***Advs. for Appellant(s):-***

Prashant Singh, Santosh Kumar Pandey, Sharad Kumar Srivastava

Advs. for Respondent(s):-

G.A., Jyoti Bhushan

(Delivered by Hon'ble Anil Kumar-X, J.)

1. Heard Shri Prashant Singh and Shri Santosh Kumar Pandey, learned counsels for the appellant, Shri Jyoti Bhushan, learned counsel for the respondent/informant and Shri K.K. Gupta, learned AGA for the State-respondent.

2. This criminal appeal under Section 14-A(1)) of The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 seeks quashing of the entire criminal proceeding in Sessions Case No.291 of 2024 (State Vs. Abhinash Sharma @ Avinash Sharma), under Section 376, 504, 506 I.P.C. & Section 3(1)Da, 3(1)Dha, 3(2)5 of Prevention of Schedule Caste/Schedule Tribes (Prevention of Atrocities) Act, 1989 (Amendment 2015), Police Station Bilariyaganj, District Azamgarh (arising out of Case Crime No.135 of 2024), pending before the Special Judge (S.C./S.T.) Act, Azamgarh including the summoning order 13.09.2024 passed by learned Special Judge (S.C./S.T.) Act, Azamgarh.

3. Briefly stated, the facts are that an FIR was lodged by the informant, Smt. Geeta w/o Bhola, resident of Village Tohfapur, District Azamgarh, against the appellant on 4.5.2024. She alleged that her daughter (the victim) was trapped by the appellant in a love relationship, and that the appellant had established a physical relationship with her on the pretext of marriage. When pressed to solemnize the marriage with the victim, he refused and threatened to kill the informant or her family members if they ever demanded marriage. She further alleged that the appellant used casteist slurs.

4. The case was investigated, and a charge-sheet was submitted against the appellant for offences under Sections 376, 504, and 506 IPC, as well as Sections 3(1)(da), 3(1)(dha), and 3(2)(va) of the SC/ST Act. The learned court took cognizance of the offences against the appellant vide order dated 13.9.2024.

5. Learned counsel for the appellant submits that a bare perusal of the FIR shows no allegations constituting the offences under the SC/ST Act against the appellant. No incriminating evidence was produced before the Investigating Officer to substantiate the claim that the victim was exploited by the appellant on a false promise of marriage. Notably, neither the FIR nor the victim's statement under Section 161 Cr.P.C. discloses the duration of the relationship between the appellant and the victim. It merely levels a bald allegation of exploitation on the pretext of false marriage. In her statement to the Investigating Officer, the victim stated that she was sexually exploited by the appellant, who had falsely promised marriage. She alleged that when she asked the appellant to solemnize the marriage, he refused, stating it was not possible due to their different castes, and also abused and threatened her.

6. Learned counsel for the appellant further submits that in her statement under Section 164 Cr.P.C., the victim admitted for the first time that she had been in contact with the appellant for the past four months. She stated that the appellant promised to marry her and thereafter established physical relations with her on two occasions?specifically on 20.4.2024 and 30.5.2024. She candidly stated that she was not raped by the appellant. Moreover, the victim stated in her statement under Section 164 Cr.P.C. that if the appellant marries her, she will not prosecute him. She also affirmed being about 20 years old, establishing that she is a major capable of understanding the consequences of her actions. The contents of the FIR, read with the victim's statements under Sections 161 and 164 Cr.P.C., clearly indicate that even assuming the prosecution's allegations to be true, the relationship was consensual. The omission to specify particulars of any promise of marriage by the appellant gives rise to a presumption that no such promise was made. Mere allegation of rape based on a pretext of marriage is insufficient unless the prosecution proves that the victim consented to the sexual relationship relying on such a promise. Absent substantiation of this material fact,, the allegation of rape cannot stand. Thus, the entire proceedings against the appellant are liable to be quashed.

7. Learned AGA and counsel for the informant submit that the victim's statement clearly shows that she was deceived by the appellant, who promised marriage to satisfy his lust. She stated that when she pressed for marriage, the appellant refused, citing their different castes as the reason. The appellant established physical relations with her twice on the pretext of marriage but later refused to marry. The victim's statement is cogent, clear, and consistent, establishing the accused's guilt. Hence, this criminal appeal lacks merit and is liable to be dismissed.

8. I have considered the submissions advanced by the learned counsel for the parties and perused the record.

9. Before entering into the facts of this case, it would be proper to examine the difference between false promise of marriage to induce a woman to obtain her consent for physical relationship and breach of promise to marry. Sexual relationship amounts to rape if it is obtained without consent of women. What amounts to "consent" as mentioned in Section 375 IPC is defined in Section 90 IPC.

Section 90 of I.P.C. defines consent known to be given under fear or misconception:-

"90. Consent known to be given under fear or misconception.- A consent is not such a consent as intended by any section of this Code, if the consent is given by a person under fear of injury or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person.- if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature of the consequence of that to which he gives his consent; or

Consent of child.- unless the contrary appears from the context, if the consent is given by a person who is under 12 years of age."

Reading the definition of "consent" (Section 90 IPC) with the definition of "rape" (Section 375), it becomes manifest consent of women is vitiated if she is convinced to engage in sexual relationship with accused who induces her with false promise to marry.

10. The Supreme Court in **Pramod Suryabhan Pawar vs The State Of Maharashtra, AIR 2019 S C 4010**, while dealing with a similar situation, enunciated principles of law by following observations:-

"Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it..."

The Supreme Court was further observed:

"To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

11. Hence, it becomes evident that a man can be held criminally liable for having a sexual relationship on the basis of a false promise of marriage only if the sexual relationship happened solely because of that false promise. If the relationship occurred due to other reasons, the offence is not made out. A woman may choose to enter into a physical relationship for reasons other than a promise of marriage, such as mutual affection or personal choice, even without insisting on marriage.

12. Now, the next significant question arises as to when and how an accused can be held guilty for inducing a woman to engage in sexual relationships by making false promise of marriage?

13 It is trite that in criminal cases, where accused is alleged to have committed rape, testimony of victim becomes significant and if her statement is of sterling quality, it does not even require corroboration. However, converse is also true because law regarding appreciation of evidence does not distinguish between different categories of witnesses and no privilege has been extended to victim of rape. There is no universal law to treat statement of victim as gospel truth. The Supreme Court in **Abbas Ahmed Choudhury v. State of Assam (2010) 12 SCC 115** held that a case of sexual assault has to be proved beyond reasonable doubt as any other case and that there is no presumption that a prosecutrix would always tell the entire story truthfully.

14. The proposition as discussed in preceding paragraph applies equally in cases where the allegation against accused is of inducing the victim to engage in sexual relationship by making

false promise to marry. In order to fasten an accused of such criminal liability, it is necessary for prosecution to come up with adequate evidence to show that at relevant time, i.e., at the initial stage itself, the accused had no intention of keeping his promise to marry the victim. The Supreme Court in **Deepak Gulati v. State of Haryana**", AIR 2013 SC 2071, held as follows:

"24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

15. Hence, it evident that before an accused can be held liable, it is necessary that (a) the accused never intended to marry the victim from the beginning. A mere failure to marry, due to later circumstances, does not amount to deception. Section 90 IPC applies only when dishonest intention existed at the outset and, (b) same has to be proved by adequate evidence.

16. From the foregoing discussions, it is apparent that establishing physical relationships with a woman by making false promise of marriage is an offence which vitiates her consent and it attracts offence under Section 376 IPC. Breach of promise is generally defined as the failure of one party to fulfill a mutual agreement or commitment to marry another and it is viewed as a civil wrong. In order to hold an accused criminally liable for committing rape on pretext of false promise of marriage, it is necessary that prosecution must establish that accused right from the beginning cheated victim without any intention to marry with an intent to satisfy his lust. Hence, the essential ingredients of the offence are:

- (a) the accused made a promise to marry the victim;
- (b) the promise was false and not intended to be fulfilled;
- (c) the promise was made with the intention of deceiving the victim and inducing her to consent to a sexual relationship;
- (d) the dishonest intention to deceive and cheat existed from the very inception of the promise; and
- (e) the victim's consent for the sexual relationship was obtained solely on the basis of such false promise.
- (f) for consent to be vitiated by a false promise, the promise must have immediate relevance to the woman's decision to engage in intercourse.

(g) there must be adequate evidence to show that promise made by accused from its inception was made without any intention to fulfill.

17. In light of the aforesaid legal principles, a careful scrutiny of the FIR and the victim's statements under Sections 161 and 164 Cr.P.C. reveals only bald allegations of exploitation on the pretext of marriage without disclosing the duration of the relationship or any contemporaneous promise. The victim's statement under Section 161 Cr.P.C. also lacks particulars of any specific promise of marriage. She did not say when and where the said promise was made, but has only alleged that her proposal to marriage was refused by appellant. It is significant to note that victim in her statement under Section 164 Cr.P.C. admits to a four-month consensual relationship, specifies physical relations on two occasions post-promise, candidly denies rape, affirms her majority (about 20 years), and expressly states willingness to withdraw prosecution upon marriage.

18. The absence of proof that the essential ingredient of a "promise to marry" is specifically that the promise was made without any intention of fulfilling it from the beginning? does not invalidate consent of victim for sexual relations under Section 90 read with Section 375 of the Indian Penal Code, 1860. A consensual sexual relationship followed by a subsequent refusal to marry does not render the accused liable for rape. This position finds consistent support in the jurisprudence of the Supreme Court, as laid down in **Deepak Gulati v. State of Haryana (2013) 7 SCC 675** and **Pramod Suryabhan Pawar v. State of Maharashtra (2019) 9 SCC 608**, wherein it has been emphatically held that mere breach of promise to marry, in absence of initial dishonest intent, cannot convert consensual physical relations into rape. Treating every such refusal to marriage as vitiated consent would dilute the sanctity of Section 375 IPC and overburden the criminal justice system with cases arising from soured relationships rather than genuine sexual offences.

19. These materials, even if assumed true, fail to establish the essential ingredients: (a) no adequate evidence shows the promise, if any, was false from inception with dishonest intent to deceive solely for lust; (b) the relationship appears driven by mutual affection over four months rather than immediate reliance on a false promise; and (c) subsequent refusal citing caste difference suggests breach of promise at best, not deception ab initio. Mere failure to marry due to later circumstances does not vitiate consent **under Section 90 IPC, as held in Pramod Suryabhan Pawar (supra) and Deepak Gulati (supra).**

20. For charges under Sections 504 and 506 IPC, the claims of abuse and threats are too vague and general. No specific details appear in the FIR or statements, so no initial case is made out.

21 No offences under Sections 3(1)(da), 3(1)(dha), or 3(2)(va) of the SC/ST Act are made out either. The FIR and victim's statements lack any specific caste slurs aimed at her SC/ST status, said in public to humiliate her. Just mentioning caste differences in refusing marriage does not meet the legal requirements, so Section 14-A(1) of the SC/ST Act does not apply.

22. Hence, this Court is of view that allowing the criminal proceeding against the appellant in the facts and circumstances to continue, where no criminal liability can be attached, would amount

to abuse of the process of court. Therefore, appellant is entitled to the relief claimed for quashing the complaint/ FIR.

23. In view of the aforesaid, entire criminal proceeding in Sessions Case No.291 of 2024 (State Vs. Abhinash Sharma @ Avinash Sharma), under Section 376, 504, 506 I.P.C. & Section 3(1)Da, 3(1)Dha, 3(2)5 of SC/ST Act, arising out of Case Crime No.135 of 2024 as well as the summoning order 13.09.2024 passed by learned Special Judge (S.C./S.T.)

24. This criminal appeal is, accordingly, **allowed**.

(2026) 1 ILRA 828
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.01.2026

BEFORE

THE HON'BLE ABDUL SHAHID, J.

Criminal Revision No. 201 of 2026

Jai Nath Prajapati

...Revisionist

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Issue pertains to whether the trial court rightly exercised its power u/s 319 Cr.P.C. (corresponding s. 358 B.N.S.S, 2023) to summon the revisionist as an additional accused in the commission of the offence on the basis of evidence adduced during trial, in conformity with the requirement of "more than a prima facie case."

Headnotes

Indian Penal Code, 1860 - ss. 147, 148, 149, 302 - Code of Criminal Procedure, 1973 - ss. 2(g), 319, 358(1), 161 - Against summoning order - Scope of - Revisional jurisdiction - Scope of - As per the prosecution case originated from an incident dated 29.05.2021 at about 7:50 p.m., wherein the husband of complainant, who was returning home after closing his medicine clinic, was allegedly intercepted near Sangeeta Farm House by the present revisionist along with other co-accused persons, and certain unknown persons, who due to previous enmity and pursuant to a conspiracy, fired at him with firearms, causing his death on the spot - The First Information Report was lodged on 30.05.2021 under various sections of I.P.C. - After investigation, no charge-sheet was submitted against the revisionist - However, during the course of trial, upon recording the examination-in-chief of P.W.-1 (informant), P.W.-2, and P.W.-3 all of whom specifically named and attributed active participation to the revisionist in the firing incident, an application u/s 319 Cr.P.C. was filed by the opposite parties - The learned trial court, being satisfied that the evidence adduced during trial disclosed more than a prima facie case against the revisionist, passed the impugned order dated 12.11.2025 summoning him to face trial along with the other accused persons, which order was assailed in the instant criminal revision before the High Court. (E-11)

Held: It is settled law that statements recorded u/s 161 Cr.P.C. during investigation do not constitute substantive evidence; they can only be used for the purpose of contradiction of the statements recorded during the trial by prosecution witnesses - The evidence recorded during the trial, along with all the facts and

circumstances of the case, clearly establishes that the evidence against the revisionist collected during the trial is more than a prima facie case against the accused/revisionist - Any contradictions in the statements recorded u/s 161 Cr.P.C. during investigation, or any improvements, if at all, noticed during the trial, are matters to be considered by the learned trial court after completion of entire evidence and at the conclusion of the trial - The evidence available before the learned trial court at the time of summoning the revisionist/accused u/s 319 Cr.P.C. was sufficient for exercising such power - The learned trial court rightly passed the impugned order by summoning the accused/revisionist - No illegality in the impugned order, thus, criminal revision dismissed. [Paras 20, 24, 25]

Case Law Cited

Sagar v. State of U.P. and Another, **2022 (6) SCC 389**; *Ramesh Chandra Srivastava v. State of U.P. and Another*, **2021 (12) SCC 608**; *Hardeep Singh v. State of Punjab*, **(2014) (3) SCC 902**; *Omi v. State of Madhya Pradesh*, **(2025) 2 SCC 621**; *Shiv Baran v. State of U.P.*, **2025 SCC Online SC 1417**; *Asim Akhtar v. State of West Bengal*, **2024 NSC 794** - referred to

Mehraj Singh v. State of U.P., **1994(1) SCC (Cri) 1390** -distinguished

List of Acts

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

List of Keywords

Criminal Revision; First Information Report; Summoning of revisionist; ss. 147, 148, 149 and 302 I.P.C.; Firearm injuries; Previous enmity; Investigation; Delay in lodging the FIR; No charge-sheet filed against the present revisionist; Statements recorded u/s 161 Cr.P.C.; Medical practitioner; Examination-in-chief of P.W.-1, P.W.-2 and P.W.-3; Application u/s 319 Cr.P.C.; Evidence recorded during trial; More than prima facie case; Contradictions and improvements; Cross-examination; Substantive evidence; Extraordinary power; Illegality or irregularity; Criminal revision dismissed.

Case Arising From

REVISIONAL JURISDICTION: Criminal Revision No. - 201 of 2026

From the Judgment and Order dated 12.11.2025 passed by District and Sessions Judge in Session Trial No. 310 of 2021

Appearances for Parties

Advs. for the Revisionist:

Jagannath Singh, Shree Prakash Giri

Advs. for the Opposite Party:

G.A., Vivek Kumar Singh

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

1. Heard learned counsel for the revisionist and learned A.G.A. for the State.

2. The brief genesis of the present case is as follows:-

3. The incident occurred on 29.05.2021 at about 7:50 p.m., whereas the F.I.R. was lodged on 30.05.2021 at 10:44 a.m. The F.I.R. has been registered under Sections 147, 148, 149, and 302 of the Indian Penal Code. The F.I.R. has been lodged against the named accused persons, namely: 1. Ravi Gautam, Bhim Gautam, 3. Jai Nath Prajapati (revisionist) and 4. Mohd. Usman and 5. several

other unknown persons. The opposite party no. 2, i.e., the complainant, stated in her F.I.R. that the incident took place on 29.05.2021 at about 7:50 p.m. The husband of the complainant, Faujdar Prajapati, runs a small medicine clinic. After closing the clinic, he was returning home on his Super Splendor motorcycle bearing registration no. UP62 AY 6657. As soon as he reached near Sangeeta Farm House, approximately 250 meters away from his residence, due to previous enmity and pursuant to a systematic conspiracy, the accused persons?Ravi Gautam and Bhim Gautam (sons of Nandlal Gautam), Jai Nath Prajapati (revisionist, son of Bhulai Ram), Mohd. Usman (son of Ataullah), and several unknown persons?stopped the husband of the complainant and fired at him. Due to the said injuries, the husband of the complainant died on the spot. Upon hearing the noise, several persons, including the complainant and her family members, reached the place of occurrence, whereupon the aforesaid accused persons fled from the spot after showing their pistols. On the advice of the villagers, the deceased was taken to the Community Health Centre, Badlapur, where the doctor declared Faujdar Prajapati dead. The condition of the complainant was not proper at that time; therefore, she came to the police station on the next day and submitted the report. Hence, the F.I.R. was lodged

4. After investigation, no charge sheet has been filed against the revisionist/Jai Nath Prajapati. After recording the statement of the P.W.-1 Raj Kumari/informant, P.W.-2 Nagendra Ram Prajapati and P.W.-3 Harendra Pratap Prajapati, the revisionist had been summoned under section 319 Cr.P.C. (corresponding section 358 B.N.S.S., 2023).

5. Section 319(1) Cr.P.C. and section 358(1) B.N.S.S., 2023, are produced hereinbelow:

"319. Power to proceed against other persons appearing to be guilty of offence.?(1)
Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed."

Section 358. Power to proceed against other persons appearing to be guilty of offence.
(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed."

6. Learned counsel for the revisionist has vehemently argued that the learned trial court has summoned the revisionist, Jai Nath Prajapati, without recording its satisfaction that the evidence against him was sufficient to summon him under Section 319 Cr.P.C. He has further submitted that the impugned order dated 12.11.2025 was passed without proper appreciation of all the evidence collected during the investigation. The learned trial court failed to appreciate that there was no evidence sufficient for summoning the revisionist under Section 319 Cr.P.C., and despite this, the revisionist was summoned. Learned counsel for the revisionist has relied upon the law laid down by the Hon'ble Supreme Court in ***Mehraj Singh v. State of U.P., 1994 (1) SCC (Cri) 1390***. In the said judgment, the Hon'ble Supreme Court decided two appeals under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, against the judgment of the

Allahabad High Court, whereby the appeal of the respondent State was allowed and the acquittal of the appellants in both the appeals was set aside. It has been submitted that the appreciation of evidence required at the stage of summoning a person under Section 319 Cr.P.C. is not to the same extent as is required for final appreciation of evidence at the

7. In view of the aforesaid, the law laid down in *Mehraj Singh (supra)* does not exactly support the contention of the learned counsel for the revisionists in the present criminal revision.

8. Learned counsel for the revisionist has further relied upon the law laid down by the Hon'ble Supreme Court in *Sagar v. State of U.P. and Another, 2022 (6) SCC 389*. He has placed reliance on paragraph no. 9 of the said judgment, wherein the Constitution Bench has cautioned that the power under Section 319 of the Code is a discretionary and extraordinary power, which should be exercised sparingly and only in those cases where the circumstances of the case so warrant. It has further been observed that the crucial test as noticed above has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of the satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. Learned Single Judge of the High Court has even failed to consider the basic principles laid down by this Court while invoking section 319 of the Code, which has been considered by the learned trial judge under its order dated 30.01.2018.

9. Learned counsel for the revisionists has further relied upon the law laid down by the Hon'ble Supreme Court in *Ramesh Chandra Srivastava v. State of U.P. and Another, 2021 (12) SCC 608*. In paragraph 10, it has been observed as follows:

"10. We say this for the following reason: The test as laid down by the Constitution Bench of this Court for invoking power under Section 319 Cr.P.C. inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than prima facie case which is applied at the time of framing of charges."

10. Learned counsel for the revisionists has vehemently relied upon the evidence and the statements collected and recorded under Section 161 Cr.P.C. He has submitted that the F.I.R. was lodged with a delay of 15 hours and, therefore, the F.I.R. was lodged after due consultation.

11. However, it is to be seen in the facts and circumstances of the case that the complainant is the wife of the deceased, and she has clearly stated in her F.I.R. that after the incident her condition was not normal; hence, she came on the next day to lodge the F.I.R. The delay in lodging the F.I.R. is not fatal if a proper explanation exists. Since the husband of the complainant was brutally murdered, her mental condition could not be expected to be normal. In such circumstances, the first priority would naturally be to arrange medical assistance and to reach a medical centre. Therefore, the delay in lodging the F.I.R. appears to be reasonable.

12. Learned counsel for the revisionists has further submitted that the complainant herself stated that the deceased died on the spot without any medical consultation. However, it has to be

viewed holistically that after the deceased was hit by firearm injuries, he was taken by the complainant and co-villagers to the Community Health Centre, where he was declared brought dead. The F.I.R. was lodged thereafter. Hence, the presumption of the complainant that her husband died on the spot has substance. Nevertheless, confirmation of death or provision of treatment to a grievously injured or apparently dead person must be made by an established medical practitioner. Ordinarily, every effort is made to seek medical consultation even when, prima facie, it appears that the person has died due to firearm injuries.

13. Learned counsel for the revisionists has also relied upon the statement of the complainant/opposite party no. 2 recorded during investigation under Section 161 Cr.P.C., contending that there are serious contradictions in her statement, which are not sufficient for summoning the revisionists. He has further objected to the statements of the alleged eyewitness Sri Nagendra Ram Prajapati and the additional statement of the complainant.

14. Learned counsel for the revisionists has additionally submitted that there are contradictions in the statement of Harendra Pratap Prajapati and no sufficient evidence was found against the revisionists during the investigation, as a result of which their names were exonerated; despite this, they have been summoned under Section 319 Cr.P.C.

15. Learned counsel for the revisionists has further submitted that there are material improvements in the statements recorded before the court during the trial of P.W.-1, P.W.-2, and P.W.-3. Such improvements are not permissible in law and have not been properly appreciated. The learned trial court had not recorded the satisfaction prior to summoning the revisionist under Section 319 Cr.P.C.

16. It is settled law held by the Hon'ble Supreme Court in **Hardeep Singh Versus State of Punjab, (2014) (3) SCC 902** that the word "evidence" used under section 319(1) Cr.P.C. indicates, the word "evidence" is limited to the evidence recorded during trial.

17. Learned counsel for the revisionist has further relied upon section 2(g) of Cr.P.C., 1973 as follows-"inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court. The present matter pertains to section 319 Cr.P.C. where the matter has to be considered of the evidences regarding trial because that constitute as evidence as held in Hardeep Singh (supra).

18. It is held by the Hon'ble Supreme Court in **Omi Versus State of Madhya Pradesh, (2025) 2 SCC 621** that the trial court can add an individual as accused only on the basis of evidence adduced before it and not on the basis of the materials available in the charge sheet or the case diary because such materials contained in the charge sheet or the case diary do not constitute evidence. It is held by Hon'ble Supreme Court in **Shiv Baran Versus State of U.P., 2025 SCC Online SC 1417** that the trial court can exercise power to summon an additional accused under section 319 Cr.P.C. only on the basis of the evidence adduced before it and not any other material collected during investigation. It is held in **Hardeep Singh** (supra) that summoning of accused under section 319 Cr.P.C. is settled, that this power is an extraordinary power, which should be used sparingly with circumspection and while passing the summoning order under section 319

Cr.P.C., court must consider whether more than prima facie case made out, or not, mere prima facie case is not sufficient.

19. Learned counsel for the revisionist has further relied upon and discussed the cross-examination of P.W.-1/Raj Kumari, P.W.-2/Nagendra Ram Prajapati, and P.W.-3/Harendra Pratap Prajapati. However, the final appreciation of evidence is to be undertaken by the trial court after considering all the material collected during the trial, whether in examination-in-chief or cross-examination, in a meticulous manner. At the stage of Section 319 Cr.P.C., such final and meticulous appreciation of evidence is neither justified nor permissible.

20. It is settled law that statements recorded under Section 161 Cr.P.C. during investigation do not constitute substantive evidence; they can only be used for the purpose of contradiction of the statements recorded during the trial by prosecution witnesses.

21. Raj Kumari (P.W.-1), in her examination-in-chief, has specifically deposed that the accused Ravi Gautam, Bhim Gautam, Jai Nath Prajapati, Mohd. Usman, and some unknown persons stopped the motorcycle of her husband, fired at him, and thereafter fled from the spot. She further stated that her husband died on the spot. P.W.-2 Nagendra Ram Prajapati, in his examination-in-chief, deposed that there was previous enmity between the deceased and Ravi Gautam, Bhim Gautam, Jai Nath Prajapati, and Mohd. Usman, all of whom are residents of the same village. The enmity was related to a land dispute. He specifically deposed that all four accused persons fired at Faujdar Prajapati, as a result of which he died on the spot. P.W.-3 Harendra Pratap Prajapati, who examined himself as P.W.-3, supported the prosecution version and specifically deposed that Ravi Gautam, Bhim Gautam, Jai Nath Prajapati, and Mohd. Usman, due to previous enmity, committed the murder of Faujdar Prajapati by firing with firearms.

22. The final interpretation or appreciation of the evidence is neither required nor permissible at this stage of the present criminal revision by this Court, as it may cause prejudice to the accused persons.

23. It is held by the Hon'ble Supreme Court in **Asim Akhtar Versus State of West Bengal, 2024 NSC 794** that complicity of any person sought to be arrayed as an accused can be decided with or without conducting the cross examination of the complainant and other prosecution witnesses, and there is no mandate to decide the application under section 319 Cr.P.C. before cross examination of other witnesses.

24. Hence, the evidence recorded during the trial, along with all the facts and circumstances of the case, clearly establishes that the evidence against the revisionist collected during the trial is more than a prima facie case against the accused/revisionist. Any contradictions in the statements recorded under Section 161 Cr.P.C. during investigation, or any improvements, if at all, noticed during the trial, are matters to be considered by the learned trial court after completion of the entire evidence and at the conclusion of the trial.

25. The evidence available before the learned trial court at the time of summoning the revisionist/accused under Section 319 Cr.P.C. was sufficient for exercising such power.

Accordingly, the learned trial court rightly passed the impugned order dated 12.11.2025, summoning the accused/revisionist Jai Nath Prajapati. There is no illegality or irregularity in the impugned order dated 12.11.2025.

26. The criminal revision is liable to be dismissed and it is dismissed accordingly.

(2026) 1 ILRA 834
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.01.2026

BEFORE

THE HON'BLE CHAWAN PRAKASH, J.

Criminal Revision No. 629 of 2024

Parveen Bano

...Revisionist

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Issue pertains to whether the learned Magistrate committed any illegality or jurisdictional error in exercising discretion by declining to pass an order for registration of F.I.R. u/s 156(3) Cr.P.C. and instead directing that the application be registered and proceeded with as a complaint case.

Headnotes

Code of Criminal Procedure, 1973 - ss. 156(3), 200 - Registration of FIR - Plea of - Cognizable offences - Revisional jurisdiction - Scope of - According to the facts of the case, on 17.09.2023 when the revisionist was cleaning the back side of the house, the opposite party nos. 2 to 5 came there and due to old enmity they started abusing her - On being stopped by her, they started beating her by kicks and fists and when her daughter came to rescue her, they took her daughter with intention to commit illegal act - Further, an application was given by revisionist to the police for registration of F.I.R. and a copy of the same was also sent to the S.P. but no report was registered - Thereafter, revisionist had approached the learned Additional Sessions Judge/Special Judge alleging specific acts constituting criminal offences and prayed for a direction to the police authorities to register and investigate the matter, however, upon consideration of the averments made in the application as filed u/s 156(3) Cr.P.C. and the material placed on record, the Magistrate exercised judicial discretion and directed that the application be registered as a complaint case, to be proceeded with in accordance with law - Aggrieved by the said order declining to order registration of the F.I.R. and opting to treat the application as a complaint case, the revisionist filed the instant criminal revision before the High Court. (E-11)

Held: In the instant case, the learned Magistrate after perusal of the fact of case declined to pass an order u/s 156(3) Cr.P.C. for registration of F.I.R. but registered the said application as complaint case and registered the case for recording statement of complainant u/s 200 Cr.P.C. - The learned Magistrate has not committed any illegality in passing the impugned order because it is in discretion of the learned Magistrate to register any application filed u/s 156(3) Cr.P.C. as complaint case - Hence, the criminal revision lacks merits and is accordingly dismissed. [Para 9]

Case Law Cited

Lalita Kumari v. State of Uttar Pradesh and others (2012) 4 Supreme Court Cases 1; Ram Babu and others v. State of U.P. 2001 (43) ACC 50 - referred to

Sukhwasi v. State of U.P. 2007 (59) ACC 739; Smt. Mausam v. State of U.P. and others 2007 (7) ALJ 221 - followed

List of Acts

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

List of Keywords

Criminal Revision; Application u/s 156(3) Cr.P.C.; Seeking direction for registration of F.I.R.; Cognizable offence; Land partition; Old enmity; Judicial discretion; Registered as complaint case; Statements recorded u/ss. 200 and 202 Cr.P.C.; Investigation by police; Prima facie case; Illegality; Criminal Revision dismissed; Order affirmed.

Case Arising From

REVISIONAL JURISDICTION: Criminal Revision No. - 629 of 2024

From the Judgment and Order dated 30.11.2023 passed by the learned Additional Sessions Judge/Special Judge (POCSO Act), Basti in Criminal Misc. Case No. 425 of 2023.

Appearances for Parties

Adv. for the Revisionist:
Jitendra Kumar Srivastava

Adv. for the Opposite Party:
Kanhaiya Lal Tiwari

(Delivered by Hon'ble Chawan Prakash, J.)

1. Heard Sri Jitendra Kumar Srivastava, learned counsel for the revisionist, learned A.G.A. for the State and Sri Firdos Ahmad, Advocate holding brief of Sri Kanhaiya Lal Tiwari, learned counsel for the opposite party nos. 2 to 5 and perused the record.

2. The present criminal revision has been filed against the order dated 30.11.2023 passed by the learned Additional Sessions Judge/Special Judge (POCSO Act), Basti in Criminal Misc. Case No. 425 of 2023, under Section 156(3) Cr.P.C. (Parveen Bano Vs. Ajeej and others) whereby the application filed by the revisionist under Section 156(3) Cr.P.C. was treated as complaint case.

3. The brief facts of the case are that an application under Section 156(3) Cr.P.C. was filed by the informant Parveen Bano for registration of the F.I.R. but the said application was treated as complaint case by the learned Additional Sessions Judge/Special Judge, (POCSO Act), Basti vide order dated 30.11.2023. Feeling aggrieved by the said order, the present revision has been filed.

4. It is submitted by learned counsel for the revisionist that the opposite party nos. 2 to 5 are family members of the revisionist. On 17.09.2023 at about 9.45 A.M. when the revisionist was cleaning the back side of the house, the opposite party nos. 2 to 5 came there and due to old enmity they started abusing her. On being stopped by her, they started beating her by kicks and fists and

when her daughter came to rescue her, they took her daughter with intention to commit illegal act and her clothes were torn. Thereafter they entered into house of the revisionist and started breaking articles and Rs.1500/- kept in Almirah were also taken away. An application was given to the police for registration of the F.I.R. and a copy of the same was also sent to the S.P. Basti but no report was registered by the police. Thereafter an application under Section 156(3) Cr.P.C. was moved by the revisionist before the learned Chief Judicial Magistrate, Basti but the learned Magistrate instead of passing the order under Section 156(3) Cr.P.C. for registration of the case, has registered the application as complaint case. It is further submitted that the revisionist Parveen Bano and her daughter Nagma were medically examined. It is next submitted that the learned Magistrate has committed an illegality in passing the impugned order and in view of the settled principles of law by the Hon'ble Apex Court in the case of ***Lalita Kumari Vs. State of Uttar Pradesh and others (2012) 4 Supreme Court Cases 1***, a prima facie case is made out against the accused persons and the impugned order is liable to be set aside.

5. Per contra, learned counsel for the opposite party nos. 2 to 5 and learned A.G.A. opposed the submissions made by learned counsel for the revisionist and submitted that the present application has been filed due to old family dispute about land partition. There is old rivalry between the parties and compromise has been entered many times and proceedings under Section 107/116 Cr.P.C. were initiated against the revisionist. A case No. 163 of 2019 (Karam Husain and others Vs. Ram Paltan and others) is also pending. The medical papers filed by the revisionist regarding injuries of Nagma are forged and fabricated. In fact, they have not received any injury due to the said incident. The learned Magistrate has not committed any illegality in passing the impugned order. The learned Magistrate is not bound to pass an order for registration of the F.I.R. and its investigation by police on each and every application under Section 156(3) Cr.P.C. and the said application could be registered as complaint case.

6. The main question of the learned counsel for the revisionist is as to whether the Magistrate is bound to pass order for registration of the F.I.R. and its investigation by the police on each and every application under Section 156(3) Cr.P.C. Section 156 (3) Cr.P.C. provides that any Magistrate empowered under Section 190 Cr.P.C. may pass order for registration of the F.I.R. and its investigation of a cognizable offence. Learned counsel for the revisionist mainly contended that a Magistrate was bound to pass an order for registration of the F.I.R. and its investigation by the police on the application under Section 156(3) Cr.P.C., as cognizable offence of serious nature requiring investigation is made out on the basis of averments made in that application. The contention of the learned counsel for the State and opposite party nos. 2 to 5 is that if the application under Section 156(3) Cr.P.C. contains the allegations of commission of cognizable offence, then the Magistrate is always under obligation to direct registration of the F.I.R. and its investigation.

7. The issue that the Magistrate is bound to pass an order for registration of the F.I.R. and its investigation by the police on each and every application under Section 156(3) Cr.P.C. containing allegations of a commission of cognizable offence is not 'res integra'. Now, as this controversy has been settled by a Division Bench of this Court in the case of ***Sukhwasi Vs. State of U.P. 2007 (59) ACC 739***. In the case of ***Smt. Mausam Vs. State of U.P. and others 2007 (7) ALJ 221*** the single judges of this Court has taken a view that if an application under Section 156(3) Cr.P.C. discloses

the commission of cognizable offence then the obligation of the Magistrate is to direct the registration of the F.I.R. on the basis of that application. This Court agreeing this view, following question was referred to the larger Bench in the case of Sukhwasi (supra) "whether a Magistrate is bound to pass an order on each and every application under Section 156(3) Cr.P.C. containing the allegations of commission of a cognizable offence for registration of the F.I.R. and its investigation by the police even if those allegations, prima facie, do not appear to be genuine and do not appeal to reason, or he can exercise judicial discretion in the matter and can pass order for treating it as 'complaint' or to reject it in suitable cases".

8. After having considered the Full Bench decision of this Court in the case of **Ram Babu and others Vs. State of U.P. 2001 (43) ACC 50** and many other cases, the Division Bench in the case of **Sukhwasi (supra)** has answered in paragraph 23 of the case as under:-

"The reference is, therefore, answered in the manner that it is not incumbent upon a Magistrate to allow an application under Section 156(3) Cr.P.C. and there is no such legal mandate. He may or may not allow the application in his discretion. The second leg of the reference is also answered in the manner that the Magistrate has a discretion to treat an application under Section 156 (3) Cr.P.C. as a complaint."

9. In the present case, the learned Magistrate after perusal of the fact of this case declined to pass an order under Section 156(3) Cr.P.C. for registration of the F.I.R. but registered the said application as complaint case and registered the case for recording statement of the complainant under Section under Section 200 Cr.P.C. The learned Magistrate has not committed any illegality in passing the impugned order because it is in discretion of the learned Magistrate to register any application filed under Section 156(3) Cr.P.C. as complaint case. Hence, the revision lacks merits and is accordingly **dismissed**.

(2026) 1 ILRA 837
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.01.2026

BEFORE

THE HON'BLE KSHITIJ SHAILENDRA, J.

Criminal Revision No. 1352 of 2024

Ashok Singh @ Kali Singh

...Revisionist

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Issue pertains to whether the material collected during investigation including the alleged suicide note, the statements of witnesses, and the F.S.L. report, prima facie disclosed the essential ingredients of "abetment of suicide" within the meaning of ss. 306 and 107 I.P.C., thereby justifying the continuation of criminal proceedings or whether in the absence of specific instigation, intentional aid, or active participation

attributable to the revisionist, the summoning order and the order framing charge suffered from illegality or non-application of judicial mind.

Headnotes

Indian Penal Code, 1860 - ss. 107, 306 - Code of Criminal Procedure, 1973 - ss. 227, 228 - Framing of charge - Scope of - Revisional jurisdiction - Scope of - The case emanates from an incident dated 02.03.2020, wherein the dead body of deceased, was recovered with a handwritten suicide note allegedly attributing harassment and responsibility for his death to the applicant, his real brother - On the basis of the said note and ensuing investigation, a First Information Report was lodged and a charge-sheet submitted u/s 306 IPC, pursuant to which the Magistrate took cognizance on 22.10.2021 and Sessions Court subsequently framed charge on 24.01.2024 - The prosecution case is further supported by statement of widow of deceased alleging property disputes and harassment, abetment or instigation by applicant, whereas the defence disputes the genuineness of the suicide note, highlights inconsistencies in witness statements, questions the timing of cognizance vis-à-vis submission of charge-sheet, and asserts false implication arising out of familial and property-related discord.. (E-11)

Held: There being contradictory reports, one having been submitted pursuant to steps taken by prosecution, the other being contrary but not indicating as how and when the same came in light and as to whether or not it forms part of Case Diary, no definite opinion, can be expressed regarding validity of suicide note in terms of handwriting and signatures of deceased - It is for trial court to record a finding based upon the documentary and oral evidence led before it during the course of trial and all the submissions made based upon F.S.L. report are found to be not sufficient to invalidate the order framing charge - The grave suspicion/presumption did exist which obliged the Court to frame charge u/s 306 I.P.C. and, hence, considering the judicial pronouncements, it cannot be said that framing of charge by learned Sessions Court is faulty - The widow of deceased declined twice to get her statement recorded and then got the same recorded and uttered things in one or the other way, the same not being relevant at this stage and required to be seen during the course of trial when the statements recorded during the course of investigation would be required to be corroborated/not corroborated by other evidence, the same not being a significant aspect in favour of applicant, argument discarded - Similar is the position with regard to initial application dated 02.03.2020 submitted by widow and it is for the trial court to put the widow on trial and permit her cross-examination and, then form an opinion eitherway - Hence, no error in impugned order, accordingly dismissed. [Paras 31, 39 to 42]

Case Law Cited

Shashikant Sharma and others v. State of U.P. and another : **2024 AIR SC 193**; *Satish Mehra v. Delhi Administration and another* : **1996 SCC (Cri) 1104**; *Dinesh Tiwari v. State of U.P. and another* : **(2014) 13 SCC 137**; *State of Bihar v. Ramesh Singh*: **(1977) 4 SCC 39**; *Amit Kapoor v. Ramesh Chander and another* : **(2012) 9 SCC 460**; *Kanti Bhadra Shah v. State of West Bengal* : **(2000) 1 SCC 722**; *Alamohan Das v. State of West Bengal* : **(AIR) 1970 SC 863**; *Union of India v. Profulla Kumar Samal and another* : **(1979) 3 SCC 4 - referred to**

Jayedepsinh Pravinsinh Chavda and others v. State of Gujarat : **(2025) 2 SCC 116**; *Suresh @ Pappu Bhudharmal Kalani v. The State of Maharashtra* : **(2001) 3 SCC 703 - distinguished**

List of Acts

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

List of Keywords

Criminal Revision; Cognizance; Summoning order; Investigating Officer; Framing of charge; Abetment of suicide; First Information Report; Inquest proceedings; Suicide note; Ante-mortem injuries; Forensic Science Laboratory (F.S.L.) report; Partition of Ancestral property; Handwritten suicide note; Charge-sheet; Discharge; Statements of witnesses recorded u/s 161 Cr.P.C.; Prima facie case; Grave suspicion; Handwriting and

signatures of deceased; Sufficient ground for proceeding; Ingredients of offence; Instigation; Intentional aid; Illegality; Contradictory reports; Human error; Endorsement; Civil suit; Rejection of plaint; Revision dismissed; Revision dismissed; Interim order vacated.

Case Arising From

REVISIONAL JURISDICTION: Criminal Revision No. - 1352 of 2024

From the Judgment and Order dated 24.01.2024 passed by the learned Additional District and Sessions Judge/Special Judge (P.C. Act), Court No.1, in S.C. No. 95 of 2024 and also order dated 22.10.2021 passed by the Chief Judicial magistrate - I, Gorakhpur.

Appearances for Parties

Adv. for the Revisionist:

Rajeev Chaddha

Adv. for the Opposite Party:

G.A.

(Delivered by Hon'ble Kshitij Shailendra, J.)

1. Heard Shri Rajeev Chaddha, learned counsel for the applicant in revision and learned A.G.A. for the opposite parties.

THE CHALLENGE

2. The instant revision under Section 397/401 Cr.P.C. has been filed challenging the order dated 24.01.2024 whereby the learned Additional District and Sessions Judge/Special Judge (P.C. Act), Court No.1, Gorakhpur has framed charge against the applicant under Section 306 I.P.C. in S.C. No. 95 of 2024 (State v. Ashok Singh). Another order under challenge is dated 22.10.2021 whereby the learned Additional Chief Judicial Magistrate-I, Gorakhpur ("Magistrate") had taken cognizance in the matter and summoned the applicant.

BRIEF FACTS

3. As per the case of the applicant, on 02.03.2020, a ward boy of District Hospital, Gorakhpur informed the police that a dead body was kept in mortuary. On his information, police reached on the spot and found a suicide note in the pocket of the deceased namely Deen Dayal Singh, real brother of the applicant. Accordingly, opposite party No.2, Incharge of Police Chowki Beniganj, Gorakhpur registered a First Information Report dated 02.03.2020 mentioning that during inquest proceedings, one handwritten suicide note and two Aadhaar Cards were found in the left pocket of the pant of the deceased and on perusal of the suicide note, reason of death was indicated as harassment caused by the applicant to the deceased and cause of death was found to be ante-mortem injuries caused by train.

4. Based upon investigation, a chargesheet was submitted before the Court of Magistrate who took cognizance in the matter by order dated 22.10.2021 under Section 306 I.P.C. Later on, charge

was framed under the same Section by the Sessions Court order dated 24.01.2024. These two orders have been assailed in the instant revision.

SUBMISSIONS ON BEHALF OF THE APPLICANT

5. Learned counsel for the applicant has raised following submissions:-

(i). Framing of charge under Section 306 I.P.C. is patently illegal as ingredients of abetment, as provided under Section 107 I.P.C., do not stand attracted;

(ii). The suicide note is not a reliable piece of evidence even at this stage, inasmuch as, it runs in nine (9) paragraphs and, just after two lines of the first paragraph, signatures allegedly made by deceased Deen Dayal Singh stand reflected but, thereafter, further language has been incorporated, which, in itself, shows that the suicide note was prepared for the purposes of the case and was planted by the prosecution at some subsequent stage;

(iii). Even assuming without admitting the genuineness of the suicide note, the contents thereof reflect that the deceased was inclined to settle his property among his family members and nothing has been indicated as to in what manner the applicant ever abetted or instigated the deceased to commit suicide.

(iv). Forensic Science Laboratory (F.S.L.) submitted its report dated 03.08.2021 indicating that for satisfactory examination of the disputed signatures, atleast 10-15 signatures of the deceased were required and though communication was sent in that regard, till today, no such forensic examination report has come on record of proceedings and, therefore, there was lack of evidence so as to necessitate framing of charge under Section 306 I.P.C.

(v). First paragraph of the suicide note indicates that the applicant and father of the deceased were the persons responsible for his death, whereas father of the deceased had already died on 15.12.2019, i.e. four months before death and hence, the entire suicide note is liable to be discarded;

(vi). Neelam Singh, widow of deceased, when contacted by the Investigating Officer ("I.O."), twice declined to get her statement recorded; firstly on 15.03.2020 stating that she would get her statement recorded after consulting her lawyer; secondly, on 28.03.2020 taking identical stand and when her statement was recorded after two months thereafter on 08.05.2020, she stated that it was her second marriage with the deceased which was solemnized in 2011; her first marriage was solemnized with Amit Kumar Jagwani belonging to Asansol who died in Agartala; there is a son born out of her wedlock with her first husband who is studying in Class XII at Dehradun; Rekha, first wife of deceased lives in Gwalior; family members of deceased had forcibly got her divorced in which main role was played by the applicant and her late father-in-law Krishna Bihari Singh who used to run a brick-kiln for the last 20 years, entire earnings whereof had been kept by the applicant who had amassed immovable properties; the deceased, being much harassed by the misdeeds of his brother, had taken the step of committing suicide which stands proved by the suicide note and that some dispute regarding partition of ancestral property was pending in which

the applicant had got valuable property of front side in his name and corner-property in the name of her deceased husband which he could not sell, as a result whereof, he had committed suicide;

(vii). On the date of death, i.e. 02.03.2020, the first application submitted by the widow of the deceased before the Incharge of Police Station- Kotwali clearly mentioned that her husband had committed suicide on account of great loss occurred in his business; that no person of her family was responsible for the same and that she did not want any legal proceedings against anyone. It, therefore, shows that things were developed later on with the passage of time and the applicant has been falsely implicated due to malice but the said aspects have not been looked into by the court(s) below who have erred in taking cognizance in the matter and then in framing charge;

(viii). A Civil Suit being Original Suit No.153 of 2022 filed by widow of the deceased has already been dismissed by order dated 15.09.2022 in terms of rejection of plaint which itself reflects that declaration of rights claimed by the widow had been discarded by the civil court;

(ix). Chargesheet was submitted by the I.O. on 23.10.2021 but cognizance was taken by the learned Magistrate on 22.10.2021, i.e., one day before the chargesheet could be submitted and, hence, the entire proceedings stand vitiated.

6. In support of his submissions, learned counsel for the applicant has placed reliance upon following judgments:-

(i). **Jayedeepsinh Pravinsinh Chavda and others v. State of Gujarat : (2025) 2 SCC 116;**

(ii). **Shashikant Sharma and others v. State of U.P. and another : 2024 AIR SC 193;**

(iii). **Satish Mehra v. Delhi Administration and another : 1996 SCC (Cri) 1104;**

(iv). **Suresh @ Pappu Bhudharmal Kalani v. The State of Maharashtra : (2001) 3 SCC 703.**

SUBMISSIONS ON BEHALF OF THE STATE

7. *Per contra*, learned A.G.A. has made following submissions:-

(i). The suicide note being sufficient evidence at this stage, coupled with statements of witnesses collected during the course of investigation indicating instigation made by the applicant compelling the deceased to commit suicide, the same were sufficient to take cognizance in the matter and, therefore, no error has been committed by the learned Magistrate;

(ii) Insofar as the order framing charge is concerned, no detailed reasoning is required to be recorded by the court at that stage and charge can be framed even on grave suspicion and, hence, the said order also does not call for any interference.

8. In support of his submissions, reliance has been placed upon judgement of the Hon"ble Supreme Court in **Dinesh Tiwari v. State of U.P. and another : (2014) 13 SCC 137.**

DISCUSSION

9. I have considered the submissions made by learned counsel for the parties and perused the material available on record.

10. Out of the two orders under challenge, vehement submissions were advanced questioning validity of the order dated 24.01.2024 framing charge under Section 306 I.P.C., however, after hearing of the case was concluded and judgment was reserved and 3-4 other cases thereafter were heard, Shri Chaddha, learned counsel for the applicant again appeared and submitted that apart from the order framing charge, another order dated 22.10.2021 taking cognizance in the matter and summoning the applicant had also been challenged, which aspect was earlier missed to be argued by him. When asked about illegality in the said order, the only submission made was that the chargesheet contains an endorsement dated 23.10.2021 to the effect that the same be sent to the court and, therefore, cognizance could not have been taken one day before submission of chargesheet, i.e. on 22.10.2021 and, hence, the order taking cognizance is liable to be set aside on this ground alone.

Challenge to the order taking cognizance:

11. Since the order taking cognizance is prior in point of time, first of all, the Court proceeds to examine the challenge laid to the same based upon the arguments advanced. A perusal of page 59-E, i.e., the last page of copy of the chargesheet annexed, indicates as under:-

"आरोपपत्र न्यायालय जाये

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दिनांक 23.10.21"

12. Admittedly, cognizance was taken by the Magistrate on 22.10.2021. Though, it is true that cognizance can be taken only after submission of chargesheet and not prior thereto, the argument advanced based upon discrepancy in the two dates does not appeal to the Court for the reason that Annexure-10 to the affidavit is said to be a copy of the chargesheet and the corresponding paragraph 18 of the affidavit does not indicate that the same is the certified copy of the chargesheet nor does it stand reflected from bare perusal of the said document. As a matter of fact, Annexure-10 is an incomplete typed copy of the chargesheet accompanied by photostat copy thereof which contains an endorsement of taking cognizance on 22.10.2021 at its first page and, at its last page, the above-quoted endorsement dated 23.10.2021 is found.

13. The Court cannot be too wild in its vision so as to assume that though the chargesheet was submitted on 23.10.2021, the Court concerned, one day prior thereto, took cognizance thereon. If such argument is accepted, it would mean that either the learned Magistrate went to the police

station to take cognizance in the matter without there being a chargesheet submitted in his court or the Investigating Officer, after obtaining an endorsement of taking cognizance on the chargesheet, carried the same to the police station (P.S.) and, then, the office at P.S. made an endorsement next day regarding sending of chargesheet to the court. The Court has to be pragmatic in its approach while analysing record of proceedings and discrepancy of one date, when the matter pertains to submission of chargesheet and taking cognizance thereon, does not lead to the court to set aside the order taking cognizance on this ground.

14. Further, there is a half-hearted challenge to the cognizance order based upon the discrepancy qua date(s) and though first three grounds have been raised in the memo of revision based upon such discrepancy, paragraph 18 of the affidavit appears to have been drafted half-heartedly. For ready reference, the said paragraph is reproduced as under:-

"18. That on the basis of the aforesaid evidence Investigating Officer concluded the investigation and forwarded the charge sheet and circle officer vide its order dated 23.10.2021 directed to produce the same in the court and the learned Chief Judicial Magistrate vide its order dated 22.10.2021 took cognizance on the charge sheet. A copy of charge sheet is being filed herewith as Annexure No.10 to this affidavit."

15. After paragraph 18, no averment has been made in the affidavit in consonance with the stand taken in the first three grounds contained in the memo of revision and the deponent went forward to mention other aspects of the matter such as statement of widow and civil/revenue proceedings etc. The Court is focusing on this aspect for the reason that pursuant to orders passed by this Court, affidavits were directed to be exchanged and averments made in paragraph 18 of the affidavit have been responded to in 10th paragraph of counter affidavit indicating that "*contents of paragraph 18 of the affidavit is matter of record and, hence need no comment*". Though forwarding of the chargesheet on 23.10.2021 and taking cognizance by the learned Magistrate on 22.10.2021 has been responded to indicating it as a matter of record, there being no further emphasis based upon the two dates so as to raise a challenge to the order on the above count, the Court is not in a position to accept the challenge on this ground and concludes that endorsement made by the Circle Officer on 23.10.2021 is nothing but a human error in writing the date. In this view of the matter, cognizance order dated 22.10.2021 does not call for interference and the challenge laid to the same stands discarded.

Challenge to the order framing charge:

A. Legal position:

16. Coming to the main challenge laid to the order framing charge, first of all, the Court deems it appropriate to mention that since the case is triable by Court of Session, Chapter XVIII of Cr.P.C. would be applicable and for the purposes of the case, reproduction of Sections 227 and 228 of the said Chapter is necessary. The same are quoted hereunder:-

"227. Discharge.

- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, **the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.**

228. Framing of Charge. (1) If, after such consideration and hearing as aforesaid, the **Judge is of opinion that there is ground for presuming** that the accused has committed an offence which"

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, **he shall frame in writing a charge against the accused.**

(2) Where the Judge frames any charge under clause (b) of Sub-Section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

(emphasis by Court)

17. A bare perusal of Section 227 indicates that if, upon consideration of the record of the case and the documents submitted therewith and, after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record the reasons for so doing. Once the Judge discharges an accused under Section 227, the matter ends then and there and the next stage of framing of charge under Section 228 does not arise, however, if, after consideration of record and hearing the accused and the prosecution, the Judge is of the opinion that there is ground for **presuming** that the accused has committed an offence, he shall try the same in accordance with the procedure prescribed.

(emphasis by Court)

18. The language used in Sections 227 and 228 is clear and unambiguous. Whereas reasons are required to be recorded while discharging the accused under Section 227; Section 228 does not require the Judge to record his reasons for framing charge, rather what is sufficient for him at that stage is that there is ground for **"presuming that an offence has been committed"**. The word "presuming" appearing in Section 228 is sufficient to infer that charge can be framed on presumption and not on concrete basis which may be necessary for either discharging/not discharging or either convicting or acquitting the accused.

(emphasis by Court)

19. At this stage, reference to certain judgements on the power of the Court as well as legal requirements of framing charge and aspects associated thereto, is required to be made.

20. In **State of Bihar v. Ramesh Singh : (1977) 4 SCC 39**, it has been held by the Hon"ble Supreme Court that at the stage of framing charge, it is not to see whether there is sufficient ground for conviction of accused or whether the trial is sure to end in his conviction and if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against him.

21. In **Amit Kapoor v. Ramesh Chander and another : (2012) 9 SCC 460**, the Hon"ble Supreme Court drew a distinction between Sections 227 and 228 Cr.P.C. and held that framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the **'record of the case'** and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge.

(emphasis by Court)

22. It has further been held that there is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgement of the Court while Section 228 is tentative. **Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.** At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not.

(emphasis by Court)

23. The view taken by the Hon"ble Supreme Court in **Amit Kapoor (supra)** has been reiterated with affirmance in **Dinesh Tiwari (supra)**.

24. In **Kanti Bhadra Shah vs. State of West Bengal : (2000) 1 SCC 722**, it has been held by the Hon"ble Supreme Court that the Judge is required to record reasons only if he decides to discharge the accused but if he is to frame charge, he may do so without recording his reasons for showing why he framed the charge.

B. Suicide note:

25. Above being the position of law, when record of the instant case is perused, it stands reflected that the main document relied upon by the prosecution is the handwritten suicide note, though disputed by the applicant. The said suicide note indicates that the applicant and father of the deceased were the persons responsible for his death. The said indication contained in first paragraph of the suicide note has been signed allegedly by the deceased. Further paragraphs of the suicide note mention inclination of the deceased to settle his properties amongst his family members and certain other emotions allegedly expressed by him before committing suicide.

26. Though vehement submissions have been made that since, immediately after first paragraph containing two lines, the suicide note was allegedly signed by the deceased, the said mere fact cannot be conclusive at this stage to discard further paragraphs No. 2 to 9 contained in the suicide note, particularly when, after 9th paragraph also, signatures allegedly of the deceased are found. The Court cannot presume, at this stage, that after putting signatures at the end of first paragraph, no further writing could be made by the deceased and it may be a case where the first paragraph was written and signed by the deceased but, at some later point of time, the remaining paragraphs were written and signed. Death of the father of the deceased occurred on 15.12.2019 also, at this stage, cannot be sufficient to discard the suicide note and there may be a circumstance that first paragraph was written when father of the deceased was alive and suicide note was kept with him by the deceased and remaining paragraphs were written after death of his father or the entire suicide note was written after the death of father of the deceased but indicating him as responsible for death of the deceased.

27. The above observations are being made for the reason that no date is indicated on the suicide note as to when it was written or signed and the mere fact that it was found from the left pocket of the pant of the deceased when his dead body was found on 02.03.2020, it cannot be said that the suicide note was written on the said date. No further observations are required to be made by this Court in this regard otherwise the trial may be prejudiced, however, observations have been made only for the reason that validity/genuineness of the suicide note was assailed vehemently pointing out the contents of and signatures thereon.

28. Since arguments were raised qua FSL report dated 03.08.2021, the Court finds the said report indicating that writing as well as signatures on the suicide note were disputed and a torn notebook was sent to the FSL as a specimen of writing of the deceased, however, the FSL concluded that handwriting of the deceased tallies with the two documents, i.e. suicide note and the note book, but for satisfactory examination of the disputed signatures, signatures sufficient in number, at least 10 to 15, are required. Assuming that no further FSL report came on record by the time when the charge was framed by the order impugned, the said mere fact is not sufficient to outrightly discard the suicide note at this stage, particularly when observation of FSL is that handwriting of the deceased on two documents tallies.

29. The Court finds another report dated 27.06.2020 on record forming part of Annexure-4 to the affidavit. The same was prepared by one Mr. R.K. Jaiswal, Advocate claiming himself to be Handwriting and Finger Print Expert (Forensic Scientist). The said report is said to be submitted before Smt. Dhanwanti Devi, i.e., mother of the deceased and the same, in so many words, records

that disputed writings differ in formation and designing and that the same have not been written by the writer of the admitted writings.

30. First Information Report in the case was lodged on 02.03.2020 and cognizance was taken on 22.10.2021. As to when and by whom the signatures (admitted/disputed) were sent to Mr. R.K.Jaiswal, Advocate for submission of his report, is not clear from the record. On the other hand, the F.S.L. report dated 03.08.2021 indicates that the documents were sent to the F.S.L by Constable Navin Kumar Gautam on 01.03.2021 and, based upon the report dated 03.08.2021, forming part of the Case Dairy, cognizance was taken on 24.01.2024.

31. In view of the above, there being contradictory reports, one having been submitted pursuant to steps taken by the prosecution, the other being contrary but not indicating as how and when the same came in light and as to whether or not it forms part of the Case Diary, no definite opinion, at this stage, can be expressed regarding validity of the suicide note in terms of handwriting and signatures of the deceased. It is for the trial court to record a finding based upon the documentary and oral evidence led before it during the course of trial and, hence, all the submissions made based upon F.S.L. report are found to be not sufficient to invalidate the order framing charge.

C. Judgments cited on behalf of the applicant:

32. In the case of Jayedeepsinh Pravinsinh Chavda (supra), the Hon"ble Supreme Court dealt with the provisions of Section 306 I.P.C. read with Section 107 I.P.C. and held that to bring a case under Section 306 I.P.C., it is imperative that the accused intended by their act to instigate the deceased to commit suicide and the prosecution must establish that the accused contributed to the act of suicide and, further, involvement must satisfy one of the three conditions outlined in Section 107 I.P.C. For a ready reference, paragraphs 21, 22 and 27 of the judgment need reproduction and are quoted as under:-

"21. Section 306 IPC provides for punishment for the offence of abetment of suicide. It has to be read with Section 107 IPC which defines the act of "abetment". The provisions read as follows:

"306. Abetment of suicide. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

"107. Abetment of a thing. - A person abets the doing of a thing, who-

First.- Instigates any person to do that thing; or

Secondly. -Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.-A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

22. Section 306 IPC penalises those who abet the act of suicide by another. For a person to be charged under this section, the prosecution must establish that the accused contributed to the act of suicide by the deceased. This involvement must satisfy one of the three conditions outlined in Section 107 IPC. These conditions include the accused instigated or encouraged the individual to commit suicide, conspiring with others to ensure that the act was carried out, or engaging in conduct (or neglecting to act) that directly led to the person taking his/her own life.

27. Thus, to bring a case under this provision, it is imperative that the accused intended by their act to instigate the deceased to commit suicide. Thus, in cases of death of a wife, the Court must meticulously examine the facts and circumstances of the case, as well as the evidence presented. It is necessary to determine whether the cruelty or harassment inflicted on the victim left them with no other option but to end their life. In cases of alleged abetment of suicide, there must be concrete proof of either direct or indirect acts of incitement that led to the suicide. Mere allegations of harassment are insufficient to establish guilt. For a conviction, there must be evidence of a positive act by the accused, closely linked to the time of the incident, that compelled or drove the victim to commit suicide."

33. There is no quarrel, nor can there be, with the proposition laid down by the Hon"ble Supreme Court qua the requirements under Section 306/107 I.P.C., however, what is significant to observe here is that the matter before the Hon"ble Supreme Court had arisen from a situation where the trial court had refused to discharge the accused and revision preferred against the said order was dismissed by the High Court. The Hon"ble Supreme Court examined the material on record involving accusations made under Sections 306, 498-A and 114 I.P.C. and, after analysing the facts in the light of the provisions, ingredients of offence under Section 306 I.P.C. were not found as made out even on preliminary analysis and, therefore, the accused was discharged by the Hon"ble Supreme Court.

34. The present case arises from a different stage where question of discharging/not discharging the applicant in revision is not before this Court, i.e. to say that this Court is not examining the validity of an order passed under Section 227 Cr.P.C., rather is examining a challenge to the order framing charge in exercise of powers under Section 228 Cr.P.C. Therefore, the parameters of examining the challenge in the light of material on record being different, as already discussed hereinabove while referring to the judgments in the case of **Ramesh Singh** (supra), **Amit Kapoor** (supra), **Dinesh Tiwari** (supra) and **Kanti Bhadra Shah** (supra), the

applicant does not get advantage of the judgment in the case of **Jayedeesinh Pravinsinh Chavda** (supra).

35. The next judgment in the case of **Suresh @ Pappu Bhudharmal Kalani** (supra) relied by the applicant deals with the stage of Section 227/228 and in 9th paragraph of the judgment, it is clearly observed that the Court may, for limited purpose, sift the evidence and it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is unopposed to common sense or the broad probabilities of the case and, therefore, at the stage of framing of the charge, the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground **for proceeding** against him and **not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.** As such, the judgment in case of **Suresh @ Pappu Bhudharmal Kalani** (supra) would be read against the applicant and not in his favour, inasmuch as, only presumption qua commission of offence is sufficient at the stage of framing of charge and not for the purposes of arriving at a conclusion qua conviction/acquittal.

(emphasis by Court)

36. **Shashikant Sharma** (supra) was a case where an application for discharge filed by the accused was rejected by the Special Judge (SC/ST Act) and criminal appeal challenging the said order was dismissed by the High Court and the matter went to the Hon"ble Supreme Court. Under such factual scenario, it was observed by the Hon"ble Supreme Court that the Court is not required to undertake a meticulous evaluation of evidence and even grave suspicion is sufficient to frame charge, nevertheless there is also a long line of precedents that from the admitted evidence of the prosecution as reflected in the documents filed by the I.O. in the report under Section 173 Cr.P.C., if the necessary ingredients of an offence are not made out, then the Court is not obligated to frame charge for such offence against the accused.

37. Though reference was made by the Hon"ble Supreme Court to the judgement in **Suresh @ Pappu Bhudharmal Kalani** (supra), the observations were to the effect that absence of necessary ingredients of an offence would not oblige the Court to frame charge, however, in the present case, as discussed above, a prima facie opinion regarding matching of handwriting on the suicide note read with statement of widow of the deceased, contents of the suicide note, need analysis of the entire material on record so as to examine as to whether the case in hand falls in either of the three clauses i.e. first, second or third read with Explanations (1) and (2) contained under Section 107 I.P.C., so as to examine the fact as to whether applicant has committed an offence punishable under Section 306 IPC. When the Court is not required to record detailed reasons for framing charge, it cannot be said at this stage that no charge could be framed in the present case. It may be altogether a different aspect that applicant would be convicted or acquitted or that the prosecution succeeds or fails to establish the charge against the accused.

38. In the case of **Satish Mehra** (supra), while referring to the judgements in **Alamohan Das v. State of West Bengal : (AIR) 1970 SC 863** and **Union of India v. Profulla Kumar Samal and another : (1979) 3 SCC 4**, observations were made by the Hon"ble Supreme Court that the exercise is to find out whether a prima facie case against the accused has been made out and the test

to determine a prima facie case would naturally be dependent upon the facts of each case and it is difficult to lay down rule of universal application. It was further observed that if the Judge is satisfied that the evidence produced gives rise to some suspicion but not grave suspicion, he would be fully within his right to discharge the accused and at the same time, the Court cautioned that a roving inquiry into the pros and cons of the case by weighing the evidence as if he was conducting the trial, is not expected or even warranted at this stage. (emphasis by Court)

39. In view of the above observations made by the Hon"ble Supreme Court, this Court is of the view that suspicion/grave suspicion/presumption did exist which obliged the Court to frame charge U/S 306 I.P.C. and, hence, considering the judicial pronouncements referred to hereinabove, it cannot be said that framing of charge by the learned Sessions Court is faulty.

40. As regard the fact that the widow of the deceased declined twice to get her statement recorded and then got the same recorded and uttered things in one or the other way, the same not being relevant at this stage and required to be seen during the course of trial when the statements recorded during the course of investigation would be required to be corroborated/not corroborated by other evidence, the same not being a significant aspect in favour of the applicant at this stage, the argument advanced on that line also stands discarded. Similar is the position with regard to the initial application dated 02.03.2020 submitted by the widow before the Incharge Police Station-Kotwali and it is for the trial court to put the widow on trial and permit her cross-examination on that aspect and, then, form an opinion eitherway.

41. For all the aforesaid reasons, this Court does not find any error in the orders dated 22.10.2021 and 24.01.2024.

42. The revision has no merit and is, accordingly, **dismissed**. The interim order dated 18.12.2025 stands **vacated**.

43. It is made clear that any observation made in this judgment is confined to the stage to examining the challenge laid to the order taking cognizance and the one framing charge and may not be treated as any expression of opinion on merits of the entire case which shall be the sole prerogative of the trial court during the course of trial.

(2026) 1 ILRA 850
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.01.2026

BEFORE

THE HON'BLE CHAWAN PRAKASH, J.

Criminal Revision No. 1467 of 2024

Avanish Chandra Srivastava

...Revisionist

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Issue pertains to whether, at the stage of considering an application for discharge u/s 239 Cr.P.C., the Magistrate is confined to the police report and documents submitted u/s 173 Cr.P.C., and whether the existence of a prima facie case or strong suspicion on the basis of the prosecution material alone justified rejection of discharge application.

Headnotes

Indian Penal Code, 1860 - ss. 409, 419, 420, 467, 468, 471, 111, 120B - Code of Criminal Procedure, 1973 - ss. 227, 228, 239, 240, 173, 161 - Discharge application - Rejection of - Framing of Charge - Scope of - The instant criminal revision was filed by revisionist, assailing the order dated 07.02.2024 passed by learned Chief Judicial Magistrate, whereby his application for discharge was rejected - The prosecution case originated from an F.I.R. lodged on 29.03.2004, alleging that after being relieved from his post in the office of District Panchayat Raj Officer, the revisionist failed to hand over charge and relevant rural development records and had prepared certain receipt/bill vouchers by forging signatures - Upon investigation, statements were recorded, documentary evidence was collected, and a charge-sheet dated 24.12.2006 was submitted against the revisionist and a co-accused under various sections of I.P.C., whereupon cognizance was taken on 21.02.2007 - The revisionist, asserting that he had duly handed over charge and that the allegedly missing files were later recovered from the custody of co-accused, and further relying upon a departmental inquiry report dated 25.08.2023 exonerating him, moved a discharge application, however, the learned Magistrate, confining consideration to the police report and documents submitted u/s 173 Cr.P.C., rejected the application.(E-11)

Held: As per the mentioned sections, in case the Sessions Court did not discharge the accused as per s. 227 Cr.P.C. or the learned Magistrate did not find any ground to discharge the accused u/s 239 Cr.P.C., then unless the order rejecting the discharge application was challenged and stayed by the Higher Court, the Sessions Court and the Magistrate Courts are statutory bound to frame charges against the accused u/s 228 Cr.P.C. and 240 Cr.P.C. respectively - It is a settled provision of law that merely filing of criminal revision or criminal appeal against any order, does not amount to that the proceedings of the said Court, has been stayed - Upon considering the facts of instant case and on taking into consideration the order passed by learned Magistrate, the Court found that the learned Magistrate has not committed any illegality in rejecting the said discharge application - Accordingly, the criminal revision is dismissed. [Paras 23, 24]

Case Law Cited

Nil

List of Acts

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

List of Keywords

Criminal Revision; Discharge application; s. 239 Cr.P.C.; First Information Report; ss. 409, 419, 420, 467, 468, 471, 111, 120B I.P.C.; Investigation; Investigating Officer; Statements u/s 161 Cr.P.C.; Documentary evidence; Relevant papers of Rural Development; Disciplinary proceedings; Receipt/Bill voucher; Forged signature; Charge-sheet; Cognizance; Police report u/s 173 Cr.P.C.; Groundless charge; Prima facie case; Strong suspicion; Framing of charge; ss. 227, 228, 239 and 240 Cr.P.C.; Warrant case; Departmental inquiry; Exonerated; Statutory duty to frame charges; Stay of further proceedings; Dismissal of revision; Circulation of judgment to all District Courts.

Case Arising From

REVISIONAL JURISDICTION: Criminal Revision No. - 1467 of 2024

From the Judgment and Order dated 07.02.2024, passed by the learned Chief Judicial Magistrate, Kaushambi in Case Crime No. 28 of 2004

Appearances for Parties

Advs. for the Revisionist:

Neeja Srivastava, Ritesh Singh, Suresh Singh, Sr. Advocate, Veerendra Singh

Adv. for the Opposite Party:

G.A.

(Delivered by Hon'ble Chawan Prakash, J.)

1. Heard Mr. V. P. Srivastava, learned Senior Advocate assisted by Mr. Veerendra Singh, learned Counsel for the revisionist and learned A.G.A. for the State.

2. The instant criminal revision has been filed against the order dated 07.02.2024, passed by the learned Chief Judicial Magistrate, Kaushambi, whereby the discharge application moved by the revisionist, in Case No. 286 of 2007, State v. Avanish Chandra Srivastava and others, under Sections 409, 419, 420, 467, 468, 471, 111, 120B I.P.C., arising out of Case Crime No. 28 of 2004, registered at Police Station Manjhanpur, District Kaushambi, has been rejected.

3. It is submitted by Mr. V. P. Srivastava, learned Senior Advocate that on 29.03.2004, opposite party no.2 lodged an F.I.R., which was registered as Case Crime No. 28 of 2004, under Section 409 I.P.C, Police Station Manjhanpur, District Kaushambi with the allegation that the revisionist has not handed over the charges and also has not submitted relevant papers of rural development to the concerned Officer, after being relieved. It was further alleged that he prepared some receipt/bill voucher after making forged signature.

4. On 31.12.1981, the revisionist was appointed as Junior Clerk in the Office of the District Panchayat Raj Officer, Mirzapur. In the month of April, 1982, he was transferred from District Mirzapur and he joined the same post in Block Manjhanpur (then District Allahabad). He was promoted to the post of Accountant in the year 1996 and in the year 1997 he was transferred to District Kaushambi and attached in the office of the District Development Officer, Kaushambi. Ultimately, in the year 2000, he was attached with the office of the District Panchayat Raj Officer, Kaushambi till 17.12.2003. Thereafter, he was relieved from that office and was transferred to the office of Block Development Officer Sarsawa, District Kaushambi and then on 31.12.2022, he retired after attaining the age of superannuation.

5. After registration of F.I.R., the investigation was proceeded and the Investigating Officer interrogated the first informant Mohan Singh Dohare, Kamal Narayan Singh and Chandrama Prasad Pandey. During investigation, the Investigating Officer collected the applications send by one Indra Pal Sonkar mentioning in it that two files were not handed over to him. The Investigating Officer recorded supplementary statement of one Chandrama Prasad Pandey and the first informant. Thereafter, he collected affidavit of Dr. Vinay Kumar Upadhyay and recorded his statement. He also recorded the statements of co-accused Indra Pal Sonkar. In the meanwhile, the Investigating Officer was changed and new Investigating Officer started investigating the matter on 28.05.2006.

6. It is further submitted that the allegations made against the revisionist are totally incorrect and baseless. In the investigation, nothing was found against the revisionist but co-accused Indra Pal Sonkar was found to be guilty. The revisionist in his statement has clearly stated that he was transferred from his post and he handed over the charges to the District Panchayat Raj Officer, Kaushambi on 17.12.2003, including files in question. He also handed over Rs. 11,392/- and Rs. 40,000/- in cash to him. It is further submitted that the Investigating Officer filed a charge-sheet on 24.12.2006 against the revisionist and co-accused Indra Pal Sonkar under Sections 409, 419, 420, 467, 468, 471, 111, 120B I.P.C and the learned Magistrate, took cognizance on 21.02.2007. During investigation, it became quite clear that the said two files, which were stated to have been missing, was received by co-accused Indra Pal Sonkar. Thus, no offence against the revisionist is made out. The files in question were found in almirah of Indra Pal Sonkar when it was opened by the expert before the official concerned. A disciplinary proceedings was also initiated against the revisionist in which he was found innocent and ultimately exonerated on 25.08.2023 on the basis of the fact that the missing files were found in almirah of Indra Pal Sonkar.

7. The next contention of the learned Counsel for the revisionist is that the revisionist had filed an application under Section 482 Cr.P.C., being Application U/s 482 No. 41651 of 2023, which was disposed of by this Court vide order dated 29.11.2023 and a liberty was given to the revisionist to file a discharge application before the Trial Court. The revisionist filed a discharge application before the learned Chief Judicial Magistrate, Kaushambi by submitting all the documents but the learned Magistrate did not consider the said application as well as supporting documents and rejected the same. The learned Magistrate has committed illegality in rejecting the said application and the said order is liable to be set aside and the revision may be allowed.

8. *Per contra*, learned Counsel for opposite party no.2 and learned A.G.A. have stated that the learned Magistrate has not committed any illegality in passing the impugned order because the revisionist neither handed over the charges nor submitted the relevant papers of Rural Development to the concerned Officer after being relieved and he prepared some receipt/ bill voucher by a forged signature. During investigation, the Investigation Officer had recorded the statement of the witnesses and also interrogated the matter in depth. He also collected some documents and filed a charge-sheet against the revisionist. The learned Magistrate took cognizance on the charge-sheet. The revisionist had also filed an application under Section 482 Cr.P.C. before this Court for quashing the charge-sheet dated 24.12.2006, but this Court disposed of that application by stating that a prima facie offence is made out against the revisionist. The revisionist has filed a discharge application with additional documents, which are not the part of the charge-sheet. At the time of hearing on discharge application, learned Magistrate has taken into consideration the Police report and the documents sent with it under Section 173 Cr.P.C. The documents or the defence of the accused cannot be taken into consideration while passing an order on discharge application. Thus, the learned Magistrate has not committed any illegality in passing the impugned order and the revision is liable to be dismissed.

9. As per the fact of the present case, a First Information Report was registered as Case Crime No. 28 of 2004 under Section 409 I.P.C. at Police Station Manjhanpur District Kaushambi with an allegation that the revisionist has not handed over the charges and also not submitted the relevant papers of the Rural Development to the concerned Officer after being relieved. It was further

alleged in the F.I.R. that the revisionist has prepared some receipt/bill voucher after making forged signatures. The Investigating Officer recorded the statement of the witnesses under Section 161 Cr.P.C. He has also interrogated the revisionist and co-accused. During investigation, he collected certain documents and after completion of investigation a charge-sheet was filed on 24.12.2006, under Sections 409, 419, 420, 467, 468, 471, 111, 120B I.P.C, in which the learned Magistrate took cognizance on 21.02.2007.

. The revisionist has filed a discharge application before the Trial Court annexing with it the report of disciplinary inquiry dated 25.08.2023, in which he was exonerated. The learned Magistrate has dismissed the said application stating that at the time of passing of an order on application under Section 239 Cr.P.C., the Police report and the documents annexed along with it would be taken into consideration.

11. Section 239 Cr.P.C. reads as under:

"239. When accused shall be discharged.-?If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

12. As per aforesaid Section, if, upon considering the police report and the documents sent with it under section 173 Cr.P.C. and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge, he shall discharge the accused, it means at the time of passing of an order on application filed under Section 239 Cr.P.C. only the police report and the document submitted along with it would be taken into consideration.

13. In respect of warrant cases triable by Magistrates, instituted on police report, Sections 239 Cr.P.C. and 240 Cr.P.C. are the relevant statutory provisions. Section 239 Cr.P.C. requires the Magistrate to consider on the Police report and the documents sent with it under Section 173, and, if necessary, examine the accused after giving him an opportunity of being heard, if Magistrate considers the charge against the accused to be groundless, the accused is liable to be discharged by recording the reason thereof.

14. As per settled provision of law, at the stage of framing of charge, it is not obligatory for the Judge to consider, in any detail and weigh in a sensitive balance, whether the facts, if proved, would be incompatible with the innocence of the accused or not. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion, at the initial stage of framing of charge, is sufficient to frame the charge and at that event, it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

15. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Sessions under Section 227 Cr.P.C. in a case triable by it; cases instituted upon a police report are

covered by Section 239 Cr.P.C. and cases instituted otherwise then on a police report are dealt with in Section 245 Cr.P.C. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused. Under Section 227 of the Code, the Trial Court is required to discharge the accused if it considers that there is not sufficient ground for proceeding against the accused. However, discharge under Section 239 Cr.P.C. can be ordered when the Magistrate considers the charge against the accused to be groundless. The power to discharge is exercisable under Section 245(1) Cr.P.C. when, the Magistrate considers, for reason to be recorded that no case against the accused has been made out which, if unrebutted, would warrant his conviction.

16. Section 227 Cr.P.C. and Section 239 Cr.P.C. provide for discharge before the recording of the evidence on the basis of police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245 Cr.P.C., on the other hand, is reached only after the evidence referred in Section 244 Cr.P.C. has been taken.

17. Thus, there is difference in the language employed in these provisions. But, notwithstanding these differences, and whichever provision may be applicable, the Court is required at this stage to see that there is a *prima facie* case for proceedings against the accused.

18. It is also settled principle of law that the Magistrate, at the stage of framing charges, has to see whether the facts alleged and sought to be proved by the prosecution *prima facie* disclose the commission of offence on general consideration of the material placed before him by the investigating Officer. It is well settled that at the stage of framing of charge, the defence of the accused cannot be put forth. In other words, it can be said that at the time of framing of charge or taking cognizance, the accused has no right to produce any material.

19. In the present case, an F.I.R. as Case Crime No. 28 of 2004 was registered against the revisionist with an allegation that the revisionist has not handed over the charges and also has not submitted relevant papers of rural development to the concerned Officer, after being relieved. It was further alleged that he prepared some receipt/bill voucher after making forged signature. During investigation, the Investigating Officer recorded the statement of the witnesses under Section 161 Cr.P.C. and also collected the documentary evidence. After completion of investigation, a charge-sheet was filed on 24.12.2006 against the revisionist and co-accused Indra Pal Sonkar under Sections 409, 419, 420, 467, 468, 471, 111, 120B I.P.C. and the learned Magistrate took cognizance on 21.02.2007.

20. At the time of deciding the discharge application, the Court has to see whether a *prima facie* case against the accused is made out or not. In the present case, a *prima facie* case is made out against the revisionist. Moreover, the departmental inquiry, in which the revisionist was stated to be exonerated, was conducted after filing of the charge-sheet and thus, the inquiry report cannot be taken into consideration at the time of deciding the discharge application.

21. Before imparting the order, it is relevant to mention here that in the present case the discharge application filed by the accused was dismissed by the learned Chief Judicial Magistrate,

Kaushambi vide order dated 07.02.2024 but no charge has been framed by the concerned Court against the accused persons till date. This Court has come across with a number of criminal revisions in which the learned Trial Courts, while dismissing the application filed by the accused seeking discharge of any case, are fixing the case for framing of charges after about one month and, in some other cases, the Trial Courts are not framing charges against the accused persons on the pretext that criminal revisions are pending before High Court against the impugned order. This Court has observed in many cases that the Trial Court usually defer final hearing of the cases as soon as the parties prefer an appeal, revision or writ before the superior court, even if no order is passed by the the superior Courts granting stay of further proceedings.

22. It is relevant to reproduce here Sections 227, 228, 239 and 240 Cr.P.C., which reads as under:

***"227. Discharge.-**If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*

***228. Framing of charge.-(1)** If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which?*

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

***239. When accused shall be discharged.-**If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.*

***240. Framing of charge.?(1)** If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and*

which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty

of the offence charged or claims to be tried."

23. As per the above mentioned sections, in case the Sessions Court did not discharge the accused as per Section 227 Cr.P.C. or the learned Magistrate did not found any ground to discharge the accused under Section 239 Cr.P.C., then unless the order rejecting the discharge application was challenged and stayed by the Higher Court, the Sessions Court and the Magistrate Courts are statutory bound to frame charges against the accused under Section 228 Cr.P.C. and 240 Cr.P.C. respectively. It is a settled provision of law that merely filing of criminal revision or criminal appeal against any order, does not amount that the proceedings of the said Court, has been stayed.

24. Upon considering the facts of the present case and on taking into consideration the order passed by the learned Magistrate, this Court is of opinion that the learned Magistrate has not committed any illegality in rejecting the said discharge application. Hence, this revision is liable to be dismissed.

25. Accordingly, this revision is **dismissed**.

26. Let a copy of this judgment be circulated amongst all the District Courts by the Registrar (Compliance) with a direction that the learned District Judges shall impress upon all the Judicial Officers in the Judgeship that in case any discharge application is dismissed by the Trial Court then unless the order rejecting the discharge application is challenged and stayed by the High Court, the Trial Courts are under statutory duty to frame charges against the accused and merely filing of an appeal, revision or even a writ petition against an order or judgment shall not be considered any valid or justifiable ground to say the proceedings of a case unless the superior Court grants stay order of further proceedings.

(2026) 1 ILRA 857
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 28.01.2026

BEFORE

THE HON'BLE SAMIT GOPAL, J.

Criminal Revision No. 2776 of 2013

Rajesh Kukreja

...Revisionist

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Issue pertains to whether a complaint instituted u/s 138 of Negotiable Instruments Act, 1881, by a person who is neither the "payee" nor the "holder in due course" of the dishonoured cheque, is legally maintainable, and consequently, whether the summoning order passed by the Magistrate on such a complaint is sustainable in law..

Headnotes

Negotiable Instruments Act, 1881 - ss. 7, 9, 138, 142 - Indian penal Code, 1860 - ss. 406, 420 - Code of Criminal Procedure, 1973 - ss. 200, 202 - Against summoning order - Complainant - Locus standi - Cognizance of offence - A complaint was instituted by M/s Krishna Hotels and Developers through its partner against the accused for offences u/s 138 of Negotiable Instruments Act, 1881, along with allied provisions of Indian Penal Code, on the allegation that multiple cheques of substantial amounts issued by the accused were dishonoured upon presentation - Notably, the cheques in question were drawn in favour of "Hotel Paradise," whereas the complaint was filed in the name of a different entity, namely M/s Krishna Hotels and Developers - In fact, the complaint should be filed by representative or authorized agent of "Hotel Paradise" - Plea of - The trial court, despite initially raising a query regarding this discrepancy, proceeded to take cognizance and summon the accused - Aggrieved thereby, the accused filed a criminal revision challenging the summoning order primarily on the ground that the complainant lacked locus standi, as it was neither the payee nor the holder in due course of the dishonoured cheques. (E-11)

Held: A complaint u/s 138 Negotiable Instruments Act, 1881 is not maintainable by a third party - It must be filed by the payee or the holder in due course of cheque - An authorized representative of the payee or holder of cheque can initiate proceedings being the power of attorney holder or the authorized signatory of the company but the complaint is still to be in the name of payee or holder of cheque and not in the representatives personal capacity - A third party or a stranger with no legal title to the cheque can not file and institute a complaint - A person who is neither payee nor holder in due course cannot file a complaint even if he is indirectly affected by the transaction - In case of companies or firms, entity is the complainant acting through an authorized person - The opposite party no. 2 had no locus to file the present complaint - The trial court although in its order dated 21.11.2012 had mentioned about the said observation regarding locus of complainant but later on did not consider the same while passing the impugned order summoning the accused/revisionist - Accordingly, criminal revision allowed. [Paras 13, 14]

Case Law Cited

M/s Naresh Potteries v. M/s Aarti Industries and another: 2025 0 INSC 1 - distinguished

List of Acts

Negotiable Instruments Act, 1881; Indian Penal Code, 1860; Code of Criminal Procedure, 1973

List of Keywords

Application u/s 482 Cr.P.C.; Complaint Case; Summoning order; Cognizance; ss. 7, 9, 138, 142 Negotiable Instruments Act, 1881; ss. 406, 420 of Indian Penal Code, 1860; ss. 200, 202 Code of Criminal Procedure, 1973; Representative or authorized agent; Third party or a stranger; Payee nor holder in due course; Dishonour of cheque; Cause of action; Maintainability of complaint; Locus of complainant; Criminal revision allowed; Impugned order quashed.

Case Arising From

REVISIONAL JURISDICTION: Criminal Revision No. - 2776 of 2013

From the Judgment and Order dated 26.7.2013 passed by M.M. VIIIth, Kanpur Nagar in Complaint Case No. 1091/2012.

Appearances for Parties

Adv. for the Revisionist:

L.M. Singh

Adv. for the Opposite Party:

Alok Kumar Yadav, Govt. Advocate

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

1. Heard Sri L.M. Singh, learned counsel for the revisionist, Sri Ankur Kushwaha, Advocate, holding brief of Sri Alok Kumar Yadav, learned counsel for the opposite party no. 2, Sri Ajay Singh, learned A.G.A.-I for the State/opposite party no. 1 and perused the

2. This revision under Section 397/401 Cr.P.C. has been filed by the revisionist - Rajesh Kukreja with the following prayers:-

'It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to set aside the order dated 26.7.2013 passed by M.M. VIIIth, Kanpur Nagar in Complaint Case No. 1091/2012 (M/s. Krishna Hotel Versus Rajesh Kukreja), in the ends of justice.'

3. The facts of the case are that a complaint dated 8.8.2012 was filed by M/s. Krishna Hotels and Developers through its partner Smt. Saroj Dubey wife of Sri Virendra Dubey, against Rajesh Kukreja, Director, Mangalam Restaurant and Hotel Pvt. Ltd., son of Ghanshamdas, for the offence under Section 138 read with 142 of the Negotiable Instruments Act, 1988, Sections 406 and 420 I.P.C. The complainant filed an affidavit dated 8.8.2012 to be read under Section 202 Cr.P.C. as her statement. The trial court vide its order dated 21.11.2012 observed that perusal of the records shows that a complaint has been filed by the M/s Krishna Hotels and Developers through partner Smt. Saroj Dubey whereas cheque nos. 115261, 115262, 115263, 115264, 199008, 199009, 199010, 199011, 199013, 199014 and 199015 all of Rs.2,00,000/- each, dated 15.04.2012 have been drawn in favour of Hotel Paradise whereas the complaint has been filed by M/s. Krishna Hotels and Developers through partner Smt. Saroj Dubey, whereas the complaint had to be filed by Hotel Paradise through its representative. It further directed that the complainant by the next date should clarify the same. Subsequently vide order impugned dated 26.7.2013 passed by the Metropolitan Magistrate, Court No. 8, Kanpur Nagar. The court concerned after considering the complaint, the statement of the complainant under Section 200 Cr.P.C. and that of the witnesses under Section 202 Cr.P.C. came to the conclusion that offence under Section 138 N.I. Act is made out against Rajesh Kukreja and thus summoned him under the said section. The said order is thus under challenge before this Court.

4. Counter affidavit on behalf of the opposite party no.2 dated 16.12.2013 and rejoinder affidavit by the revisionist to the same dated 24.2.2014 have been filed which are on the record.

5. The dispute thus in the present matter relates to cheque nos. 115261, 115262, 115263, 115264, 199008, 199009, 199010, 199011, 199013, 199014 and 199015 all of Rs.2,00,000/- each, dated 15.04.2012, drawn on Bank of India, Karolbagh Branch, New Delhi issued in favour of Hotel Paradise by Mangalam Restaurant & Hotels Pvt. Ltd.

6. The argument in crux of learned counsel for the revisionist is that the proceedings of the present matter were initiated on the basis of a complaint dated 08.08.2012 filed by M/s. Krishna Hotels and Developers through its partner Smt. Saroj Dubey adult wife of Sri Virendra Dubey against the revisionist under the provisions of the Negotiable Instruments Act and Indian Penal Code in which the Court of Metropolitan Magistrate, VIIIth, Kanpur Nagar vide order dated 21.11.2012 directed the complainant to clarify the fact that cheques in issue were drawn in the name of Hotel Paradise but the complaint has been filed by M/s Krishna Hotels and Developers through its partner Smt. Saroj Dubey whereas the said complaint should have been filed by Hotel Paradise or its authorized agent. It is submitted that subsequently trial court concerned vide order the impugned dated 26.07.2013 by observing that Hotel Paradise is a unit of M/s Krishna Hotels and Developers proceeded to summon the applicant for offence under Section 138 of the N.I. Act which is totally illegal and knocks out the entire prosecution as the complainant of the present matter has no locus to initiate the proceedings. It is submitted that thus the order impugned deserves to be set aside.

7. Per contra, learned counsel for the opposite party no.2 opposed the arguments and petition for revision vehemently and submitted that the trial court was fully convinced with the facts of the case and thus took cognizance on the complaint after inquiry and summoned the accused/revisionist. It is submitted while placing para-6 of the counter affidavit that Hotel Paradise was given for marketing purpose on the agreement that 50% of the total annual turn over would be paid to the opposite party no. 2. It is further submitted that the opposite party no. 2 is the partner of Hotel Paradise who entered into an oral contract with the revisionist for business purposes and thus she has a locus to file the complaint. Learned counsel for the opposite party no. 2 has placed the judgement of the Apex Court in the case of *M/s Naresh Potteries vs. M/s Aarti Industries and another: 2025 0 INSC 1*, (page-14) and has submitted that the Apex Court has held that if there is a dispute with regards to the person prosecuting the complaint not being authorized to do so, it would be open for the accused to dispute the position and establish the same during the course of the trial and thus the correct situation would be that the revisionist should take up the said objection at the stage of trial to be decided by the trial court. It is submitted that as such the present revision be dismissed.

8. After having heard learned counsels for the parties and perusing the records, it is evident that the dispute in the present matter relates to cheque nos. 115261, 115262, 115263, 115264, 199008, 199009, 199010, 199011, 199013, 199014 and 199015 all of Rs.2,00,000/- each, dated 15.04.2012, which were issued from Bank of India, Karolbagh Branch, New Delhi in favour of Hotel Paradise. The said cheques stood dishonored. A complaint regarding the same was filed on which initially the trial court raised a query regarding the locus of the complainant but later on took cognizance and summoned the accused/revisionist vide the order impugned. The same is under challenge before this Court.

9. The arguments of learned counsel for the revisionist is with regards to locus of the complainant/opposite party no. 2 to file the said complaint. The complaint in the present matter has been filed by M/s. Krishna Hotels and Developers through its partner Smt. Saroj Dubey wife of Sri Virendra Dubey, against Rajesh Kukreja, Director, Mangalam Restaurant and Hotel Pvt. Ltd., son of Ghanshamdas, mentioning therein in para-1 of the same that she is the owner of M/s. Paradise

Hotel and Restaurant, situated at House No.16/62, Civil Lines, Kanpur. The Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I. Act') in its Section 142 states regarding cognizance of offence. The same reads as under:-

'Cognizance of offences.

142. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),'

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

(c) [Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(d) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.'

10. Section 7 of the N.I. Act describes 'Drawer', 'Drawee', 'Drawee in case of need', 'Acceptor', 'Acceptor for honour' and 'Payee'. The same reads as under:-

'7. "Drawer", "Drawee"- The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called the "drawee".

"Drawee in case of need"- When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need".

"Acceptor"- After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor".

"Acceptor for honour"-When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts it supra protest for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour".

"Payee"-The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".'

11. Section 9 of the N.I. Act defines 'holder in due course' which reads as under:-

'9. 'Holder in due course'."Holder in due course' means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if 1[payable to order,]

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.'

12. In so far as the judgement relied upon by learned counsel for the opposite party no. 2 in the case of **M/s Naresh Potteries (Supra)** is concerned, the facts therein are distinguishable with that of the present case. Perusal of para-26 of the said judgement goes to show that in the said case the complaint was filed by M/s Naresh Potteries through its Manager and Authority-letter holder. The cheque in the said matter was issued from the account of M/s Aarti Industries in the name of M/s Naresh Potteries and thus Naresh Potteries was the holder of the cheque in due course. The fact thus in the said matter are clearly distinguishable with that of the present matter and as such the said judgement would thus not be of any help to the opposite party no. 2 in the present matter.

13. A complaint under Section 138 of the Negotiable Instruments Act, 1881 is not maintainable by a third party. It must be filed by the payee or the holder in due course of cheque. Section 138 of the Act creates the offence of cheque dishonour. Section 142(1)(a) of the Act states clearly that a complaint can be made only by a payee or the holder of cheque in due course. The payee is the person in whose favour cheque is drawn. A holder in due course is a person who lawfully receives the cheque for consideration and becomes entitled to the amount mentioned therein (Section 7 and 9 of the Act). An authorized representative of the payee or holder of cheque can initiate proceedings being the power of attorney holder or the authorized signatory of the company but the complaint is still to be in the name of payee or holder of the cheque and not in the representatives personal capacity. A third party or a stranger with no legal title to the cheque can not file and institute a complaint. A person who is neither payee nor holder in due course cannot file a complaint even if he is indirectly affected by the transaction. A complaint through a third party being an attorney holder or a manager is valid only if they are duly authorized and the complainant remains the payee or holder of the cheque. In case of companies or firms, entity is the complainant acting through an authorized person. Thus conclusion which can be drawn is that under the Negotiable Instruments Act a complaint by a third party in their own name is not maintainable unless that third party qualifies as holder in due course or acts merely as an authorized representative of the payee or the holder of the cheque.

14. From the discussion as above, it is clear that the opposite party no. 2 had no locus to file the present complaint. The trial court although in its order dated 21.11.2012 had mentioned about the said observation regarding locus of the complainant but later on did not consider the same while passing the order impugned summoning the accused/revisionist.

15. The order impugned dated 26.7.2012 passed by the Metropolitan Magistrate, Court No. 8, Kanpur Nagar in Complaint Case No. 1091/2012 (M/s. Krishna Hotel Versus Rajesh Kukreja) is hereby quashed.

16. The present revision under Sections 397/401 Cr.P.C. is allowed.

17. Pending application(s), if any, shall stand disposed of.

(2026) 1 ILRA 863
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.01.2026

BEFORE

THE HON'BLE SANJIV KUMAR, J.

Criminal Revision No. 5100 of 2022

Brijmohan

...Revisionist

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Issue pertains to **whether the impugned order passed by the Family Court u/s 125 Cr.P.C., granting maintenance to the wife, suffers from any perversity, illegality, warranting interference in exercise of revisional jurisdiction, particularly in light of husband's contentions regarding alleged desertion by the wife, her purported independent income, and his asserted lack of sufficient means.**

Headnotes

Indian Penal Code, 1860 - ss. 498A, 323, 504, 506 - Code of Criminal Procedure, 1973 - s. 125 - Dowry Prohibition Act, 1961 - ss. 3/4 - Maintenance - Quantum of - Revisional jurisdiction - Scope of - The criminal revision arose out of proceedings u/s 125 Cr.P.C., wherein opposite party/wife instituted a maintenance application against her husband/revisionist before the Family Court asserting that their marriage was solemnized on 17.02.2012 according to Hindu rites and that subsequent to marriage she was subjected to physical and mental cruelty on account of dowry demands, ultimately being ousted from her matrimonial home on 23.07.2013 - She further alleged that an FIR under various sections of IPC and sections of Dowry Prohibition Act had been lodged against the husband and his family members and that she had no independent source of income to sustain herself, whereas the husband was possessed of sufficient means - The husband denied the allegations, contending that she had deserted him without sufficient cause and that she was educated and earning through tuition and tailoring work, thereby disentitling her from maintenance - Upon appreciation of oral and documentary evidence, the Family Court partly allowed the application and awarded maintenance, which order was assailed by the husband before the High Court. (E-11)

Held: The revisionist has sufficient source of income and he is liable to maintain his wife/opposite party no.2 and the finding of the learned Trial Court is perfectly justified and does not suffer from any infirmity or illegality - A perusal of the impugned order shows that opposite party no.2 was ordered maintenance of Rs.3000/- per months from the date of application up to the date of order and Rs.5000/- per month from the date of order - Looking into the status of both the parties, the maintenance amount awarded by Trial Court is not excessive - Thus, the impugned order does not suffer from any perversity or illegality or infirmity - Hence, no interference is warranted - As a result, the revision, being devoid of merits, is dismissed and the impugned order dated 06.09.2022 is affirmed - Accordingly, the interim order passed on 04.04.2023 is vacated. [Paras 34 to 36]

Case Law Cited

Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke & Another, (2015) 3 SCC 123; *State of Kerala v. Puttumana Illath Jathavedan Namboodiri* (1999) 2 SCC 452; *Dukhtar Jahan v. Mohd. Farooq* (1987) 1 SCC 624; *Vimla (K.) v. Veeraswamy (K.)*, (1991) 2 SCC 375; *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316; *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353; *Manish Jain v. Akansha Jain*, (2017) 15 SCC 801; *Reema Salkan v. Sumer Singh Salkan* (2019) 12 SCC 303; *Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan and Another*, AIR (1981) SC 1982; - referred to

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Dowry Prohibition Act, 1961

List of Keywords

Criminal Revision; Family Court; Maintenance Case; ss. 125, 125(3) Cr.P.C.; Interim maintenance; Monthly allowance; Date of application; Matrimonial home; Physical and mental torture; Additional dowry; Medical examination; Injury report; FIR; Charge-sheet; False and concocted allegations; Recovery warrant; Mediation; Mediation and Conciliation Centre; Interim order; Perversity; Illegality; Infirmary; Supervisory jurisdiction; Neglect or refusal to maintain; Sufficient means; Unable to maintain herself; Able bodied person; Voluntary desertion; Sufficient cause; Adultery; Mutual consent; Cancellation of order; Sale deed; Ancestral property; Co-sharers; Agricultural land; Agricultural; Quantum of maintenance; Execution of warrant; Imprisonment; Revision dismissed.

Case Arising From

REVISIONAL JURISDICTION: Criminal Revision No. - 5100 of 2022

From the Judgment and Order dated 06.09.2022, passed by learned Additional Principal Judge, Court No.1, Family Court, Firozabad in Maintenance Case No. 1907 of 2014.

Appearances for Parties

Advs. for the Revisionist:

Akhilesh Singh, Ram Pravesh Yadav, Vinay Kumar

Advs. for the Opposite Party:

Dinesh Rai, G.A., Sanjay Yadav

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

1. The instant Criminal Revision has been filed on behalf of Brijmohan against the judgment and order dated 06.09.2022, passed by learned Additional Principal Judge, Court No.1, Family Court, Firozabad in Maintenance Case No. 1907 of 2014 (Smt. Dhirjesh Vs. Brijmohan), under Section 125 Cr.P.C. Police Station Makkhanpur, District Firozabad.

2. In the impugned judgment and order, the learned trial court allowed maintenance application filed under Section 125 Cr.P.C. by Smt. Dhirjesh and directed the revisionist Brijmohan to pay a sum of Rs.3000/- per month as maintenance to her from the date of application and Rs.5000/- per month from the date of order.

3. Brief facts of the case are that Smt. Dhirjesh filed application under Section 125 Cr.P.C. against the revisionist Brijmohan, alleging therein that her marriage with Brijmohan was solemnized on 17.02.2012 as per Hindu rites. Her in-laws were not satisfied with the dowry and demanded three lakhs in the form of additional dowry and started committing physical and mental torture. Brijmohan did not maintain physical relations with her. On 23.07.2013, she was badly

beaten by her husband and in-laws for additional demand of dowry. Her relatives took her to hospital at Shikohabad, District Firozabad for treatment, where she was medically examined. Her father lodged a criminal case regarding torture for want of dowry and in that case the police has filed charge-sheet before the competent court. The said case is pending at the stage of trial.

4. It is further alleged that her husband thrown her out of the her matrimonial home and, since then, has not taken her care and not willing to keep her with him. She is living at her father's home. It is further alleged that due to cruelty committed by her in-laws, she has not been able to apply for a job. Her husband is B.Sc. graduate and his father is retired from Railways. The husband of opposite party no. 2 has thirty bigha of agricultural land besides two beer shops and four wine shops. Brijmohan earns about Rs.1,00,000/- per month and she wants Rs.20,000/- per month from her husband for her maintenance, studies and to apply for a job.

5. The revisionist, Brijmohan, appeared before the court and filed his written submissions denying all the allegations levelled against him and stated that the allegations against him are false and concocted. Smt. Dhirjesh always quarrels with him and his family members and wanted partition to live separately from his parents. He has no licence to run any wine shop. Further, he has no business. His father has some land whereas Smt. Dhirjesh is engaged in making bangles and kadas. She is a graduate women and earns about Rs.10,000/- per month from tuition and sewing work, therefore, she is in no need to get any maintenance, as she is able to maintain herself. Therefore, the application be rejected.

6. After exchange of pleadings, Smt. Dhirjesh appeared in witness box and examined herself as A.P.W. 1 and produced Prem Shankar as A.P.W. 2. Besides this, she also filed some documentary evidence in the form of copy of FIR, her own affidavits, photo-copy of four wheeler R.C. registered in the name of Brij Mohan, photo-copy of her bank account, copy of sale deed and injury report et cetera.

7. The revisionist Brijmohan examined himself as O.P.W. 1 and in his documentary evidence, he has filed copy of ex-parte judgment dated 04.04.2016, copy of order sheet, copy of recovery warrant issued in Misc. Case No. 108 of 2016, under Section 125(3) Cr.P.C., photograph C.D., Challani order and his own affidavit et cetera.

8. After hearing the arguments of both the parties and examining the record, the learned court came to the conclusion that, admittedly, both the parties are married to each other and the applicant Dhirjesh is unable to maintain herself. It was also observed that opposite party Brijmohan has means to maintain his wife Smt. Dhirjesh. It was also observed that due to mental and physical torture committed, Smt. Dhirjesh has reasonable and sufficient cause to live separately from her husband and, in view of the above, the maintenance application filed under Section 125 Cr.P.C. was partly allowed and interim order regarding maintenance passed against the revisionist Brijmohan

9. Feeling aggrieved, this revision has been filed on the ground that the learned court has not appreciated the evidence and material in its right perspective. Smt. Dhirjesh herself left the house out of her own sweet will without any reasonable cause. She deserted the revisionist without any

sufficient cause and thus, is not liable to claim maintenance. It is also alleged that the maintenance amount granted is excessive. The revisionist is engaged in agricultural work. It is further submitted that the court has not assigned any specific reason in granting maintenance from the date of filing of application. Thus, the impugned order is not sustainable and liable to be set aside.

10. Learned counsel for opposite party no.2 has appeared and filed a counter affidavit on her behalf, wherein she has denied the submissions of learned counsel for the revisionist. Learned counsel for the revisionist has filed a rejoinder affidavit.

11. During the course of hearing, this Court sent the matter for mediation before the Mediation and Conciliation Centre, High Court, Allahabad but the mediation failed. Thereafter, on 17.02.2025, it was observed that the the revisionist had obtained interim order on 04.04.2023 and, in spite of mediation proceedings having been failed, is not turning up to argue this matter on merits.

12. On the last date i.e. 17.10.2025 also, none appeared on behalf of the revisionist. On 24.01.2025, it was observed by this Court that if the learned counsel appearing on behalf of the revisionist does not appear, this Court will proceed to hear and decide the matter finally, even in his absence. Even today, nobody appears on behalf for the revisionist to press this revision, as such, learned AGA and learned counsel for opposite party no.2 are heard and this revision is decided on merits in the absence of learned counsel for the revisionist.

13. With regard to scope of exercise of revisional jurisdiction, the Hon'ble Supreme Court in '*Sanjaysinh Ramrao Chavan vs Dattatray Gulabrao Phalke & Another*, (2015) 3 SCC 123, held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate, unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material. The order cannot be set aside merely on the ground that another view is possible.

14. In the case of *State of Kerala v. Puttumana Illath Jathavedan Namboodiri* (1999) 2 SCC 452, while considering the scope of the revisional jurisdiction of the High Court, the Hon'ble Supreme Court held that the jurisdiction is one of supervisory, exercised for correcting the miscarriage of justice, but the said revisional power cannot be equated with the power of an appellate Court, nor can it be treated even as a second appellate jurisdiction ordinarily, therefore, it may not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same, when the evidence has already been appreciated by the Magistrate as well as by the Sessions Judge.

15. This criminal revision has been preferred by the revisionist against the order passed under Section 125 Cr.P.C., whereby maintenance application of opposite party no.2/Dhirjesh was allowed.

16. The Hon'ble Supreme Court has reiterated the principle of law as to how the proceedings under Section 125 Cr.P.C. have to be dealt with by the Court. In *Dukhtar Jahan v. Mohd. Farooq* (1987) 1 SCC 624, the Hon'ble Supreme Court held that proceedings under Section 125 Cr.P.C. of the Code, it must be remembered, are of summary nature and intended to enable destitute wives

and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner.

17. A three Judge Bench in *Vimla (K.) v. Veeraswamy (K.)*, (1991) 2 SCC 375, while discussing about the basic purpose under Section 125 of the Code, opined that Section 125 of the Cr.P.C. is meant to achieve a social purpose and the object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wives.

18. In *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316, it has been held that the object of maintenance proceedings is not to punish the husband for his past neglect, but to prevent 'vagrancy and destitution' by providing a speedy remedy for food, clothing, and shelter.

19. The provisions of Section 125 Cr.P.C. is reproduced hereunder for ready reference:

Section 125 Cr.P.C.-Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain'

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

*a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate' I * * * as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:*

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.--For the purposes of this Chapter,

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

[(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each months'4[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.--If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wifes refusal to live with him.

(4) No wife shall be entitled to receive an'5[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section in living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

20. Further in ***Bhuwan Mohan Singh Vs. Meena, (2015) 6 SCC 353***, the Hon'ble Supreme Court held that Section 125 Cr.P.C. was conceived to ameliorate the agony, anguish, financial suffering of a women, who had left her matrimonial home, so that some suitable arrangements can be made by the Court and she can sustain herself and also her children, if they are with her. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able bodied and could not avoid his obligation, except on any legally permissible ground mentioned in the Statute.

21. In ***Manish Jain Vs. Akansha Jain, (2017) 15 SCC 801***, the Hon'ble Supreme Court held that the financial position of the parents of the applicant wife would not be material while determining the quantum of maintenance. It is not an answer to a maintenance application that his wife is educated and can support herself. The plea of the husband that he does not possess any source of income ipso facto does not absolve of him to main his wife, if he is able bodied and has educational qualification (***Reema Salkan Vs. Sumer Singh Salkan (2019) 12 SCC 303***).

22. In view of the above legal position, the impugned order is to be examined to determine whether it suffers from any perversity or illegality.

23. The revisionist/husband has raised three points, assailing the impugned order. Firstly, he has raised the point that opposite party no.2/Smt. Dhirjesh voluntarily deserted the revisionist and, therefore, is not entitled for maintenance. Secondly, the revisionist submits that opposite party no.2 has sufficient means to maintain herself. Thirdly, he contends that he has no source of income to maintain his wife.

24. So far as the first point is concerned, it is not in dispute that the revisionist/Brijmohan and opposite party no.2/Smt. Dhirjesh are legally wedded husband and wife. According to opposite party no.2, after the marriage, she was thrown away from her matrimonial home and, on account of torture committed upon her, she sustained injuries and was medically examined. Her father had lodged an FIR registered vide Case Crime No. 606 of 2013, under Section 498A, 323, 504, 506 IPC and Section 3/4 of the Dowry Prohibition Act, 1961, against the revisionist and his family members. The Police, after investigation, have filed charge-sheet in the said crime, which is pending at the stage of trial. Opposite party no.2 has stated that due to the torture of her husband and in-laws, she is now residing at her parental house. In support of this, she has given her statement on oath and has filed copy of charge-sheet.

25. The revisionist has not denied the fact that the above criminal case was lodged against him and his family members, but has submitted that it was lodged on false and concocted facts.

26. In ***Sirajmohmedkhan Janmohamadkhan Vs. Hafizunnisa Yasinkhan and Another, AIR (1981) SC 1982***, it has been held that if the wife is being tortured for want of dowry or due to the conduct of husband, there is apprehension to the wife that she may suffer injury, then it is valid ground for the wife to live separately from her husband.

27. In the instant case, the learned Trial Court, after considering the evidence on record and the legal position, held that there are valid grounds for the wife to live separately from her husband.

The revisionist has not filed any concrete evidence to prove that opposite party no.2 had voluntarily deserted him of her own freewill. Therefore, the finding recorded by the Trial Court does not suffer from any perversity or infirmity.

28. With regard to the second point, it is argued on behalf of the revisionist that opposite party no.2 is a post-graduate, having passed M.A. It is further argued that she makes bangles and kada moreover, she gives tuition and also performs tailor work, from which she earns Rs.10,000/- per month and therefore, she is in no need of maintenance from the revisionist. Opposite party no.2 has denied this fact and said that she has no income to maintain herself. The revisionist has not filed any evidence with regard to alleged income of opposite party no.2.

29. In view of the above, the learned Trial Court held that opposite party no.2 has no source of income to maintain herself, and this view of the Trial Court also does not suffer from any infirmity.

30. Lastly, it is argued on behalf of the revisionist that he has no income to maintain opposite party no.2. On the other hand, it is alleged on behalf of opposite party no.2 that the revisionist is graduate having passed B.Sc. His father has thirty bigha of land, besides this, the revisionist has four liquor shops and his monthly income is about Rs.1,00,000/- per month.

31. The revisionist has denied these facts, but has admitted that he has four bigha of land, upon which he does agricultural work. He has also admitted that he sits at his brothers shop and earns Rs.100-150 per day. He has also admitted that he has ancestral property in his name along with three other co-sharers. The revisionist before the Trial Court has not claimed himself as disabled to maintain himself and his wife, however, it is before this Court that the revisionist has filed some prescriptions and claimed that he is ill and thus, unable to earn. From the perusal of these prescriptions, it appears that the revisionist was suffering from headache and given some prescription. These medical papers do not show that the revisionist suffers from any such disease, which prevents him in doing any physical labour work. Thus, the revisionist is able bodied person and, being so, he is liable to maintain his wife.

32. Opposite party no.2, in her counter affidavit, has alleged that during the pendency of this criminal revision, the revisionist had gifted some of his property to her to avoid paying maintenance and also stated that during the pendency of this criminal revision, the revisionist had purchased a commercial property along with his brother. Opposite party no.2 has filed a copy of the sale deed. The sale deed is annexed as Annexure No.3 to her counter affidavit. In support of her claim, the revisionist has filed a rejoinder affidavit, but has not denied this fact in it.

33. Opposite party no.2 has claimed that, in view of the order of the interim maintenance of this Court, the revisionist has paid maintenance amount to the opposite party no.2, which further substantiates the claim of opposite party no.2 that the revisionist has sufficient means to pay maintenance to opposite party no.2.

34. In view of the above, the revisionist has sufficient source of income and he is liable to maintain his wife/opposite party no.2 and the finding of the learned trial Court in this regard is perfectly justified and does not suffer from any infirmity or illegality.

35. A perusal of the impugned order shows that opposite party no.2 was ordered maintenance of Rs.3000/- per months from the date of application up to the date of order and Rs.5000/- per month from the date of order.

36. Looking into the status of both the parties, the above maintenance amount awarded by Trial Court is not excessive. Thus, in view of the above discussion, the impugned order does not suffer from any perversity or illegality or infirmity. Hence, no interference is warranted by this Court. As a result, this revision, being devoid of merits, is **dismissed** and the impugned order dated 06.09.2022 is hereby affirmed. Accordingly, the interim order passed by this Court on 04.04.2023 is vacated.

(2026) 1 ILRA 871
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.01.2026

BEFORE

THE HON'BLE ABDUL SHAHID, J.

Criminal Revision No. 7290 of 2025

Akash Yadav

...Revisionist

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Issue pertains to whether the learned trial court committed any illegality or material irregularity in rejecting the discharge application of accused in a prosecution u/s 376 IPC and ss. 5/6 of POCSO Act, particularly in light of alleged contradictions regarding the age of the prosecutrix, the medical opinion suggesting an age approximating majority, the reliance upon educational records to determine minority, the plea of consensual relationship, and the absence of injuries at a stage where the matter was confined to consideration of framing of charge and not appreciation of evidence on merits.

Headnotes

Indian Penal Code, 1860 - s. 376 - The Protection of Children From Sexual Offences Act, 2012 - ss. 5/6 - Code of Criminal Procedure, 1973 - ss. 161, 164 - Discharge application - Rejection of - Framing of charge - Scope of - According to the prosecution case, as emerging from first information report lodged by informant - father of prosecutrix, was that the accused had enticed away and committed sexual assault upon the minor victim - During investigation, statements of prosecutrix u/ss. 161 and 164 Cr.P.C. were recorded, and medical examination was conducted - The age of prosecutrix was determined primarily on the basis of her educational records, which indicated that she was below eighteen years of age at the time of alleged occurrence, though the medical opinion assessed her age to be near about majority - The accused, asserting that the relationship was consensual and disputing the minority of prosecutrix, moved an application seeking discharge on the ground that no prima facie case was made out, however, the trial court, upon consideration of material collected during investigation, rejected the said application, leading to filing of criminal revision before the High Court.(E-11)

Held: After perusing the impugned order, it appears that the learned trial court had mentioned the name of the victim - It is not appreciable - It is absolutely clear that the disclosure of the identity can be permitted by the special court only when the same is in the interest of the child and in no other circumstances - The Court was of the view that the disclosure of the name of the child to make the child a sample of protest cannot normally be treated to be in the interest of the child - There are sufficient ingredients of the evidence available before the learned court below and he has rightly rejected the application of discharge of accused-revisionist - There is neither any illegality nor irregularity in impugned order dated 20.9.2025 - Accordingly, the criminal revision is dismissed. [Paras 8, 12, 13]

Case Law Cited

Rohini and another v. State of U.P. and others, **2025 LawSuit (All) 1263**; *P. Yuvaprakash v. State Rep. By Inspector of Police in Criminal Appeal No. 1898 of 2023 decided on 18.7.2023*; *Zakir Shaikh v. State of U.P.*, **2015 (90) A.C.C. 901**; *Irfan Vs. State of U.P.*, **Criminal Appeal No. 1594 of 2017**; *Vijay alias Chinee v. State of M.P.*, **(2010) 8 SCC 191**; *Raju alis Umakant v. State of M.P.*, **2025 SCC OnLine SC 997**; *Nipun Saxena and another v. Union of India and others*, **reported in (2019) 2 Supreme Court Cases 703**; *Kinnori Ghosh and another v. Union of India and others*, **Writ Petition (Civil) Diary No.(s) 37158 of 2024**; referred to

List of Acts

Indian Penal Code, 1860; The Protection of Children From Sexual Offences Act, 2012; Code of Criminal Procedure, 1973

List of Keywords

Criminal Revision; Application for discharge; Rejected; Special Judge (POCSO Act); s. 376 IPC; ss. 5/6 of POCSO Act; First Information Report; Investigation; Framing of charge; Statements u/ss. 161 and 164 Cr.P.C.; Age of prosecutrix; Medical examination report; Age determination test; Date of Birth; High School certificate; School Transfer certificate; College record; Status of Minor victim/prosecutrix; Consensual relationship plea; Absence of injuries; Appreciation of evidence; Illegality nor irregularity; Dismissed; Trial to proceed in accordance with law.

Case Arising From

REVISIONAL JURISDICTION: Criminal Revision No. - 7290 of 2025

From the Judgment and Order dated 20.9.2025 passed by Addl. District & Sessions Judge, POCSO Act, (Exclusive) Jaunpur in S.S.T. No. 124 of 2024 arising out of Case Crime No. 78 of 2024, P.S. Mugrbadshahpur, District Jaunpur.

Appearances for Parties

Advs. for the Revisionist:

Prem Prakash Yadav, Satya Prakash Yadav

Adv. for the Opposite Party:

G.A.

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

1. Heard Sri Prem Prakash Yadav, learned counsel for the revisionist and learned A.G.A. for the State. None is present for the Opposite Party No. 2 despite service of notice.

2. The instant Criminal Revision has been preferred against the impugned judgment and order dated 20.9.2025 passed by the Addl. District & Sessions Judge, POCSO Act, (Exclusive) Jaunpur

in S.S.T. No. 124 of 2024 (State Vs. Akash Yadav, arising out of Case Crime No. 78 of 2024, under Section 376 IPC and Section 5/6 POCSO Act, P.S. Muqrbadshahpur, District Jaunpur.

3. Learned counsel for the revisionist has submitted that the learned trial court has ignored the statement of the prosecutrix recorded under Section 161 Cr.P.C. and 164 Cr.P.C. which shows material contradictions regarding the alleged age of the prosecutrix. The medical report of the prosecutrix as stated, the age of the prosecutrix as approximately 18 years on the date of medical examination, although her age was 18 plus (1-2) is equal to 19-20 years. This contradicts the school certificate which suggest her date of birth dated 20.11.2007, mentioning her age nearly 18 years at the time of the alleged incident i.e. on 6.3.2024. It creates a doubt as to her minor status under the POCSO Act.

4. Learned trial court while rejecting the discharge application of the revisionist has ignored the documents suggested prior to consensual relationship between them. The statement of the prosecutrix itself shows that she had met with him 3-4 times before the incident. The rejection of the discharge application had not adequately been considered that voluntarily relationship between the parties, close to the age of majority neither comes under the POCSO Act nor under Section 376 IPC is made out where the victim is major and the parties had entered into consensual relationship.

5. Learned counsel for the revisionist relied on the law laid down by the Division Bench of this Court in the case of **Rohini and another Vs. State of U.P. and others, 2025 LawSuit (All) 1263**. It is passed in the Habeas Corpus writ petition. In para-25 of the aforesaid case, the School Transfer Certificate was produced to prove the age of the child. The Hon'ble Supreme Court has held that the School Transfer Certificate cannot be relied upon to determine the age of the child under the Act of 2015. In this context, the observation of the Hon'ble Supreme Court in Para Nos. 14,18 and 19 of the aforesaid judgment are reproduced below:-

[25] In the aforesaid case, the school transfer certificate was produced to prove the age of the child. The Supreme Court held that a school transfer certificate cannot be relied upon to determine the age of child under the Act, 2015. In this context, the observation of the Supreme Court in paragraph nos. 14, 18 and 19 of the aforesaid judgment are reproduced below:-

"14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997.

....

....

....

Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

18. Reverting to the facts of this case, the headmaster of M's School, CW-1, was summoned by the court and produced a Transfer Certificate (Ex.C-1). This witness produced a Transfer Certificate Register containing M's name. He deposed that she had studied in the school for one year, i.e., 2009-10 and that the date of birth was based on the basis of the record sheet given by the school where she studied in the 7th standard. DW-2 TMT Poongothoi, Headmaster of Chinnasoalipalayam Panchayat School, answered the summons served by the court and deposed that 'M' had joined her school with effect from 03.04.2002 and that her date of birth was recorded as 11.07.1997. She admitted that though the date of birth was based on the birth certificate, it would normally be recorded on the basis of horoscope. She conceded to no knowledge about the basis on which the document pertaining to the date of birth was recorded. It is stated earlier on the same issue, i.e., the date of birth, Thiru Prakasam, DW-3 stated that the birth register pertaining to the year 1997 was not available in the record room of his office.

19. It is clear from the above narrative that none of the documents produced during the trial answered the description of "the date of birth certificate from the school" or "the matriculation or equivalent certificate" from the concerned examination board or certificate by a corporation, municipal authority or a Panchayat. In these circumstances, it was incumbent for the prosecution to prove through acceptable medical tests/examination that the victim's age was below 18 years as per Section 94(2)(iii) of the JJ Act. PW-9, Dr. Thenmozhi, Chief Civil Doctor and Radiologist at the General Hospital at Vellore, produced the X-ray reports and deposed that in terms of the examination of M, a certificate was issued stating "that the age of the said girl would be more than 18 years and less 2015 than 20 years". In the cross-examination, she admitted that M's age could be taken as 19 years. However, the High Court rejected this evidence, saying that "when the precise date of birth is available from out of the school records, the approximate age estimated by the medical expert cannot be the determining factor". This finding is, in this court's considered view, incorrect and erroneous. As held earlier, the documents produced, i.e., a transfer certificate and extracts of the admission register, are not what Section 94 (2) (i) mandates; nor are they in accord with Section 94 (2) (ii) because DW-1 clearly deposed that there were no records relating to the birth of the victim, M. In these circumstances, the only piece of evidence, accorded with Section 94 of the JJ Act was the medical ossification test, based on several X-Rays of the victim, and on the basis of which PW-9 made her statement. She explained the details regarding examination of the victim's bones, stage of their development and opined that she was between 18-20 years; in cross-examination she said that the age might be 19 years. Given all these circumstances, this court is of the opinion that the result of the ossification or bone test was the most authentic evidence, corroborated by the examining doctor, PW-9."

6. Learned counsel for the revisionist has also relied upon the law laid down by the Hon'ble Supreme Court in the case of **P. Yuvaprakash Vs. State Rep. By Inspector of Police in**

Criminal Appeal No. 1898 of 2023 decided on 18.7.2023. The important aspect has been held as follows:-

"(1) It is only when there is penetrative sexual assault which implies sexual contact with or without consent of minor victim, that offences under POCSO Act are committed.

(2) Only in absence of birth certificate, age shall be determined by Ossification Test or any other latest medical age determination test conducted on orders of Committee or Board."

Whereas, in the present case, the trial is yet to begin. The application for the discharge has been rejected by the trial court. The final adjudication on the merit of the case would be held at the stage of trial. Opposite Party No. 2/ complainant had filed the objection against the application for discharge that he is the complainant. He is the father of the victim. Victim has passed Class-10th in the 2023-2024 from Sarvajanik Inter College, Mungra Badshahpur, District Jaunpur. The transfer certificate is available in the file. The date of birth, as per record, of the victim is 20.11.2007. The incident is dated 6.3.2024 hence, at the time of the incident, the age of the victim was 16 years, 3 months and 16 days. The victim had recorded her statement under Section 161 Cr.P.C. and she has stated herself that she studies in Sarvajanik Inter College, Mungra Badshahpur, District Jaunpur. She told her date of birth as 20.11.2007. She had also told that the revisionist had called her on phone several times and he made physical relationship with her. In her statement under Section 164 Cr.P.C. she supported the prosecution story. The complainant further objected that in the availability of the High School Certificate where the age of victim is 16 years at the time of incident, hence there is no reason for the admissibility of the local report, if any, at the stage of framing of charge. The victim is High School pass. The incident is dated 6.3.2024, whereas the medical examination of the victim took place on 15.3.2024. In the absence of any injuries on the private part of the victim, it could not be a reason that no offence of rape has been committed.

7. During the investigation, statement of Principal of Sarvajanik Inter College, Mungra Badshahpur, District Jaunpur had also been recorded and he verified that the date of birth of the victim, as per the college record, is 20.11.2007.

8. The trial court had passed a detailed, reasoned and speaking order and refused to discharge the revisionist-accused. The learned trial court had relied upon the educational documents of the victim wherein her date of birth is 20.11.2007 and the incident is dated 6.3.2024. The victim had herself stated her age as 16 years in her statement under Sections 161 and 164 Cr.P.C.. She had recorded her statement that the revisionist had called her on phone and makes the physical relationship with her after removing her cloths.

9. The learned trial court had specifically held that it is settled law that at the stage of framing of the charge, meticulous appreciation of the evidence is not permissible. He has further relied upon the law laid down by this Court in the case of **Zakir Shaikh Vs. State of U.P., 2015 (90) A.C.C. 901** has held that if there is reasonable suspicion on the basis of the material available and collected during the investigation, it is sufficient for framing of the charge. It is held by the Division Bench of this Court in **Criminal Appeal No. 1594 of 2017 (Irfan Vs. State of U.P.)**. In para-75 of the said judgment it has been held that the injury to the private part of the victim is not always necessary as

evidence, to establish the offence of rape. Learned Co-ordinate Bench of this Court had also referred on this issue the law laid down by the Hon'ble Supreme Court in **Vijay alias Chinev v. State of M.P., (2010) 8 SCC 191**, and *Raju alis Umakant Vs. State of M.P.*, 2025 SCC OnLine SC 997 also a case of gang-rape, it was observed by the Supreme Court:

"Injury on the person of the prosecutrix

25. In Gurcharan Singh v. State of Haryana [(1972) 2 SCC 749 : 1972 SCC (Cri) 793 : AIR 1972 SC 2661] this Court has held that : (SCC p. 753, para 8) the absence of injury or mark of violence on the private part on the person of the prosecutrix is of no consequence when the prosecutrix is minor and would merely suggest want of violent resistance on the part of the prosecutrix. Further absence of violence or stiff resistance in the present case may as well suggest helpless surrender to the inevitable due to sheer timidity. In any event, her consent would not take the case out of the definition of rape.

26. In Devinder Singh v. State of H.P. [(2003) 11 SCC 488 : 2004 SCC (Cri) 185] a similar issue was considered by this Court and the Court took into consideration the relevant evidence wherein rape was alleged to have been committed by five persons. No injury was found on the body of the prosecutrix. There was no matting on the pubic hair with discharge and no injury was found on the genital areas. However, it was found that the prosecutrix was used to sexual intercourse. This Court held that the fact that no injury was found on her body only goes to show that she did not put up resistance."

Hence, the submission made by the learned counsel for the revisionist that there was no injury to the victim does not possess any significance, more particularly at the stage of framing of the charge.

10. After perusing the impugned order, it appears that the learned trial court had mentioned the name of the victim. It is not appreciable. It is held by the Hon'ble Supreme Court in **Special Leave Petition (Criminal) Diary No. 7772 of 2021** dated 30.6.2021, wherein the Hon'ble three Judges Bench passed the order, " However, we take excepting to the judgment of the Sessions Judge where the name of victim is mentioned. It is well established that in cases like the present one, the name of the victim is not to be mentioned in any proceeding. We are of the view that all the subordinate courts shall be careful in future while dealing with such cases." Hence, the law laid down by the Hon'ble Supreme Court is binding and it is complied with in toto without any exception. It has been held by the Hon'ble Supreme Court in the case **Nipun Saxena and another Vs. Union of India and others**, reported in (2019) 2 Supreme Court Cases 703, wherein it has been held by the Hon'ble Supreme Court that the law makers was that the victim of such offences should not be identifiable so that they do not face any hostile discrimination or harassment in the future. Moreover, discriminating the purpose of POCSO Act, the Court observed, " a bare reading of Section 24 (5) and Section 33 (7) makes it amply clear that the name and identity of the child is not to be disclose at any time during the course of investigation or trial and the identity of the victim is protected from the public or media. Furthermore, Section 37 provides that the trial is to be conducted in camera which means that the media cannot be present. The entire purpose of the POCSO is to ensure that the identity of the child is not disclosed unless the Special Court for

reasons to be recorded in writing permits such disclosure. This disclosure can only be made if it is in the interest of the child and not otherwise. It is absolutely clear that the closure of the identity can be permitted by the Special Court only when the same is in the interest of child and in no other circumstances. We are of the view that the disclosure of the name of the child to make the child a sample of protest cannot normally be treated to be in the interest of child. There are sufficient ingredients and the evidences are available before the learned court below and he has rightly rejected the application of discharge of the accused-revisionist.

11. The Hon'ble Supreme Court has passed an order that the directives issued by this Court in the case of **Nipun Saxena and another (supra)** as well as the directive was also issued by the Union of India, Ministry of Home Affairs on 16.1.2019 regarding the identity of victims of rape should be protected by the media including the press electronic and social media shall not reveal their identity in **Writ Petition (Civil) Diary No.(s) 37158 of 2024** (Kinnori Ghosh and another Vs. Union of India and others). The order is as follows:-

"2 Plainly, this is in violation of the directives of this Court in Nipun Saxena & Anr Vs Union of India & Ors'. This Court directed that the identity of victims of rape should be protected and the media including the press, electronic and social media shall not reveal their identity. A directive was also issued by the Union Union Ministry of Home Affairs on 16 January 2019.

3 Reliance has also been placed on the provisions of Section 72(1) of the Bhartiya Nyay Sanhita 2023.

4 This Court is constrained to issue an injunctive order since the social and electronic media have proceeded to publish the identity of the deceased and photographs of the dead body after the recovery of the body.

5 We accordingly direct that all references to the name of the deceased in the above incident, photographs and video clips shall forthwith be removed from all social media platforms and electronic media in compliance of this order.

6 The Writ Petition is accordingly disposed of.

7 Pending applications, if any, stand disposed of."

12. It is absolutely clear that the disclosure of the identity can be permitted by the special court only when the same is in the interest of the child and in no other circumstances. We are of the view that the disclosure of the name of the child to make the child a sample of protest cannot normally be treated to be in the interest of the child. There are sufficient ingredients of the evidence available before the learned court below and he has rightly rejected the application of discharge of the accused-revisionist.

13. There is neither any illegality nor irregularity in the impugned order dated 20.9.2025 passed by the Addl. District & Sessions Judge, POCSO Act, (Exclusive) Jaunpur. The present criminal revision is liable to be dismissed and it is **dismissed** accordingly.

(2026) 1 ILRA 878
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.01.2026

BEFORE

THE HON'BLE ABDUL SHAHID, J.

Criminal Revision No. 8411 of 2025

Sanjay Yadav

...Revisionist

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Matter pertains to whether a criminal appeal, duly instituted within the prescribed period of limitation, can be dismissed in default solely on account of non-appearance of counsel, and whether such dismissal, being contrary to the statutory mandate governing appellate procedure, renders subsequent proceedings including rejection of an application for condonation of delay in filing a fresh appeal legally unsustainable.

Headnotes

Negotiable Instrument Act, 1881 - s. 138 - Limitation Act, 1963 - s. 5 - Bharatiya Nyaya Suraksha Sanhita, 2023 - s. 425 - Dismissal of appeal - Summary - Revisional - Powers - The instant criminal revision was instituted by revisionist, challenging the judgment dated 20.05.2022 passed by learned Additional Chief Judicial Magistrate, Ist, Gorakhpur, in Complaint Case No. 1400 of 2020, whereby he was convicted and sentenced u/s 138 of Negotiable Instruments Act, as well as the subsequent appellate order dated 26.10.2023 passed by learned Sessions Court in Criminal Appeal No. 96 of 2022 dismissing his appeal in default, and the order dated 17.09.2025 passed by Special Judge (S.C./S.T. Act), Gorakhpur, rejecting his application u/s 5 of Limitation Act seeking condonation of delay in filing a fresh appeal - The revisionist had preferred the original criminal appeal within the prescribed period of limitation while remaining in custody, however, the same was dismissed for non-appearance of counsel - Thereafter, he filed another appeal along with an application for condonation of delay to set aside the dismissal order, which too was rejected, leading to filing of instant criminal revision before the High Court. (E-11)

Held: The order dated 26.10.2023 dismissing Criminal Appeal No. 96 of 2022 in default is absolutely void ab initio - Hence, the order dated 26.10.2023 passed in Criminal Appeal No. 96 of 2022 is set aside - Consequently, the impugned order dated 17.09.2025 passed by the Special Judge (S.C./S.T. Act), Gorakhpur, in Criminal Misc. Case No. 587 of 2024 u/s 5 of Limitation Act has no legal significance and is also set aside - There is no requirement or legal necessity for filing a second criminal appeal - The Criminal Appeal No. 96 of 2022, which was filed by the revisionist/accused within the prescribed period of limitation, is valid and in consonance with the provisions of law - The same can be decided only on merits and not dismissed in default - The learned appellate court is directed to decide the criminal appeal as expeditiously as possible - Accordingly, criminal revision allowed. [Paras 8 to 11]

Case Law Cited

K. Muruganandam & ORS. v. State Rep. by the Superintendent of Police and Anr., (2021) 20 SCC 642 - referred to

List of Acts

Negotiable Instrument Act, 1881; Limitation Act, 1963; Bharatiya Nyaya Suraksha Sanhita, 2023

List of Keywords

Criminal Revision; Complaint Case; s. 138 of N.I. Act; Criminal Appeal; Dismissed in default; Period of limitation; Continuously in jail; Application u/s 5 of Limitation Act; Condonation of delay; s. 425 of the B.N.S.S. (corresponding to s. 384 Cr.P.C.); Summary dismissal of appeal; Reasonable opportunity of being heard; Recording of reasons; Void ab initio; Set aside; No legal significance; Expeditiously as possible; Revision allowed.

Case Arising From

REVISIONAL JURISDICTION: Criminal Revision No. - 8411 of 2025

From the Judgment and Order dated 17.09.2025 passed by Special Judge (S.C./S.T. Act), Gorakhpur, in Criminal Misc. Case No. 587 of 2024, Order dated 26.10.2023 passed by Special Judge (S.C./S.T. Act), Gorakhpur, in Criminal Appeal No. 96 of 2022 and Judgment dated 20.05.2022 passed by learned Additional Chief Judicial Magistrate, Ist, Gorakhpur, in Complaint Case No. 1400 of 2020.

Appearances for Parties

Advs. for the Revisionist:

Kunwar Abhishek Singh, Suresh Pratap Singh

Adv. for the Opposite Party:

G.A.

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

1. Heard learned counsel for the revisionist/Sanjay Yadav and learned A.G.A. for the State.

2. The present criminal revision has been filed by the revisionist against the impugned order dated 17.09.2025 passed by the Special Judge (S.C./S.T. Act), Gorakhpur, in Criminal Misc. Case No. 587 of 2024, as well as the order dated 26.10.2023 passed by the Special Judge (S.C./S.T. Act), Gorakhpur, in Criminal Appeal No. 96 of 2022 (Sanjay Yadav versus Mithilesh Narayan Pandey), and the judgment dated 20.05.2022 passed by the learned Additional Chief Judicial Magistrate, Ist, Gorakhpur, in Complaint Case No. 1400 of 2020, Mithilesh Narain Pandey versus Sanjay Yadav, under Section 138 of the N.I. Act, Police Station Sahjanwa, District Gorakhpur.

3. Learned counsel for the revisionist/accused has submitted that the revisionist was convicted and sentenced vide judgment and order dated 20.05.2022 passed by the learned Additional Chief Judicial Magistrate, Ist, Gorakhpur, in Complaint Case No. 1400 of 2020, Mithilesh Narain Pandey versus Sanjay Yadav, under Section 138 of the N.I. Act, Police Station Sahjanwa, District Gorakhpur.

4. Being aggrieved by the aforesaid judgment and order of conviction and sentence dated 20.05.2022, the revisionist/accused preferred a criminal appeal before the learned Sessions Court, Gorakhpur, vide Criminal Appeal No. 96 of 2022 (Sanjay Yadav versus Mithilesh Narayan Pandey) within the period of limitation. The revisionist/accused was continuously in jail. The said criminal appeal was dismissed in default on 26.10.2023.

5. Thereafter, the revisionist/accused, Sanjay Yadav, filed another criminal appeal along with an application under Section 5 of the Limitation Act on 31.08.2024 for setting aside the order dated 26.10.2023, as well as for condonation of delay in filing another appeal after a period of eight months. The said application under Section 5 of the Limitation Act was rejected by the learned Special Judge (S.C./S.T. Act), Gorakhpur, vide order dated 17.09.2025 passed in Criminal Misc. Case No. 587 of 2024. Hence, the present criminal revision.

6. The revisionist/accused Sanjay Yadav was convicted and sentenced on 20.05.2022. Thereafter, he preferred Criminal Appeal No. 96 of 2022, which was dismissed in default on 26.10.2023. The dismissal of Criminal Appeal No. 96 of 2022 in default on account of absence of learned counsel for the appellant is contrary to law and is not in consonance with Section 425 of the B.N.S.S. (corresponding to Section 384 Cr.P.C.).

Section 425 of B.N.S.S. is quoted herein below:

"425. Summary dismissal of appeal. (1) *If upon examining the petition of appeal and copy of the judgment received under section 423 or section 424, the Appellate Court considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily: Provided that-* (a) *no appeal presented under section 423 shall be dismissed unless the appellant or his advocate has had a reasonable opportunity of being heard in support of the same;* (b) *no appeal presented under section 424 shall be dismissed except after giving the appellant a reasonable opportunity of being heard in support of the same, unless the Appellate Court considers that the appeal is frivolous or that the production of the accused in custody before the Court would involve such inconvenience as would be disproportionate in the circumstances of the case;* (c) *no appeal presented under section 424 shall be dismissed summarily until the period allowed for preferring such appeal has expired.* (2) *Before dismissing an appeal under this section, the Court may call for the record of the case.* (3) *Where the Appellate Court dismissing an appeal under this section is a Court of Session or of the Chief Judicial Magistrate, it shall record its reasons for doing so.* (4) *Where an appeal presented under section 424 has been dismissed summarily under this section and the Appellate Court finds that another petition of appeal duly presented under section 423 on behalf of the same appellant has not been considered by it, that Court may, notwithstanding anything contained in section 434, if satisfied that it is necessary in the interests of justice so to do, hear and dispose of such appeal in accordance with law."*

7. The Hon'ble Supreme Court in the case of **K. Muruganandam & ORS. v. State Rep. by the Superintendent of Police and Anr. , (2021) 20 SCC 642**, has held that the court is obliged to proceed with the hearing of the case only after appointing an amicus curiae, but can not dismiss the appeal merely because of non-representation or default of the advocate for the accused. The relevant paragraph of the the above judgement is being Quoted below:

"8. It is well settled that if the accused does not appear through counsel appointed by him/her, the Court is obliged to proceed with the hearing of the case only after appointing an amicus curiae, but cannot dismiss the appeal merely because of non-representation or default of the advocate for the accused (see Kabira vs. State of Uttar Pradesh I and Mohd. Sukur Ali vs. State of Assam)."

8. The order dated 26.10.2023 dismissing Criminal Appeal No. 96 of 2022 in default is absolutely void ab initio. Hence, the said order dated 26.10.2023 passed in Criminal Appeal No. 96 of 2022 (Sanjay Yadav versus Mithilesh Narayan Pandey) is hereby set aside. Consequently, the impugned order dated 17.09.2025 passed by the Special Judge (S.C./S.T. Act), Gorakhpur, in Criminal Misc. Case No. 587 of 2024 under Section 5 of the Limitation Act has no legal significance and is also set aside.

9. There is no requirement or legal necessity for filing a second criminal appeal. The Criminal Appeal No. 96 of 2022, which was filed by the revisionist/accused within the prescribed period of limitation, is valid and in consonance with the provisions of law. The same can be decided only on merits and not dismissed in default. Accordingly, Criminal Appeal No. 96 of 2022 (Sanjay Yadav versus Mithilesh Narayan Pandey) is hereby restored to its original number.

10. The learned appellate court is directed to decide the criminal appeal as expeditiously as possible.

11. Accordingly, the present criminal revision is allowed.

(2026) 1 ILRA 881
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 19.01.2026

BEFORE

THE HON'BLE LAKSHMI KANT SHUKLA, J.

Criminal Revision No. 8658 of 2025

Vineeta

...Revisionist

Versus

Dr. Ved Prakash Singh

...Opposite Party

Issue for Consideration

Issue pertains to whether the Trial Court was justified in rejecting the application for interim maintenance u/s 125 Cr.P.C. on the ground that the husband, though otherwise capable, had been rendered physically incapacitated and financially unable to maintain the wife due to a grievous injury allegedly caused by the acts of wife's family members, and consequently, whether such incapacity disentitles the wife from claiming maintenance despite the statutory obligation of her husband.

Headnotes

Code of Criminal Procedure, 1973 - s. 125 - Interim maintenance - Plea of - Revisional jurisdiction - Scope of - Incapacity - Proof of - The revisionist-wife instituted proceedings u/s 125 Cr.P.C. seeking maintenance against her husband, asserting that the opposite party-husband, despite having sufficient means, neglected and refused to maintain her - On the other hand, the husband contended that he was earlier running a homeopathic clinic and he had suffered a grievous firearm injury, allegedly at the instance of the real brother and father of the revisionist, resulting in a pellet being lodged in his spinal cord and rendering him physically incapacitated and incapable of earning his livelihood - The Trial Court, upon consideration of the

material on record, declined to grant interim maintenance, accepting the plea of financial incapacity of the husband, which order has been assailed in the instant criminal revision.(E-11)

Held: In the facts of the instant case, prima facie, it appears that the conduct of the wife and her family members has rendered the opposite party incapable of earning his livelihood - If a wife by her own acts or omissions, causes or contributes to the incapacity of her husband to earn, she cannot be permitted to take advantage of such a situation and claim maintenance - Granting maintenance in such circumstances would result in grave injustice to the husband, and the Court cannot shut its eyes from the reality emerging from the record - The material on record clearly establishes that the opposite party has suffered a grievous firearm injury, with a pellet entangled in his spinal cord, and medical advice indicates that any surgical intervention carries a serious risk of paralysis - Owing to such physical incapacity, the opposite party has been rendered incapable of earning his livelihood - It is apparent from the record that the said physical incapacity was caused by the revisionist's side - No illegality in impugned order, thus, criminal revision dismissed. [Paras 12A, 14A]

Case Law Cited

Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal & Ors. (1978) 4 SCC 70 - *Jasbir Kaur Sehgal (SMT) v. District Judge, Dehradun and others*, (1997) 7 SCC; *Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy*, (2017) 14 SCC 200; *Shamima Farooqui v. Shahid Khan*, (2015) 5 SCC 705 - referred to

List of Acts

Code of Criminal Procedure, 1973

List of Keywords

Criminal Revision; Family Court; validity; Trial Court; Interim maintenance; s. 125 Cr.P.C.; Legally wedded wife; Sufficient means; Neglect or refusal to maintain; Monthly allowance; Unable to maintain herself; Incapable of earning livelihood; Firing incident; Attempt to kill; Firearm injury; Homeopathy doctor; Pellet lodged in spinal cord; Medical advice; Paralysis; Unemployed; Professional work; Clinic; Conduct of the revisionist's side; Incapacity to earn; Pious duty of husband; Financial constraints; Earning capacity; Manifest illegality; Neither failed to exercise jurisdiction; Revision lacks merit; Revision dismissed.

Case Arising From

REVISIONAL JURISDICTION: Criminal Revision No. - 8658 of 2025

From the Judgment and Order dated 07.05.2025 passed by Additional Principal Judge, Family Court, Kushinagar at Padrauna in Case No. 600 of 2019.

Appearances for Parties

Advs. for the Revisionist:

Dinesh Kumar Singh, Gaurav Suryavanshi

Advs. for the Opposite Party:

Nil

(Delivered by Hon'ble Lakshmi Kant Shukla, J.)

1. Heard Mr. Gaurav Suryavanshi, learned counsel for the revisionist and perused the record.

2. The instant criminal revision has been preferred by the revisionist challenging the validity of the impugned order dated 07.05.2025 passed by the Additional Principal Judge, Family Court, Kushinagar at Padrauna in Case No. 600 of 2019, Vineeta v. Dr. Ved Prakash Singh, whereby the Trial Court rejected the revisionist's application seeking interim maintenance .

3. Learned counsel for the revisionist submits that the impugned order is illegal, arbitrary, and has been passed without due application of mind. It is further contended that the Trial Court, while passing the impugned order, has committed material irregularity.

4. A perusal of the impugned order reveals that the decision of the Trial Court is based on the fact that the opposite party became incapable of earning his livelihood due to a firing incident in which an attempt to kill him was made by the real brother of the revisionist and his associates.

5. It is pertinent to note that the revisionist had filed an application under Section 125 Cr.P.C. seeking maintenance from the opposite party, claiming to be his legally wedded wife.

6. Section 125(1) of the Cr.P.C. provides as under:

"125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain -

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate [* *] [The words "not exceeding five hundred rupees in the whole" omitted by Act 50 of 2001, w.e.f. 24.9.2001.], as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :*

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct.

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of

within sixty days from the date of the service of notice of the application to such person.] [Inserted by Act 50 of 2001, Section 2 (w.e.f. 24-9-2001).]

Explanation. - For the purposes of this Chapter, -

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority,

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married."

7. Justice Krishna Iyer in his judgment in **Captain Ramesh Chander Kaushal v Mrs. Veena Kaushal & Ors. (1978)4 SCC 70** held that the object of maintenance laws is :

"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause ? the cause of the derelicts."

8. The following essential ingredients must be satisfied for grant of maintenance to a wife under Section 125 Cr.P.C :

(i) the person against whom relief is sought must have sufficient means;

(ii) the applicant-wife must be unable to maintain herself;

(iii) the wife must be living separately from the opposite party (husband); and

(iv) such separate residence must be for reasonable and justifiable grounds.

9. In **Jasbir Kaur Sehgal (SMT) v. District Judge, Dehradun and others, (1997) 7 SCC 7**, the Apex Court held as under:

"8.No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate."

10. From a bare perusal of the impugned order, it is evident that the Trial Court recorded that as per the objections filed by the opposite party, he (opposite party) was a Homeopathy doctor running his own clinic. However, on 13.04.2019, while he was engaged in his routine professional work, the real brother and father of the revisionist along with four other persons arrived at his clinic, hurled filthy abuses, and extended threats to his life. Upon resistance, the brother of the revisionist opened fire at the opposite party, causing firearm injury. The pellet is still lodged in the bone of his spinal cord, and as per medical advice, any attempt to remove the same may result in paralysis. Due to the said injury, the opposite party is unable to sit comfortably even for a short duration and, consequently, has become unemployed and incapable of earning any income. In view of these circumstances, the Trial Court rejected the revisionist's application for interim maintenance.

11. When confronted with above, the learned counsel for the revisionist could not overcome the aforesaid factual findings and throughout the course of arguments merely emphasized that the opposite party is a doctor and, therefore, possesses sufficient means. It was argued that despite having sufficient means, the opposite party has failed to maintain the revisionist and that the Trial Court has committed material irregularity.

12. Considering the facts and circumstances of the case, this Court is of the view that it is a pious duty of a husband to maintain his wife, and ordinarily, a husband having sufficient means who neglects or refuses to maintain his wife cannot seek protection of law. In Indian society, it is well recognized that a husband, even in the absence of regular employment, is expected to undertake suitable work according to his capacity to maintain himself and his family. However, the present case stands on a different footing. At an earlier stage, the opposite party was capable of maintaining his wife and had sufficient means, but his earning capacity was completely destroyed due to the criminal act committed by the brother and father of the revisionist. Thus, it was the conduct of the revisionist's side which rendered the opposite party incapable of earning and left him without sufficient means.

12A. It is well settled that though it is the pious obligation of a husband to maintain his wife, however, there is no such explicit legal duty has been cast upon the wife by any Court of law. In the facts of the present case, prima facie, it appears that the conduct of the wife and her family members has rendered the opposite party incapable of earning his livelihood. If a wife by her own acts or omissions, causes or contributes to the incapacity of her husband to earn, she cannot be permitted to take advantage of such a situation and claim maintenance. Granting maintenance in such circumstances would result in grave injustice to the husband, and the Court cannot shut its eyes from the reality emerging from the record.

13. It was held in the case of **Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy, (2017) 14 SCC 200** that the amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors.

14. In **Shamima Farooqui v. Shahid Khan, (2015) 5 SCC 705**, the Hon'ble Supreme Court held that it is the obligation of a husband to maintain his wife and that he cannot be permitted to plead financial constraints so long as he is capable of earning. The Court thus made the husband's liability to maintain contingent upon his actual capacity to earn.

14A. In the present case, the material on record clearly establishes that the opposite party has suffered a grievous firearm injury, with a pellet entangled in his spinal cord, and medical advice indicates that any surgical intervention carries a serious risk of paralysis. Owing to such physical incapacity, the opposite party has been rendered incapable of earning his livelihood. It is apparent from the record that the said physical incapacity was caused by the revisionist's side.

15. In view of the aforesaid circumstances, this Court finds that the learned Trial Court has not committed any manifest illegality or material irregularity while passing the impugned order. The Trial Court neither failed to exercise its jurisdiction nor exceeded the same. Consequently, the revision lacks merit and is liable to be dismissed.

16. It is, accordingly, **dismissed**.

(2026) 1 ILRA 886
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.01.2026

BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE SATYA VEER SINGH, J.

First Appeal No. 252 of 2025

Neetesh Kumar Pal

...Appellant
Versus

Smt. Ramendree Pal

...Respondent

Issue for Consideration

Matter pertains to whether the Family Court erred in law and on facts in refusing to dissolve the marriage on the ground of cruelty, despite the existence of prior judicial findings that the wife had instituted false criminal proceedings u/s 498A IPC and had failed to substantiate allegations of dowry demand and neglect, and whether such conduct constituted mental cruelty sufficient to warrant a decree of divorce.

Headnotes

Indian Penal Code, 1860 s. 498-A - Code of Criminal Procedure, 1973 - s. 125 - Indian Evidence Act, 1872 - s. 3, 5, 6 - Cruelty - Matrimonial ground - Relevancy of Evidence - Burden of Proof - Maintenance - The instant First Appeal arose out of a judgment and decree passed by the Family Court whereby the petition filed by the husband seeking dissolution of marriage on the ground of cruelty was dismissed - The marriage between the parties was solemnised according to Hindu rites and customs, and disputes subsequently arose leading to separation - The wife instituted criminal proceedings u/s 498A IPC and allied provisions alleging dowry demand and harassment, and also initiated proceedings u/s 125 Cr.P.C. claiming maintenance - In the maintenance

proceedings, the court recorded findings that the allegations of dowry demand and cruelty were not substantiated, and such findings were affirmed in revision - Relying upon these prior judicial determinations, the husband instituted the matrimonial petition before the Family Court contending that the filing of false criminal cases, and the resultant social stigma and mental agony, constituted mental cruelty warranting dissolution of marriage - The Family Court, however, by judgment dated 24.01.2025 declined to grant a decree of divorce, holding that cruelty was not established to the requisite legal standard, which order was assailed before the High Court in the instant appeal. (E-11)

Held:. The appellant works as a cook in the Army, posted at Bengaluru - Respondent possesses educational qualification of being double MA in English - In this context, there is respectful agreement with the view taken in Smt. Tripti Singh (infra), where the co-ordinate Bench found that appellant therein holding Doctorate of Philosophy (Ph.D.), had made false allegation and caused her husband and his family members (her in-laws) to be taken into custody - Such conduct would give rise to apprehension that it may not be safe for the other party to live and have matrimonial relationship with the wife - Thus, impugned judgment is reversed - On the petition presented before the Family Court, the marriage solemnized on 2nd July, 2015, is dissolved by decree of divorce on the ground of cruelty - In view of prior findings that parties spent precious little time together and that also not found to the contrary in impugned judgment that husband-appellant was asked to live in respondent's parental house, thus, Court decline to exercise discretion to direct permanent alimony - According, appeal allowed. [Paras 10 to 12]

Case Law Cited

State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, reported in (2004) 7 SCC 659; *Samar Ghosh v. Jaya Ghosh*, reported in (2007) 4 SCC 511 - referred to

Smt. Tripti Singh v. Ajat Shatru, First Appeal No. 251 of 2013, judgment dated 17th September, 2024 - followed

List of Acts

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

List of Keywords

First Appeal; Decree of divorce; Dissolution of marriage; Family Court; Mental cruelty; s. 125 Cr.P.C.; Interim Maintenance; Criminal revision; s. 498A IPC; Dowry demand; False implication; Disinterest of appellant in relation to offspring; Matrimonial relationship; Reasonable apprehension; Appeal allowed; Decline to award permanent alimony.

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 252 of 2025

From the Judgment and Order dated 24.01.2025 passed by Family Court, Jhansi in Misc. Cases / 394 / 2020

Appearances for Parties

Advs. for the Petitioner:

Ashwani Kumar Sachan, Saurabh Sachan

Adv. for the Respondent:

Shyam Bahadur

(Delivered by Hon'ble Arindam Sinha, J.)

1. The first appeal stands preferred by aggrieved husband in the marriage. The Family Court on judgment dated 24th January, 2025 refused to accept appellant's petition for dissolution of the marriage. In other words, it stood dismissed. Mr. Saurabh Sachan, learned advocate appears on behalf of appellant-husband and Mr. Shyam Bahadur, learned

2. We had required the registry to make English translation of impugned judgment as well as judgment dated 22nd September, 2017, earlier passed by a different learned Judge of the Family Court, rejecting the petition of respondent-wife claiming interim maintenance under section 125 of Code of Criminal Procedure, 1973. We have perused both judgments. We have also heard learned advocates for the parties.

3. It appears from impugned judgment, the Family Court disbelieved appellant's case because he was found to have separated from respondent on 25th December 2015, when she was two months pregnant. Said Court found appellant had admitted that neither did he know for how many days his daughter was in intensive care unit (ICU) after birth nor what disease she was suffering from. He never attended his daughter's birthdays. On 25th May, 2019, when respondent went to Bengaluru, appellant did not take her to his room because he was staying with other roommates (colleagues). Having found so, the Family Court proceeded to say, inter alia, as in paragraphs 19 and 20 of the judgment, English translation of which are reproduced below.

19. The cruelty must be of such a nature as to satisfy the conscience of the court that the relationship between the parties has deteriorated to such an extent that it has become impossible for them to live together without mental agony. Cruelty generally does not involve a single act but a series of acts extended over a period of time. The cruelty inflicted may take many forms and must be such as to create an apprehension in the mind of the spouse that it is dangerous to live with the at-faulting party. The standard of proof required is a preponderance of probability and not "beyond all reasonable doubt" as in criminal proceedings. A particular type of statement and conduct may not amount to cruelty in all cases. It depends on the status of the spouse and the environment in which they live.

20-In the present suit, the extended series of cruelty-based acts described by the petitioner, other than the filing of a criminal case for dowry by the opposite party, is not such that it shows the intensity of cruelty and harsh conduct and it becomes impossible for the spouse to live with each other.

(emphasis supplied)

4. Contention of appellant before us is that earlier, respondent had petitioned for interim maintenance under section 125. Her petition was rejected on aforesaid judgment dated 22nd September, 2017. Facts were found by the Court to so reject. The judgment, along with rejection of the criminal revision directed against it by the learned single Judge on **order dated 23rd July, 2021 [Criminal Revision no. 9 of 2018 (Smt. Ramendri Pal vs. State of U.P. and others)]** were both tendered in evidence by him in the dissolution of marriage proceeding. There is no discussion in impugned judgment to find to the contrary. As such the learned Judge erred on facts and there be

reversal of the judgment, to declare dissolution of the marriage. Respondent's contention on the other hand is reliance on impugned judgment, on the facts found as stated therein.

5. The earlier learned Judge in the Family Court, who delivered said judgment dated 22nd September, 2017 while considering facts in issue relevant to award of interim maintenance had framed, amongst others, issue nos. 4 and 5, reproduced below.

"4- Did the opposite party intentionally neglect to support the petitioner and refused to support her?"

5- Does the petitioner have reasonable and justifiable grounds for living separately from the opposite party?"

The learned Judge answered the issues in favour of appellant and against respondent. The answer was dependent on finding of the facts. Here it is necessary for us to refer to section 3, interpretation clause in Indian Evidence Act, 1872, since repealed but as applicable on making of said judgment. The section gives interpretation of, inter alia, 'fact', 'relevant', 'facts in issue', 'proved', 'disproved' and 'not proved'. Sections 5 and 6 provide for evidence that may be given of facts in issue, relevant facts and relevancy of facts forming part of same transaction. Here we may say, marital discord having caused separation and respondent thereafter seeking interim maintenance would give rise to finding of facts in deciding her claim, which can be relevant facts in the continuing marital discord giving rise to appellant's petition for dissolution of the marriage.

6. Having said as above, the learned Judge in dealing with the maintenance claim is seen to have found respondent's allegation that appellant had tendered written apology and having promised to treat her well in future, not proved. Appellant had proved that the parties came to know each other through the internet. While he stayed in a hotel, the parties got married and respondent went to her paternal home to convince her parents to accept him. She alleged, there was subsequent wedding ceremony arranged by her side, in which photographs were taken, also found as not proved. The marriage having been solemnized on 2nd July, 2017 in fact situation as found by the learned Judge, led to further conclusion that her subsequent allegation of dowry demand at Rs. 10,00,000/-, was false. The learned Judge found, precious little time together was spent by the parties. In addition, respondent had made allegation that appellant was carrying out with a girl, which allegation also she could not prove.

7. It is undisputed that respondent caused initiation of a criminal case against appellant carrying accusation invoking section 498A in Indian Penal Code, 1860. Clauses (a) and (b) of the explanation under the section gives meaning of what is cruelty as provided therein. It includes wilful conduct as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health or such conduct with a view to coercing her or any person related to her to meet any unlawful demand. Respondent did not even produce let alone tender a police complaint, at the hearing of her maintenance claim. Having thereafter perused impugned judgment we accept submission made on behalf of appellant that the earlier judgment and order in criminal revision, produced in evidence by appellant, were not even looked at. In this connection a passage from English translation of paragraph 5 in impugned judgment is reproduced below.

"5. List of documentary evidence on behalf of the petitioner viz. from Paper No. 52 C 1/1 to 52 C 1/6, respectively, photocopy of railway ticket, photocopies related to Sharda Health Care Medical, copy of Facebook status, affidavit and copy of evidence of petitioner and opposite party in case no. 131/2016 and copy of decision and copy of Criminal Revision No. 9/2018,....."

(emphasis supplied)

8. Said judgment dated 22nd September, 2017 contains aforesaid findings on facts. Respondent had brought it for revision to this Court. As aforesaid, on **order dated 23rd July, 2021** (supra) the criminal revision petition was dismissed. The Supreme Court in **State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand**, reported in (2004) 7 SCC 659, paragraph 22 said that the revisional Court is empowered to exercise all the powers conferred on the appellate Court by virtue of the provisions contained in section 401 in Code of Criminal Procedure, 1973, since repealed. The repealed Act was in operation, when said earlier judgment was passed and **order dated 23rd July, 2021** (supra) made, dismissing the criminal revision therefrom. It follows, no interference by the High Court on findings of fact relevant to the facts in issue not considered was erroneous omission of the learned Judge in delivering impugned judgment. Contention of appellant on facts based on said judgment dated 22nd September, 2017 thus bears substance. We come back to impugned judgment and discussion of additional facts regarding birth of the daughter and petitioner's disinterest. The learned Judge in passing impugned judgment construed those facts in isolation, to give the reasoning as in paragraphs 19 and 20 of the judgment. The English translation stands reproduced above. It must be remembered, disinterest of appellant in relation to offspring, contended by respondent before the Family Court, cannot amount to or be considered good defence to allegation of cruelty against her.

9. On behalf of appellant there was reliance on view taken by co-ordinate Bench on **judgment dated 17th September, 2024 in First Appeal no. 251 of 2013 (Smt. Tripti Singh vs. Ajat Shatru)**. The Family Court had earlier by said judgment dated 22nd September, 2017 found false complaint was made by respondent against appellant. He was taken into custody. In paragraph 17 of impugned judgment, the Family Court referred to the fact but did not thereby find sufficient proof on the allegation of cruelty made by appellant against respondent. Hence, reliance by appellant on view taken in **Smt. Tripti Singh** (supra). Co-ordinate Bench in **Smt. Tripti Singh** (supra) had considered appeal of the wife against judgment dated 22nd February, 2013 of the Family Court dissolving the marriage on ground of cruelty. The Bench considered several judgments of the Supreme Court for declarations of law on cruelty. One of the discussed cases was *Samar Ghosh Vs. Jaya Ghosh*, reported in (2007) 4 SCC 511, wherein the Supreme Court gave several instances of what might amount to mental cruelty. Several other landmark judgments of the Supreme Court declaring the law on cruelty were discussed and relevant paragraphs quoted in the judgment. Having done that co-ordinate Bench stated its view in paragraph 23 of the judgment. Reproduced below is a passage therefrom.

"23.... In the context of a Hindu marriage, one may continue to describe the parents of the spouse as parents-in-laws, at the same time for the act of cruelty committed, once arrest of parents of a spouse is caused on false allegations or allegations found to be false in the course of a criminal trial, no further or strict proof of cruelty may be prescribed or applied by Courts. Those who were arrested were not strangers or third parties. The victims of the reckless and false accusation

made by the appellant were the closest family members of the respondent i.e. his parents. Once that cruel act was committed, in the context of the educational and social background of the parties, it could never be resisted that the respondent was meted out most cruel behaviour in which he may have reasonably felt unsafe to cohabit with the appellant. It would be completely another case where allegation of demand of dowry is found true. However, divorce sought being a civil proceeding, everything apart, its institution may never have offered the respondent spouse (in that proceeding) motivation to get even with her spouse-by lodging a false criminal case. That act committed by the appellant led to loss of reputation and standing of the respondent and his family, in his society. Having suffered that, the respondent cannot be expected to cope with that and revive his matrimonial relations. As noted above, both parties being well educated, the respondent holding Master in Business Administration (M.B.A.) and the appellant holding Doctorate of Philosophy (Ph.D.), loss of reputation suffered by the respondent on the false prosecution pressed by the appellant is seen to have caused cruelty to the extent that it may create a reasonable apprehension in the mind of the respondent that it may not be safe for him and his family to live in a matrimonial discord relationship with the present appellant as that occurrence would always remain exposed to the risk of similar false prosecution etc." (emphasis supplied)

10. We see that appellant before us works as a cook in the Army, posted at Bengaluru. Respondent possesses educational qualification of being double MA in English. In this context we are in respectful agreement with the view taken in **Smt. Tripti Singh** (supra), where the co-ordinate Bench found that appellant therein holding Doctorate of Philosophy (Ph.D.), had made false allegation and caused her husband and his family members (her in-laws) to be taken into custody. Such conduct would and gives rise to apprehension that it may not be safe for the other party to live and have matrimonial relationship with the wife.

11. For reasons aforesaid, impugned judgment is reversed. On the petition presented before the Family Court, the marriage solemnized on 2nd July, 2015, is dissolved by decree of divorce on the ground of cruelty. Considering there is earlier finding of fact that parties spent precious little time together and also further finding of fact, not found to the contrary in impugned judgment that husband-appellant was asked to live in respondent's parental house, we are not moved to exercise discretion to direct permanent alimony.

12. The appeal is allowed and **disposed of**.

(2026) 1 ILRA 891
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.01.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 455 of 2023

Om Prakash Gupta

...Appellant

Versus

Radhey Shyam Gupta

...Respondent

Issue for Consideration

Matter pertains to whether the trial court was justified in rejecting the plaint under O. VII R. 11(d) CPC on the ground that the suit for partition was barred u/s 4 r/w s. 2(9) of Prohibition of Benami Property Transactions Act, 1988, when the plaint specifically averred that the disputed properties were joint Hindu family properties acquired from the nucleus and income of the joint family business.

Headnotes

Code of Civil Procedure, 1908 - O. 7 R. 11, s. 96 - Prohibition of Benami Property Transactions Act, 1988 - s. 4 r/w ss. 2(9), 2(8), 3 Rejection of plaint - Scope of - The instant first appeal u/s 96 CPC arose from the judgment and decree dated 03.03.2023 passed by Additional Civil Judge (Senior Division), Gorakhpur, whereby the plaintiff's suit for declaration and partition was rejected under O. VII R. 11 CPC as being barred by s. 4 r/w s. 2(9) of Prohibition of Benami Property Transactions Act, 1988 - The plaintiff/ appellant instituted O.S. No. 1034 of 2022 against his elder brother/respondent, asserting that both were members of a joint Hindu family and had jointly carried on business since the late 1980s, out of whose income various immovable and movable properties were acquired in the names of different family members, including the defendant, their mother, and their respective spouses and children - It was specifically pleaded that such properties were purchased from the nucleus and income of Joint Hindu Family and were liable to be partitioned, the plaintiff claiming a half share therein along with consequential relief of permanent injunction - The defendant, however, moved an application under O. VII R. 11 CPC contending that the suit was barred by Benami Act on the ground that the properties stood in individual names and the plaintiff was, in effect, asserting a benami claim - Accepting the said objection, the trial court rejected the plaint at the threshold, holding the suit to be barred by law, which led to the filing of the appeal before the High Court. (E-11)

Held: The business of plaintiff and defendant was joint, in which their family members were also involved, who were also having joint bank account - In view of the evidence on record, there was considerable merit in the submission of the plaintiff/appellant that the plaint schedule properties were purchased from the nucleus and income of the joint Hindu undivided family of the plaintiff and defendant - It is further apparent that whether the disputed property was benami and was not covered by the exception, was again an issue to be decided on the basis of evidence and not simply on mere averments contained in the plaint and the defendant has to adduce evidence to prove the property to be benami, as such, prima-facie the trial court could not have rejected the plaint at the threshold under O. 7 R. 11 CPC - It is further apparent that since, the disputed property was alleged to be property of the joint Hindu undivided family, as such, u/s 2(9) of Act of 1988, it fell within the exception carved out, hence it was not a benami property, but the trial court has held otherwise - In view of this, since the disputed plaint properties were falling in the exception contained in s. 2(9) of Act of 1988, the plaintiff's suit was also not barred u/s 4 of Act, and the trial court has certainly erred in dismissing the plaintiff's suit on this ground - It is apparent that the impugned order passed by trial Court is perverse, which is legally unsustainable and is liable to be set aside - Accordingly, the appeal allowed, thus, impugned order set aside. [Paras 27, 28]

Case Law Cited

Shaifali Gupta v. Vidya Devi Gupta and others **2025 SCC OnLine SC 1181**; *Vinod Infra Developers Ltd. v. Mahaveer Lunia and others* **2025 SCC OnLine SC 1208**; *Keshav Sood v. Kirti Pradeep Sood and others* **2023 SCC OnLine SC 2459**; *Pushpalata v. Vijay Kumar(Dead) through LR's and others* **2022 SCC OnLine SC 1152**; *Pawan Kumar v. Babulal Since Deceased Through LRS & Ors.* **(2019) 4 SCC 367**

List of Acts

Code of Civil Procedure, 1908; Prohibition of Benami Property Transactions Act, 1988

List of Keywords

First Appeal u/s 96 CPC; O. VII R. 11 CPC; Barred by law; s. 4 r/w s. 2(9) of Prohibition of Benami Property Transactions Act, 1988; Benami property; Benami transaction; Joint Hindu family; Hindu undivided family (HUF); Karta; Nucleus of joint family; Joint earning; Partition; Declaration of 1/2 share; Permanent injunction; Plaint schedule property; Appellate Jurisdiction; Benami Holder; Triable issues; Threshold rejection; Preliminary stage; Documentary evidence; Perverse order; Legally unsustainable; Set aside; Restoration of suit; Selling; Alienation; Transferring; Creation of third party rights; Appeal allowed with costs.

Case Arising From

APPELLATE JURISDICTION: First Appeal No. - 455 of 2023

From the Judgment and Decree dated 03.03.2023 passed by the Court of Additional Civil Judge (Senior Division) Second, Gorakhpur in Original Suit No. 1034 of 2022.

Appearances for Parties

Advs. for the Appellant:

Hausihla Prasad Mishra

Adv. for the Respondent:

Vineet Kumar Singh

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

1. The instant first appeal under Section 96 of the CPC has been preferred by the plaintiff in O.S. no. 1034 of 2022 Omprakash Gupta versus Radheyshyam Gupta, against the impugned judgment and decree dated 3.3.2023 passed by the Court of Additional Civil Judge(Senior Division) Second, Gorakhpur, whereby the defendant's application 38-C under Order 7 Rule 11 CPC was allowed and consequently, the plaintiff's suit was dismissed being barred by Section 4 read with Section 2(9) of ***The Prohibition of Benami Property Transactions Act, 1988*** (hereinafter referred to as the 'Act').

2. Factual matrix is that the plaintiff appellant filed O.S. no. 1034 of 2022 against his elder brother/defendant Radheyshyam Gupta with the averments that their father Krishnanath died about 45 years ago and at that time plaintiff was minor and since then the plaintiff and defendant are the members of a joint Hindu family, the defendant being its head and Karta.

3. It was further averred by the plaintiff that he and the defendant came to Gorakhpur in the year 1987-88 where they jointly started timber and sugarcane business and they gradually started accumulating money. The plaintiff averred that whatever he used to earn, he gave it to his elder brother/defendant, being the Karta of the joint family. He further averred that from their joint earning on 30.10.1995 in Indranagar, Gorakhpur five decimal land measuring 2180 ft was purchased in the name of the defendant to which he didn't object, keeping in view the reputation and dignity of the family and also because the defendant was his elder brother and was also the head and the Karta of the joint Hindu family. He further averred that in the year 1993 he and the defendant after due consultation purchased two plots of land in Transport Nagar, Gorakhpur, out of which plot no. 56 was purchased in the name of defendant and plot no. 12 was purchased in his name. He further averred that he has constructed a three storey house on plot no. 12, in which till the year 2010, the families of plaintiff and defendant along with their mother resided together. He

further averred that plot no. 56 has been bounded and pillars and walls have been constructed on it and merely the lantern remains to be cast.

4. The plaintiff further averred that he and the defendant continued to do business jointly and in the year 2002 land was purchased by them in the name of their mother Sitabi Devi in Siddhath Enclave, Ramgarh Taal, Gorakhpur and thereafter, from the income of joint family, a three storey house was constructed on it, the house tax of which was being paid by their mother Sitabi Devi. He further averred that he and the defendant are still residing jointly in the above house.

5. The plaintiff further averred that thereafter, from the joint income of the family, on the plot purchased in Indranagar, Gorakhpur in the year 1995, on the ground floor a hall was constructed in which the plaintiff's son is running the shop in the name and style of Jai Maa Durga Supermarket and on its upper floor, four persons have been inducted as tenants and in the basement, half portion has been allotted to the parking of vehicles and another half portion has been rented to Sidhi Plywood, whose proprietor is Baijnath Gupta and on the first floor, Shriram Transport Company, a coaching centre and security company are functioning.

6. He further averred that his son Shubham took contribution of ₹ 8 lakhs from his elder brother Ajeet Kumar Gupta for running the Jai Maa Durga Supermarket and further, the plaintiff and the defendant jointly took a loan of ₹ 20 lakhs from the Union Bank of India in the year 2021 for starting a business, from which, it was also proved that the plaintiff and defendant are having a joint family. He further averred that he and the defendant from the joint income of the family purchased plot no.C-129 in the name of defendants son Vinod Kumar Gupta as benami, in BuddhVihar commercial scheme, Gorakhpur whereas this property belongs to joint Hindu family.

7. The plaintiff further averred that the business of plaintiff and defendant is still joint and at present they are owners of 13 trucks, out of which 8 trucks belong to defendant and 5 trucks belong to the plaintiff. He further averred that the plaintiff and defendant are still residing jointly and due to differences in opinion from 1.4.2022, they have separated their kitchen, but the business is still joint. He further averred that the trucks of the defendant are in the name of defendants wife Somari Devi and defendant's elder son Vinod Kumar Gupta whereas, trucks of the plaintiff are jointly in the name of plaintiff and his wife Girja Devi, but still the earning of all the trucks is kept by his elder brother/defendant. He further averred that the defendant has established a firm in the name and style of Nigam Traders for doing joint business in which, the income of all the trucks is accounted for.

8. The plaintiff further averred that since quite some time the intention of the defendant has turned malafide who was not giving full account of the income of the joint family and their sons have also become major. He further averred that the defendant has got seven children, out of which five daughters and a son have been married whereas, the plaintiff has got two sons and two daughters out of which only one daughter has been married and his three children are still to be married. He further averred that due to the tension prevailing in the family he requested the defendant to partition his half share in the property but when the defendant refused, he was compelled to file the instant suit.

9. The plaintiff claimed the following reliefs against the defendant:-

(A) By decree granted in favour of the plaintiff against the defendant, in the plaint schedule property, his 1/2 share be declared and partitioned.

(B) By decree of permanent injunction granted in favour of the plaintiff against the defendant, the defendant be restrained from interfering in the peaceful possession of the plaint schedule property till partition is effected and the defendant be further restrained from creating any hindrance in the residence of the family members of the plaintiff and in his business.

10. During the pendency of the suit, the defendant moved an application 38-C under Order 7 Rule 11 CPC with the averments that the plaint schedule properties are individually in the name of plaintiff and defendant but the plaintiff has averred the disputed properties to be benami property of a joint Hindu family and was claiming partition on the basis of his individual share in that property, which was barred by the provisions of the Prohibition of Benami Property Transactions Act, 1988 as such, the plaintiff's suit was barred by law and was liable to be rejected.

11. The above application of the defendant was opposed by the plaintiff on the ground that the application was not legally maintainable. It was further averred by the plaintiff that whether the disputed property was not purchased from the joint earning of plaintiff and defendant, can only be decided at the trial. It was further submitted that in the year 2002 one of the disputed property was purchased in the name of their mother Sitabi Devi, who was a housewife, who had no independent source of income, and at that time the plaintiff, defendant and their mother were living together in a joint family, and the defendant was the Karta of the joint family. It was further submitted that plot no.C-127 was purchased by the plaintiff by making payment in instalments from his bank account, which also proves that the business of plaintiff and defendant was joint. It was further submitted that the trucks in the name of plaintiff's wife were also operated from the defendant's firm, which also proves that the business of plaintiff and defendant was joint. It was further submitted that the disputed property does not attract the provisions of the Act of 1988 and the question raised by the defendant involves appreciation of fact and evidence which cannot be examined at the threshold, as such, the application was not legally maintainable.

12. The trial court has concluded that the plaintiff has averred that the disputed properties were purchased from the joint earning of the plaintiff and defendant but in support of the above contention, no document was produced by the plaintiff. The trial court has noted that if any property was purchased by the Karta of the Hindu undivided family for the benefit of the members of the family and its consideration was provided from the funds of the joint family, then it does not attract the provisions of the Act of 1988. The trial court has concluded that the plaintiff has not averred that the property purchased by the defendant was from the funds of the joint family. It was further concluded that since the disputed property was purchased in the name of the defendant and other persons as such, the suit was barred by Section 4 read with Section 2(9) of the Act of 1988, and has accordingly allowed the defendant's application 38-C and consequently, dismissed the plaintiff's suit being barred under the above provisions of the Act of 1988, aggrieved against which, the plaintiff has filed the instant appeal under section 96 of the CPC.

13. Learned Senior counsel for the plaintiff -appellant Sri Pramod Kumar Jain submitted that at the stage of deciding application under Order 7 Rule 11 CPC, the court has not to examine the written statement and the evidence submitted by the defendant, and only the plaint averments and the documents filed by the plaintiff are to be considered. It was further submitted that from the plaint averments it is apparent that the plaintiff and defendant are real brothers, who had a joint business, and from the earning of the joint business, several immovable properties were purchased by the plaintiff, defendant and their family members, including their mother Sitabi Devi, in their individual names, whereas in fact, all the above property was purchased from the funds of the joint Hindu family, which was prima-facie proved from the documents submitted with the plaint. It was further submitted that at this stage, the plaint averments are to be presumed true and if any disputed question of fact arises, then the plaint cannot be rejected at the threshold. Learned counsel further submitted that prima-facie there was sufficient evidence on record to prove that the business of the plaintiff and defendant was joint, who were residing jointly, and from the business of the joint family, several immovable properties were purchased in the individual name of its members as such, the trial court should not have rejected the plaint under Order 7 Rule 11 CPC. It was further submitted that since the disputed property was the property of joint Hindu family, the provisions of the Prohibition of Benami Property Transactions Act, 1988 were not attracted in the facts and circumstances of the case but the trial court has held otherwise. Learned counsel in support of his above contention has relied upon the case law of ***Shaifali Gupta vs. Vidya Devi Gupta and others 2025 SCC OnLine SC 1181***. With these submissions it was prayed that the appeal be allowed and the matter be remanded to the trial court for deciding the suit on merits.

14. Per contra, learned counsel for the defendant respondent submitted that the disputed property is in the name of defendant but the plaintiff is alleging that the defendant is a benami holder as such, the plea of the plaintiff was barred under the provisions of the Act of 1988, hence, the trial court has not erred in allowing the defendant's application under Order 7 Rule 11 CPC and consequently, dismissing the plaintiff's suit which does not warrant any interference from this Court in exercise of its appellate jurisdiction. With these submissions, it was prayed that the appeal is meritless and be rejected.

15. I have heard the learned counsel of both the parties, perused the impugned order and the record of the lower court.

16. The Apex Court in the case of ***Vinod Infra Developers Ltd. versus Mahaveer Lunia and others 2025 SCC OnLine SC 1208*** has held that at the preliminary stage of deciding Order 7 Rule 11 CPC application, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected.

17. The Apex Court in the case of ***Keshav Sood versus Kirti Pradeep Sood and others 2023 SCC OnLine SC 2459*** has held that the scope of Rule 11 of Order 7 of CPC is concerned, the law is well settled. The court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of defendant and documents relied upon by him cannot be looked into while deciding such application.

18. It is apparent from the above law laid down by the Apex Court in the case of ***Vinod Infra developers Ltd. (supra)*** and ***Keshav Sood (supra)*** that at the time of deciding Order 7 Rule 11 CPC application, the court has to look into only the averments made in the plaint and the documents submitted by the plaintiff. The court has not to examine the written statement of the defendant or the documents submitted by it. Further, the court has also not to examine the plaintiffs case on merit to determine whether he is going to succeed or not? It is also apparent that if any triable issue arises out of the pleadings of the plaintiff, then the plaint cannot be summarily rejected.

19. For appreciating the controversy in correct perspective, it will be appropriate to examine the relevant provisions of ***The Prohibition of Benami Property Transactions Act, 1988***. Section 2(8), 2(9), 3, 4 of the Act reads as under:-

“2. Definitions.-In this Act, unless the context otherwise, requires,

(8) benami property means any property which is the subject matter of a benami transaction and also includes the proceeds from such property;

(9) benami transaction means,

(A) a transaction or an arrangement

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or

(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

Explanation. For the removal of doubts, it is hereby declared that benami transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in section 53A of the Transfer of Property Act, 1882, if, under any law for the time being in force,

(i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property;

(ii) stamp duty on such transaction or arrangement has been paid; and

(iii) the contract has been registered

3. Prohibition of benami transactions.-

(1) No person shall enter into any benami transaction.

*(2) ******

*(3) ******

4. Prohibition of the right to recover property held benami.-

(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

20. The Apex Court in the case of ***Pushpalata versus Vijay Kumar(Dead) through LR's and others 2022 SCC OnLine SC 1152***, while discussing the circumstances which can be taken as a guide to determine the nature of the transaction, held as under:-

“22. The court's approach in cases, where the claim is that a property or set of properties, are benami, was outlined, after considering previous precedents, in Binapani Paul v. Pratima Ghosh (2007) 6 SCC 100, where this court cited with approval extracts from Valliammal v. Subramaniam (2004) 7 SCC 233:

47. Burden of proof as regards the benami nature of transaction was also on the respondent. This aspect of the matter has been considered by this Court in Valliammal (D) By LRS. v. Subramaniam (Supra) wherein a Division Bench of this Court held:

13. This Court in a number of judgments has held that it is well established that burden of proving that a particular sale is benami lies on the person who alleges the transaction to be a benami. The essence of a benami transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. Ref to Refer to Jaydayal Poddar v. Bibi Hazra [(1974) 1 SCC 3], Krishnanand Agnihotri v. State of M.P. [(1977) 1 SCC 816 : 1977 SCC (Cri) 190], Thakur Bhim Singh v. Thakur Kan Singh [(1980) 3 SCC 72], Pratap Singh v. Sarojini Devi [1994 Supp (1) SCC 734] and Heirs of Vrajilal J. Ganatra v. Heirs of Parshottam S. Shah [(1996) 4 SCC 490]. It has been held in the judgments referred to above that the question whether a particular sale is a benami or not, is largely one of fact, and for determining the question no absolute formulas or acid test, uniformly applicable in all situations can be laid. After saying so, this Court spelt out the following six circumstances which can be taken as a guide to determine the nature of the transaction:

(1) the source from which the purchase money came;

(2) the nature and possession of the property, after the purchase;

(3) motive, if any, for giving the transaction a benami colour;

(4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;

(5) the custody of the title deeds after the sale; and

(6) the conduct of the parties concerned in dealing with the property after the sale. (Jaydayal Poddar v. Bibi Hazra [(1974) 1 SCC 3], SCC p. 7, para 6)

14. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another. We would examine the present transaction on the touchstone of the above two indicia.

*** **

18. *It is well settled that intention of the parties is the essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami. The evidence shows clearly that the original plaintiff did not have any justification for purchasing the property in the name of Ramayee Ammal. The reason given by him is not at all acceptable. The source of money is not at all traceable to the plaintiff. No person named in the plaint or anyone else was examined as a witness. The failure of the plaintiff to examine the relevant witnesses completely demolishes his case*

23. *As a matter of law, the principle that one who alleges that a property is benami and is held, nominally, on behalf of the real owner - in cases which form the exception, under Section 4 (3) - has to displace the initial burden of proving that fact. Such proof can be through evidence, or cumulatively through circumstances. This fact was brought home, by this court, in Marcel Martins v. M. Printer (2012) 5 SCC 342. In that case, the issue was whether the transfer of rights in favour of one of the siblings, in the absence of a will, by the person having interest (as a tenant in the property), after her death, operated to exclude the other heirs. The court held that the transfer was made to fulfil a municipality's requirement, and the property was held by the one in whose name it was mutated, in a fiduciary capacity, under Section 4(3)(a) of the Act, on behalf of the siblings:*

22. *It is manifest that while the expression fiduciary capacity may not be capable of a precise definition, it implies a relationship that is analogous to the relationship between a trustee and the beneficiaries of the trust. The expression is in fact wider in its import for it extends to all such situations as place the parties in positions that are founded on confidence and trust on the one part and good faith on the other.*

23. *In determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the Court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. Having said that, let us turn to the facts of the present case once more to determine whether the appellant stood in a fiduciary capacity vis- -vis the plaintiffs-respondents.*

24. *The first and foremost of the circumstance relevant to the question at hand is the fact that the property in question was tenanted by Smt. Stella Martins-mother of the parties before us. It is common ground that at the time of her demise she had not left behind any Will nor is there any other material to suggest that she intended that the tenancy right held by her in the suit property should be transferred to the appellant to the exclusion of her husband, C.F. Martins or her daughters, respondents in this appeal, or both. In the ordinary course, upon the demise of the tenant, the tenancy rights should have as a matter of course devolved upon her legal heirs that would include the husband of the deceased and her children (parties to this appeal). Even so, the reason why the property was transferred in the name of the appellant was the fact that the Corporation desired such transfer to be made in the name of one individual rather than several individuals who may have succeeded to the tenancy rights. A specific averment to that effect was made by plaintiffs-respondents in para 7 of the plaint which was not disputed by the appellant in the written statement filed by him. It is, therefore, reasonable to assume that transfer of rights in favour of the appellant was not because the others had abandoned their rights but because the*

Corporation required the transfer to be in favour of individual presumably to avoid procedural complications in enforcing rights and duties qua in property at a later stage. It is on that touchstone equally reasonable to assume that the other legal representatives of the deceased-tenant neither gave up their tenancy rights in the property nor did they give up the benefits that would flow to them as legal heirs of the deceased tenant consequent upon the decision of the Corporation to sell the property to the occupants. That conclusion gets strengthened by the fact that the parties had made contributions towards the sale consideration paid for the acquisition of the suit property which they would not have done if the intention was to concede the property in favour of the appellant. Superadded to the above is the fact that the parties were closely related to each other which too lends considerable support to the case of the plaintiffs that the defendant-appellant held the tenancy rights and the ostensible title to the suit property in a fiduciary capacity vis- -vis his siblings who had by reason of their contribution and the contribution made by their father continued to evince interest in the property and its ownership. Reposing confidence and faith in the appellant was in the facts and circumstances of the case not unusual or unnatural especially when possession over the suit property continued to be enjoyed by the plaintiffs who would in law and on a parity of reasoning be deemed to be holding the same for the benefit of the appellant as much as the appellant was holding the title to the property for the benefit of the plaintiffs.

25. The cumulative effect of the above circumstances when seen in the light of the substantial amount paid by late Shri C.F. Martins, the father of the parties, thus puts the appellant in a fiduciary capacity vis- -vis the said four persons. Such being the case the transaction is completely saved from the mischief of Section 4 of the Act by reason of the same falling under Sub-section 3(b) of Section 4. The suit filed by the respondents was not, therefore, barred by the Act as contended by the learned counsel for the appellant.

27. In the light of these factors, and the law declared by this court which has elaborated the circumstances under which a claim against a benami owner can be said to be proved, under Section 4(3)(a) of the Act, the conclusions drawn by the trial court and first appellate court, are plainly erroneous, given the evidence on record. The High Court, in the opinion of this court, fell into error in not noticing the correct position in law.

30. In the opinion of this court, the High Court fell into error, in ignoring that the circumstances of this case, where the first plaintiff had proved that the properties had been purchased, with his funds, and the sons were minors, with no source of income. The second defendant's position-throughout all the proceedings, was that the properties were that of the first plaintiff; in other words, he admitted to the suit averments. The plaintiff also proved that he had possession of the property, by adducing positive evidence of tenants, who paid rent to him. In these circumstances, the elements necessary to establish benami ownership within the meaning of Section 4 (3) (a) of the Act, in terms of the judgments in Binapani Paul and Valliammal (supra) have been satisfied by the first plaintiff.

21. The Apex Court in the case of *Shaifali Gupta* (supra) held as under:-

23. *Section 4 of the Benami Act bars the suit, claim or action in respect of a property held benami by person at the behest of the person claiming to be its true owner. It reads as under:*

4(1). No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

24. *The above provision bars an action in respect of property held benami . However, whether the property in respect of which the suit, claim or action has been brought about is a benami property or not, is the issue of prime consideration.*

25. *The plaint allegations all through describe the suit properties as the Joint Hindu Family properties and that they have been purchased either from the nucleus of the Joint Hindu Family property or the income derived from the joint family business. The properties are not described as benami in the name of any member of the family. Therefore, from the plaint reading, the suit properties cannot ex-facie be held to be benami properties in respect whereof the suit may not be maintainable in view of Section 4 of the Benami Act.*

26. *The Benami Act further defines benami property and benami transaction under Sections 2(8) and 2(9) of the said Act. Benami property is the property which is the subject matter of benami transaction whereas benami transaction is a property held by a person in respect whereof consideration has been provided by some other person but would not include certain categories of properties such as where a person is holding a property in a fiduciary capacity for the benefit of another person.*

27. *In such circumstances, whether a property is a benami, has to be considered not in the light of Section 4 of the Benami Act alone but also in connection with Sections 2 (8) and 2 (9) of the said Act i.e. whether the property if benami falls in the exception. It is only where the property is benami and does not fall within the exception contained in Sub-Section (9) of Section 2 that a suit may be said to be barred. However, the issue whether the property is benami and is not covered by the exception, is again an issue to be decided on the basis of evidence and not simply on mere averments contained in the plaint. The defendants have to adduce evidence to prove the property to be benami.*

28. *In Pawan Kumar v. Babu Lal (2019) 4 SCC 367, a similar issue arose before this Court in a matter concerning rejection of plaint under Order 7 Rule 11 (d) CPC. This Court held that for rejecting a plaint, the test is whether from the statement made in the plaint it appears without doubt or dispute that the suit is barred by any statutory provision. Where a plea is taken that the suit is saved by the exception to the benami transaction, it becomes the disputed question of fact which has to be adjudicated on the basis of the evidence. Therefore, the plaint cannot be rejected at the stage of consideration of application under Order 7 Rule 11 CPC.*

29. *The ratio of the above case squarely applies to the facts of the case at hand. Accordingly, in our opinion, the courts below have not committed any error of law in rejecting the application under Order 7 Rule 11 CPC on the above score.*

22. From the above law laid down by the Apex Court in the above mentioned cases, dealing with the Prohibition of Benami Property Transactions Act, 1988 before its amendment in the year 2016, and after its amendment, it is apparent that where it is alleged that the suit properties are joint Hindu family property and they have been purchased either from the nucleus of the joint Hindu family property or the income derived from the joint family business and the relief claimed in the suit is purely in respect of the said property, then such suit does not stand prohibited by the Benami Act. It is further apparent that if the disputed benami property falls within the exception contained in Section 2(9) of the above Act then the suit is not barred under Section 4 of the above Act. It is further apparent that whether the disputed property is benami and is not covered by the exception, is again an issue to be decided on the basis of evidence and not simply on mere averments contained in the plaint and the defendant have to adduce evidence to prove the property to be benami.

23. The Apex Court in the case of ***Pawan Kumar versus Babulal Since Deceased Through LRS & Ors. (2019) 4 SCC 367*** has held that the plea of benami cannot be decided at the stage when the application under Order 7 Rule 11 CPC is taken up for consideration because the matter required fuller and final consideration after the evidence was led by the parties. It was held that where a plea is taken that the suit is saved by the exception to the benami transaction, it becomes the disputed question of fact, which has to be adjudicated on the basis of the evidence. Therefore, the plaint cannot be rejected at the stage of consideration of application under Order 7 Rule 11 CPC.

24. It is apparent that the plaintiff has averred in the plaint that the immovable property sought to be partitioned, which has been described in the schedule of the plaint, was purchased by the plaintiff and defendant from the funds of the joint Hindu family. It has further been averred by the plaintiff that the business of the plaintiff and defendant was joint, they were also residing jointly along with their mother Sitabi Devi, who was a housewife, who was not having any independent source of income, an immovable property was also purchased in her name from the funds and income of the joint Hindu family. It has also been averred by the plaintiff that other immovable property and movable property in the form of trucks have also been purchased in the name of family members of plaintiff and defendant from the income of the joint Hindu family. In documentary proof before the trial court the plaintiff has filed the sale deeds and lease deeds of the immovable property mentioned in the plaint which disclose that the property is in the individual name of plaintiff, defendant, plaintiffs mother Sitabi Devi and defendant's son Vinod Kumar Gupta.

25. The plaintiff has also filed in the trial court letter issued by the Union Bank of India, branch Taramandal, Gorakhpur, which discloses that there is a joint loan account no. 591406580000001 in the name of plaintiff and defendant in which an amount of ₹ 20 lakhs was disbursed on 8.10.2021, from which an amount of ₹ 18 lakhs was credited to account no. 591401010050560 in the name of Jai Maa Durga supermarket and ₹ 2 lakhs was credited to plaintiffs account no. 591402010001643.

26. In the instant appeal by order dated 31.3.2023 the parties were directed to file their respective affidavits and in compliance of the above order of this Court, the plaintiff appellant has filed the photo copy of certificate issued by Messers Nigam Traders, Gorakhpur dated 26.7.2019 which prima-facie discloses that 4 trucks belonging to the plaintiff numbering UP-53AT-4159, UP-53BT-7619, UP-53DT-6179 and UP-53ET-0739 were running under the above firm of the defendant from 14.9.2002. The appellant has also filed a supplementary memorandum of entry dated 14.9.2018 issued by the Union Bank of India, Taramandal branch, Gorakhpur which discloses that a credit facility of ₹ 125 lakhs was extended by the above bank to the defendant and plaintiffs wife Girja Devi jointly, for which, the defendant's son Vinod Kumar Gupta has stood guarantor being the owner of plot no. C-127 BuddhaVihar, commercial scheme, Taramandal, Gorakhpur. The plaintiff appellant has also filed a copy of the bank statement of cash credit account no. 591406520000106 jointly in the name of defendant Radheyshyam Gupta and plaintiff Omprakash Gupta, with Union Bank of India, Taramandal Branch Gorakhpur, which discloses that the account was opened on 28.3.2014. The appellant has also filed a photocopy of no objection certificate granted by the defendant on affidavit on 31.7.2021 for enabling the plaintiff's son Shubham Gupta to do his business from the defendant's house No. 215-B, Indranagar, Gorakhpur.

27. All the above mentioned documentary evidence prima-facie prove that the business of plaintiff and defendant was joint, in which their family members were also involved, who were also having joint bank account. In view of the above evidence on record, there was considerable merit in the submission of the plaintiff that the plaint schedule properties were purchased from the nucleus and income of the joint Hindu undivided family of the plaintiff and defendant. It is further apparent that whether the disputed property was benami and was not covered by the exception, was again an issue to be decided on the basis of evidence and not simply on mere averments contained in the plaint and the defendant has to adduce evidence to prove the property to be benami, as such, prima-facie the trial court could not have rejected the plaint at the threshold under Order 7 Rule 11 CPC. It is further apparent that since, the disputed property was alleged to be property of the joint Hindu undivided family, as such, under Section 2(9) of the Act of 1988, it fell within the exception carved out, hence it was not a benami property, but the trial court has held otherwise. In view of this, since the disputed plaint properties were falling in the exception contained in Section 2(9) of the Act of 1988, the plaintiff's suit was also not barred under Section 4 of the Act, and the trial court has certainly erred in dismissing the plaintiff's suit on this ground. It is apparent that the impugned order passed by the trial Court is perverse, which is legally unsustainable and is liable to be set aside. Accordingly, for the reasons disclosed above, this appeal has got merit and is liable to be allowed.

28. Accordingly, the instant first appeal stands allowed with costs. Consequently, the impugned judgment and decree of the trial court dated 3.3.2023 in O.S. no.1034 of 2022 is set aside. The defendant's application 38-C under Order 7 Rule 11 CPC stands dismissed. The plaintiffs original suit stands restored to its original number. The decree be prepared accordingly.

29. The trial court is directed to decide the original suit preferably within a period of one year from the date a certified copy of this order is produced before it, without affording unnecessary adjournments to either of the parties, in accordance with law, on merits.

30. It is further made clear that the trial court is not bound by the observations made by this Court in this order and is free to form its opinion, in accordance with law, on the basis of pleadings of the parties and evidence adduced by them during trial.

31. It is apparent that this Court vide order dated 31.3.2023 passed in the instant appeal, had directed that no third party right shall be created over the property in question. In view of this, both the parties are restrained from selling, alienating, transferring or creating third party rights in the disputed property, till the disposal of the suit by the trial court on merits.

32. Office is directed to send back, the original record of the trial court, forthwith.

(2026) 1 ILRA 905
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.01.2026

BEFORE

THE HON'BLE MRS. SANGEETA CHANDRA, J.
THE HON'BLE AMITABH KUMAR RAI, J.

Writ A No. 82 of 2026

Deepak Kumar & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

(1) Permissibility of requiring additional qualification for the post of Drug Inspector apart from the minimum qualification prescribed under Rule 49.

(2) Binding effect of *Kuldeep Singh's case* (Full Bench), wherein, it was held that the experience referred to in the first proviso to Rule 49 is not an essential qualification, particularly in view of third amendment of 18.11.2015, whereby the experience was made mandatory.

Headnotes

(A) Service law – Drug Inspectors – Qualification – Rule 49 of the Service Rules, 1995 provides the qualification of Degree in Pharmacy etc. – However, the State Government, vide Third Amendment of 18.11.2015, also made the experience mandatory – Vires of Third Amendment was challenged – *Kuldeep Singh's case* (Full Bench) was relied upon by the petitioner, wherein it was held that the experience referred to in the first proviso to Rule 49 is not an essential qualification for appointment as a Drug Inspector – Permissibility. (E-1)

Held : The State Government while amending the U.P. Food and Drug Administration Department Gazetted Officers' (Drugs) Service Rules, 1995 by the Third amendment introduced additional qualification, which in no manner has violated the qualifications as prescribed in Rule 49 of the Rules of 1945 – The State Government can always prescribe additional qualification apart from the minimum qualification prescribed under Rule 49 of the Drugs and Cosmetic Rules, 1945 for the purpose of recruitment of Drug Inspectors in the Department of Food Safety and Drug Administration while framing rules in exercise of power under proviso to Article 309 of the Constitution. [Para 24 and 39]

Further held : The Judgement in the case of *Kuldeep Singh* is of 10.04.2014 and the Third amendment in the U.P. Food and Drug Administration Department Gazetted Officers' (Drugs) Service Rules, 1995, is

subsequent to the decision of Full Bench incorporated by Notification No. 78/2015/1934/88-15-75Oshadhi/10 dated 18.11.2015 – The reliance placed on the Full Bench judgment by learned counsel for the petitioners is misconceived and untenable in the eyes of law, as the interpretation of the then existing Rules by the Full Bench cannot be imported to hold the substituted Rules as ultra vires. In fact, the judgment of the Full Bench in Kuldeep Singh has lost its relevance after the Third Amendment to the Rules, 1995, introduced vide notification dated 18.11.2015. [Para 19 and 35]

Case Law Cited

Civil Miscellaneous Writ Petition No. 46079 of 2010, Kuldeep Singh and others versus State of U.P. and another decided on 10.04.2014 (Full Bench); S. Satyapal Reddy and others versus Government of Andhra Pradesh and others, 1994 (4) SCC 391. – **referred to.**

List of Acts

Constitution of India – Article 309, proviso – Seventh Schedule, List II, Entry no. 41 – List III, Entry no. 19; Drugs and Cosmetics Act, 1940 – Section 6(2), 12, 33 and 33N; Drugs and Cosmetics Rules, 1945 – Rule 49, Proviso; U.P. Food and Drug Administration Department Gazetted Officers' (Drugs) Service Rules, 1995 – Rule 21(1) (a).

List of Keywords

Minimum Qualification, Additional qualification, Essential eligibility criteria, Experience, Vires, Confirmation.

Case Arising From

Advertisement dated 22.12.2025 prescribing the additional qualifications for the post of Drug Inspector.

Appearances for Parties

Advs. for the Appellant : Shireesh Kumar and Utkarsh Kumar.

Advs. for the Respondents : S.C. and Raj Kumar Upadhyaya .

(Delivered by Hon'ble Mrs. Sangeeta Chandra, J.

&

Hon'ble Amitabh Kumar Rai, J.)

1. Heard learned Counsel for the petitioners, who are 33 in number, learned Standing Counsel, who appears on behalf of the State respondents, and Sri Raj Kumar Upadhyaya, learned counsel appearing on behalf of the respondent no.2.

2. This petition has been filed with the following main prayers:-

"(i) issue a writ order or direction in the nature of mandamus declaring ultra vires the Rule 8 of "Uttar Pradesh Food and Drug Administration Department, Gazette Officers (Drugs) Service Rules, 1995 introduced vide notification dated 18.11.2015 as contained in Annexure No.-1 to this writ petition.

(ii) issue a writ order or direction in the nature of certiorari quashing the qualifications prescribed under Clauses 2(a) to (c) of Serial No. 4 under the heading Academic Qualifications for the post of Inspector of Drugs of the advertisement dated 22.12.2025, as contained in Annexure No.-2 to this writ petition.

(iii) issue a writ order or direction in the nature of mandamus commanding the opposite parties to allow the petitioners to apply for appointment to the post of Drug Inspector in pursuance to the advertisement no. No. D-6/E-1/2025 dated 22.12.2025

(iv) issue a writ order or direction in the nature of mandamus commanding the opposite parties to make appointment to the post of Drug Inspectors on the basis of qualifications prescribed by the Central Government under Rule 49 of the Rules the Recruitment Rules of 2025."

3. It has been submitted by the learned Counsel for the petitioners that the petitioners were intending to apply for selection and appointment as Drug Inspectors and an advertisement in this regard has been issued on 22.12.2025, describing the qualifications for the post. However, such qualifications are in contradiction to the provisions of Section 33N(2)(b) of the Act and Rule 49 of the Rules of 1945. Therefore, this petition has been filed with the aforementioned prayers.

4. Learned Counsel for the petitioners has submitted that under Section 33N of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the Act of 1940'), the Central Government has the power to make rules for the purpose of giving effect to the provisions of the Chapter and under sub-section (2)(d), it can prescribe the qualifications and duties of Government Analysts and the qualifications of Inspectors. The Central Government has made the Rules of 1945 with regard to the qualifications of Inspectors.

5. Learned Counsel for the petitioners has referred to Rule 49, which provides that a person may be appointed as an Inspector under the Act if he has a Degree in Pharmacy **or** a Degree in Pharmaceutical Sciences **or** a Degree in Medicine **with** specialization in Clinical Pharmacology or Microbiology from a University established in India by law.

6. In the proviso to the said Rule, the Drug Inspectors who may be authorized to inspect the manufacture or may be authorized to test or inspect the firm's manufacturing substances in Schedule C of the Act and the Rules have been given, which require 18 months' experience in the respective domain.

7. It has been submitted by learned Counsel for the petitioners that a Full Bench of this Court in Civil Miscellaneous Writ Petition No. 46079 of 2010: Kuldeep Singh and others versus State of U.P. and another, along with the connected matters, was referred two questions by a Division Bench. They being, whether the experience required in the proviso to Rule 49 of the Drugs and Cosmetics Rules, 1945, is only a bar of authorization to inspect the manufacture of substances, or is an essential qualification under Rule 49 for direct appointment as Drug Inspector under Rule 5(4) of the U.P. State Drug Control Gazetted Officers' Service Rules, 1995.

8. Learned Counsel for the petitioners has read out paragraphs-16 and 17 of the said judgment and also the operative portion wherein the Full Bench has observed that the experience referred to in the first proviso to Rule 49 of the Drugs and Cosmetics Rules, 1945, has not been made an essential qualification for appointment as a Drug Inspector. The effect of the first proviso is that only an Inspector who holds the experience as specified in it, is authorized to inspect the manufacture of a substances specified in Schedule C to the Rules.

9. It has been submitted that only the Central Government is empowered to lay down the eligibility criteria or to prescribe qualifications for appointment to the post of Drug Inspectors, and it has already made Rules in this regard as aforesaid. This fact is also evident from the Notification made by the Ministry of Health and Family Welfare dated 11.11.2025, notifying the Ministry of Health and Family Welfare, Central Drugs Standard Control Organization, Drugs Inspector (Group 'B' Post) Recruitment Rules, 2025. The Central Government, in the Schedule to the said Rules, has given the qualifications as a Bachelor's Degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a recognized University or Institute.

10. However, the State Government has framed Rules by way of an amendment notified on 18.11.2015, which prescribe an additional qualification for appointment as Drug Inspector. Rule 8(a) mentions 18 months' experience given in the proviso of Rule 49 as an essential criteria for appointment in addition to the possession of Bachelor's Degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology or equivalent from a recognized University.

11. It has been submitted by the learned Counsel appearing for the petitioners that the observations made by the Full Bench in Kuldeep Singh have been referred to and followed by two High Courts, i.e., the Delhi High Court and the Patna High Court, and the first proviso has been held by such High Courts to only prescribe the eligibility for authorization to inspect firm's manufacturing Schedule C substances as mentioned in the Rules.

12. Learned Counsel for the respondents, on the other hand, has pointed out the judgment rendered by the Hon'ble Supreme Court in *S. Satyapal Reddy and others versus Government of Andhra Pradesh and others*, 1994 (4) SCC 391, wherein the Supreme Court has held that the State can prescribe additional qualifications for services under it.

13. It has been argued that Public Services is a State subject and under Entry No. 41, List II it is within the State List of the Seventh Schedule of the Constitution.

14. It has been submitted that only additional and higher qualification in terms of 18 months' experience has been provided under the Rules and no lower qualification than what has been prescribed under Rule 49 has been prescribed by the State Government for recruitment of Drug Inspectors.

15. It has also been stated that several applications have already been received from persons who possess the essential eligibility criteria and it is not as if there are no persons with 18 months' experience. In the last two selections held by the respondents, they have selected only persons having 18 months' experience.

16. Having gone through the judgment rendered by the Full Bench of this Court, we find that the observations made in paragraph-26 should also be taken into account. Paragraph-26 of the said judgment is being quoted hereinbelow:-

"26. Finally, as we have noted earlier, we may clarify that it is always open to the legislature or its delegate to suitably amend a statutory provision or, as in the present case, subordinate legislation to make the holding of the requisite experience as a condition of eligibility or a qualification for appointment but, that would have to be by an amendment of the subordinate legislation. As a matter of fact, the attention of the Court has been drawn to a notification dated 27 October 2010²⁸, of the Ministry of Health and Family Welfare, Government of India, amending the recruitment rules for the post of Drug Inspectors in the Central Drugs Standard Control Organization under the Directorate General of Health Services by making the holding of the requisite experience as an essential qualification for appointment. The relevant part of the notification reads as follows:

"Essential : -

(i) Degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a recognized University or equivalent;

(ii)(a) Eighteen months' experience in the manufacture of at least one of the substances specified in Schedule 'C' to the Drugs and Cosmetics Rules, 1945; or

(b) Eighteen months' experience in testing of at least one of the substances specified in Schedule 'C' to the Drugs and Cosmetics Rules, 1945 in a laboratory approved for this purpose by the licensing authority; or

(c) Three years' experience in the inspection of firms manufacturing any of the substances specified in Schedule 'C' to the Drugs and Cosmetics Rules, 1945 during the tenure of their services as Drug Inspector."

No such amendment has been made in Rule 49 of the Drugs and Cosmetics Rules, 1945. The Rules, as we have interpreted them on their plain and natural meaning as they stand, do not make the experience, which is stipulated in the first proviso, as a condition of eligibility."

17. The issue before the Full Bench in Civil Miscellaneous Writ Petition No.46079 of 2010: Kuldeep Singh and others versus State of U.P. and others, was as to whether the experience required in the proviso to Rule 49 of the Drugs and Cosmetics Rules, 1945 is only a bar of authorization to inspect the manufacture of substances, or is an essential qualification under Rule 49 for direct appointment as Drug Inspector under Rule 5(4) of the U.P. State Drug Control Gazetted Officers' Service Rules, 1995.

18. The U.P. Food and Drug Administration Department Gazetted Officers' (Drugs) Service Rules, 1995 earlier provided the qualification for appointment of Drug Inspectors as under:-

"A candidate for direct recruitment to the post of Inspector of Drugs must possess such qualifications as have been prescribed under rule-49 of the Drugs and Cosmetic Rules, 1945 made by the Central Government in accordance with the provisions contained in section 21 of the Drugs and Cosmetics Act, 1940."

After the third amendment in the year 2015, the said qualification has been substituted as under:-

"A candidate for direct recruitment to the post of Inspector of Drugs must possess the following qualifications;-

(i) Degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology or equivalent from a recognized University;

(ii)(a) Eighteen months' experience in the manufacture of at least one of the substances specified in Schedule 'C' to the Drugs and Cosmetic Rules, 1945; or

(b) Eighteen months' experience in testing of atleast one of the substances specified in Schedule 'C' to the Drugs and Cosmetics Rules, 1945 in a laboratory approved for this purpose by the licensing authority; or

(c) Three years' experience in the inspection of firms manufacturing any of the substances specified in Schedule 'C' to the Drugs and Cosmetics Rules, 1945, during the tenure of their services as Drug Inspector of any State Government or Central Government."

19. The Judgement in the case of Kuldeep Singh (supra) is of 10.04.2014 and the Third amendment in the U.P. Food and Drug Administration Department Gazetted Officers' (Drugs) Service Rules, 1995, is subsequent to the decision of Full Bench incorporated by Notification No.78/2015/1934/88-15-75Oshadhi/10 dated 18.11.2015. The U.P. Food and Drug Administration Department Gazetted Officers' (Drugs) Service Rules, 1995, have been framed under proviso to Article 309 of the Constitution of India.²⁰ The Drugs and Cosmetics Act, 1940, is a Central legislature covered under Entry 19 of the Concurrent List (List III).

21. The Drugs and Cosmetic Rules, 1945, have been framed in exercise of powers conferred by Sections 6(2), 12, 33 and 33(N) of the Drugs and Cosmetics Act, 1940. Rule 49 prescribes qualification for appointment of Drug Inspectors and Rule 49 was interpreted by the Full Bench in the case of Kuldeep Singh to hold that the experience referred to in the first proviso to Rule 49 of the Drugs and Cosmetics Rules, 1945, is not an essential qualification for appointment as a Drug Inspector and the effect of the first proviso is that only an Inspector, who holds the experience as specified in it, is authorized to inspect the manufacture of the substances specified in Schedule 'C' to the Rules of 1945.

22. The qualification of the Drug Inspector as prescribed in Rule 49 is a minimum qualification which should have to be adhered to in the appointment of Drug Inspectors and cannot be ignored.

23. The State Government while amending the U.P. Food and Drug Administration Department Gazetted Officers' (Drugs) Service Rules, 1995, by the Third amendment issuing Notification dated 18.11.2015 made the experience mandatory, which is an additional qualification

to what Rule 49 of the Drugs and Cosmetic Rules, 1945 prescribes for appointment of a Drug Inspector.

24. The State Government in its wisdom has introduced the additional qualification as the Drug inspectors appointed by the State Government have to discharge their duties which also includes inspection of firms & units manufacturing drugs and other related substitutes which cannot be faulted upon by merely referring to Rule 49 of the Rules of 1945 as the State Government while amending the U.P. Food and Drug Administration Department Gazetted Officers' (Drugs) Service Rules, 1995 by the Third amendment introduced additional qualification, which in no manner has violated the qualifications as prescribed in Rule 49 of the Rules of 1945.

25. The services under the State Government are the exclusive domain of the State legislature and falls within Entry 41 of the State List (List II) and as such the State Government is fully empowered to frame Rules with regard to the services in connection with the State Public Services.

26. The services of Drug Inspectors of the U.P. Food & Drug Administration Department undisputedly belong to the State Public Services and as such the State Government is fully empowered to prescribed qualification for the post of Drug Inspectors prescribing additional qualification to that as provided in Rule 49 of the Rules of 1945.

27. We, therefore, find no reason to issue notice to the learned Advocate General only because the vires of such amended Rules have been challenged. In fact, we find no merit in the writ petition and we, therefore, refuse to show any interference as prayed for.

28. Learned Counsel for the petitioners, at this stage, has stated that as per paragraph-26 of the Full Bench decision of this Court, only the legislature can make amendment to the Rules and the legislature in this case will be the Central Legislature as per Section 33N of the Drugs and Cosmetics Act, 1940.

29. We have gone through Section 33N of the Act of 1940, which refers to the power of the Central Government to make Rules under Chapter IV A. Chapter IV A of the Act refers to the provisions relating to Ayurvedic, Siddha and Unani drugs and Inspectors relating to Ayurvedic, Siddha and Unani drugs. Such provision under Section 33N is confined to Chapter IV A of the Act of 1940. There is no mention in the said Rule or Chapter IV A of the Act of 1940 that the State Government cannot make Rules for appointment of Drug Inspectors relating to Allopathic medicine. Although the counsel for the petitioner has only referred to Section 33(N) of the Act of 1940, this Court finds reference of framing Rule with respect to the Allopathic medicine relating to the appointment of Drug Inspectors under Section 33(2)(b). Thus, under the Drugs and Cosmetic Rules, 1945 the prescription of minimum qualifications for appointment of Drug Inspectors is traceable to Rule 33(2)(b) of the Act of 1940.

30. The reliance placed on the Full Bench judgment rendered by the Allahabad High Court in Kuldeep Singh (supra) by learned counsel for the petitioners while challenging the vires of the Uttar Pradesh Food and Drug Administration Department Gazetted Officers' (Drugs) Service (Third Amendment) Rules, 1995, as amended by notification dated 18.11.1995, is also

misconceived. The issue before the Full Bench was with regard to the interpretation of the then existing qualifications required for appointment to the post of Drug Inspector in the Food Safety and Drug Administration Department, Government of U.P.

31. The Full Bench interpreted the then existing Rules and held that the experience required in the first proviso to Rule 49 of the Drugs and Cosmetics Rules, 1945 was not an essential qualification for appointment as a Drug Inspector. At that point of time, the Rules, 1995 provided qualifications under Rule 8 akin to those specified in Rule 49 of the Drugs and Cosmetics Rules, 1945.

32. Subsequently, vide notification dated 18.11.2015, the Rules were amended and the experience required under Rule 8(ii) was introduced as an additional qualification for appointment to the post of Drug Inspector, while retaining the minimum qualifications prescribed under Rule 49 of the Drugs and Cosmetics Rules, 1945.

33. The Full Bench, while deciding the issue, took into consideration the then existing Rule 21(1)(a) of the Rules, 1995, which provided for confirmation of a probationer Drug Inspector only if he had acquired 18 months' experience in testing Schedule C substances in an approved laboratory, as indicated in paragraph 17 of the Full Bench judgment.

34. Rule 8 has been amended by notification dated 18.11.2015, and correspondingly, Rule 21 of the Rules, 1995, regarding confirmation has also been amended, which now reads as under:-

"21. Confirmation (1) Subject to the provisions of sub-rule (2), a probationer shall be confirmed in his appointment at the end of the period of probation or the extended period of probation if?

(a) his work and conduct are reported to be satisfactory;

(b) his integrity is certified; and

(c) the appointing authority is satisfied that he is otherwise fit for confirmation.

(2) Where, in accordance with the provisions of the Uttar Pradesh State Government Servants Confirmation Rules, 1991, confirmation is not necessary, the order under sub-rule (3) of Rule 5 of those Rules declaring that the person concerned has successfully completed the probation shall be deemed to be the order of confirmation."

35. Thus, the reliance placed on the Full Bench judgment by learned counsel for the petitioners is misconceived and untenable in the eyes of law, as the interpretation of the then existing Rules by the Full Bench cannot be imported to hold the substituted Rules as ultra vires. In fact, the judgment of the Full Bench in Kuldeep Singh (supra) has lost its relevance after the Third Amendment to the Rules, 1995, introduced vide notification dated 18.11.2015.

36. Be that as it may, as we have already held above that the State Government while exercising power under Article 309 with respect to the State Public Services can frame Rules which cannot be in contravention of the minimum qualifications laid down in Rule 49 of the Drugs and Cosmetic Rules, 1945, but certainly the State Government can always prescribe additional qualification apart from the minimum qualification prescribed under the Drugs and Cosmetic Rules, 1945.

37. The Hon'ble Supreme Court in the case of Dr. Preeti Srivastava and another Vs. State of M.P. and others, reported in 1999 (7) SCC 120, while dealing with the issue of admission to the Medical Colleges has noted the terms "Eligibility" and "qualifications" and has held that minimum standards laid down by the Central statute have to be complied with by the State while making admissions, however it may in addition lay down other additional norms for admission or regulate admission in exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down by the Central Statute.

Paragraph-39 of the Judgement rendered by Hon'ble Supreme Court in Dr. Preeti Srivastava (supra), is being quoted hereinbelow:-

"39. The respondents have emphasised the observation that admission has to be made by those who are in control of the colleges. But, the question is, on what basis? Admissions must be made on a basis which is consistent with the standards laid down by a statute or regulation framed by the Central Government in the exercise of its powers under Entry 66 List I. At times, in some of the judgments, the words "eligibility" and "qualification" have been used interchangeably, and in some cases a distinction has been made between the two words ? "eligibility" connoting the minimum criteria for selection that may be laid down by the University Act or any Central statute, while "qualifications" connoting the additional norms laid down by the colleges or by the State. In every case the minimum standards as laid down by the Central statute or under it, have to be complied with by the State while making admissions. It may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down."

38. The Hon'ble Supreme Court in the case of S. Satyapal Reddy and others Vs. Government of Andhra Pradesh and others, reported in 1994 (4) SCC 391, while dealing with the issue regarding prescription of qualifications for recruitment of officers in the Transport Department, has held in paragraph-7 as under:-

"7. It is thus settled law that Parliament has exclusive power to make law with respect to any of the matters enumerated in List I or concurrent power with the State Legislature in List III of the VIIth Schedule to the Constitution which shall prevail over the State law made by the State Legislature exercising the power on any of the entries in List III. If the said law is inconsistent with or incompatible to occupy the same field, to that extent the State law stands superseded or becomes void. It is settled law that when Parliament and the Legislature derive that power under Article 246(2) and the entry in the Concurrent List, whether prior or later to the law made by the State Legislature, Article 246(2) gives power, to legislate upon any subject enumerated in the Concurrent List, the law made by Parliament gets paramountcy over the law made by the State

Legislature unless the State law is reserved for consideration of the President and receives his assent. Whether there is an apparent repugnance or conflict between Central and State laws occupying the same field and cannot operate harmoniously in each case the court has to examine whether the provisions occupy the same field with respect to one of the matters enumerated in the Concurrent List and whether there exists repugnancy between the two laws. Article 254 lays emphasis on the words "with respect to that matter". Repugnancy arises when both the laws are fully inconsistent or are absolutely irreconcilable and when it is impossible to obey one without disobeying the other. The repugnancy would arise when conflicting results are produced when both the statutes covering the same field are applied to a given set of facts. But the court has to make every attempt to reconcile the provisions of the apparently conflicting laws and court would endeavour to give harmonious construction.

The purpose to determine inconsistency is to ascertain the intention of Parliament which would be gathered from a consideration of the entire field occupied by the law.

The proper test would be whether effect can be given to the provisions of both the laws or whether both the laws can stand together. Section 213 itself made the distinction of the powers exercisable by the State Government and the Central Government in working the provisions of the Act. It is the State Government that operates the provisions of the Act through its officers. Therefore, sub-section (1) of Section 213 gives power to the State Government to create Transport Department and to appoint officers, as it thinks fit. Sub-section (4) thereof also preserves the power. By necessary implication, it also preserves the power to prescribe higher qualification for appointment of officers of the State Government to man the Motor Vehicles Department. What was done by the Central Government was only the prescription of minimum qualifications, leaving the field open to the State Government concerned to prescribe if it finds necessary, higher qualifications. The Governor has been given power under proviso to Article 309 of the Constitution, subject to any law made by the State Legislature, to make rules regulating the recruitment which includes prescription of qualifications for appointment to an office or post under the State.

Since the Transport Department under the Act is constituted by the State Government and the officers appointed to those posts belong to the State service, while appointing its own officers, the State Government as a necessary adjunct is entitled to prescribe qualifications for recruitment or conditions of service. But while so prescribing, the State Government may accept the qualifications or prescribe higher qualification but in no case prescribe any qualification less than the qualifications prescribed by the Central Government under sub-section (4) of Section 213 of the Act. In the latter event, i.e., prescribing lesser qualifications, both the rules cannot operate without colliding with each other. When the rules made by the Central Government under Section 213(4) and the statutory rules made under proviso to Article 309 of the Constitution are construed harmoniously, there is no incompatibility or inconsistency in the operation of both the rules to appoint fit persons to the posts or class of officers of the State Government vis-a-vis the qualifications prescribed by the Central Government under sub-section (4) of Section 213 of the Act."

39. In view of the above proposition of law as laid down by Hon'ble Supreme Court, as applied in the present case, we are of the view that the State Government can always prescribe additional qualification apart from the minimum qualification prescribed under Rule 49 of the Drugs and Cosmetic Rules, 1945 for the purpose of recruitment of Drug Inspectors in the Department of Food Safety and Drug Administration while framing rules in exercise of power under proviso to Article 309 of the Constitution.

40. Consequently, we hold that Rule 8 of the U.P. Food and Drug Administration Department Gazetted Officers' (Drugs) Service Rules, 1995 introduced vide Notification No.78/2015/1934/88-15-75Oshadhi/10 dated 18.11.2015 is *intra vires*.

41. The writ petition stands *dismissed*.

42. No order as to Costs.

(2026) 1 ILRA 915
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.01.2026

BEFORE

THE HON'BLE MANOJ KUMAR GUPTA, J.
THE HON'BLE ARUN KUMAR, J.

Special Appeal No. 213 of 2025
 alongwith other cases

State of U.P. & Ors.

...Appellants

Versus

Ramesh Kumar Singh & Ors.

...Respondents

Issue for Consideration

(1) Scope of Article 21-A of the Constitution of India in reference to the obligation of State to provide financial aid to the recognized private basic schools and further in reference to the entitlement of the Teachers and non-teaching staffs of the same schools to claim salary from the State Exchequer.

(2) Binding effect of the law laid down by the Hon'ble Apex Court in *Pawan Kumar Dwivedi's case* and by the Allahabad High Court in *Paripurna Nand Tripathi's case* in reference to the entitlement of recognized private Primary School to receive grant-in-aid.

Headnotes

(A) Education law – Grant in aid – Entitlement of private recognized primary school having more than 50% students belonging to S.C./S.T. – Ground of Article 21-A of Constitution making obligation on the State to provide free and compulsory education to all children of the age of 6-14 years was taken – Principal of law laid down by Supreme Court in *Pawan Kumar Dwivedi's case* and by Allahabad High Court in *Paripurna Nand Tripathi's case* was also relied upon in support of entitlement – Permissibility – Writ Court directed the State to accord grant-in-aid – Validity challenged by the State. (E-1)

Held : The obligation of the State to provide free and compulsory education, now enacted as fundamental right, is not to be enforced through such schools for giving recurring grants to meet the expenses of the

salary of teachers and other incidental expenses – The State Government in fulfilling its obligation has brought on record materials to show that it has established primary school at every one kilometre and Junior High School at every three kilometre. Complete reimbursement of fee is being provided to students of weaker section for studying in private institutions as contemplated under Section 12(2) of the RTE Act 2009. In view of the aforesaid, no indefeasible right accrues in favour of institution to receive recurring grant-in-aid from the State Government for every recognized primary schools imparting education from classes 1 to 5, having more than 50% of the students belonging to scheduled caste and scheduled tribe category. [Para 34 and 39]

Held further : The State has an obligation to provide free and compulsory education to children between the age of 6 to 14 years. However, providing grant-in-aid to all private recognised institutions, imparting education to students between the ages of 6 to 14 years, have not been held to be a fundamental right of such institutions. [Para 47]

(B) Service law – Assistant Teacher and Peon in private recognized primary school – Payment of salary from the state exchequer was claimed, though having not been appointed as per the procedure prescribed under Rules of 1975 – Plea of institution having more than 50% students belonging to S.C./S.T. and further ground of Article 21-A of Constitution making obligation on the State to provide free and compulsory education to all children of the age of 6-14 years was made – Permissibility – Writ Court directed the State to release the grant for payment of salary to the teaching and non-teaching staff – Validity challenged by the State. (E-1)

Held : There is also no material to show that the petitioner-respondents possess the minimum eligibility and have passed the TET examination, which is *sine quo non*, for being appointed as an Assistant Teacher in a Basic School. In the absence of the aforesaid material on record, no positive direction can be issued in favour of petitioner-respondents for payment of salaries, even if the institutions existing on the issuance of Government Order dated 31.03.1994, are found to be entitled for recurring grant. [Para 43]

(C) Service law – Recurring grant-in-aid – Benefit of G. O. dated 31.03.1994 was extended to the institution vide another G.O. dated 03.01.2024, issued in compliance of order of writ court – Scope of interference – Employees of the institution were remain no more employed – Effect – Salary was claimed by the subsequently appointed petitioner-respondent – Permissibility. (E-1)

Held : The entitlement of the aforesaid Institution for recurring grant which was pending consideration since 1997 and was in principle, accepted by the Government Order dated 03.01.2024, is not required to be interfered with – Even though, the institution's entitlement for recurring grant cannot be denied, but the payment of salary to the petitioner-respondents of Special Appeal No. 213 of 2025, Special Appeal Defective No. 7 of 2025 and Special Appeal Defective No. 9 of 2024, cannot be directed unless they establish that their appointments were in accordance with Act of 1975, and they possess the minimum eligibility. [Para 49]

Case Law Cited

State of U.P. vs. Pawan Kumar Dwivedi and others, (2014) 9 SCC 692; Special Appeal Defective No. 994 of 2014, Paripurna Nand Tripathi and another vs. State of U.P. and 20 others decided on 05.12.2014; Writ A No. 38992 of 2017, Jai Ram Singh and others vs. State of U.P. and others, decided on 23.05.2019; Writ A No. 14997 of 2019, C/M Harijan Primary Pathshala, Madhopur and others vs. State of U.P. and others decided on 21.10.2019; Special Appeal No. 143 of 2008, C/M Adrsh Shishu Sadan vs. State of U.P. and others decided on 31.08.2010; The State of U.P. and others vs. Principal Abhay Nandan Inter Colleges and others, (2021) 15 SCC 600. – referred to.

List of Acts

Constitution of India – Article 21-A and 45; Right of Children to Free and Compulsory Education Act, 2009 – Ss. 2(f), 6, 7, 8, 12; U.P. Basic Education Act, 1972; U.P. Kshetra Samitis and Zila Parishad Adhinyam, 1961 – Ss. 32 and 33; U.P. Recognized Basic Schools (Recruitment and Conditions of Services of Teachers and other Conditions) Rules 1975; UP Junior High School (Payment of Salary of Teachers and other Employees) Act, 1978; UP High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971.

List of Keywords

Recurring grant, Free and compulsory education, Financial approval, Payment of salary, Grant-in-aid, Children belonging to Scheduled Caste/ Scheduled Tribes category, Basic amenities, Policy decision, Indefeasible right, Constitutional duty to enforce the fundamental right, Claim for reimbursement, Child belonging to disadvantaged group, Minimum eligibility, Permanent recognition.

Case Arising From

Judgment and order of the writ court dated 21.12.2022 passed in Writ A No. 1659 of 2020, Writ A No. 5455 of 2019, Writ A No. 10873 of 2021, Writ A No. 10962 of 2021 and Writ A No. 3215 of 2021 arising out of the order dated 10.05.2019 of the State Government rejecting the claim of providing recurring grant to the Institution, in question.

Appearances for Parties

Advs. for the Appellant : Anoop Trivedi, Additional Advocate General; Tej Bhanu Pandey, SC.

Advs. for the Respondents : Rajesh Kumar Singh and Vivek Kumar Singh.

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

1. Heard Sri Anoop Trivedi, Learned Additional Advocate General, assisted by Sri Tej Bhanu Pandey, Learned Standing Counsel, for the Appellants Sri Rajesh Kumar Singh and Sri Vivek Kumar Singh for the respondents.

2. SPLA No.213 of 2025, SPLA No.214 of 2014, SPLAD No.4 of 2025, SPLAD No.7 of 2025 and SPLA D No.9 of 2024, arises out of Writ-A No.1659 of 2020, Writ-A No.15455 of 2019, Writ-A No.10873 of 2021, Writ-A No.10962 of 2021 and Writ-A No.3215 of 2021, respectively.

BRIEF FACTS

3. Writ-A No.1659 of 2020, Writ-A No.10962 of 2021 and Writ-A No.3215 of 2021, had been filed by Assistant Teachers of Mahamana Malviya Ansuchit Jati Primary Pathsala, Jakariya, Rasra, District Ballia, seeking quashing of the order of the respondent-appellant no.1, the State Government, dated 10.05.2019, rejecting their claim for providing recurring grant to their Institution. A further direction was sought to direct the respondent -appellants to take their institution on the grant-in-aid list and pay salary to the petitioners from the state exchequer. The aforesaid Institution was granted recognition by the order of the Zila Parishad, Ballia, dated 31.01.1970. The petitioners of the aforesaid three writ petitions claim to have been appointed in the Institution between 01.07.2000 to 08.07.2017, by the Committee of Management. The petitioners set up their claim for the first time through their representation dated 15.02.2018, before respondent-appellant no.1.

4. Writ-A No.15455 of 2019, had been filed by the Committee of Management of Shree Shivmangal Chaudhari Primary Vidyalay, Bandhawa Kalyan, Manjhanpur, District Kaushambi, seeking quashing of the order dated 22.02.2019, passed by the respondent-appellant no.1, rejecting the claim of the petitioner-respondent for providing recurring grant to its institution from the Department of Social Welfare, Govt. of U.P. The aforesaid Institution was granted permanent recognition by the order of the Zila Basic Shiksha Adhikari, Allahabad, dated 17.07.1987. The petitioner institution had set up its claim by filing its representation dated 13.10.2018, before respondent-appellant no.1.

5. Writ-A No.10873 of 2021, had been filed by 9 Assistant Teachers and 1 Peon, of Sant Ravidas Prathamik Vidyalay, Malap No.1, Yogivir, Ghoghaea, District Ballia, seeking quashing of the order of the respondent-appellant no.1, the State Government, rejecting the claim of the petitioner-respondents, for providing recurring grant to their institution, by the Department of Social Welfare. The aforesaid Institution was granted recognition by the order of the Zila Basic Shiksha Adhikari, Ballia, dated 23.02.1996. All the petitioners have been appointed in the aforesaid institution between 01.07.2005 to 01.07.2015, by its Committee of Management. They had set up their claim for the first time before the respondent-appellant no.1, through their representation dated 07.05.2018.

6. In all the aforesaid writ petitions, the basis of the claim of the writ petitioners were that they are working as Assistant Teachers and Peon in private recognized primary schools, imparting basic education from classes I to V, having more than 50% students belonging to scheduled caste and scheduled tribes, therefore, their institutions are entitled for recurring grant, from the Department of Social Welfare, Government of U.P. It was further contended that in view of the 86th amendment of the Constitution of India, Article 21-A has been inserted, which casts an obligation upon the State to provide free and compulsory education to all children of the age of six to fourteen years. Thus, in view of the law laid down by the Hon'ble Apex Court in its decision in the case of **State of U.P. vs. Pawan Kumar Dwivedi and others, (2014) 9 SCC 692** and the decision of this Court in **Paripurna Nand Tripathi and another vs. State of U.P. and 20 others, Special Appeal Defective No.994 of 2014**, they are also entitled for salary from the state exchequer, by taking their institutions under grant-in-aid list of the State Government.

7. All the aforesaid writ petitions were consolidated and decided by a common judgment and order of the learned Single Judge, dated 21.12.2022, quashing the impugned order(s) challenged in it. The respondent-appellants were further directed to accord financial approval and release the grant for payment of salary to the teaching and non-teaching staff of the petitioner institution by passing appropriate orders.

8. All the connected Special Appeals have been filed by the State of U.P. through Principal Secretary, Department of Social Welfare, Govt. of U.P., Lucknow and others, challenging the judgment and order of learned Single Judge, dated 21.12.2022, passed in Writ-A No.1659 of 2022 (Ramesh Kumar Singh and 13 others vs. State of U.P. and 4 others) alongwith the connected writ petitions, Writ-A No.15455 of 2019, Writ-A No.10873 of 2021, Writ-A No.10962 of 2021 and Writ-A No.3215 of 2021.

The arguments advanced by the Additional Advocate General, on behalf of the Appellants, in the abovementioned Special Appeals

9. The writ petitions filed by the petitioners, who are Assistant Teachers in the unaided recognized Primary Schools, claiming grant-in-aid for the institution was not maintainable, on their behalf.

10. In view of the policy decision of the State Government, by issuance of the Government Order dated 05.10.2006, withdrawing the earlier policy of providing recurring grant to primary

schools run by private managements, as incentives, for imparting education to children belonging to scheduled castes/scheduled tribes categories, by the Department of Social Welfare, Government of U.P., the claim of the petitioner-respondents was not sustainable.

11. The decision of the State Government, dated 14.07.2020 (Page 167 of the Special Appeal No. 213 of 2025), taken in pursuance of the direction of this Hon'ble Court, in **Writ-A No.38992 of 2017, Jai Ram Singh and others versus State of U.P. and others, decided on 23.05.2019**, it has been held that, after having established a Primary school at every one kilometer and a Junior High School at every 3 km, the obligation of the Government, contemplated under Article 21-A of the Constitution of India and the provisions of the Right of Children to Free and Compulsory Education Act, 2009, and the Rules framed there under, have been fulfilled, therefore there is no justification to grant any aid to the private managed Primary Schools.

12. The decision of the State Government, dated 17.12.2020 (Page 161 of the Special Appeal No. 213 of 2025), taken in pursuance of the direction of this Hon'ble Court, in **Writ-A No.14997 of 2019, Committee of Management Harijan Primary Pathshala, Madhopur, Kasia, Kushinagar and others versus State of U.P. and others, decided on 21.10.2019**, an identical claim for grant of recurring aid to a private managed Primary School, has been rejected by the Appellants, therefore there is no justification to grant any aid to the present petitioner-respondents.

13. The Government Orders dated 05.10.2006, 14.07.2020 and 17.12.2020, having not been challenged by the petitioners, no relief as claimed by them, could have been allowed by the learned single judge.

14. The law laid down by the Hon'ble Apex Court in its decision in the case of **State of U.P. vs. Pawan Kumar Dwivedi and others, (2014) 9 SCC 692** and the decision of this Court in **Paripurna Nand Tripathi and another vs. State of U.P. and 20 others, Special Appeal Defective No.994 of 2014**, relates to entitlement of grant-in-aid for attached Primary sections/schools, to a Junior High School or an High School and Intermediate College, already receiving aid from the Government, therefore, have no application on the facts of the present cases.

15. Relying on the Inspection Report dated 24.01.2024, 26.02.2024 and 05.10.2025, filed as Annexure SA-5, SA-6, SA-7, respectively to the IIIrd Supplementary Affidavit filed in Special Appeal No. 213 of 2025, it has been contended that the Institution Mahamana Malviya Ansuchit Jati Primary Pathsala, Jakariya, Rasra, District Ballia, does not comply with the norms for being considered to be taken on the Grant-in-aid list. He has drawn attention of the Court to the said reports showing that, against the 352 students allegedly enrolled in the institution only 40 to 65 students are found attending classes, in the academic year 2024-2025. In the academic year 2025-2026, against 466 students registered, 370 are not authenticated by Aadhaar. The building of the institution does have the basic amenities like toilet, staff room, and adequate number of furniture, fans and lights.

16. In discharge of the obligation of the State Government under relevant provisions of the Right of Children to Free and Compulsory Education Act, 2009, (RTE Act 2009, for short), a Primary school at every one kilometer and a Junior High School at every 3 km, has been

established, under the control of U.P. Basic Shiksha Parishad. All private institutions affiliated to any Board are directed to admit in class I, at least twenty-five per cent of the strength of that class, by children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education, till its completion. The entire fees of such students are reimbursed by the State Government.

17. The petitioner or any institution imparting education to classes I to V, having more than 50% students belonging to scheduled caste and scheduled tribes, does not acquire any fundamental right for grant-in-aid from the Department of Social Welfare, Government of U.P., in the light of RTE Act, 2009, as held by a Coordinate Bench of this Court in **Special Appeal No.143 of 2008, decided on 31.08.2010**, while rejecting the claim of appellants for recurring grant under the Government Order dated 31.03.1994.

Contention on behalf of the petitioner-respondents

18. Counsel for the petitioner-respondents contended that immediately after issuance of Government Order dated 31.03.1994, the Committee of Management Mahamana Malviya Asuchit Jati Primary Pathshala, Jakariya, Rasra, District Ballia, moved an application to take the institution on the grant-in-aid list by the Social Welfare Department of State Government. A report dated 09.05.1997 was submitted to the State Government by the District Magistrate, Ballia to include the said institution on the grant-in-aid list. Subsequently, the District Social Welfare Officer, Ballia submitted a fresh report dated 18.08.1998 to the Director, Social Welfare Department, Government of U.P., annexing a list of Assistant Teachers working in the institution which included one Headmaster and 17 Assistant Teachers. When no action was taken, the Committee of Management of the institution filed Writ-C No.45371 of 1999, which was disposed of with the direction to the State Government or its nominee, to decide petitioner's representation within a period of two months.

19. When the institution was not taken on the grant-in-aid list another writ petition being Writ-C No.48150 of 2004 was filed by the Committee of Management before this Court, which was disposed of vide judgment and order dated 01.10.2004, to decide the claim of the petitioner, in terms of the order passed by this Court in Writ-C No.16522 of 2003 (Committee of Management, Adarsh Shishu Sadan, Basahiya Khurd, District Maharajganj and another vs. State of U.P. and others).

20. In compliance of the order of this Court dated 01.10.2004, the Director, Social Welfare, Uttar Pradesh, issued a letter dated 12.01.2005 to the Secretary, Government of U.P. alongwith recommendation of four institution, including the aforesaid institution in question, to include them on grant-in-aid list of the State Government in pursuance of the direction of the High Court. It is contended by the counsel for the petitioner-respondents that the Committee of Management of the institution continued to pursue the claim for taking the institution on the grant-in-aid list, even though the Government Order dated 05.10.2006, was issued withdrawing recurring grant to all primary schools by the Social Welfare Department. The Director, Social Welfare, Uttar Pradesh, issued a letter dated 17.01.2014, to the Secretary, Government of Uttar Pradesh recommending

revival of the policy of grant-in-aid to the institutions, which are imparting primary education to children belonging to scheduled caste and scheduled tribe, for the last 10 years.

21. All the efforts of the Committee of Management went in vain as the State Government refused to take the Institution on the grant-in-aid list, by the Social Welfare Department of the State Government.

22. In pursuance of the order of the High Court dated 03.10.2016, passed in Writ-C No.1351 of 2016 and the order dated 01.05.2017, passed in Contempt Petition No.1910 of 2017, the State Government allowed grant-in-aid to Samaj Kalyan Primary Pathshala, Samogar, Deoria, by the Government order dated 11.12.2017. The petitioner-respondents thereafter moved an application before the State Government for consideration of their Institution on the grant-in-aid list, in view of the Government Order dated 31.03.1994.

23. The State Government in compliance of the order of this Court dated 18.12.2018, passed in Writ-A No.68262 of 2011, by the Government Order dated 16.10.2020, also accepted the claim of Janta Prathamik Vidyalaya, Basthan, Jamilpur, Azamgarh, allowing recurring grant on the satisfaction of conditions contained in the Government Order dated 31.03.1994.

24. The Counsel for the petitioner-respondents argued that in the cases where special appeals have been dismissed and the officers were under the threat of being punished for contempt of this Court, they have accepted the claim of institutions for recurring grant on the condition contained in the Government Order dated 31.03.1994. However, the claim of petitioners-respondents in the present appeals are being contested on the flimsy ground that the State has recalled its earlier policy of allowing recurring grant to institutions, imparting primary education from classes 1 to 5 with more than 50% students belonging to scheduled caste and scheduled tribe, by the Government Order dated 05.10.2006.

25. In compliance of the order of learned Single Judge, impugned in the present appeals, the State Government took a policy decision and issued a Government Order dated 03.01.2024, to extend the benefit of recurring grant to Mahamana Malviya Asuchit Jati Primary Pathshala, Jakariya, Rasra, District Ballia. The said Government Order has been brought on record by an affidavit dated 04.02.2025 filed in Special Appeal No.213 of 2025, as annexed in the Compliance Affidavit filed in Contempt Petition No.4416 of 2023, by the Principal Secretary, Social Welfare, Government of U.P.

26. The ratio of judgments in the case of Pawan Kumar Dwivedi (supra) and Paripurna Nand Tripathi (supra) squarely covers the case of the petitioner-respondents pursuant to which their writ petitions were allowed.

Contention on behalf of Committee of Management, the respondent no.14, in Special Appeal No.213 of 2025

27. Sri Vivek Kumar Singh, learned counsel appearing for the Committee of Management, Mahamana Malviya Asuchit Jati Primary Pathshala, Jakariya, Rasra, District Ballia (the respondent

no.14 in Special Appeal No.213 of 2025) has accepted the arguments made on behalf of petitioner-respondents. He has further contended that the Committee of Management of the institution had been pursuing the matter for including the Institution on the grant-in-aid list of the State Government since the issuance of Government Order dated 31.03.1994, till 2014, when the Director, Social Welfare, Government of U.P. had sent a recommendation to the State Government to include the similarly situated institutions on the grant-in-aid list. However, due to lack of financial resources, the litigation could not be pursued further, as the institution imparts education to the students from the weaker section of the society belonging to scheduled caste and scheduled tribe category, without charging any fees.

28. Points for consideration in the present Appeals

(i) Whether Article 21-A of the Constitution of India and the provisions of the Right of Children to Free and Compulsory Education Act, 2009, and the Rules framed there under, makes it obligatory upon the State Government to provide financial aid to all recognized private basic schools imparting education to Classes I to V or I to VIII?

(ii) Whether all private institution imparting education to children of the age of six to fourteen years, have any fundamental right for grant-in-aid from the State Government, in view of Article 21-A of the Constitution of India?

(iii) Whether, the Assistant Teachers of recognized Primary Schools, having been appointed after the enforcement of the Uttar Pradesh Recognized Basic Schools (Recruitment and Conditions of Service of Teachers and other conditions) Rules, 1975, without following the procedure contained in it, can claim salary from the State Exchequer, under any policy or scheme of the Government?

(iv) Whether, the ratio of the law laid down by the Hon'ble Apex Court in its decision in the case of **State of U.P. vs. Pawan Kumar Dwivedi and others, (2014) 9 SCC 692** and the decision of this Court in **Paripurna Nand Tripathi and another vs. State of U.P. and 20 others, Special Appeal Defective No.994 of 2014**, create a right in respect of unaided recognized Primary Schools, imparting education to classes I to V only, for grant-in-aid from the Department of Social Welfare, Government of U.P.?

(v) Whether, the decision of the State Government, dated 11.12.2017, taken in pursuance of the judgment and order of this Hon'ble Court passed in Writ A No. 1351 of 2017, Committee of Management Samaj Kalyan Primary Pathshala, Samogar, Deoria versus State of U.P. and others, dated 03.10.2016, allowing recurring grant to the aforesaid petitioner institution, creates any indefeasible right for grant-in-aid, in favour of the petitioner-respondent of the present Special Appeal.?

Discussion

Point- (i) & (ii)

29. The 86th Amendment Act, 2002 amending the Constitution w.e.f. 12.12.2002, substituted Article 45 providing for free and compulsory education for children to be provided by the State within ten years from the date of commencement of the Constitution, until they complete the age of 14 years. Article 45, as it stood prior to its amendment, was transposed by the same amendment under Article 21A in Part III Constitution of India. The newly inserted Article 21A and the substituted Article 45 by the 86th Amendment Act, 2002 provides:-

"Article 21A- The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may by law determine.

Article 45- The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."

30. The Parliament has finally fulfilled the mandate of Article 45 by including the duty imposed by the Constitution on the State, as a fundamental right under Article 21-A to the children of the age of 6 to 18 years to free and compulsory education. The 86th Amendment to the Constitution, in our opinion, is most significant constitutional amendment made after the Constitution was enacted, for the development of the Country. It serves the goals set forth in the preamble. The fundamental right, given to the children and the corresponding obligation of the State to provide free and compulsory education to the children of the age of 6 to 14 years is now a real and achievable right. The Courts now have an additional constitutional duty to enforce the fundamental right of free and compulsory education for the children of the age 6 to 14, and the obligation of the State, to give it full purpose and meaning.

31. Section 6 of the Right of Children to Free and Compulsory Education Act, 2009 provides for the appropriate government and local authority to establish within such area or limits of neighbourhood as may be prescribed a school where it is not so established within a period of three years from the date of commencement of the Act. The Central Government and the State Government have to share, under Section 7, concurrent responsibility for providing funds to carry out the provisions of the Act. The duty of compulsory elementary education to every child is placed upon the appropriate government defined under Section 2 (a) of the Act, which in relation to school established, owned and controlled by the Central Government, means the Central Government and other than the schools referred to as above, the State Government or the Union Territory as the case may be.

32. The RTE Act of 2009 defines in Section 2 (f) 'elementary education' to mean the education from 1st class to 8th class. The duty of local authority under Section 9, is to provide free and compulsory education to every child, provided that where a child is admitted by his or her parents or guardian, as the case may, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardians, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school. Section 8 (b) ensure availability of a neighbourhood school in respect of children belonging to weaker section and the child belonging to disadvantaged group. Section 8 (c) and Section 9 (c) in respect of appropriate government and local authority responsible provide liability to ensure that

they are not discriminated and prevented from pursuing and completing elementary education on any grounds. The appropriate government and the local authority are also under duty under Sections 8 and 9 to provide infrastructure including school building, teaching staff, learning equipment; and to ensure good quality elementary education in such neighbourhood school. The Act also gives a corresponding liability under Section 10 on the parents and guardians to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school.

33. Chapter IV of the Act provides for responsibilities of the school to provide free and compulsory education. The school under Section 2 (n) means, (i) a school established, owned or controlled by the appropriate government or a local authority; (ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate government or the local authority; (iii) a school belonging to specified category; and (iv) an aided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority. The school, which does not receive aid and grants under Section 12 (2), is required to provide free education. Section 12 is quoted as below:-

"12. Extent of School's responsibility for free and compulsory education-(1) For the purposes of this Act, a school,-

(a) specified in sub-clause (i) of clause (n) of Section 2 shall provide free and compulsory elementary education to all children admitted therein;

(b) specified in sub-clause (ii) of clause (n) of Section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent;

(c) specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in Class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion;

Provided further that where a school specified in clause (n) of Section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

(2) The school specified in sub-clause (iv) of clause (n) of Section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of Section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of if having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation."

34. In the present case the schools are recognised in accordance with law, by the competent Authority. There was no assurance given by the State Government for giving recurring grants to the schools. The salary of the teachers and other expenses were required to be met by the management from its own funds. The obligation of the State to provide free and compulsory education, now enacted as fundamental right, is not to be enforced through such schools for giving recurring grants to meet the expenses of the salary of teachers and other incidental expenses.

35. We do not find any right either under the Government orders issued from time to time or under the Act No. 35 of 2010, enacted to fulfill the rights under Article 21A, to any school for claiming recurring grant-in-aid. The State Government is conscious of its obligation and is making efforts to provide atleast one primary school on a population of 300 within one kilometre area and a junior high school on a population of 800 within two kilometres area under the 'Sarv Shiksha Abhiyan'. Nothing has been brought on record to show, that the area in which the petitioners' schools are being run do not have any school as is defined in Section 2 (n) (i), (ii) and (iii), for education of the children between the age of 6 to 14, in the neighbourhood.

36. Section 12 (2) of the Act of 2009, provides for reimbursement to the extent of per-child-expenditure incurred by the State, to those schools, which are un-aided and are not receiving any kind of aid including land, building, equipment or other facilities recognised for imparting elementary education and are providing free and compulsory education to the children. The reimbursement is to be made in a manner, in which it may be prescribed. The State shall, if there is an established school by the appropriate government or by a local authority, as a neighbourhood school provide free and compulsory education to the children of the area through such schools. It is only when there is no school in the neighbourhood that the State Government may provide for a reimbursement per child to the school, which is required for such services by the State, in accordance with the rules as may be prescribed.

37. A Coordinate Bench of this Court in Special Appeal No.143 of 2008, decided on 31.08.2010, while rejecting the claim of appellants for recurring grant under the Government Order dated 31.03.1994, has held as under:-

'The fundamental rights under Article 21-A, given to the children of the age of 6 to 14 years and the corresponding duty of the State to provide free and compulsory education by law, now provided by the Right of Children to Free and Compulsory Education Act, 2009 w.e.f. 26.8.2009 does not give any right to the managements of the existing unaided schools to receive any kind of aid or recurring grant to meet its expenses from the appropriate government or the local authority.'

38. The Hon'ble Supreme Court, while discussing the right of private institution for grant-in-aid from the government, in **The State of U.P. and others vs. Principal Abhay Nandan Inter Colleges and others, (2021) 15 SCC 600**, has held as under:-

'29.' We will first take up the right of institutions qua the aid. A decision to grant aid is by way of policy. While doing so, the government is not only concerned with the interest of the institutions but the ability to undertake such an exercise. There are factors which the government is expected to consider before taking such a decision. Financial constraints and deficiencies are the factors which are considered relevant in taking any decision qua aid, including both the decision to grant aid and the manner of disbursement of an aid.

30.' Once we hold that right to get an aid is not a fundamental right, the challenge to a decision made in implementing it, shall only be on restricted grounds. Therefore, even in a case where a policy decision is made to withdraw the aid, an institution cannot question it as a matter of right. Maybe, such a challenge would still be available to an institution, when a grant is given to one institution as against the other institution which is similarly placed. Therefore, with the grant of an aid, the conditions come. If an institution does not want to accept and comply with the conditions accompanying such aid, it is well open to it to decline the grant and move in its own way. On the contrary, an institution can never be allowed to say that the grant of aid should be on its own terms.

31.' We are dealing with a case where aid is not denied in toto but sought to be given in different form. The reason for such a decision is both efficiency and economy. When such a decision is made as a matter of policy and is being applied not only to educational institutions but spanning across the entire State in every department, one cannot question it and that too when there is no express arbitrariness seen on the face of it.'

39. The State Government in fulfilling its obligation has brought on record materials to show that it has established primary school at every one kilometre and Junior High School at every three kilometre. Complete reimbursement of fee is being provided to students of weaker section for studying in private institutions as contemplated under Section 12(2) of the RTE Act 2009. In view of the aforesaid, no indefeasible right accrues in favour of institution to receive recurring grant-in-aid from the State Government for every recognized primary schools imparting education from classes 1 to 5, having more than 50% of the students belonging to scheduled caste and scheduled tribe category.

Point- (iii)

40. Prior to promulgation of the U.P. Basic Education Act, 1972, on 19.08.1972, the responsibility for primary education rested on Zila Parishad and the Municipal Boards. The Kshetra Samitis and Zila Parishad under Sections 32 and 33 of the U.P. Kshetra Samitis and Zila Parishad Adhiniyam, 1961, exercised control over primary education within their territorial jurisdiction. After enforcement of the U.P. Basic Education Act, 1972, all primary school/Junior Basic Schools, imparting education from classes I to V, are being controlled by the Uttar Pradesh Board of Basic Education, constituted under Section 3 of the aforesaid Act.

41. In exercise of powers under sub-section (1) of Section 19 of the U.P. Basic Education Act, 1972, the Uttar Pradesh Recognized Basic Schools (Recruitment and Conditions of Service of Teachers and other conditions) Rules, 1975, was framed, for appointment of Assistant Teachers in Junior Basic Schools/Primary Schools. Under Section 9 of the aforesaid Act, no person shall be appointed as teacher or other employee in any recognized school unless he possesses such qualifications as are specified in this behalf by the Board and for whose appointment the previous approval of the Basic Shiksha Adhikari has been obtained in writing. The vacancy has to be filled by inviting applications through advertisement in at least two newspapers; one of them being a daily newspaper.

42. After insertion of Article 21-A, in the Constitution of India, providing free and compulsory education of all children in the age group of six to fourteen years as a fundamental right, the Parliament enacted, The Right of Children to Free and Compulsory Education Act, 2009, (RTE Act, 2009, for short) which received the Presidential assent on 26.08.2009, laying down norms and standards for schools imparting elementary education.

43. The provisions of RTE Act 2009 contemplates that, every student shall be imparted education by trained teachers appointed in accordance with law, possessing minimum qualification laid down by the National Council for Teacher Education. In the cases in hand the petitioner-respondents claim to have been appointed by the Committee of Management within the period 2000 to 2017. However, there is nothing on record to show that their appointments were in conformity with the mandatory provisions of the U.P. Recognized Basic Schools (Recruitment and Conditions of Services of Teachers and other Conditions) Rules 1975. There is also no material to show that the petitioner-respondents possess the minimum eligibility and have passed the TET examination, which is sine quo non, for being appointed as an Assistant Teacher in a Basic School. In the absence of the aforesaid material on record, no positive direction can be issued in favour of petitioner-respondents for payment of salaries, even if the institutions existing on the issuance of Government Order dated 31.03.1994, are found to be entitled for recurring grant.

Point- (iv)

44. The Hon'ble Supreme Court in the case of Pawan Kumar Dwivedi (supra) has held that a Junior High School imparting education to classes 6 to 8, and is receiving aid from the State Government, if opens a primary section from classes 1 to 5, becomes integral part of the said junior high school. The teachers of the primary section are entitled for salary as the Assistant Teachers of the Junior High School, under the Uttar Pradesh Junior High School (Payment of Salary of Teachers and other Employees) Act, 1978. Relevant paragraphs of the aforesaid judgment in Pawan Kumar Dwivedi (supra) are reproduced as under:-

'43. It is important to notice here that recognised Junior High Schools can be of three kinds: (one) having Classes I to VIII, i.e., Classes I to V (Junior Basic School) and so also Classes VI to VIII (Senior Basic School), (two) a school as above and upgraded to High School or intermediate standard and (three) Classes VI to VIII (Senior Basic School) initially with no Junior Basic School (Classes I to V) being part of the said school.

44. *As regards the first two categories of Junior High Schools, the applicability of Section 10 of the 1978 Act does not create any difficulty. The debate which has centered round in this group of appeals is in respect of third category of the schools where Classes I to V are added after obtaining recognition to the schools which are recognized and aided for imparting education in Classes VI to VIII. Whether teachers of primary section Classes I to V in such schools are entitled to the benefit of Section 10 of the 1978 Act is the moot question. As noticed, the constitutional obligation of the state to provide for free and compulsory education of children till they complete the age of 14 years is beyond doubt now. The note appended to clause (xxvi), para 1 of the Educational Code (revised edition, 1958), inter alia, provides that Basic Schools include single schools with Classes I to VIII. In our view, if a Junior Basic School (Classes I to V) is added after obtaining necessary recognition to a recognized and aided Senior Basic School (Classes VI to VIII), then surely such Junior Basic School becomes integral part of one school, i.e., Basic School having Classes I to VIII. The expression 'Junior High School' in the 1978 Act is intended to refer to the schools imparting basic education, i.e., education up to VIII class. We do not think it is appropriate to give narrow meaning to the expression 'Junior High School' as contended by the learned senior counsel for the state. That Legislature used the expression Junior High School and not the Basic School as used and defined in the 1972 Act, in our view, is insignificant. The view, which we have taken, is fortified by the fact that in Section 2(j) of the 1978 Act, the expressions defined in the 1972 Act are incorporated.*

45. *The submission of Mr. P.P. Rao, learned senior counsel for the State of U.P. with reference to the subject School, namely, Riyaz Junior High School (Classes VI to VIII), that the said school was initially a private recognized and aided school and the primary section (Classes I to V) was opened by the management later on after obtaining separate recognition, which was un-aided, the teachers of such primary section, in terms of definition in Rule 2(b) and Rule 4 of the 1975 Rules are not entitled to the benefits of Section 10 of the 1978 Act does not appeal to us for what we have already said above. The view taken by the High Court in the first round in Vinod Sharma¹ that Classes I to VIII taught in the institution are one unit, the teachers work under one management and one Head Master and, therefore, teachers of the primary classes cannot be deprived of the benefit of the 1978 Act, cannot be said to be a wrong view. Rather, it is in accord and conformity with the Constitutional scheme relating to free education to the children up to 14 years.'*

45. Similarly, in the case of Paripurna Nand Tripathi (supra) the Division Bench of this Court while considering the claim of primary section imparting education to classes 1 to 5 attached to an intermediate college was under consideration where the Court accepted the claim of appellants for salary to the Assistant Teachers of the primary section. The observation of the Division Bench of this Court is as under:-

'The learned Single Judge has observed that number of students was not spelt out clearly and only two teachers are trained. Learned counsel appearing on behalf of the appellants has drawn our attention to paragraphs 21, 22, 23 & 24 of the writ petition, wherein it is averred that the institution has 25 approved sections in primary wing against which 26 teachers are working and out of them 24 teachers are duly approved by the District Inspector of Schools. In paragraph 23 of the writ petition it is averred that there are 924 students in the primary section which is established

from the record filed before the State Government. It is also stated that there are 16 classrooms for primary section in the institution. Insofar as the finding recorded by the learned Single Judge that there are only two trained teachers is concerned, it has been submitted that at the time of appointment of the appellants the minimum qualification for appointment of teachers in the primary section was only Intermediate. The first appellant has obtained L.T. Training and the second appellant is having B.Ed. degree and it was also made clear that the Committee of Management had appointed untrained teachers due to non-availability of trained teachers. The State has taken a decision that if an untrained teacher continuously works for more than ten years, then such teacher shall be granted exemption from training and accordingly, in the entire State of Uttar Pradesh a large number of untrained teachers, who were appointed, were subsequently exempted from training under the orders passed by the State Government from time to time. Thus, the appellants who are untrained teachers are entitled for the benefit of exemption under the aforesaid Government orders.

We find that the submission of the learned counsel appearing for the appellants on the aforesaid issue merits acceptance. This aspect of the matter has not been considered by the learned Single Judge and the finding recorded by the learned Single Judge is against the pleadings of the appellants. We also find that the learned Single Judge has not given any reason in support of various conclusions.'

46. The Division Bench of this Court in the case of Paripurna Nand Tripathi (supra) while considering the obligation of the State Government to provide free and compulsory education to the children of age 6 to 14 years has further observed as under:-

'In the State of Uttar Pradesh, most of the institutions providing basic education have been established by societies registered under the Societies Registration Act, 1860 by private managements. The State Government has framed policy guidelines and has issued executive orders/circulars/administrative orders from time to time laying down standards/norms for providing grant-in-aid to unaided institutions. Unless those conditions are fulfilled by private institutions, the State Government does not take liability for the payment of salaries of the teachers and other employees of such institutions.

After the enactment of the Act, 2009 and the law laid down by the Supreme Court in Society for Unaided Private Schools of Rajasthan (supra), Bhartiya Seva Samaj Trust (supra) and State of Uttar Pradesh and others v. Pawan Kumar Dwivedi and others, we are of the view that the State Government may revisit its age old policy in the light of the constitutional amendment and the law laid down by the Supreme Court on the subject.

Undoubtedly, now it is the State's responsibility to provide free and compulsory education to the children of the age of six to fourteen years. Private institutions, which are imparting education to children of the said age group, in fact, are performing and sharing the obligations of the State. Therefore, an obligation is cast upon the State Government not only to provide the grant-in-aid to such institutions but to provide infrastructure also subject to reasonable conditions laid down by it. Providing education to the children of the age of six to fourteen years shall be a mirage unless qualitative education is provided to them.

In the State of Uttar Pradesh, the large majority of children of the said age group come from the marginalized sections of the society. Most of the institutions providing primary and basic education are situated in rural and semi-urban areas. To provide quality education it is necessary that trained and competent teachers are appointed and necessary infrastructure is also made available to such institutions. The teachers in private unaided institutions are working in pitiable conditions. No good teacher would like to work in such institutions. Thus, the students will be deprived of quality education.

In view of the supervening events, we are of the view that the order of the learned Single Judge dated 29 August 2014 and the order of the State Government dated 10 January 2002 need to be set aside and are, accordingly, set aside. The matter is remitted to the State Government to reconsider it in the light of the law referred to above. The State Government may reconsider its policy of 1989 in respect of the grant of aid to the unaided institutions in the light of the constitutional amendment, the Act of 2009 and the law laid down in the judgments referred above.'

47. Consideration of the aforesaid two judgments shows that the State has an obligation to provide free and compulsory education to children between the age of 6 to 14 years. However, providing grant-in-aid to all private recognised institutions, imparting education to students between the ages of 6 to 14 years, have not been held to be a fundamental right of such institutions. The junior high schools, high schools and intermediate colleges, run by private managements, which have been brought on the grant-in-aid list, there are separate enactments for providing salaries to the teacher and other employees. However, for institution exclusively imparting education to classes 1 to 5, there is no enactment under which salary is to be paid to its teaching and non-teaching staff. Infact, under Section 4 of the Uttar Pradesh Recognized Basic Schools (Recruitment and Conditions of Service of Teachers and other conditions) Rules, 1975, it is provided that, in every recognized school adequate financial recourses shall be made available by the management of such school. The decisions in the case of Pawan Kumar Dwivedi (supra) and Paripurna Nand Tripathi (supra) find support to only those Assistant Teachers of primary sections, which are attached to a junior high school or an intermediate college, so that they could be brought under the purview of the Uttar Pradesh Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978 or the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, respectively, holding them to be the integral part of the said institution.

Point- (v)

48. The institutions which were existing at the time of issuance of Government Order dated 31.03.1994, ought to have been considered for grant of recurring aid to them. As the institution Mahamana Malviya Asuchit Jati Primary Pathshala, Jakariya, Rasra, District Ballia was established in 1970 and was eligible under the Government Order dated 31.03.1994, it was the obligation of the State Government to have considered its eligibility for recurring grant. Despite all efforts by the Committee of Management of the said institution, the State Government did not extend the said benefit, and the aforesaid Government Order was withdrawn by a subsequent Government Order dated 05.10.2006. It is not in dispute that the State Government has accepted the claim of various such institutions which were pursuing their claim before it under the several orders of this Court on

the conditions contained in the Government Order dated 31.03.1994. In compliance of the order of learned Single Judge, impugned in the present appeals, the State Government has already issued a Government Order dated 03.01.2024, extending the benefit of recurring grant to Mahamana Malviya Asuchit Jati Primary Pathsala, Jakariya, Rasra, District Ballia.

49. In view of the aforesaid facts, the entitlement of the aforesaid Institution for recurring grant which was pending consideration since 1997 and was in principle, accepted by the Government Order dated 03.01.2024, is not required to be interfered with. However, the Headmaster and Assistant Teachers working in the institution as shown in the report of the District Social Welfare Officer, dated 18.08.1998, are no more employed in the Institution. All the petitioner-respondents have been subsequently appointed, but no documents are on record, to substantiate the veracity of their appointments. In such view of the matter, even though, the institution's entitlement for recurring grant cannot be denied, but the payment of salary to the petitioner-respondents of Special Appeal No.213 of 2025, Special Appeal Defective No.7 of 2025 and Special Appeal Defective No.9 of 2024, cannot be directed unless they establish that their appointments were in accordance with Act of 1975, and they possess the minimum eligibility.

Reliefs

50. The entitlement for recurring grant to Mahamana Malviya Ansuchit Jati Primary Pathsala, Jakariya, Rasra, District Ballia, has been accepted, by the Government Order dated 03.01.2024, which requires no interference by this Court. However, no positive direction can be issued for payment of salaries to the teachers and other employees of the Institution in absence of any materials on record, to substantiate that they were appointed in accordance with law and possess the requisite qualifications. In view of the aforesaid, the Special Appeal No.213 of 2025, Special Appeal Defective No.7 of 2025 and Special Appeal Defective No.9 of 2024, are disposed of with a direction to the State Government to ensure that the petitioner-respondents of the aforesaid Special Appeals are paid salary only if they were appointed strictly in accordance with law, following the provisions of Act of 1975 and possessed requisite qualification, as envisaged under the notifications issued by the National Council for Teacher Education, from time to time.

51. In Special Appeal No. 214 of 2025 and Special Appeal Defective No.4 of 2025, the institution were granted permanent recognition in 1987 and 1996, respectively, and had never claimed for recurring grant till the Government Order dated 31.03.1994 and the policy for providing recurring grant to the institutions run by the Social Welfare Department, were withdrawn by the Government Order dated 05.10.2006. As held above, the institution imparting education to classes I to V, having more than 50% students belonging to scheduled caste and scheduled tribes, does not acquire any fundamental right for grant-in-aid from the Department of Social Welfare, Government of U.P., in the light of RTE Act, 2009, and the Government Order dated 31.03.1994. In such circumstances, the order of learned Single Judge dated 10.05.2019, accepting the claims of the petitioner-respondents of the aforesaid Appeals, being unsustainable, is set aside. The Special Appeal No.214 of 2025 and Special Appeal Defective No.4 of 2025 are accordingly **allowed** and the Writ-A No.15455 of 2019 and Writ-A No.10873 of 2021, are hereby dismissed.

(2026) 1 ILRA 932
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 28.01.2026

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Writ A No. 4164 of 2024

Smt. Shanti Devi & Ors.

...Petitioners

Versus

State Cadre Authority U.P. Primary Agriculture Credit Cooperative Societies Lko & Ors.

...Respondents

Issue for Consideration

- (1) Mode of payment of arrear of salary and retiral benefit to the Cadre Secretaries of Sadhan Sahkari Samiti.
- (2) Applicability of amended Rules of 2006 providing provision of 'Khata' in respect of payment of salary etc. to the Cadre Secretaries.

Headnotes

(A) Service law – Sadhan Sahkari Samiti – Secretary – Payment of arrear of salary and retiral dues – Employee died during harness while working as Secretary – Rule of 1976 was subsequently amended in 2006 making the provision of 'Khata', however, petitioner's claim was rejected relying on Amendment Rules of 2003 – Permissibility – Relevancy of 'Khata' discussed.
 (E-1)

Held : The issue with respect to 'Khata' has been interpreted by the Coordinate Division Bench of this Court in Special Appeal Defective No. 57 of 2022 – Under rule 4(iii) it is the responsibility charged upon the Khata created under 2006 Rules to provide assistance to the Primary Agricultural Co-operative Credit Societies for the managerial expenses from where the payment of salary/arrears of salary to the Cadre Secretary is to be made even in past, such assistance as envisaged under rule 4(iii) of 2006 Rules, has been provided to the Primary Agricultural Cooperative Credit Societies for the purposes of making payment of salary to the Cadre Secretaries – The issue has been settled that from 'Khata' as prescribed under the sub-rule 3 of Rule 2006, the word 'Managerial Assistance' connotes and denotes, that the same is meant for the payment of salary to the 'Cadre Secretary'. – The orders impugned dated 02.11.2023, 01.11.2023 and 17.10.2023 passed by respondent nos. 2, 3 and 4 respectively, are unsustainable, thus, the same are hereby quashed. [Para 7, 17, 18 and 19]

Case Law Cited

Special Appeal Defective No. 57 of 2022, The State Cadre Authority UP vs. Hanoman Singh and others decided on 26.09.2022. – **referred to.**

List of Acts

UP Primary Agricultural Co-operative Credit Societies Centralized Service Rules, 1976, UP Agriculture Cooperative Credit Structure Management and Development Rules 2006 – Rule 4(iii).

List of Keywords

Retiral dues, Khata, Arrears of salary, Contribution of the provident fund, Managerial Assistance.

Case Arising From

1 All. Smt. Shanti Devi & Ors. Vs. State Cadre Authority U.P. Primary Agriculture Credit Cooperative Societies Lko & Ors. 933
Impugned orders dated 02.11.2023, 01.11.2023 and 17.10.2023 passed by respondent nos. 2, 3 and 4 respectively.

Appearances for Parties

Advs. for the Appellant : Santosh Kr. Yadav 'Warsi'; Ashok Kumar Yadava; Balram Yadav and Lalji Yadav.

Advs. for the Respondents : Jaibind Singh Rathod; Piyush Kumar and Neeraj Chaurasiya.

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Heard Mr. Santosh Kumar Yadav "Warsi", learned Senior Counsel assisted by Mr. Balram Yadav and Mr. Lalji Yadav, counsels for the petitioner, Mr. J.S. Rathore, learned counsel for respondent no. 1, Mr. Piyush Kumar, learned counsel for respondent nos. 2 & 3. Though, the name of Mr. Neeraj Chaurasiya is shown for respondent nos. 4 & 5, but no one is present for respondent nos. 4 & 5.

2. The present writ petition has been filed assailing the orders dated 02.11.2023, 01.11.2023 and 17.10.2023 passed by respondent nos. 2, 3 and 4 respectively.

3. The contention of learned counsel for the petitioner is that the petitioners are the legal heirs of the deceased employee, namely, Late Ram Laxman Yadav, who was appointed as Secretary, Sadhan Sahkari Samiti, District Faizabad in year 1977 and since then, he had discharged his duties on the post of Secretary at various Sadhan Sahkari Samiti, with full dedication and devotion and his conduct and work was always above-board.

4. He further argued that husband of petitioner no. 1 died on 15.08.2018, thereafter, the occasion arises for the payment of retiral dues and once it was sought by the petitioners, the same has been denied on either of the pretext and ultimately, once the order was passed in Writ No. 17506 of 2018, on 14.09.2023, the cadre authority as well as Registrar has decided the issue vide the orders dated 02.11.2023 and 01.11.2023.

5. Further submission is that the dispute is with respect to determining the authority that who is in fact the competent to pay the arrears of salary and other dues of Late Ram Laxman Yadav, for which the petitioners are entitled for.

6. He submitted that controversy with respect to the authority, on whom this is incumbent upon to make assistance for payment of the salary etc has been settled by the Division Bench of this Court, in judgment and order dated 26.09.2022 passed in Special Appeal Defective No. 57 of 2022.

7. Placing reliance on the aforesaid, he has referred the following relevant paragraphs:-

"Learned counsel representing the State Cadre Authority has not been able to show any order regarding the provisions contained in rule 4 (iii) of the Rules 2006, has been issued removing the doubts or difficulties under rule 8 of the said Rules. Even otherwise, we have already noticed the Scheme of the Rules, 2006 and have also taken into account the chronological development which took place regarding fixing the responsibility of payment of salary to the Cadre Secretaries

who are members of the Centralized Service. As already discussed above and we have, thus, held that under rule 4(iii) it is the responsibility charged upon the Khata created under 2006 Rules to provide assistance to the Primary Agricultural Co-operative Credit Societies for the managerial expenses from where the payment of salary/arrears of salary to the Cadre Secretary is to be made even in past, such assistance as envisaged under rule 4(iii) of 2006 Rules, has been provided to the Primary Agricultural Cooperative Credit Societies for the purposes of making payment of salary to the Cadre Secretaries.

So far as the payment of amount relating to Contributory Provident Fund and Group Insurance Scheme is concerned, it is primarily the responsibility of the appointing authority to not only make deductions of contributory share of the employees concerned but also to deposit its own share. The appointing authority of the Cadre Secretaries, who are the members of Centralized Service is the District Administrative Committee and accordingly the amount relating to CPF and Group Insurance Scheme is the responsibility of the District Administrative Committee.

In view of the aforesaid, all these special appeals are disposed of with the following modification in the judgment and order dated 03.12.2018 passed by the learned Single Judge in Writ Petition No.2190 (S/S) of 2014 as corrected/modified by means of the order dated 03.12.2018:

(i) So far as the payment of arrears of salary from the year 20081 till the age of retirement of the petitioner-Hanoman Singh is concerned, it shall be the responsibility of the State Cadre Authority to provide assistance to Sadhan Sahkari Samiti Limited, Khusehati, Development Block-Banki, District Barabanki, in terms of the provisions contained rule 4(iii) of U.P. Cooperative Credit Structure Management and Development Rules, 2006. The Cadre Authority shall accordingly take effective steps to fulfill its obligation under this judgment and order within three months from the date a certified copy of this order is furnished. Accordingly, the payment of arrears of salary shall be made to the respondent no. 1/petitioner-Hanoman Singh within next four weeks.

(ii) Similarly, the District Administrative Committee shall take appropriate steps to ensure payment of Contributory Provident Fund and amount of Group Insurance Scheme within three months.

There will be no order as to costs."

8. Referring the aforesaid, he submitted that it has been said in so many words by the Division Bench of this Court that the 'Khata' created under the U.P. Agriculture Cooperative Credit Structure Management and Development Rules 2006(hereinafter referred to as 'Rules 2006') the Rule 4(iii) provides that the managerial expenses is for payment of the salary to the Cadre Secretaries of the Primary Agriculture Cooperative Credit Societies. He further submits and has drawn attention towards U.P. Agriculture Cooperative Credit Structure Management and Development Rules 2006, which is an amendment in the Uttar Pradesh Primary Agricultural Co-operative Credit Societies Centralized Service Rules, 1976(hereinafter referred to as 'Rules 1976'). Rules 2006 is quoted hereinunder:-

""(1) Short title applicability and commencement.-(1) These rules may be called the Uttar Pradesh Agricultural Co-operative Credit Structure Management and Development Rules, 2006.

(2) They shall apply to all the Agricultural Co-operative Societies. District Co-operative Banks, registered or deemed to have been registered under the Uttar Pradesh Co-operative Societies Act, 1965(Uttar Pradesh Act No. 11 of 1966) and all the Co-operative Societies contributing into the Khata as established under these rules.

(3) They shall come into force with effect from the date of their publication in the Gazette.

2. Definitions. In these rules unless the context otherwise requires-

(a) "District Administrative Committee" means a Committee constituted under sub-rule (4) of Rule 7 of the Uttar Pradesh Primary Agricultural Co-operative Credit Societies Centralized Service Rules, 1976.

(b) "District Co-operative Bank" means a Central Co-operative Bank having its head office at the headquarters of a District.

(c) "Khata" means a Khata established under Uttar Pradesh Agricultural Co-operative Credit Structure Management and Development Rules.

(d) "State Cadre Authority" means the Committee constituted under sub-rule(2) of Rule 7 of the U.P. Primary Agricultural Co-operative Credit Societies Centralized Service Rules. 1976.

(e) "Member Secretary" means the Managing Director, Uttar Pradesh Co-operative Bank Limited Lucknow.

(f) "Society and District/Central Co-operative Credit Society and District/Central Co-operative Bank registered under Uttar Pradesh Co-operative Societies Act, 1965.

3. Khata. There shall be a 'Khata' to be maintained at Uttar Pradesh Co-operative Bank Limited, Lucknow the contribution to which shall come as prescribed in Rule 5 below.

4. Objects Objects of the Khata.- The fund in the Khata may be utilize inter alia for the following purpose-

1. Vide Notification No. 3253/XLIX-1-06. dated 6th November, 2006. published U.P Gazette Extra Part. \$. Section(Kha), dated 6th November, 2006.

(i) to prepare action plan for the development, commercial expansion and self-dependence of the societies and to provide requisite assistance in the shape of share capital, margiri money, writing off bad and doubtful loans etc., for these purposes.

(ii) to provide assistance to the District Administrative Committee for the payment of subsistence allowance of the suspended Secretaries of the U.P. Primary Agricultural Co-operative Credit Society Centralised Service Cadre, legal expense and for depositing contribution in the Provident Fund and Group Insurance Scheme of Primary Agricultural Co-operative Credit Societies Secretaries.

(iii) to provide assistance to the Primary Agricultural Co-operative Credit Societies for the managerial expenses.

(iv) to provide financial assistance, for revitalization of weak District Co-operative Banks, as share money or interest free loan.

5. Contribution in the Khata.- The Khata shall be constituted as under-

(1) by transfer of amount as per the direction of the Registrar, from the surplus amount available in the District Primary Centralised Service Fund which was prevalent prior to coming of these rules into existence.

(2) the contribution made by all District Co-operative Banks, U.P. Co-operative Bank, and other Apex Institution at the rate fixed by the Registrar from time to time.

(3) the contribution of financial assistance from other sources.""

9. Referring the aforesaid, he submitted that in clause 4(ii), it is provided that so far as 'Khata' mentioned in clause 3 of Rules 2006 is concerned, that is for providing assistance to the District Administrative Committee for the payment of subsistence allowances of the suspended secretaries of U.P. Primary Agriculture Cooperative Credit Society, Centralized Service and the Cadre Legal Expenses and for depositing the contribution in the provident fund and group insurance scheme of the Primary Agricultural Cooperative Credit Societies and further in sub-clause 3 of clause 4 of the Rules 2006, the 'Managerial Expenses' are also provided, which has been interpreted by the Coordinate Division Bench of this Court In the judgment and order dated 26.09.2022. He added that aforesaid judgment and order was assailed by the department concerned before the Hon'ble Apex Court, wherein, the SLP has been dismissed vide order dated 10.02.2023, in SLP No. 3332 of 2023. He submitted that thus, the judgment and order dated 26.09.2022 has attained finality and the respondent-department cannot escape itself from the aforesaid law laid down by the Coordinate Division Bench of this Court.

10. He added that the orders impugned dated 02.11.2023, 01.11.2023 and subsequent orders are against the settled proposition of law as is held in the judgment and order dated 26.09.2022, therefore, submission is that the orders aforesaid may be quashed and authorities may be directed to consider and decide the claim of the petitioners in accordance with law settled by Division Bench.

11. On the other hand, Mr. Jaibind Singh Rathour, learned counsel appearing for respondent no. 1 has opposed the contentions aforesaid and submitted that so far as rule 2003, which is also the amendment in Rules 1976 is apparent that the respondent no. 1 has no authority to make payment

of the salary to the Cadre Secretaries and only some funds are being conducted by the respondent no. 1 and the authority vests with respondent no. 2, therefore, no payment with respect to the salary to the Cadre Secretaries could be done by the respondent no. 1.

12. Mr. Piyush Kumar, learned counsel appearing for the State has also supported the version of counsel for respondent no. 1 and submitted that the liability with respect to the payment of salary of Cadre Secretaries vests with respondent no. 5 i.e. Sadhan Sahkari Samiti Ltd as the funds are being generated and borne out from its own resources. He submits that amended rule 4 of 2003 is referred while passing the order by the respondent authority and therefore, no interference is warranted.

13. Upon considering the submissions of counsel for the parties, it transpires that the petitioners are the heirs of Late Ram Laxman Yadav, who died in harness on 15.08.2018 and since then, the petitioners are claiming for the payment of arrears of salary of the husband of petitioner no. 1 as well as the other retiral dues.

14. Initially the issue was brought before this Court, by way of instituting Writ Petition No. 17506 of 2018, wherein, the same was finally decided vide the judgment and order dated 14.09.2023, with direction to decide the claim of the petitioner which has been rejected by the respondents vide impugned order.

15. When this Court examines the submissions and grounds of the respondents as well as the petitioners, taken herein, it is apparent that while declining the claim of the petitioners, the Amendment Rules 2003 has been taken care of, though, subsequently in year 2006, rules 1976 has again been amended and the Rules 2006 provides the provision with respect to 'Khata.' This 'Khata' has been explained in sub-rule 4 of rule 2006 that the same is regarding the contribution of the provident fund and group insurance scheme of Primary Agriculture Cooperative Credit Societies and the further provision is that to provide the assistance to Primary Agriculture Cooperative Credit Societies for the 'managerial expenses.'

16. The question crop up is of two fold; one that whether the payment of salary would be made as per the provision prescribed in the sub-rule IV of rule 4 of Rules 2006 and secondly is that whether the other retiral dues are payable, as per the said Khata.

17. This question was already borne out before the Division Bench of this Court in Special Appeal Defective No. 57 of 2022, which has exhaustively been dealt with and it has been held therein that the 'Khata' and the 'Managerial Expenses' as provided of the Rules 2006, the Primary Agriculture Cooperative Credit Societies is explained. The issue with respect to 'Khata' has been interpreted by the Coordinate Division Bench of this Court in Special Appeal Defective No. 57 of 2022. In fact this judgment and order was challenged before the Hon'ble Apex Court in SLP No. 3332 of 2023, wherein, the order dated 26.09.2020, has been upheld.

18. The Registrar, Cooperative Societies as well as the Cadre Authority, has rejected the claim of the petitioner, taking into the consideration the provisions of Rules 2003 and has ignored that subsequent thereof, the Rule 2006 has been promulgated and that has been interpreted so far as the

payment of salary of the Cadre Secretaries of the Primary Cooperative Societies are concerned. Now at this juncture, the issue has been settled that from 'Khata' as prescribed under the sub-rule 3 of Rule 2006, the word 'Managerial Assistance' connotes and denotes, that the same is meant for the payment of salary to the 'Cadre Secretary.'

19. In this view of the matter, the orders impugned dated 02.11.2023, 01.11.2023 and 17.10.2023 passed by respondent nos. 2, 3 and 4 respectively, are unsustainable, thus, the same are hereby quashed.

20. It is provided that the petitioner shall raise fresh claim before the respondent no. 2, within period of fifteen days and if such claim is raised, the respondent no. 2/Commissioner and Registrar, Co-operative Societies, Ambedkar Nagar, U.P., shall consider and decide the same, within further period of eight weeks, after holding opportunity of hearing to all the stakeholders, in the light of judgment and order dated 26.09.2022, passed in Special Appeal Defective No. 57 of 2022.

21. The writ petition is **allowed** accordingly.

(2026) 1 ILRA 938
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 30.01.2026

BEFORE

THE HON'BLE MANISH MATHUR, J.

Writ A No. 4322 of 2024

Dharmendra Kumar Shukla

...Petitioners

Versus

U.O.I. & Ors.

...Respondents

Issue for Consideration

(1) Scope of judicial review, when the matter involved relating to the issue of restructuring and renaming of a degree and not of treating a degree equivalent to other degree.

(2) Effect of restructuring and renaming the degree of Acharya as a Master Degree of Sanskrit in respect of qualification for the post of Religious Teacher Junior Commissioned Officer.

Headnotes

(A) Service law – Educational qualification – Post of Religious Teacher Junior Commissioned Officer (RTJCO) – Qualification of Shastri/Acharya in Sanskrit with 'Karm Kand' as one of the main/course subjects or one year diploma in 'Karm Kand' was required – The petitioner possessed the degree of M.A. in Sanskrit and diploma in 'Karm Kand' also – Respondent denied candidature on the ground that the degree of M.A. in Sanskrit along with diploma in Karm Kand is not equivalent to the qualification of Shashtri/Acharya in Sanskrit – Validity challenged – Degree of Acharya was restructured as M.A. in Sanskrit – Effect – Scope of judicial review explained. (E-1)

Held : Subsequent to the notification dated 5th July 2014, the specified degree of Acharya has now been restructured and renamed as a Master Degree of Sanskrit to be issued by all universities affiliated to the UGC

– Even prior thereto, in terms of notification dated 23rd January 1964, issued by Government of India, a degree of Acharya has been held equivalent to M.A. as clearly enunciated by the Supreme Court in the case of Rampalit Vyakaran Acharya – Subsequent to 5th July 2014, the said degree of Acharya has been restructured as M.A., Sanskrit. In such circumstances, there is no question of not considering the degree of M.A., Sanskrit as equivalent or restructured with regard to the degree of Acharya – Equivalence or restructuring of degree of Acharya with that of M.A. in Sanskrit has already been notified by the employer being the Government of India and the expert educational body being UGC and therefore there is no occasion for any judicial review of that aspect. [Para 17, 18, 20 and 25]

Case Law Cited

Rampalit Vyakaran Acharya and others vs. Punjab University Chandigarh and another, AIR 1975 SC 2478; Civil Appeal No. 4468 of 2013, Shifana P.S. vs. State of Kerala and others; Civil Appeal No. 11853-11854 of 2018 and other, Zahoor Ahmad Rather and others vs. Sheikh Intiyaz Ahmed and others. – **referred to.**

List of Acts

Notification dated 23.01.1964, Notification dated 05.07.2014.

List of Keywords

Educational qualification, Diploma in 'Karm Kand', Equivalence, Restructuring, Recruitment policy, Entitlement of employer.

Case Arising From

Not admitting the degree of M.A. in Sanskrit as the degree of Shastri/Acharya in Sanskrit.

Appearances for Parties

Advs. for the Appellant : Amitesh Pratap Singh.

Advs. for the Respondents : A.S.G.I. and Varun Pandey.

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

1. Heard Mr. Aakar Srivastava learned counsel for petitioner and Ms. Shivangi Verma Advocate holding brief on behalf of Mr. Varun Pandey learned counsel for opposite parties.

2. Petition has been filed seeking a direction to concerned authority to reconsider petitioner's candidature for recruitment on the post of RTJCO and conduct a fair evaluation with regard to his qualification.

3. It is submitted that an advertisement for recruitment on the aforesaid post was issued in recruitment year 2023-24 in which petitioner applied for the post of Religious Teacher Junior Commissioned Officer (RTJCO). He successfully cleared the written examination whereafter he also qualified the physical endurance test as well as other medical criteria.

4. It is submitted that educational qualification required for the said post has been indicated in the advertisement as RT Pandit and Pandit (Gorkha) for Gorkha Regiment Hindu candidate with Shastri/Acharya in Sanskrit from UGC recognized university. In addition, it was prescribed that an individual should have a qualification of 'Karm kand' as one of the main/course subjects during Shastri/Acharya or one year diploma in 'Karm kand'.

5. It is submitted that petitioner possesses a diploma in 'Karm kand' but his candidature has apparently not been considered in view of the fact that opposite parties do not admit any equivalence of a degree of M.A. Sanskrit, which is the qualification of petitioner, with the degree of Shastri/Acharya in Sanskrit.

6. Learned counsel for petitioner has adverted to a notification dated 5th July 2014 published in Gazette of India issued by University Grants Commission regarding specification of degrees. It is submitted that the broad discipline-wise nomenclatures of degrees at all levels of higher education has thereafter been restructured with effect from the date of notification as required to be issued by universities governed by UGC regulations. He has specifically adverted to item 120 of the aforesaid notification to indicate that the degree of Acharya has been restructured as a Master's degree in Sanskrit.

7. Learned counsel has also placed reliance on a judgment rendered by Supreme Court in the case of Rampalit Vyakaran Acharya and others versus Punjab University Chandigar and another, AIR 1975 Supreme Court 2478 to buttress his submission that the aforesaid judgment has placed reliance on notification dated 23rd January 1964 issued by Government of India indicating equivalence of the degree of Acharya with M.A. in Sanskrit.

8. Learned counsel for opposite parties on the basis of counter-affidavit has refuted submissions advanced by learned counsel for petitioner with submission that it is manifestly evident that petitioner does not possess requisite educational qualification prescribed for the post of RTJCO since admittedly he holds the degree of M.A. in Sanskrit along with diploma in Karm Kand, which is neither equivalent nor permissible substitute to the qualification of Shashtri/Acharya in Sanskrit. Learned counsel also submits that qualifications prescribed in an advertisement are sacrosanct and the notification dated 5th July 2014 in fact does not grant any equivalence of the degree of Acharya with that of M.A. in Sanskrit since the aforesaid restructuring is with regard to Sanskrit-sounding degrees.

9. Learned Counsel has placed reliance on judgments rendered by Supreme Court in the case of Shifana P.S. versus State of Kerala and Others, Civil Appeal No. 4468 of 2013; Zahoor Ahmad Rather and others versus Sheikh Imtiyaz Ahmed and others, Civil Appeal No. 11853-11854 of 2018 and other connected matters as well as Division Bench of this court in the case of Saurabh Saxena versus Union of India, Special Appeal Defective No. 10 of 2025.

10. Upon consideration of submissions advanced by learned counsel for parties and perusal of material and record, it is thus evident that for purposes of recruitment to the post of RTJCO, the qualification required is as follows:-

"RT Pandit and Pandit (Gorkha) for Gorkha Regiment Hindu Candidate with Shastri/Acharya in Sanskrit from UGC recognized University. In addition, individual should have under mentioned religious qualification:-

'Karam Kand' as one of the main/core subject during Shastri/ Acharya.

OR

One year Diploma in 'Karam Kand'.

11. It is admitted by parties that except for degree of Shastri/Acharya in Sanskrit from UGC-recognized university, petitioner is otherwise qualified for the aforesaid post.

12. The dispute therefore pertains to consideration of petitioner's candidature for appointment as religious teacher in the Army in case his degree of MA in Sanskrit can be held to be equivalent to that of the degree of Acharya in Sanskrit.

13. From the aspects as indicated herein above, it is also evident that notification issued by the University Grants Commission, dated 5th July 2014 published in Gazette of India pertains to specification of degrees which is a broad discipline-wise nomenclature of degrees at all levels of higher education which are required to be taken into account for purposes of grant of such degrees by universities affiliated to UGC. The notification specifies that the nomenclature of degrees that were then in vogue in some institutions were found to be neither conventional nor reflective of career innovation in knowledge and were therefore de-specified and that the same would be restructured / changed.

14. It is in pursuance of said recommendation that the notification was issued. Item 120 of the aforesaid notification dated 5th July 2014 pertains to Sanskrit-sounding degrees and indicates the specified degree of Acharya being restructured as a masters degree with a minimum duration course of two years and entry qualification of Bachelor.

15. The aforesaid aspect clearly indicates that so far as grant of degrees by universities affiliated to UGC are concerned, the specified degree of Acharya stood restructured as a Masters degree in 2014.

16. The aforementioned aspect pertaining to equivalence of a degree of Acharya with that of M.A. has been dealt with by Supreme Court in the case of Rampalit Vyakaran Acharya (supra) in the following manner:-

"8. That Acharya is equivalent to M. A. is clear from the letter No. F. 46-1/63-SU dated January 23, 1964, from the Government of India, Ministry of Education to the Education Secretaries of all the State Governments/Union Territory Governments/Administrations and Registrars of all Universities on the subject of equivalence of Sanskrit Examinations as given in an enclosed statement. Entry 21 in column I of that statement mentions the Punjab University, Chandigarh, where Shastri is shown as equivalent to B.A. and Acharya to M.A. It is significant to note from the letter of the Ministry of Education that Government is keen regarding development of Sanskrit in the country and it has impressed upon all the Universities, 'that they should employ at least one Traditional Sanskrit Scholar and the scholar so employed should enjoy the same status and pay-scales as his counterparts trained on modern lines with equivalent degrees'. It goes on further to say 'that the employment of traditional Sanskrit Pandits in High/Higher Secondary Schools/Colleges should also be given the due encouragement. Teachers so employed should be

treated on par with other teachers possessing equivalent qualifications of the general educational set up".

17. In view of aforesaid factors as discussed herein above, it is thus evident that subsequent to the notification dated 5th July 2014, the specified degree of Acharya has now been restructured and renamed as a Master Degree of Sanskrit to be issued by all universities affiliated to the UGC.

18. Even prior thereto, in terms of notification dated 23rd January 1964, issued by Government of India, a degree of Acharya has been held equivalent to M.A. as clearly enunciated by the Supreme Court in the case of Rampalit Vyakaran Acharya (supra).

19. So far as submission of learned counsel for opposite parties is concerned, in paragraph 14 of the counter affidavit, it has been admitted that petitioner holds a degree of M.A., Sanskrit along with diploma of 'Karm kand'. However the aforesaid degree of M.A. in Sanskrit has not been held to be equivalent nor a permissible substitute for the qualification of Shastri/Acharya in Sanskrit.

20. In view of discussion made herein above, it is thus evident that even prior to 2014, in terms of notification dated 23rd January 1964 issued by Central Government, the degree of Acharya was considered as equivalent to that of M.A. in Sanskrit and subsequent to 5th July 2014, the said degree of Acharya has been restructured as M.A., Sanskrit. In such circumstances, there is no question of not considering the degree of M.A., Sanskrit as equivalent or restructured with regard to the degree of Acharya.

21. With regard to the case law cited by learned counsel for opposite parties in the case of Shifana P.S. (supra), the Supreme Court has clearly enunciated that the issue of equivalence cannot be gone into either by the Selection Committee or the Courts while exercising power of judicial review and that the said domain is exclusive to experts/educational institutions authorized in that regard.

22. Obviously the aforesaid judgment is inapplicable in the present facts and circumstances where equivalence and restructuring has been done by educational board itself.

23. So far as the case of Zahoor Ahmad Rather (supra) is concerned, it has been enunciated that in the absence of any rule, it would be impermissible to draw an inference that a higher qualification necessarily pre-supposes the acquisition of another, albeit lower, qualification and that the prescription of qualifications for post is a matter of recruitment policy which is the State as employer is entitled to prescribe as a condition of eligibility.

24. Hereagain the aspect of equivalence as in the present case, having already been indicated by UGC and by the Government of India as an employer, clearly indicates that the aforesaid judgment would be inapplicable in the present facts and circumstances of the case.

25. In the considered opinion of this Court, the aforesaid judgment would also be inapplicable in the present facts and circumstances with reiteration that since in the present case, equivalence or restructuring of degree of Acharya with that of M.A. in Sanskrit has already been notified by the

employer being the Government of India and the expert educational body being UGC and therefore there is no occasion for any judicial review of that aspect.

26. In view of discussion made herein above, this Court is in agreement with submissions as made by learned counsel for petitioner.

27. Therefore a writ in the nature of Mandamus is issued commanding the opposite parties to reconsider petitioner's candidature for recruitment/appointment to the post of RTJCO in terms of advertisement for the recruitment year 2023-24 in view of observations made herein above considering his degree of M.A., Sanskrit degree to be of equivalence/restructured with regard to degree of Acharya.

28. Consideration with regard to same shall be made by opposite parties expeditiously within a period of eight weeks from the date a certified copy of this order is served upon the concerned authority.

29. Resultantly the petition succeeds and is allowed. Parties to bear their own costs.

(2026) 1 ILRA 943
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 22.01.2026

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Writ A No. 8208 of 2024

Abhishek Jaiswal

...Petitioner

Versus

P.N.B. Head Office & Ors.

...Respondents

Issue for Consideration

(1) Validity of denial of compassionate appointment requested by the widow of the deceased employee for her son.

Headnotes

(A) Service law – Compassionate appointment – Petitioner's father was regular employee – After death, the widow moved application for appointment of her son/petitioner within period of five years, which was duly received in the office – The petitioner was completed Intermediate on the date of application – Other formality was completed too – However, the appointment was denied – Validity challenged. (E-1)

Held : This Court has failed to understand that if at the time of issuing the letter on 27.08.2018, the bank had considered the letter, in the sense, in which the same was written; what restrained to proceed for appointment of the petitioner – The "compassion" cannot be considered in vacuum, as the same attracts and meant of sympathy, kindness and soft feeling with human sentiments. Infact, it is highly rich customs and traditions of the cultural heritage of India, which has been enshrined in Article 51-A(g) of the Constitution of India and therefore the authorities while considering appointment on compassionate ground must look the

very aim and object of the Rules, 1974, as the same can never be understood unless the sentiment of sufferer is felt. [Para 15 and 17]

Case Law Cited

Mohinder Singh Gill vs. Chief Election Commissioner and others, (1978) 1 SCC 405. – **referred to.**

List of Acts

Constitution of India – Article 51-A(g), *UP Recruitment of Dependants of Government Servants Dying in Harness*. Rules, 1974.

List of Keywords

Compassionate appointment, Legal heir, Financial hardship, Financial distress, Compassion, Sympathy, Fellow-feeling, Soft feeling, Human sentiments, Cultural heritage.

Case Arising From

Impugned order dated 19.09.2023 passed by the authority.

Appearances for Parties

Advs. for the Appellant : Vinod Kumar Shukla; Alok Kumar Pandey; Azmi Yousuf and Shashank Singh.

Advs. for the Respondents : Vishwas Saraswat; Brajendra Amiy and Gaurabh Kumar.

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Heard Mr. Vinod Kumar Shukla and Mr. Alok Kumar Pandey, learned counsel for the petitioner, Mr. Vishwas Saraswat, learned counsel for the respondents and perused the record.

2. The present petition has been filed challenging the order dated 19.09.2023 passed by opposite party no. 2, i.e. Chief Manager, Punjab National Bank, Circle Office, Sitapur, on the ground that without assigning any reason, the order has been passed, declining the appointment of the petitioner on compassionate ground.

3. The contention of learned counsel for the petitioner is that the petitioner's father, Late Keshav Ram Jaiswal, who joined the service in 1982, unfortunately died in the year 2016, i.e. on 04.08.2016, leaving behind the legal heirs, including the present petitioner being the son.

4. He submitted that after the death of the father, the mother submitted an application on 04.08.2018 while making a claim for appointment by mentioning that her son had passed the Intermediate examination and he is pursuing his graduation course, and she desired that her son be appointed after completion of his education.

5. He added that the application may not be happily worded, but one thing is apparent that the son of the deceased employee, who is the legal heir, had passed the Intermediate examination and therefore, he should have been considered for appropriate appointment under the rules prevalent at that point of time in the bank.

6. Further submission is that the impugned order does not speak about any reason for refusal of the claim of the petitioner for his appointment on compassionate ground. He has also drawn attention towards paragraphs 4 and 5 of the supplementary affidavit dated 06.11.2025 filed by the

counsel for the respondent bank and submitted that it has been mentioned in the affidavit that the deliberation and discussion among the members of the Board is oral in nature and based on that oral discussion, the petitioner was not found eligible and therefore his appointment has been declined.

7. He further argued that the rules of compassionate appointment are made for considering such legal heirs on the basis of compassion and it is not the intent of any law-making agency to deprive a person whose caretaker and parent has died in harness. He next submitted that the mental status of the family, particularly the wife, after the death of her husband can be understood and therefore, if the application has been filed, not with a targeted request, then that should not be taken otherwise, rather, it is incumbent upon the authorities to try to fulfill the very purpose of the prevalent rules and laws for which those are meant.

8. He added that the application initially was submitted in the year 2018, i.e. very well within the time period prescribed under the provisions. Clarifying the position, he submitted that after the application was instituted on 04.08.2018, a letter was received by the petitioner on 27.08.2018, which is appended as Annexure No. 3 along with the writ petition and in compliance thereof, all the formalities were completed on 04.08.2018, But in the meantime, the office was shifted and therefore, it was requested by the bank officers that a fresh application be given, and thereafter, the fresh application was given on 27.01.2021. This does not mean that the application was initially given in the year 2021, rather, it was given in the year 2018 through the application which was given on 27.01.2021 is also within the time of five years of limitation period prescribed in the Rules. He added that all these reasons were neither considered nor discussed, as is evident in the letter of rejection of the claim of the petitioner.

9. Concluding his argument, he submitted that the impugned order does not stand on its own legs and therefore, the same is liable to be quashed.

10. On the other hand, Mr. Saraswat, appearing for the respondent bank, has opposed the aforesaid contentions and submitted that in fact, the letter of the year 2018 could not have been taken into consideration as the same itself is evident that the appointment was sought for in future, i.e. after completion of the graduation of the petitioner, and therefore, the application which was subsequently submitted by the petitioner, in the year 2021, was considered. He submitted that since after the lapse of five years, the application was moved and therefore, under the rules, the same could not have been considered, and after due deliberation in the meeting of the Board, the decision was taken and the order dated 19.09.2023 was passed. He further submitted that there was no financial hardship before the petitioner or his mother or the family, and therefore, the petitioner is also not entitled to any kind of appointment under the Rules, 1975 for compassionate appointment. Thus, the writ petition is liable to be dismissed.

11. Upon considering the submissions of learned counsel for the parties and perusal of the records, it transpires that the petitioner's father was working in the respondent bank and he died in harness, on 04.08.2016. Thereafter, the wife of the deceased moved an application for appointment on 04.08.2018, whereafter, a letter was sent by the bank, on 27.08.2018, for completing the formalities with respect to the appointment, on compassionate ground. In compliance thereof, the

formalities were completed but as per the argument of learned counsel for the petitioner, in the meantime the office was shifted and a new application was demanded which was submitted in the year 2021.

that two things are undisputed, firstly that the present petitioner is the legal heir of the deceased employee, who was regularly working in the respondent bank, and secondly, that the letter dated 04.08.2018 was received in the office of the bank. What is disputed is that in the letter dated 04.08.2018, the request was made by the mother of the petitioner that the petitioner had completed the Intermediate education and he may be given appointment, after completion of his graduation course.

13. This Court has noticed that after the aforesaid letter was given, the bank wrote a letter on 27.08.2018, to the mother of the petitioner, directing her to fulfill the formalities regarding the appointment and the same was completed as per the instructions.

14. In fact, the petitioner had completed Intermediate education at the time of submission of application by his mother and it is not the case of the bank that the petitioner did not possess, such qualification, for which there was no job available in the bank, and probably for these reasons, the bank, considering sympathetically the request of the mother of the petitioner, wrote a letter on 27.08.2018, for completion of the formalities regarding the appointment. It is also an undisputed fact that the formalities were completed by the petitioner, in furtherance of the letter dated 27.08.2018.

15. This Court has failed to understand that if at the time of issuing the letter on 27.08.2018, the bank had considered the letter, in the sense, in which the same was written; what restrained to proceed for appointment of the petitioner. This Court has also noticed the supplementary affidavit submitted by the respondent bank, wherein it is apparent that the members of the Board of the respondent bank, as per oral deliberation, have come to the conclusion that the petitioner is not entitled for appointment, and in one line, the rejection order has been passed, which abundantly makes it clear that there is non-application of mind, in passing the impugned order dated 19.09.2023, thus, the order impugned does not stand on its own leg.

16. The law rendered in case of *Mohinder Singh Gill v. Chief Election Commissioner & Ors.* reported in (1978) 1 SCC 405 also covers the field of the present controversy.

17. Apart from above, the objective of promulgating of Rules, 1974 is with inherent object to immediately help the family of the deceased government servant, from the financial distress and therefore such claim of appointment may be considered in purview of the scope and object of the rules. Infact, the rules provides for compassionate appointment. The word "compassion" is of far reaching consequence, as according to Oxford Advanced Dictionary, compassion means "a strong feeling of sympathy for those, who are suffering and are desire to help them". Further according to the Chambers 20th Century Dictionary, compassion is "fellow-feeling, or sorrow for the sufferings of others. The "compassion" cannot be considered in vacuum, as the same attracts and meant of sympathy, kindness and soft feeling with human sentiments. Infact, it is highly rich customs and traditions of the cultural heritage of India, which has been enshrined in Article 51-A(g) of the

Constitution of India and therefore the authorities while considering appointment on compassionate ground must look the very aim and object of the Rules, 1974, as the same can never be understood unless the sentiment of sufferer is felt.

18. In view of the aforementioned submissions and discussions, the order dated 19.09.2023, passed by the opposite party no. 2 is unsustainable, therefore it is hereby quashed.

19. Ergo the matter is remitted back to the opposite party no. 2, i.e. Chief Manager, Punjab National Bank, HRD Section, Circle Office, Sitapur, to consider and decide the matter afresh, taking into consideration the claim of the petitioner for appointment on compassionate ground, in the light of the observations made above, within a period of eight weeks from the date a certified copy of this order is produced before him.

20. With the aforesaid, the writ petition is hereby **allowed**.

(2026) 1 ILRA 947
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 05.01.2026

BEFORE

THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Writ A No. 9297 of 2023

Pralhad

...Petitioner

Versus

Union of India & Ors.

...Respondents

Issue for Consideration

(1) Permissibility of inflicting the second time penalty of reducing the MACP's benefit for the same charge, regarding which earlier major penalty was inflicted.

Headnotes

(A) Service law – Disciplinary proceeding – Penalty – Reduction in MACP's benefit – Constable in Railway Protection Force – Charge of theft of railway property was leveled – In criminal case arising out of same charge viz. stealing one tin of mustard oil alongwith other constable, the petitioner was acquitted – The tins of mustard oil were not recovered from the petitioner's house, but from the house of co-accused, though allegedly on the pointing of the petitioner – Trial court raised suspicion on the entire prosecution version and observed that both the accused were falsely implicated by the witnesses due to prior enmity – No appeal was preferred against acquittal – However, the disciplinary authority, after considering the inquiry report, found that Constable Pralhad was guilty of committing theft of railway property and ultimately awarded the punishment of withholding annual increments for 5 years with cumulative effect – Effect – MACP's benefit in reduced pay level was also granted – Validity challenged. (E-1)

Held : The impugned penalties were inflicted upon an employee for the same misconduct. One penalty was given in the year 2004 on culmination of the disciplinary inquiry against the employee, despite his acquittal in criminal charges on relation to the same misconduct and the other penalty was given by the impugned corrigendum letter dated 3/4/2023 without holding further inquiry afresh for the proposed punishment by

giving retrospective effect to the earlier punishment granted in the year 2004 – No statutory provisions have been cited in support of issuance the impugned corrigendum letter, dated 3/4/2023 as to why the penalty shown in the said letter has been inflicted upon the petitioner after a gap of 19 years in culmination of departmental proceedings against the petitioner in which a major penalty was inflicted upon him. [Para 27]

Case Law Cited

Civil Appeal No. 5848-49 of 2014, Dev Prakash vs. State of U.P. Cooperative Institutional Services Board, decided on 30.06.2014; Civil Appeal No. 1906 of 1999, Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another, AIR 1999 SC 1416; Prem Kumar Tripathi vs. The State of U.P. and another, Natural Citation No. 2024:AHC 47778, Civil Appeal No. 7935 of 2023, Ram Lal vs. State of Rajasthan and others decided on 04.12.2023 (S.C.); G.M. Tank vs. State of Gujarat and another, (2006) 5 SCC 446; Deputy Manager, Andhra Pradesh State Road Transport Corporation vs. Yusuf Miyan, 1997 (2) SCC 699. – **referred to.**

List of Acts

Constitution of India – Article 300-A; Railway Protection Force Act, 1987; Railway Property (Unlawful Possession) Act, 1966 – S. 3; Railway Security Force Rules, 1987 – Rule 153.

List of Keywords

Benefits of MACP, Reduction in pay scale, Financial hardship, Acquittal in criminal case, Departmental enquiry, Punishment, Withholding the annual increment, Superannuation, Benefit of doubt, Theft, Departmental appeal, Misconduct, Cumulative effect, Retirement, Disproportionate assets, Guilty of charge, Prosecution, Reinstatement, Delinquent employee, Judicial pronouncement, Standard of proof, Honorably acquittal, Transportation, Statutory empowerment.

Case Arising From

Impugned letter/order dated 03.04.2023.

Appearances for Parties

Advs. for the Appellant : Pradeep Kumar.

Advs. for the Respondents : Additional Solicitor General of India.

(Delivered by Hon'ble Ram Manohar Narayan Mishra, J.)

1. Heard learned counsel for the petitioner and learned Additional Solicitor General of India for the opposite parties/ Union of India and perused the record.

2. By means of instant writ petition under Article 226 of the Constitution of India, the petitioner has sought the following relief:-

"(i) Issue a directions, order or writ in the nature of CERTIORARI thereby set-aside/quash the letter/order dated 03.04.2023, which is being annexed as Annexure No.-1 to this Writ Petition.

(ii) Issue a writ, order or directions in the nature of MANDAMUS commanding the opposite party concerned to grant the benefit of MACP-I and MACP-II to the applicant in view of order dated पी/लख/254/एमएसीपी/10 dated 14.12.2010 since 01.09.2006 (issued by opposite party No.-2) and order dated पी/लख/254/ एमएसीपी/18/2046 dated 24.01.2019 (issued by opposite party no.-2)."

3. Learned counsel for the petitioner submits that the petitioner was initially appointed in the security department in the North-Eastern Railway Lucknow Division, Lucknow, on 27/11/1983, and after rendering 39 years, 7 months, and 3 days of service, he got superannuated on 30/06/2023. After superannuation, the petitioner's Pension Payment Order was issued, a copy of which has been filed as Annexure No. 3 to the petition. The petitioner completed all assignments entrusted to him by his superior authorities with full devotion and dedication. During his service period, the petitioner was falsely implicated in Case No. 268 of 1993, under section 3 of the R.P.(UP) Act at Police Station RPF (MG) District- Gonda, which was registered as State versus Ram Raksha and others. However, after due adjudication, the learned Additional Chief Judicial Magistrate, Railway, Gonda, finally decided the said criminal case on 10/08/2001, whereby the petitioner was acquitted in the said case. A copy of the judgment of the trial court dated 10/08/2001 has been filed as Annexure No. 4 to the petition. The service record of the petitioner was throughout blameless, except in the said case in which he was falsely implicated.

4. Learned counsel for the petitioner submits that vide letter no. पी/लख/254/एमएसीपी/4/23 dated 03.04.2023 passed by respondent no.-2, the benefit of MACPS (First MACP since Dated 16.11.2012 and Second MACP since Dated 16.11.2022) had been reduced in the Level 04 @ Rs. 2400/- and in the Level 05 @ Rs. 2800/- respectively.

5. Learned counsel for the petitioner has also submitted that after thorough perusal of the said letter, petitioner found vide order dated पी/लख/254/एमएसीपी/10 dated 14.12.2010 since 01.09.2006, petitioner had been granted MACP-I on attaining the service period of 20 years and vide order dated पी/लख/254/ एमएसीपी/18/2046 dated 24.01.2019 issued by opposite party no.-02, petitioner had been granted MACP-II @ Rs. 4200/- on attaining the service period of 30 years since 24.01.2019 but pursuant to suspension period of 10 years 11 months and 09 days and effect of order dated 01.03.2004 to stop the payments for 05 years, his both of MACPS benefits had been cancelled vide letter/order dated 03.04.2023 and he had been granted the MACPS benefits in the reduced pay level, which is illegal and arbitrary in manner.

6. He next submitted that due to a reduction in pay scale of benefits of MACP-I and MACP-II, the petitioner is suffering from financial hardship and he has been deprived off from the benefits of the same despite of proving him not guilty in the criminal case which was the basis of the reduction of his MACP benefits.

7. He further submits that in view of the litigation in pay scale, MACP I and MACP-II, the petitioner's benefits have already been affected, which is a gross violation of Section 300A of the Constitution of India. Once he has been acquitted of all the criminal charges by the trial court, the question of his suspension is not sustainable.

8. He next submitted that the acquittal order in criminal case was passed on 10/08/2001, but afterwards, the respondents deliberately resumed the departmental inquiry and appointed an inquiry officer on 05/11/2002, and accordingly, the impugned order was passed on 01/03/2004, which was passed in the following manner:-

"रेसुब अधिनियम 1987 की सूची III में प्र दत्त अनुशासनिक अधिकारों को प्र योग करते हु ए श्री प्र हलाद की वा िषक वेतनवृ िद्ध पांच वर्ष के िलए स् था यी रू प (डब्लू यू ०आई०पी०) संची प्र भावसे रोकने के दंड से दं िडत करता हूँ। इस आदेश के िवरूद्ध अपील तीस िदन के अन्द र मंसुआ /लखनऊ को िकया जा सकता है। इनकी िनलम् ब न अविध िद. 17.7.92 से 06.7.2002 की समयाविध का िनयमन िनलम् ब न मे िनयमित िकया जाता हैं।

9. He also submits that while passing the aforesaid order dated 01/03/2004 same set of facts and evidence were taken in the departmental proceedings, which were already taken in a criminal proceeding and there is no difference between the two. Hence, after acquittal of the petitioner of the criminal charges, continuing the departmental inquiry and awarding punishment therein against the petitioner is totally illegal, unjust, and arbitrary. Moreover, the order dated 3/4/2023 was passed in the aforesaid matter on the verge of the petitioner's retirement/ superannuation, i.e. 30/06/2023, wherein the effect of the order dated 1/3/2004 has been applied retrospectively, which is as under:-

शु िद्ध -पत्र

विर० मंडल सुरक्ष ा आयुक्त / रेसुब / कार्यालय / लखनऊ के कार्यालय आदेश : संख्या पी/लख/ 254/ एमएसीपी / 10 िदनांक 11.12.2010 के द्वा रा 20 वर्ष सेवा पूर्ण करने की सूची केकमांक 08 पर अं िकित श्र ि प्र हलाद, कान्स टे िबल / रेसुब / बादशाहनगर वर्तमान हे०कां० गों डाको िदनांक 01.09.2008 से एमएसीपी का लाभ तथा इस कार्यालय के कार्यालय आदेशसंख्या पी/लख/254/ एमएसीपी /18/2046, िदनांक 24.01.2019 के द्वा रा 30 वर्ष कीसेवा पूर्ण होने पर िदनांक 22.11.2014 से 4200/- एमएसीपी का लाभ िदया गयाथा।परन् तु उक्त कमचारी की िनलम् ब न अविध 10 वर्ष 11 माह 09 िदन िनलम् ब न में िनयमित हुई है तथा 05 वर्ष स् था ई रू प से वेतनवृ िद्ध रोकने के दंड का आदेश िदनांक 01.03.2004 को प्रभावी करते हु ए इन्हे उक्त िदये गये दोनो एमएसीपी के लाभ को िनरस्त करते हु ए इन्हे िनम् न प्रकार एमएसीपी का लाभ िदया जाता है:--

1- प्र थम एमएसीपी िदनांक 16.11.2012 लेवल-04 में रू . 2400/-

2- िद्व तीय एमएसीपी िदनांक 16.11.2022 लेवल-05 में रू . 2800/- "

10. Due to the effect of said order dated 3/4/2023, the benefit of MACP (first ACP on 16/11/2012, and second ACP on 16/11/2022), which was provided to him, had been reduced to Lavel-4 and Lavel-5 to the tune of Rs.2400 and Rs. 2800 respectively, without any statutory authority like rules, object, or regulations. Thus, the petitioner has been deprived of all financial benefits and terminal benefits in an illegal manner.

11. Learned Counsel for the petitioner lastly submitted that while passing the impugned order dated 3/4/2023, the respondent has not mentioned any rules/regulations/ statutory provisions under which the effect of the order dated 1/3/2004 has been applied retrospectively and on this ground alone the petition deserves to be allowed. The respondents have not clarified in the counter affidavit that if the punishment order was passed on 1/3/2004, then why the effect of the same has been given after 19 years, that too, when the petitioner was on the verge of superannuation and only two months were left of his retirement, which clearly shows that the impugned order was passed with ulterior motive and only to harass the petitioner with a view to deprive him of terminal benefits owing to his superannuation. Hence, if the said punishment order dated 1/3/2004 will be effected, then the respondent can deduct an amount accordingly which is illegal and arbitrary in manner.

12. Learned Counsel for the petitioner has placed reliance on the judgments of the Apex Court passed in Civil Appeal No.5848-49 of 2014 in **Dev Prakash versus State of U.P. Cooperative Institutional Services Board**, decided on 30.06.2014 and in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and another** passed in Civil Appeal No.1906 of 1999 decided on 30.03.1999 and the judgement of this Court in the case of **Prem Kumar Tripathi Vs. The State of U.P. and another** [Natural Citation No. 2024:AHC 47778], **Ram Lal Vs. State of Rajasthan and others**, Civil Appeal No. 7935 of 2023 (S.C.)

13. Per contra, Learned Counsel for the respondents/ Union of India has placed reliance on the counter affidavit and submitted that upon completion of 30 years of service, the petitioner was given the benefit of the Modified Accumulated Career Progression Scheme (MACP) on grade pay of Rs. 4200/-, however, vide order dated 1/3/2004, the benefit of regularization of service of the petitioner for suspension period of 10 years, 11 months, and 9 days were regularized and a direction was issued to withhold the increment in pay scale for five years and the benefit of MACP given to him previously was also cancelled, which is in accordance to law and there is no infirmity in the same. During the service period of the petitioner, a case under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 was registered against the petitioner in which the petitioner was tried in Crime No.03 of 1992, Case No. 268 of 1993 by the Additional Chief Judicial Magistrate, Railways, Gonda, along with co-accused, in which petitioner was acquitted on giving him the benefit of doubt . In that case , Railways Protection Force,Gonda had filed a complaint against the petitioner, Ram Raksha and after conducting the investigation, FIR was lodged against the petitioner at Police-Station RPF (MG) District- Gonda vide Case crime no. 03 of 1992. During investigation, charge against the petitioner was found true and as such, a departmental inquiry was initiated against him by the Assistant Security Commissioner (RPF), Gonda under Rule 153 of the Railway Security Force Rules, 1987 and the charge sheet was issued against him. However, the inquiry proceedings remained stayed till the conclusion of the trial by the court vide the judgment dated 10/8/2001. The inquiry officer in departmental proceedings against the petitioner found that the charges were proved against the petitioner as such by his report dated 1/1/2004. The inquiry officer submitted his report to the Assistant Security Commissioner (RPF) Lucknow, who, after examining the inquiry report vide order dated 1/3/2004 awarded punishment to the petitioner for withholding annual increments for five years in pay/salary with cumulative effect. The petitioner preferred a departmental appeal against the order dated 1/3/2004 before Senior Divisional Security Commissioner, Railways Protection Force, Lucknow which was dismissed by the appellate authority by the order dated 2/11/2004. Copies of the orders are annexed with the counter affidavit.

14. He lastly submitted that the acquittal of the petitioner was passed by the competent court by giving him the benefit of doubt, puts no restriction or embargo in conducting the departmental inquiry against a delinquent employee under the direction of the competent authority. In the case of the petitioner also, the competent authority exercising the power granted under Scheduled III of R.P.F. Rules 1987, awarded punishment to the petitioner as his guilt was found to be proved in the inquiry conducted by the inquiry officer. The Railway Protection Force is a disciplined armed force in which highest discipline is required to be maintained by its officials. The acquittal of the petitioner in criminal trial was not honorably, but by giving him benefit of doubt.

15. From the perusal of the record, it reveals that the petitioner was initially appointed in the Railway Protection Force, North Eastern Railways, Lucknow Division, Lucknow, on November 27, 1983, and superannuated on June 30, 2023. After superannuation, Pension Payment Order was issued to the petitioner on July 3, 2023. For the purpose of pension, his pay-band was mentioned as Level-V, and basic pay plus grade pay was computed Rs.38,100/-. The service period is shown as November 23, 1983, to June 30, 2023. It appears that a criminal case was registered against the petitioner vide Criminal Case Number 3 of 1992, under Section 3 of the R.P.(UP) Act at Police Station RPF (MG) District- Gonda in relation to an incident dated July 17, 1992. Co-accused Head Constable Ram Raksha, R.P.F./OP CDR Yard, told the RPF officials that on the night of July 16, 1992, he along with constable Prahlad (petitioner) had stolen one tin of mustard oil by each containing 15 kg. of mustered oil in each tin from a wagon standing in the Marshaling Yard. Two tins of mustard oil, which were recovered from the Government Quarter of Ram Raksha and stolen property were sealed in the presence of witnesses of the railway protection force officials. A complaint was lodged by the RPF officials against accused Ram Raksha and Prahlad (petitioner) under Section 3 of the Railway Property (Unlawful Possession) Act, 1966. During trial, as many as 13 witnesses were produced in support of the charges leveled against both the accused persons. The learned trial court, after appreciating the evidence adduced by the prosecution and considering the statements of the accused persons under Section 313 of the Cr.P.C. raised suspicion on the entire prosecution version and observed that both the accused were falsely implicated by the witnesses due to prior enmity. Neither the sender of the goods nor the receiver had lodged any complaint for shortage of consignment. The charges leveled against the accused could not be proved beyond doubt, and therefore, they were entitled to the benefit of the doubt. With the above findings, the learned trial court acquitted both the accused, Ram Raksha and Prahlad (petitioner) from the said charges vide judgment and order dated August 10, 2001.

16. It appears that no appeal was preferred by the Union of India against the said acquittal. After lodging of the criminal case against the petitioner, a departmental inquiry was instituted against the petitioner but later on, it was kept in abeyance in view of the pendency of the criminal case in the same matter. After the judgment of acquittal, the inquiry was resumed by the railways. After nominating Sri Umesh Singh, Inspector, Railway Protection Force, Lucknow City on 05/11/2002, who submitted an inquiry report on 01/01/2004. The petitioner filed his representation against the inquiry report on 25/01/2004, which was rejected by the disciplinary authority. In the disciplinary inquiry, it was found that a total 1188 tins of mustard oil were being transported in a railway wagon. A shortage of two tins was detected. Two tins of mustard oil were recovered from the residence of Head Constable Ram Raksha on the pointing out of both employees, Ram Raksha and Prahlad bore the same marka and print the brand name which were shown in the consignment of 1188 tins of mustard oil. During the inquiry, Head Constable Shri NK Yadav, Inspector In-charge, Head Constable Shri Navel Kishore Singh, Constable Bachha Ji Shah, Constable Ram Kripal Singh, and Inspector Sri S.P. Mishra supported the departmental case and deposed against the delinquent constable, Prahlad (petitioner).

17. The disciplinary authority/ Assistant Security Commissioner, Railway Protection Force, Lucknow, after considering the inquiry report found that Constable Prahlad was guilty of the serious charge of committing theft of railway property and exercising the disciplinary powers vested with him under Railway Protection Force Act, 1987 of Schedule (I) awarded a punishment

of withholding annual increments for 5 years with cumulative effect and his suspension period from 17/07/1992 to 06/07/2002 was regularized. The petitioner filed a departmental appeal before the Senior Divisional Security Commissioner, Railway Protection Force, Lucknow, which was dismissed on 02.11.2004, and the punishment given by the disciplinary authority was affirmed. The disciplinary appellate authority had not given the benefit of acquittal of the petitioner by the criminal court in the matter on the ground that he was acquitted by giving the benefit of the doubt. The petitioner was granted MACP-I on 04/01/2010, with effect from 01/09/2006 on completing 20 years of service, and MACP-II on 24/01/2019, completing 30 years of service on the grade pay of Rs.4200/-. However, pursuant to a suspension period of 10 years, 11 months, and 9 days and in view of a punishment order dated 01/03/2004, both of his MACP's benefits were cancelled by letter/order dated 03/04/2023. He has been granted MACP's benefits in reduced pay level by a corrigendum letter dated 03/04/2023 issued by the Senior Security Commissioner, Railway Protection Force, Lucknow as cited above. The petitioner has filed the present petition against the said corrigendum letter dated 03/04/2023.

18. On perusal of the inquiry report as well as the judgment of acquittal passed by the Additional Chief Judicial Magistrate, Railway Gonda, it appears that the main witnesses in the disciplinary proceedings, Inspector In-charge Shri N.K. Yadav, Head Constable Naval Kishore Singh, Constable Bachha Ji Sahah, and Inspector S.P. Mishra, were common witnesses in both the criminal as well as departmental proceedings. Therefore, in a nutshell, it is found that criminal proceedings, as well as departmental proceedings were initiated against the petitioner but later on the departmental proceedings were kept in abeyance due to the pendency of the criminal case in regard to the same charges. After acquittal of the petitioner from the criminal charges in the year 2001, departmental proceedings were resumed in the year 2002 which culminated against the petitioner and he was found guilty of misconduct and he was awarded the major punishment of withholding annual increment for 5 years with cumulative effect. Subsequently, prior to two months of the petitioner's retirement, the impugned corrigendum letter was issued by the competent authority on 03/04/2023 with regard to the same misconduct, his two MACPs granted in the year 2010 and 2019 which were granted to him after the finality of his punishment in departmental proceedings in the year 2004 were cancelled.

19. In some of the case law cited by learned counsel for the petitioner on behalf of the petitioner, the legal proposition is reiterated that in the absence of a specific rules/ provisions, no departmental proceedings can be continued against an employee, nor any deduction can be made from his retirement benefits, once he retires from service while the departmental inquiry is pending against him.

20. Learned counsel for the petitioner has placed reliance on the judgment of Hon'ble the Supreme Court in the case of **G.M. Tank vs. State of Gujarat and another**, (2006) 5 SCC 446, decided on 10/5/2006. In that case, the accused was charged under Section 5(1)(e) of the Prevention of Corruption Act, with allegations that the appellant having been found in possession of disproportionate assets. Learned Special Judge had acquitted the appellant of the said charge, holding that the prosecution had failed to prove the charge leveled against the appellant and thus the appellant could not be held guilty of the said offense. This acquittal was by way of complete exoneration and not by giving the benefit of doubt. The respondents had not challenged the order

passed by the learned Special Judge acquitting the appellant before any forum, and therefore, the order passed by the learned Special Judge had reached its finality and become a final conclusion. He joined the service in the year 1983 as an Overseer. A departmental inquiry was ordered against him as the movable and immovable properties of the appellant were disproportionate to his known source of income. A departmental inquiry was ordered, and as per the inquiry report dated 31/3/1980, the appellant was found guilty of the charges. The respondent, by order dated 21/10/1982, passed an order of dismissal from service as punishment. Against the said dismissal order, the appellant filed a writ petition before the High Court. The Learned Single Judge had come to the conclusion that there was sufficient evidence against the appellant and dismissed the petition. Against the order of the learned Single Judge, the appellant preferred an LPA and raised the relevant contentions. The Division Bench dismissed the LPA by confirming the order passed by Learned Single Judge. The said decision was challenged before Hon'ble the Supreme Court by filing special leave petition. The Supreme Court had set aside the judgment and order passed by the Learned Single Judge as well as the judgment and order passed in LPA by the Division Bench, and held that as the appellant had retired, therefore, we deemed it proper to set aside the order of dismissal without back wages. The Apex Court has observed as follows:-

"In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

21. Learned counsel for the petitioner has also placed reliance on another judgment of the Apex Court in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines and another, AIR 1999 SC 1416**. In the aforesaid case, Hon'ble Apex Court considered the question "whether departmental proceedings and proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously?" The Hon'ble Supreme Court held that it is a question which crops up perennially earlier in service matter and held that once again arisen in this case. Appellant was appointed as Security Officer in a Government undertaking by Kolar Gold Field at Karnataka on 31/10/1983. On 2/6/1985, a raid was conducted by the Superintendent of Police at the house of the appellant from where some gold items were recovered, therefore, on the same day an FIR was lodged at the police station and the criminal case was registered against him, who was placed under suspension on 3/6/1985. The next day i.e. 4/6/1985, a chargesheet was issued, proposing a regular departmental inquiry with regard to the recovery of the said articles from his house. In reply to the chargesheet, he prayed by way of representation that the departmental proceedings initiated against him, may be dropped till conclusion of the criminal proceedings on the basis of the FIR lodged against him at the police station. His representation was rejected on 19/6/1985. The disciplinary authority, on the basis of the inquiry report, dismissed the appellant from service by order dated 7/6/1985. On 03/02/1987, the judgment in the criminal case

was pronounced, and the appellant was acquitted with categorical findings that the prosecution had failed to establish its case. This judgment was communicated by the appellant to the respondents on 12/09/1987 with the request that he may be reinstated, but the respondents by a later dated 03/03/1987, rejected the request of the appellant on the ground that he had already been dismissed from service upon completion of a departmental inquiry which was conducted independently in the criminal case and therefore, the judgment passed by the Magistrate is of no consequence. The order of dismissal passed by the respondents was challenged in a departmental appeal which was rejected by the appellate authority on 22-7-1987. The appellant filed a writ petition before the High Court, which was allowed by the Learned Single Judge with the finding that the departmental proceedings and the criminal proceedings, being based on the same set of facts, the departmental proceedings should have been stayed till the result of the criminal case. Since in the criminal case, the appellant had already been acquitted, and the prosecution's case was not found established, the respondents could not legally refuse reinstatement or consequent wages to the appellant, while directing the reinstatement of the appellant. The High Court gave liberty to the respondents to initiate fresh proceedings against the appellant after perusing the judgment passed in the criminal case. This judgment was, however, set aside by Division Bench in a Letter Patent Appeal filed by the respondents. This judgment came in Appeal before the Supreme Court. Hon'ble the Supreme Court, for the reasons cited in the judgment, allowed the appeal and set aside the impugned judgment passed by the Division Bench of the High Court and upheld the judgment of the learned Single Judge, in- so- far as it related to purported to allow the writ petition. However, the Apex Court quashed the liberty granted to the respondents by the Learned Single Judge to initiate a fresh disciplinary proceedings against the appellant. In the peculiar circumstances of the case, especially having regard to the facts that the appellant is undergoing this agony since 1985, despite having been acquitted by the criminal court in the year 1987. The Apex Court directed the reinstatement of the appellant forthwith on the post of Security Officer with all allowances from the date of suspension till his reinstatement within three months.

22. Hon'ble the Supreme Court cited its earlier judgment in the case of **Deputy Manager, Andhra Pradesh State Road Transport Corporation versus Yusuf Miyan**, 1997 (2) SCC 699, wherein it was held that there is no bar in proceeding simultaneously with the departmental proceedings and the trial of the criminal case unless the charge in the criminal case is of a grave nature involving complicated question of facts and law, if the departmental proceedings and criminal cases are based on identical and similar sets of facts and the charge in the criminal case against the delinquent employee is of a grave nature, which involves a complicated question of law and fact, it would be desirable to stay the departmental proceedings during the conclusion of the criminal case. Whether nature of charge in a criminal case is grave, and whether complicated questions of fact and law are involved in the case will depend upon the nature of offence, nature of case launched against an employee on the basis of evidence and material collected during the investigation or reflected in the charge sheet.

23. The Supreme Court in the case of **Capt. M. Paul Antony** (supra), has already pointed out earlier that the criminal case and also a departmental proceeding were based on an identical set of facts, namely "the raid and conduct at the appellant's residence and the recovery of incriminating articles therefrom." The findings recorded by the inquiry officer, a copy of which has been placed before us, indicates that the charges framed against the appellant were sought to be proved by the

police officer and punch witnesses who had conducted raid at the house of the appellant and had affected the recovery. The inquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, after considering all the evidence, came to the conclusion that no search was ever conducted nor any recovery was made at the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In these situation, therefore, where the appellant has been acquitted by a judicial pronouncement, with the findings that the raid and recovery at the residence of the appellant were not proved, it would be unjust, unfair, and apprehensive to allow the findings recorded in an ex-parte departmental proceedings to stand, since the fact and evidence in both proceedings, namely, the departmental proceedings and the criminal case, were the same without there being an iota of difference the distinction, which is usually drawn as witnesses in departmental proceedings and the criminal case, the burden of proof would not be applicable to the instant case.

24. In **Ram Lal Vs. State of Rajasthan and others**, Civil Appeal No.7935 of 2023, Hon'ble Supreme Court in a reported judgment dated 04.12.2023 observed that the appellant was an Constable with the Rajasthan Armed Constabulary, 9th Battalion, Jodhpur. He was appointed on 15.12.1991. A FIR was lodged on 02.09.2022 against him under Sections 420,467,468 and 471 IPC . Soon thereafter on 02.04.2003, a charge-sheet in a departmental enquiry was also issued. The charges against the appellant that he had altered his date of birth in his 8th standard mark-sheet so as to project himself as having attained majority at the time of the recruitment. The disciplinary authority, by an order dated 31.03.2004 dismissed the appellant from service.. The appellate authority also dismissed the appeal. Attempts to have the order reviewed and the penalty reconsidered were also in vain. At the criminal trial, the trial court convicted the appellant for the offence under Section 420 IPC and sentenced him to undergo for the same . However, learned Additional District & Session Judge, Jodhpur in appeal acquitted the appellant. The appellant, thereafter, represented for his reinstatement. Subsequently, he filed a writ petition for quashing the dismissal order . Learned Single Judge dismissed the writ petition by holding that the standard of proof in a criminal proceeding and departmental proceeding is different. He found no infirmity in the order of the disciplinary authority . The writ appeal filed by the appellant was also dismissed by the High Court. Hon'ble the Apex Court framed two questions for consideration;

(a) Whether the dismissal of the appellant from service pursuant to the departmental enquiry was justified ?

(b) On the facts of the case , what is the effect of the acquittal, ordered by the appellate Judge in the criminal trial , on the order of dismissal passed in the departmental enquiry ?.

Hon'ble the Supreme Court answered the question no.1 in affirmative and hold we are satisfied that the disciplinary proceedings are vitiated and deserves to be quashed. In answer of question no.2 Hon'ble Supreme Court observed that the very same witnesses, who were examined in the departmental enquiry were examined in the criminal trial. A reading of entire judgment of the appellate court clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge. Expression like "benefit of doubt" and "honorably acquitted" used in the judgments are not

to be understood as magic incantations. The court of law will not be carried away by the mere use of such terminology. The Court in judicial review is obliged to examine the substance of the judgment and not got by the form of expression used. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. Hon'ble Supreme Court further observed as under:-

"We are satisfied that the findings of the appellate judge in the criminal case clearly indicate that the charge against the appellant was not just, "not proved" - in fact the charge even stood "disproved" by the very prosecution evidence. As held by this Court, a fact is said to be "disproved" when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be "not proved" when it is neither "proved" nor "disproved" [See Vijayee Singh and Others v. State of U.P. (1990) 3 SCC 190]."

25. In the present case, the impugned corrigendum letter was issued by the competent authority at the verge of retirement of the petitioner whereby, both the MACPs granted to him after completion of requisite service were canceled. A service certificate has been issued to the petitioner after his retirement, after deducting both the MACPs earlier granted to him on 03.07.2023. MACP-I and MACP -II were granted to the petitioner long after the awarding of punishment to him in regard to misconduct attributed to him as he was found guilty of committing theft of railway property during the course of transportation which was delivered by the railways for transportation by the consignor. There is a gap of 19 years between the final culmination of the disciplinary proceedings against the petitioner in the year 2004 and awarding him aforementioned punishment by the impugned corrigendum letter dated 03/04/2023. Although in the criminal proceeding the petitioner was acquitted by giving the benefit of the doubt, yet the learned trial court observed that the charges were not proved against him. The benefit of two MACPs were granted to the petitioner after the culmination of the criminal and disciplinary proceedings; former in favor of the petitioner and the latter against him. Thus, it will be presumed that on the grant of MACPs, the appointing authority was well aware of the outcome of the criminal as well as departmental proceeding concluded in respect of the petitioner.

26. This fact is not disputed that the criminal proceedings as well as departmental proceedings were initiated against the petitioner in respect of the same set of facts and misconduct, in-as-much as potential witnesses, on whose evidence reliance was placed by the department, were produced in criminal charges by the prosecution. If we have a glance over the facts of the case, it is found that as per the allegations in the case, the petitioner along with co-accused Constable Ram Raksha, had stolen one tin of mustard oil each from a railway wagon during transmission and each tin containing 15 kg of mustard oil. The tins of mustard oil were not recovered from the petitioner's house, but from the house of co-accused Ram Raksha allegedly on the pointing of the petitioner and the co-accused Constable Ram Raksha. Both tins were kept in separate plastic sacks, each containing one tin of mustard oil. It is also alleged that these tins were carried by the petitioner and co-accused on their respective bicycles to Railway Quarter No.284 B, allotted to Ram Raksha. Both the accused were seen transporting one plastic sack on the carrier of their bicycles at about 1:15 hours in the night by the witness PW3 Bachha Ji Shah, but the trial court has not placed reliance on

the evidence of Bachha Ji Shah as it was not corroborated by the witness of PW-1 Sri N.K. Yadav. The trial court also found the recovery memo suspicious. The trial court also acquitted the petitioner and co-accused Ram Raksha by extending the benefit of doubt. In the judgment the incident was allegedly found doubtful and the court gave a finding that the prosecution has failed to prove the guilt of the accused beyond doubt.

27. In the present case, it appears that the impugned penalties were inflicted upon an employee for the same misconduct. One penalty was given in the year 2004 on culmination of the disciplinary inquiry against the employee, despite his acquittal in criminal charges on relation to the same misconduct and the other penalty was given by the impugned corrigendum letter dated 3/4/2023 without holding further inquiry a fresh for the proposed punishment by giving retrospective effect to the earlier punishment granted in the year 2004. It is also not clear as to whether any opportunity of hearing was given to the petitioner while inflicting the penalty of cancelling MACPs granted to him, subsequent to the infliction of the penalty for said misconduct way back to the year 2004, no statutory provisions have been cited in support of issuance the impugned corrigendum letter, dated 3/4/2023 as to why the penalty shown in the said letter has been inflicted upon the petitioner after a gap of 19 years in culmination of departmental proceedings against the petitioner in which a major penalty was inflicted upon him withholding annual increments for 5 years with cumulative effect, even after ignoring the acquittal of the petitioner in criminal charges based on the same misconduct. In the absence of any statutory empowerment, it appears contrary to law to cancel two MACPs granted in the year 2010 and 2019 after conclusion of departmental inquiry by giving retrospective effect to the penalty imposed in the departmental proceedings way back in the year 2004, after lapse of 19 years by impugned order dated 03/04/2023, that too when the criminal court had already acquitted the petitioner for said charge based on same set of facts and that judgment of criminal court had attained finality.

28. Therefore, in view of the foregoing discussion and according due consideration of judicial authorities cited above, the impugned corrigendum letter, dated 3/4/2023, is quashed. The respondents are directed to grant benefit of MACP-I and MACP- II to the petitioner within three months in view of the earlier orders, dated 14/12/2010 and 14/1/2019, issued by them, whereby MACP-I and MACP-II were granted to the petitioner, respectively.

29. Consequently, the petition is **allowed**. However, there will be no order as to costs.

(2026) 1 ILRA 958
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.01.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 11217 of 2025

Chandra Prakash Singh & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

- (1) Effect of de-recognition of an institution to the continuity of teachers and non-teaching staffs working in that institution.
- (2) Permissibility of claim of the employees of de-recognized institution to be adjusted in another institution.
- (3) Permissibility of claiming the negative equality under Article 14 of the Constitution of India.

Headnotes

(A) Service law – Withholding of payment of salary – Petitioners were appointed on the post of Assistant Teacher, Clerk and Class IV post in the institution – Approval were also granted and salary was started to be paid – Subsequently the recognition accorded to the institution was cancelled, and the salary of the petitioners were also withheld – Writ petition against cancellation of recognition was dismissed – Effect – Adjustment to another institution was claimed – Permissibility. (E-1)

Held : Teachers working in an institution whose recognition has been cancelled do not acquire any vested or enforceable right to claim adjustment or absorption in any other recognized institution. Recognition of an educational institution constitutes the statutory foundation for the validity of appointments made therein, and once such recognition is withdrawn, the institution ceases to exist as a recognized entity in the eyes of law. The appointments of teachers, being co-terminus with recognition, automatically lose their legal sanctity – Where the statute does not provide for absorption of teachers of a derecognised institution, no right can be founded merely on the basis that some persons may have been granted such benefit erroneously – Once recognition is cancelled by the competent authority, the institution ceases to function as a recognised institution in the eyes of law, and the appointments of teachers, being co-terminus with recognition, automatically lose their legal sanctity. [Para 42, 43 and 47]

(B). Constitution of India – Article 14 – Right to equality – Positive equality and negative equality – Benefit of illegality provided to another candidate was claimed – Permissibility. (E-1)

Held : Article 14 embodies the doctrine of positive equality and does not countenance the concept of negative equality. An illegality or irregular benefit extended to any individual does not create a precedent nor confer a legal right upon others to claim similar treatment – Courts cannot perpetuate an illegality under the guise of equality. [Para 43]

Case Law Cited

State of Odisha and another vs. Anup Kumar Senapati and another, (2019) 19 SCC 626; State of Bihar v. Kameshwar Prasad Singh, (2000) 9 SCC 94; Union of India v. Kartick Chandra Mondal, (2010) 2 SCC 422; Basawaraj v. Special Land Acquisition Officer, (2013) 14 SCC 81; State of Maharashtra v. Vikas Sahebrao Roundale and others, (1992) 4 SCC 435. – **referred to.**

List of Acts

Constitution of India – Article 14; Societies Registration Act, 1860; UP Basic Education Act, 1972; UP Junior High School (Payment of Salary to Teachers & Other Employees) Act, 1978; UP Recognized Basic Schools (Junior High Schools) (Recruitment & Conditions of Service of Teachers) Rules, 1978; the UP Recognized Basic School (Junior High School) (Recruitment and Conditions of Service of Ministerial Staff & Group D Employees) Rules, 1984 – Rule 15.

List of Keywords

Grant-in-aid, Approval; Deemed approval; Permanent recognition; Revocation; Withholding of salary; Absorption; Adjustment; Cancellation of recognition; Irregularity; Constitutional jurisprudence; Doctrine of positive equality; Negative equality; Statutory foundation; Irregular benefit; Legal sanctity; Sympathy; Reasonable opportunity hearing, Pubic employment, Principle of natural justice.

Case Arising From

Impugned order dated 04.06.2025 refusing to adjust the petitioners in another institution.

Appearances for Parties

Advs. for the Appellant : Ashok Khare, Sr. Adv.; Aditendra Singh and Siddharth Khare.

Advs. for the Respondents : Anoop Trivedi, Additional Advocate General; Ashish Kumar Nagvanshi, ACSC.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Learned counsel for the petitioners states that he does not propose to file rejoinder affidavit. Therefore, with consent of the parties this petition is being decided finally without calling for further affidavits.

2. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Aditendra Singh, learned counsel for the petitioners and Sri Anoop Trivedi, learned Additional Advocate General assisted by Sri Ashish Kumar Nagvanshi, learned Additional Chief Standing Counsel for the State-respondents.

3. The present writ petition has been filed inter-alia for the following reliefs:-

'(i) a writ, order or direction in the nature of certiorari quashing the order dated 04.06.2025 passed by the Director of Education (Basic), U.P. Lucknow.

(ii) a writ, order or direction of a suitable nature commanding the respondent to adjust/absorb the petitioners in some other recognized and aided Junior High School of District Gorakhpur with all consequential benefits thereof within a period to be specified by this Hon'ble Court.

(iii) a writ, order or direction of a suitable nature commanding the respondent to disburse the regular monthly salary to the petitioner no.1, 3 and 5 and regular monthly pension to petitioner no.2 and 4 regularly, every month.

(iv) a writ, order or direction of a suitable nature commanding the respondent to disburse all arrears of salary from September 2018 to the petitioners within a period to be specified by this Hon'ble Court including the arrears of pension to petitioner no.2 and 4 within a period to be specified by this Hon'ble Court.

(v) a writ, order or direction in the nature of which this Hon'ble Court may deem fit and proper under the circumstances of the case.

(vi) award cost to the humble petitioner throughout of the present writ petition.'

4. Placing the brief facts of the case, learned counsel for the petitioners submits that Kishan Shiksha Prasar Mandal, Gorakhpur, is a society registered under the Societies Registration Act, 1860, which has established a Junior High School under the name of Baba Surya Narayan Das Laghu Madhyamik Vidyalaya, Sirsia, Bhathat, Gorakhpur, which was also receiving grant-in-aid from the State Government. Accordingly, the aforesaid institution is governed by the provisions of the UP Basic Education Act, 1972 (hereinafter referred to as 'the Act, 1972'); the UP Recognized Basic Schools (Junior High Schools) (Recruitment & Conditions of Service of Teachers) Rules,

1978 (hereinafter referred to as 'the Rules, 1978'); the UP Recognized Basic School (Junior High School) (Recruitment and Conditions of Service of Ministerial Staff & Group D Employees) Rules, 1984 (hereinafter referred to as 'the Rules, 1984'); and the UP Junior High School (Payment of Salary to Teachers & Other Employees) Act, 1978 (hereinafter referred to as 'the Act, 1978').

5. He further submits that the institution in question was brought into the grant-in-aid list by the Government Order issued on 02.12.2006.

6. The petitioner no.1 was duly selected for the post of Assistant Teacher and was accorded approval by the Basic Shiksha Adhikari, Gorakhpur, by order dated 18.09.2015. Accordingly, the Committee of Management of the institution issued an appointment letter dated 10.10.2015, pursuant to which Petitioner No. 1 joined on 14.10.2015.

7. Petitioner No. 2 was duly selected as an Assistant Teacher, and approval was accorded by the concerned Basic Shiksha Adhikari by order dated 13.05.1986. The financial approval was also granted to the petitioner by the Assistant Director of Education (Basic) vide order dated 16.11.2007. Petitioner No. 2 joined the institution on 01.07.1986.

8. Petitioner No. 3 was duly selected and appointed as Clerk, and the relevant papers were placed before the Basic Shiksha Adhikari on 20.01.2012, but no orders were passed. As a result, the selection was deemed approved in accordance with Rule 15 of the Rules, 1984. An appointment order dated 26.02.2012 was issued by the Committee of Management of the institution, pursuant to which he joined the institution on 01.03.2012.

9. Petitioner No. 4 was duly selected for appointment as a Class-IV employee of the institution, and the appointment was approved by the concerned Basic Shiksha Adhikari by order dated 23.06.1989. Financial sanction for the payment of salary to Petitioner No. 4 was ordered by the Assistant Director of Education (Basic) vide order dated 31.10.2013.

10. The petitioner no.5 was also selected for appointment as a Class-IV employee. The approval was accorded by the concerned Basic Shiksha Adhikari, Gorakhpur, vide order dated 22.11.1991. Financial sanction was granted by the Assistant Director of Education (Basic) by order dated 24.02.2009.

11. The petitioners continued to work in the institution on their respective posts continuously since the date of their appointments. The petitioners were paid salary from the Government grant from December 2006 till August 2018. However, the salary of the petitioners was withheld from the month of August 2018.

12. It appears that some complaint was lodged against the institution/management, on the basis of which the Assistant Director of Education (Basic), Gorakhpur/Basti Division, passed an order dated 22.04.2017, superseding the Committee of Management and appointing the Khand Shiksha Adhikari as Authorized Controller. Subsequently, on 05.09.2018, an order was passed by the Basic Shiksha Adhikari, Gorakhpur, whereby the permanent recognition accorded by the order

dated 02.05.1985 was revoked, and the students studying in the institution were directed to be adjusted in other institutions.

13. The aforesaid order dated 05.09.2018 was challenged by the Committee of Management by filing Writ Petition No. 32781 of 2018, which was dismissed by the learned Single Judge by judgment and order dated 27.09.2018. The aforesaid order was subsequently challenged in Special Appeal No. 1184 of 2018, wherein no interim order was passed.

14. Learned counsel for the petitioners submits that though the order dated 05.09.2018 referred to the adjustment of students in other institutions, it is conspicuously silent with regard to the adjustment of the staff members of the institution (both teaching and non-teaching).

15. As the salary of the petitioners was withheld from the month of August 2018, they represented before the District Magistrate, Gorakhpur, seeking clarification regarding their adjustment in other institutions, as was done for the students studying in the institution whose recognition was revoked.

16. The District Magistrate, Gorakhpur, accordingly sought clarification from the Basic Shiksha Adhikari, who responded through a communication dated 16.10.2018. He also sent a letter addressed to the Additional Director of Education (Basic), seeking guidance with regard to the members of the staff of the institution.

17. When nothing was done, the petitioners filed Writ-A No. 26118 of 2018¹, seeking for a direction to the authorities to absorb the petitioners in equivalent Junior High Schools in District Gorakhpur and permit them to function on their respective posts, as they were functioning in the earlier institution whose recognition was cancelled. They further prayed for the regular payment of their salary on a month-by-month basis.

18. The aforesaid writ petition was finally disposed of by the learned Single Judge by order dated 05.03.2025, wherein the petitioners were permitted to provide all necessary papers and documents on which they had relied, as well as a copy of the counter-affidavit filed by the respondents in the aforesaid writ petition before the Director of Education (Basic), Lucknow. Upon receiving these, the Director of Education (Basic) was expected to pass appropriate orders in accordance with the law.

19. In compliance with the aforesaid order, a representation dated 18.03.2025 was placed before the Director of Education (Basic), wherein a notice dated 21.03.2025 was provided to all concerned, and finally, the representation of the petitioner came to be rejected by the order dated 04.06.2025, which is the order impugned.

20. Learned counsel for the petitioners submits that the aforesaid order dated 04.06.2025 has been passed in an arbitrary and discretionary manner, as in an identical circumstance case, teaching and non-teaching staff have been adjusted in other institutions.

21. He further submits that by the order dated 23.09.2020 issued by the State Government, the members of the staff and the students of Thakur Shiv Narayan Singh Purva Madhyamik Vidyalaya, Bhagwanpur Bazar, Maharajganj, were directed to be absorbed in an aided Junior High School in the vicinity.

22. The Government Order dated 15.01.2019 also visualized a rationalization of the staff members in recognized and aided Junior High Schools, as well as the adjustment of surplus teachers, which has been ignored in the passing of the impugned order.

23. The impugned order dated 04.06.2025 has been passed in the absence of provisions for such adjustment in the 1978 Rules. However, when the Rules are silent about absorption, it cannot be inferred that the petitioners cannot be absorbed in other institutions on their respective posts, as has been done in similarly situated cases. Therefore, the impugned order has been passed in an arbitrary and discriminatory manner.

24. It is undisputed that the petitioners were duly appointed members of the staff of the institution and were receiving their salary regularly from the government grant. The cancellation of the institution's recognition is not due to any fault of the petitioners; therefore, they cannot be penalized and are entitled to adjustment in other institutions in their respective posts.

25. The cancellation of the recognition of the institution where the petitioners were appointed, was beyond their control. Therefore, the order canceling or revoking the institution's recognition, with a direction for the absorption of students in other institutions, similarly requires that similar directions be issued for the absorption of the institution's staff members. Hence, the impugned order is liable to be set aside.

26. In the counter affidavit filed in Writ Petition No. 26118 of 2018 (Chandra Prakash & 4 Others vs. State of U.P. and Others), it was stated that the then District Basic Education Officer was awaiting proper directions from the Director of Education (Basic) regarding the absorption of teaching and non-teaching staff of the institution. However, without waiting for such directions, the impugned order was passed. Therefore, the order is unjustified in the eyes of the law.

27. In the counter affidavit filed on behalf of the respondent-BSA, it has been specifically averred that Baba Surya Narayan Das Lower Middle School, Sirsiya, Bhathat, Gorakhpur, was an aided and recognized Junior High School, having been granted permanent recognition by the Deputy Director of Education, VIIth Region, Gorakhpur, vide order dated 22.05.1985. The institution was brought under the grant-in-aid list by the Government Order dated 02.12.2006, and the salaries of its teaching and non-teaching staff were paid under the provisions of the U.P. Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978, as amended from time to time.

28. After receiving a complaint dated 22.01.2016 regarding the fraudulent recognition obtained by the aforesaid institution, the Chief Development Officer conducted an inquiry, wherein it was found that Plot No. 173, measuring 0.291 hectare, was recorded as Panchayat Bhawan land

in the revenue records, and the school building, courtyard, and playground were situated upon it, which is contrary to the relevant rules.

29. A three-member committee was also constituted under the chairmanship of the District Magistrate, Gorakhpur, which submitted a report in this regard, finding that the school building and playground were indeed situated on Panchayat land, recorded as Plot No. 173, measuring 0.291 hectare.

30. The Sub-Divisional Magistrate, Sadar, Gorakhpur, vide letter dated 14.08.2018, informed that the Manager of the institution had filed a case under Section 101 of the U.P. Revenue Code, 2006, which was dismissed on merits on 09.08.2018.

31. Subsequently, in Case No. 4184 of 2017 (Gram Sabha vs. Surya Narayan), under Section 87 of the U.P. Revenue Code, 2006, the Court of the Tehsildar (Judicial), Sadar, Gorakhpur, ordered eviction of the institution, namely, Baba Surya Narayan Das L.M.V. from Plot No. 173, measuring 0.291 hectare, and imposed a compensation of Rs. 19,860/- along with the costs of execution proceedings.

32. Accordingly, in view of the aforesaid, the District Basic Education Officer, Gorakhpur, vide order dated 05.09.2018, withdrew the permanent recognition of the institution and directed that all the students be transferred to nearby Government institutions, namely P.M.V. Gehari, P.M.V. Ghosa Deur, and Mudila.

33. The teaching and non-teaching staff of the institution filed Writ Petition No. 26118 of 2018, wherein this Hon'ble Court, vide order dated 05.03.2025, directed the Director of Education (Basic), U.P., Lucknow, to pass an appropriate order on their representation within three weeks from the date of the order.

34. In compliance with the aforesaid order, the representation of the petitioners was rejected on 04.06.2025 on the ground that adjustment in any other aided Junior High Schools was not permissible under the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978, as amended.

35. In view of the fact that the recognition of the institution in question has been withdrawn on the basis of forged and false records, the request made by the petitioners, who were teaching and non-teaching staff of such an institution, could not be considered, as there is no provision for transfer or adjustment upon the withdrawal of recognition under the 1978 Rules.

36. The writ petition filed against the withdrawal of recognition, being Writ Petition No. 32781 of 2018, has also been dismissed by the Coordinate Bench of this Court by a detailed and reasoned order dated 27.09.2018. Thus, in light of the same, the petitioners are not entitled to adjustment or transfer to any other institutions.

37. The petitioners have also sought adjustment/transfer based on the Government Order dated 15.01.2019, which is misconceived, as the same is not applicable to the facts of the present case.

The said Government Order pertains only to situations where, due to a fall in student strength, certain teaching and non-teaching employees of duly recognized and aided institutions are declared surplus and permitted to draw salary until their superannuation.

38. In the present case, since the recognition of the institution itself was withdrawn due to serious irregularities found during the inquiry, the petitioners cannot be adjusted or transferred to any other institution.

39. As regards the submission made by learned counsel for the petitioners, referring to the Government Letter dated 23.09.2020, wherein the Government directed the District Magistrate, Maharajganj, to take necessary action in respect of an unauthorizedly constructed school on Gram Sabha land and to accommodate its staff and students in a nearby aided school, the District Basic Education Officer, Maharajganj, vide order dated 30.12.2023, issued with the approval of the District Magistrate, Maharajganj, adjusted one Headmaster and four Assistant Teachers in Chingudram P.M.V., Kolhui Brijmanganj, and Kisan Junior High School, Mahdeiya Nautanwa, District Maharajganj. The aforesaid order dated 30.12.2023 was subsequently confirmed by the office of the Director of Education (Basic), U.P., Lucknow, vide letter dated 14.08.2025, and reaffirmed by the District Basic Education Officer, Maharajganj, through communication dated 18.08.2025, though during the course of argument, learned counsel for the respondents submits that this has not been done as there is no provision under the Rules of 1978, as amended from time to time, for the adjustment or absorption of teaching and non-teaching staff upon the withdrawal of recognition of any aided Junior High School.

40. As this Court has taken serious note of the aforesaid issue, to which learned counsel for the respondents has undertaken to write to the higher authorities regarding the aforesaid fact. However, counsel also submits that the petitioners cannot claim negative equality for the present relief as prayed for. In support of his contention, he has relied upon the judgment of the Apex Court in the case of **State of Odisha and another vs. Anup Kumar Senapati and another**².

41. I have heard learned counsel for the petitioners and learned Standing Counsel and perused the records.

42. It is well settled that teachers working in an institution whose recognition has been cancelled do not acquire any vested or enforceable right to claim adjustment or absorption in any other recognized institution. Recognition of an educational institution constitutes the statutory foundation for the validity of appointments made therein, and once such recognition is withdrawn, the institution ceases to exist as a recognized entity in the eyes of law. The appointments of teachers, being co-terminus with recognition, automatically lose their legal sanctity. In the absence of any express statutory provision, rule, or government policy providing for adjustment or absorption, no writ of mandamus can be issued to the State authorities or to other recognized institutions. Claims based on equity, hardship, or length of service cannot override the clear mandate of law, and courts cannot create service rights by judicial fiat where the statute is silent.

43. The plea of the petitioners seeking adjustment or absorption on the ground that similarly situated teachers have been accommodated elsewhere is wholly misconceived. It is a settled

principle of constitutional jurisprudence that Article 14 embodies the doctrine of positive equality and does not countenance the concept of negative equality. An illegality or irregular benefit extended to any individual does not create a precedent nor confer a legal right upon others to claim similar treatment. Where the statute does not provide for absorption of teachers of a derecognised institution, no right can be founded merely on the basis that some persons may have been granted such benefit erroneously. Courts cannot perpetuate an illegality under the guise of equality.

44. In the case of **State of Bihar v. Kameshwar Prasad Singh**³, the Apex Court has held as under:-

'30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to 9 them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in *Gursharan Singh v. New Delhi Municipal Committee* 24 held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens.'

45. In the case of **Union of India v. Kartick Chandra Mondal**⁴, the Apex Court has held as under:-

'Even assuming that the similarly placed persons were ordered to be absorbed, the same if done erroneously cannot become the foundation for perpetuating further illegality. If an appointment is made illegally or irregularly, the same cannot be the basis of further appointment. An erroneous decision cannot be permitted to perpetuate further error to the detriment of the general welfare of the public or a considerable section.'

46. In the case of **Basawaraj v. Special Land Acquisition Officer**⁵, the Hon'ble Supreme Court has held as under:-

'8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision.'

47. Recognition of an educational institution is the statutory foundation for its lawful existence. Appointments of teachers made therein derive their validity solely from such recognition. Once recognition is cancelled by the competent authority, the institution ceases to function as a recognised institution in the eyes of law, and the appointments of teachers, being co-terminus with recognition, automatically lose their legal sanctity.

48. It is a settled principle of service jurisprudence that absorption or adjustment is not an inherent or vested right of an employee. Such right can accrue only when it is expressly provided by statute, statutory rules, or a specific government policy. In the absence of any such enabling provision, teachers of a derecognised institution cannot seek a writ of mandamus commanding the State authorities or the management of other recognised institutions to absorb or adjust them.

49. Claims founded on sympathy, hardship, or length of service cannot override the clear mandate of law. Courts cannot create service rights by judicial fiat where the statute is silent. Mere cancellation of recognition, unlike government-ordered closure or statutory takeover, does not give rise to any obligation on the part of the State to provide alternative employment.

50. In the case of **State of Maharashtra v. Vikas Sahebrao Roundale and others**⁶, the Apex Court has held that appointments in an educational institution are dependent upon its recognition; once recognition is withdrawn, such appointments cannot subsist.

51. Be that as it may, the teachers of the institution, whose recognition has been cancelled, have no right to claim absorption or adjustment in other institutions in the absence of statutory provisions, and equitable considerations cannot be invoked to confer a right contrary to statutory rules or where statutes are silent on the issue in question.

52. Teachers working in an institution whose recognition has been cancelled cannot, as a matter of right, claim adjustment or absorption in any other recognised institution. Such relief can be granted only when expressly authorised by statute or government policy. In the absence thereof, no legal or enforceable right survives.

53. In view of the aforesaid discussion and settled legal position, the claim of the petitioners seeking adjustment/absorption in other recognized institutions is wholly misconceived and devoid of merit. Hence, no interference is called for.

54. However, on the statement made by the learned Additional Advocate General appearing on behalf of the State, this Court directs the Principal Secretary, Department of Basic Education, Government of Uttar Pradesh, Lucknow, to issue appropriate circulars forthwith clarifying that the absorption or adjustment of teachers, whose parent institution has lost recognition, does not confer any vested, accrued, or enforceable right, unless such absorption is expressly sanctioned under the relevant statutory provisions.

55. The Principal Secretary shall undertake a comprehensive scrutiny of all cases where teachers have been absorbed or adjusted pursuant to the cancellation of recognition of the institutions in which they were initially appointed. Upon such scrutiny, if it is found that the

absorption or adjustment has been made dehors the statutory rules or without authority of law, necessary corrective action shall be taken strictly in accordance with law.

56. It is made clear that no claim based on equity, sympathy, long continuance in service, or administrative lapse can be sustained where the initial absorption or adjustment itself is contrary to statutory provisions. There can be no estoppel against statute, and any action taken in violation of the governing rules cannot be protected merely on equitable considerations.

57. The Court further observes that permitting such illegal absorptions or adjustments would be violative of Articles 14 and 16 of the Constitution of India, as it would amount to conferring undue advantage upon certain individuals at the cost of other eligible candidates who may have been deprived of equal opportunity in public employment. However, before taking any adverse action, the concerned teachers shall be afforded a reasonable opportunity of hearing, in compliance with the principles of natural justice.

58. The entire exercise shall be completed expeditiously, preferably within a period of six months from the date of receipt of a certified copy of this order, and the Principal Secretary shall ensure strict compliance in its true letter and spirit.

59. Registrar Compliance is directed to communicate this order to the Principal Secretary, Department of Basic Education, Government of Uttar Pradesh, Lucknow as well as Principal Secretary (Law) & L.R., Government of U.P., Lucknow, for its compliance forthwith.

60. With the aforesaid directions and observations, the writ petition stands **disposed of**.

(2026) 1 ILRA 968
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.01.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 14148 of 2025

Krishna Kant

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

(1) Application of principle of constructive res judicata to the maintainability of writ petition filed against recovery proceeding initiated in pursuance of the earlier termination order, which was confirmed in writ petition.

Headnotes

(A) Practice and procedure – Constitution of India – Article 226 – Writ – Maintainability – Recovery – Termination order passed earlier was confirmed in writ petition – Special Appeal

against writ order was pending – Consequential recovery certificate for recovery of salary was issued – Validity challenged – Principle of constructive res judicata – Applicability. (E-1)

Held : Subsequent order directing recovery of the salary paid to the petitioner is merely consequential in nature and does not give rise to any fresh or independent cause of action. A writ petition assailing such a consequential order would, therefore, amount to re-agitation of the very same issue and a second round of litigation, which is impermissible in law – No independent relief can be claimed on the basis of a consequential or ancillary order in the present writ petition. Thus, the writ petition preferred against the order impugned is not maintainable. [Para 4 and 6]

Case Law Cited

State of Uttar Pradesh vs. Nawab Hussain, (1977) 2 SCC 806; Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others, (1990) 2 SCC 715; K.K. Modi vs. K.N. Modi and others, (1998) 3 SCC 573; Commissioner of Income Tax vs. M/s. Chhabil Dass Agarwal, (2014) 1 SCC 603. – **referred to.**

List of Acts

Constitution of India – Article 226.

List of Keywords

Consequential order, Recovery certificate, Dismissal order, Cause of action, Principle of constructive res judicata, Ancillary order.

Case Arising From

Recovery certificate dated 19.08.2025 issued by respondent no. 3 for recovery of Rs. 71,10,614/- .

Appearances for Parties

Advs. for the Appellant : Prem Prakash.

Advs. for the Respondents : Ashish Kumar Nagvanshi.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard learned counsel for the petitioner, learned Standing Counsel for the State, Sri Ashish Kumar Nagvanshi, learned counsel for respondent no.3 and perused the record.

2. The petitioner has preferred instant writ petition challenging an order / recovery certificate dated 19.08.2025 issued by respondent no. 3, whereby recovery of Rs. 71,10,614/- has been ordered against the petitioner.

3. The order under challenge is a consequential order passed pursuant to the termination order dated 04.07.2025, by which appointment of the petitioner was declared void ab initio with effect from the date of his initial appointment i.e. 31.03.1998. The said order has already been assailed by the petitioner by means of Writ-A No. 10029 of 2025 (Krishna Kant v. State of U.P. and 2 Others), which came to be dismissed by this Court vide judgement and order dated 17.10.2025. The petitioner has preferred Special Appeal No. 1138 of 2025, challenging the aforesaid order dated 17.10.2025, which is still pending.

4. The writ petition earlier filed by the petitioner challenging the order cancelling his appointment has already been dismissed and the subsequent order directing recovery of the salary paid to the petitioner is merely consequential in nature and does not give rise to any fresh or independent cause of action. A writ petition assailing such a consequential order would, therefore,

amount to re-agitation of the very same issue and a second round of litigation, which is impermissible in law.

5. In a catena of judgements, the Supreme Court has categorically held that where a party had an opportunity to raise a ground in earlier proceedings but failed to do so, the principle of constructive res judicata would apply, and a subsequent petition on the same cause or consequential relief would not be maintainable. Reference may be made to the judgements in the cases of **State of Uttar Pradesh v. Nawab Hussain, (1977) 2 SCC 806** and **Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others, (1990) 2 SCC 715**. In the case of **K.K. Modi v. K.N. Modi and others, (1998) 3 SCC 573**, also, the Apex Court has deprecated repeated litigation on the same subject matter and held that such practice amounts to abuse of the process of the Court. Even otherwise, the original order passed by the authority has already been challenged by the petitioner by filing a Special Appeal, which is admittedly pending consideration. During the pendency of the Special Appeal, parallel proceedings seeking substantially the same relief are barred. In the case of **Commissioner of Income Tax v. M/s. Chhabil Dass Agarwal, (2014) 1 SCC 603**, the Supreme Court has held that where a statutory or appellate remedy is being pursued, a writ petition is ordinarily not maintainable.

6. In view of the settled legal position and the pendency of the Special Appeal, once the principal relief is declined, no independent relief can be claimed on the basis of a consequential or ancillary order in the present writ petition. Thus, the writ petition preferred against the order impugned is not maintainable. It is dismissed accordingly. Interim order granted earlier stands discharged.

7. No order as to costs.

(2026) 1 ILRA 970
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 12.01.2026

BEFORE

THE HON'BLE MANISH MATHUR, J.

Writ A No. 14910 of 2025

Ache Lal

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

- (1) Relevancy of family welfare, while considering the claim of compassionate appointment.
- (2) Basis of suitability of granting compassionate appointment.
- (3) Role of registered will in favour of a family member while considering the case of granting compassionate appointment.

Headnotes

(A) Service law – Compassionate appointment – Rivalry claim between brother and widow of deceased employee – Petitioner, being brother, claimed on the basis of registered Will, while respondent no. 4 claimed as wife of deceased – The authority denied granting compassionate appointment to either of the parties on the ground that it is difficult to ascertain eligibility of either in view of conflicting documents – Validity challenged – Role of the registered will in favour of a family member and relevancy of family welfare while granting compassionate appointment felt into consideration. (E-1)

Held : The aspect of registered Will in favour of any member of family does not have any role to play with regard to grant of compassionate employment. The only aspect requires to be seen for such benefit is the suitability of the person for providing such employment. Such suitability necessarily has to be seen based on the fact whether the applicant was dependent upon the deceased employee or not – Decision shall be taken keeping in view overall interest of welfare of entire family, particularly the widow and minor members thereof – Impugned order dated 18.11.2025 has been passed without taking into account relevant Rules of 1974 and is therefore quashed by issuance of a Writ in the nature of Certiorari. [Para 12, 13 and 17]

List of Acts

UP Recruitment of Dependents of Government Servants Dying in Harness. Rules, 1974 – Rule 2(c), 5, 6 and 7.

List of Keywords

Compassionate appointment, Registered will-deed, Family, Spouse, Welfare of entire family, Widow and minor members, Divorce.

Case Arising From

Impugned order dated 18.11.2025 passed by the authority.

Appearances for Parties

Advs. for the Appellant : Aadya Antya; Vedant Srivastava and Virendra Prasad Srivastava.

Advs. for the Respondents : C.S.C.

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

1. Heard learned counsel for petitioner and learned State Counsel for opposite
2. In view of order being passed, notice to opposite party No.4 stands dispensed with.

3. Petition has been filed challenging order dated 18.11.2025 whereby petitioner's application for compassionate appointment in terms of U.P. Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 [here-in-after referred to as '**Rules of 1974**'] has been rejected on the ground that it is impossible to ascertain heirship in view of a registered Will in favour of petitioner.

4. Learned counsel for petitioner submits that he is the brother of deceased-Ranjeet Kumar who passed away in harness on 27.09.2025. It is submitted that although opposite party No.4, Smt. Aruna Devi is the wife of deceased, but had a strained relationship with the deceased due to which she was separated and it is in fact petitioner who was taking care of the deceased alongwith aged parents. It is submitted that since petitioner is unemployed he would have a preferential right for compassionate appointment over opposite party No.4 but this is an aspect unconsidered in the impugned order despite the fact that there is a registered Will in favour of petitioner.

5. Learned State Counsel has been provided written instructions dated 08.01.2026, a copy of which is taken on record and on that basis, submits that petitioner as well as opposite party No.4 have claimed compassionate appointment in view of demise of late Ranjeet Kumar. It is submitted that although a registered Will in favour of the petitioner was produced but opposite party No.4 being the undivorced wife of deceased has also submitted an application and particularly in view of registered Will, it is difficult to ascertain the rights of either parties.

6. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, particularly impugned order, it is evident that upon demise of late Ranjeet Kumar, his wife Smt. Aruna Devi as well as petitioner being brother of deceased have putforth their claims for compassionate appointment. While petitioner is seeking claim on the basis of registered Will dated 19.06.2025, opposite party No.4 is claiming as wife of deceased.

7. The impugned order indicates that the concerned authority has not granted compassionate appointment to either of the parties on the ground that it is difficult to ascertain eligibility of either in view of conflicting documents.

8. For the purpose of providing compassionate appointment in terms of Rules of 1974, it is relevant that the person applying for same should come within the definition of 'family' as prescribed in Rule 2 (c) of the aforesaid Rules while a 'spouse' is indicated in Rule 2(c)(i) and 'unmarried brother' is indicated in Sub-Rule (iv) of the same Rules.

9. It is also relevant that Rule 4 indicates overriding effect of Rules of 1974 over any other Rules or orders and the process of recruitment is indicated in Rule - 5 thereof.

10. It is also relevant that in Rule - 7 of the Rules of 1974 procedure when more than one family member of deceased seeks employment has been indicated.

11. A perusal of Rule - 5 reveals that second proviso thereto clearly indicates that for purpose of entertaining application for compassionate appointment of a member of family of deceased, aspect of the said applicant being dependent of the deceased government servant is required. Rule - 6 indicates contents of application for employment and particularly adverts to the fact that details pertaining to all members of family of deceased, particularly about their marriage, employment and income as well as details of financial condition of family are required to be indicated.

12. In pursuance thereof Rule - 7 of the Rules provides that where more than one member of the family of the deceased seeks employment, the Head of Office shall decide about the suitability of a person seeking employment. It is provided that decision shall be taken keeping in view overall interest of welfare of entire family, particularly the widow and minor members thereof.

13. It is thus evident that the aspect of registered Will in favour of any member of family does not have any role to play with regard to grant of compassionate employment. The only aspect requires to be seen for such benefit is the suitability of the person for providing such employment. Such suitability necessarily has to be seen based on the fact whether the applicant was dependent upon the deceased employee or not. The overall interest and welfare of the entire family

particularly widow and minor members thereof is also a *sine qua non* as indicated in Rule - 7 of the Rules of 1974.

14. In such circumstances, the Head of Office is required to adjudicate not only with regard to dependency of a family member of a deceased employee but also the suitability of person applying for such compassionate appointment who will also be required to take care of the widow and minor members of the deceased family.

15. In the present case, it is evident that although petitioner has applied for compassionate appointment on the basis of a registered Will, but in the considered opinion of this Court, the said factor would be irrelevant for purposes of consideration of his application for compassionate appointment. It is incumbent upon the Head of Office to consider applications of petitioner as well as opposite party No.4 only in accordance with Rules of 1974, particularly Rules 2, 6 and 7 thereof.

16. It is also admitted between the parties that there is no Divorce Decree granted between the deceased and the opposite party No.4, who therefore continues with a status of wife of the deceased and is an aspect required to be considered by the Head of Office. Mere fact of her being estranged from the deceased does not have any relevant role particularly since as per impugned order itself, the deceased had a daughter, namely, Km. Alka whose rights in case she is an adult would also require consideration.

17. In view of discussion made here-in-above, it is evident that impugned order dated 18.11.2025 has been passed without taking into account relevant Rules of 1974 and is therefore quashed by issuance of a Writ in the nature of Certiorari. A further Writ in the nature of Mandamus is issued commanding opposite party No.3, i.e., Executive Engineer, Public Works Department, Provincial Section, Lakhimpur Kheri to decide the applications for compassionate appointment submitted by the petitioner as well as opposite party No.4, Smt. Aruna Devi afresh in light of Rules of 1974 and in light of observations made here-in-above, expeditiously, within a period of eight weeks from the date a certified copy of this order is served upon the authority concerned. For the said purpose, opportunity of hearing is required to be granted to petitioner as well as all relevant members of family of deceased including the daughter.

18. Consequently, petition succeeds and is **allowed** at the admission stage itself. Parties to bear their own costs.

(2026) 1 ILRA 973
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.01.2026

**BEFORE
THE HON'BLE ANISH KUMAR GUPTA, J.**

Writ A No. 15424 of 2025

Dr. Chandra Bhushan Singh Mahur
State of U.P. & Ors.

...Petitioner Versus ...Respondents

Issue for Consideration

Whether disciplinary proceedings imposing penalty of withholding two increments and censure entry under U.P. Government Servant (Discipline and Appeal) Rules, 1999 are vitiated for non-examination of witnesses, non-following procedure under Rule 7, and non-consideration of reply to show cause notice; and whether petitioner is entitled to retiral benefits post-retirement on 28.02.2025.

Headnotes

U.P. Government Servant (Discipline and Appeal) Rules, 1999 --- r.7 --- Disciplinary Proceedings --- Major Penalty --- No witnesses proposed in charge-sheet by Enquiry Officer or defence reply - -- No requirement for oral evidence --- Enquiry Officer analyses documents supplied with charge-sheet --- Procedure followed; fairness evident from partial exoneration (2/3 charges proved).

Held:

Where charge-sheet relies solely on documents (preliminary enquiry report supplied to charged officer) with no witnesses proposed by either side, no oral evidence recording/cross-examination mandated under r.7(vii); Enquiry Officer may conclude on available material-Discretion to summon witnesses exists but not exercised here- Show cause notice post-enquiry with reply considered-no violation-Proceedings valid-penalty upheld. [Paras 9-14]

U.P. Government Servant (Discipline and Appeal) Rules, 1999 --- Retiral Benefits --- Penalty upheld --- Entitlement to leave encashment, gratuity, pension fixation subject to penalty effect (withholding increments).

HELD:

Post-retirement (28.02.2025), petitioner entitled to all retiral dues except impact of upheld penalty-Direction issued to respondent no.1 for payment and pension fixation accordingly. [Para 16-17] (E-14)

Case Law Cited**List of Acts / Statutes**

U.P. Government Servant (Discipline and Appeal) Rules, 1999;
U.P. Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1976.

List of Keywords

Disciplinary proceedings; Major penalty; No witnesses; Charge-sheet documents; Show cause reply; Retiral benefits; Pension fixation; Leave encashment; Gratuity.

Case Arising From

Order dated 05.10.2023 imposing penalty of withholding two increments and censure (Writ-A No.12078/2024); representation dated 27.08.2025 for retiral dues/pension (Writ-A No.15424/2025).

Appearance for Parties

For the Petitioners: Sri Bhupesh Kumar Singh, Sri Vipin Chandra Lal.

For the Respondents: Sri Vishal Singh.

(Delivered by Hon'ble Anish Kumar Gupta, J.)

1. Heard Sri Bhupesh Kumar Singh, learned counsel for the petitioner, Sri Vishal, learned Standing Counsel for the State.

2. Both the aforementioned petitions have been filed by the petitioner herein, the first petition being Writ- A No. 12078 of 2024 has been filed challenging the order dated 05.10.2023, whereby the penalty of withholding the two increments of the petitioner and a censure entry was made against the petitioner herein and second Writ-A No. 15424 of 2025 has been filed by the petitioner for seeking a direction to the respondent no.1 to decide the representation of the petitioner dated 27.08.2025 with regard to payments of leave encashment, gratuity, etc. and fixation of the regular pension to the petitioner.

3. Brief facts of the case are that the petitioner had been working as Senior Homeopathic Officer at Government Homeopathic Dispensary, Shankargarh, Jaunpur and he retired on 28th February 2025 from Jaunpur. Prior to that, he was working as Officiating District Homeopathic Officer, Bulandshahr. One Naresh Kumar was the pharmacist working under the petitioner here at District Bulandshahr. He had submitted a written complaint against the petitioner. Thereupon, the preliminary enquiry was conducted and a report dated 12.10.2021 was submitted by the Chief Development Officer, Bulandshahr, while issuing the warning to both the complainant Naresh Kumar, Pharmacist, as well as the petitioner herein to be careful in their behavior against each other as well as against the senior officers.

4. In the meantime, the Director, Homeopathy, Uttar Pradesh has directed the Joint Director, Education/ Enquiry Officer to conduct a preliminary enquiry against the allegations made by said Naresh Kumar, Pharmacist against the petitioner. The enquiry was conducted by Prof. Vijay Kumar Pushkar and the preliminary enquiry report was submitted recommending the suspension of the petitioner and to initiate the disciplinary proceeding against the petitioner and also to transfer Naresh Kumar, Pharmacist to some other distant district and to initiate strict action against him as well.

5. On the basis of the aforementioned preliminary inquiry the petitioner was suspended and Dr. Prof. Anand Kumar Chaturvedi was appointed as the Enquiry Officer to prepare the charge sheet against the petitioner herein, which was duly approved by the Additional Chief Secretary. The aforementioned charge sheet dated 22nd March 2022 was duly served upon the petitioner. Having received the charge sheet, the petitioner submitted his reply to the aforementioned charge sheet on 10.04.2022. It is pertinent to mention here that in the aforementioned charge sheet the Enquiry Officer has not proposed any witness to be examined and so far as the documentary evidence is concerned, only the report of the preliminary enquiry was made the basis of the charges leveled against the petitioner. The copy of the said report dated 08.12.2021, which was relied upon for framing the charges, has also been supplied to the petitioner. The petitioner, though has submitted his reply on 10.04.2022, however, did not propose to examine any witness in his support nor he proposed to bring on record any documentary evidence.

6. Having received the reply submitted by the petitioner, the Enquiry Officer has concluded the proceedings and submitted its report on 29.06.2022. On receipt of the enquiry report, the Additional Chief Secretary issued a show cause notice dated 03.08.2022 to the petitioner calling for the punishment to be awarded to the petitioner with regard to the two charges, which were found to have been proved against the petitioner out of three charges leveled in the charge sheet.

7. The petitioner herein submitted his response dated 05.08.2022. Thereupon, the impugned order dated 05.10.2023 has imposed the punishment of withholding the two increments as well as passing a censure entry against the petitioner. Being aggrieved by the same, the petitioner has filed Writ-A No. 12078 of 2024. It is also pertinent to mention here that against the suspension order, the petitioner has filed Writ-A No. 5723 of 2023 and by the order dated 28.04.2023, the petitioner was reinstated and, the said petition was disposed of with permission to carry on the disciplinary enquiry and conclude the same. Subsequently, the petitioner herein was superannuated on 28.02.2025. However, due to the aforementioned punishment order passed against the petitioner, all his retiral dues were not granted to the petitioner. Therefore, the petitioner has filed another Writ-A No. 15424 of 2025 seeking a direction for payment of leave encashment, gratuity and regular pension to the petitioner.

8. The contention learned counsel for the petitioner is that while conducting the enquiry and disciplinary proceedings against the petitioner, the Enquiry Officer has failed to conduct the enquiry in a fair manner and has not followed the procedure as provided under Rule-7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 (in short 'Rules, 1999'). No witness has been examined in support of the allegations made in the charge sheet against the petitioner nor any further opportunity has been granted to the petitioner to be heard before submitting the enquiry report. Learned counsel for the petitioner further submitted that the disciplinary authority has also not considered the reply submitted by the petitioner to the show cause notice issued to him after submission of the enquiry report and, finally, the impugned order dated 05.10.2023 has been passed against the petitioner. He further submits that non-examination of the witnesses as well as non-grant of any opportunity of hearing to the petitioner, the enquiry report is vitiated, and since in the impugned order the reply of the petitioner to the show cause notice has not been considered, therefore, the same is also vitiated. Therefore, the petitioner seeks quashing of the enquiry report as well as the impugned order whereby his two increments were withheld by the respondents and a censure entry was made against the petitioner.

9. On the other hand, learned Standing Counsel for the state submits that the proper procedure as provided under Rule 7 of the Rules, 1999 have been followed by the Enquiry Officer as well as by the disciplinary authority. Learned Standing Counsel further submits that in the charge sheet proposed, the Enquiry Officer has not relied upon any witness and no witness was proposed to be examined during the enquiry. Rather, the enquiry report which was submitted on the basis of the preliminary enquiry was relied upon by the Enquiry Officer. Copy of the same was supplied along with the charge sheet to the petitioner herein. In response to the charge sheet, the petitioner has not proposed to examine any witness in support of his defence nor has proposed to produce any document in his defence. Thus, there was no witness proposed in the charge sheet, nor any witness was proposed on behalf of the petitioner. Therefore, there was no occasion for the Enquiry Officer to examine any witness in this case. Though the Enquiry Officer has ample discretion to examine any of the witnesses so desired by the Enquiry Officer or call for any record required by it for concluding the enquiry. However, the Enquiry Officer in its discretion has chosen not to examine any of the witnesses merely because no witness was examined, the enquiry report cannot be said to be vitiated.

10. It is further submitted by the learned Standing Counsel for the state that the Enquiry Officer has followed the proper procedure and considered the reply submitted by the petitioner and on analysis of the entire material available on record, has submitted its report in which out of the three charges, he has found two charges proved against the petitioner and for one of the charges, he was exonerated. Thereupon, proper show cause notice was issued along with the enquiry report to the petitioner by the disciplinary authority. The Petitioner also submitted its reply and after due consideration of the reply submitted by the petitioner, the impugned order has been passed. Therefore, there is no technical flaw in the entire proceeding against the petitioner herein. In view thereof, no interference is called for in the impugned order dated 05.10.2023 against the petitioner.

11. Having heard the rival submissions so made by learned counsel for the parties, this court has carefully gone through the record of the case. Before proceeding further, both the parties have heavily relied upon Rule 7 of the 1999 rules which reads as under;

"7. Procedure for imposing major penalties.- Before imposing any major penalty on a Government servant, an inquiry shall be held in the following manner-

(i) The Disciplinary Authority may himself inquire into the charges or appoint an Authority subordinate to him as Inquiry Officer to inquire into the charges.

(ii) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The charge-sheet shall be approved by the Disciplinary Authority:

Provided that where the Appointing Authority is Governor, the charge-sheet may be approved by the Principal Secretary or the secretary, as the case may be, of the concerned department.

*(iii) The charges framed shall be so precise and clear as to give sufficient indication to the charged Government servant of the facts and circumstances against him. **The proposed documentary evidences and the name of witnesses proposed to prove the same along with oral evidences, if any, shall be mentioned in the charge-sheet.***

(iv) The charged Government servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and Inquiry Officer shall proceed to complete the inquiry ex parte.

(v) The charge-sheet, along with the copy of documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government servant personally or by registered post at the address mentioned in the official records in case the

charge-sheet could not be served in aforesaid manner the charge-sheet shall be served by publication in a daily newspaper having wide circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charged Government servant shall be permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government servant appears and admits the charges, the Inquiry Officer shall submit his report to the Disciplinary Authority on the basis of such admission.

(vii) Where the charged Government servant denies the charges the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to be produced in his defence;

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The Inquiry Officer may summon any witness to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act 1976.

(ix) The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry ex parte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government servant.

(xi) The Disciplinary Authority, if it considers it necessary to do so, may, by an order appoint a Government servant or a legal practitioner, to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

(xii) The Government servant may take the assistance of any other Government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the presenting officer appointed by the Disciplinary Authority is a legal practitioner or the Disciplinary Authority having regard to the circumstances of the case so permits

Provided that this rule shall not apply in following cases:

(i) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) Where the Disciplinary Authority is satisfied, that for reason to be recorded by it in writing, that it is not reasonably impracticable to hold an inquiry in the manner provided in these rules; or

(iii) Where the Governor is satisfied that, in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules."

12. From the perusal of the aforesaid rules, it is apparent that when any major penalty is proposed to be imposed on a government servant, disciplinary inquiry is to be conducted either by the disciplinary authority itself or by any subordinate officer so appointed by the disciplinary authority for the purpose. The Enquiry Officer, with the approval of the disciplinary authority, shall frame the charges and supply the copy of the charge sheet to the government servant along with the material in support of the charge sheet. In the charge sheet, it was also obligated upon the Enquiry Officer to mention the name of the witnesses proposed to be examined during the enquiry proceedings as well as the material to be relied upon by the Enquiry Officer. Sub-Rule-IV of Rule-7 mandates upon the charged government servant to submit its reply / written statement to the charge sheet within the stipulated period, and in his reply, he was also obligated to categorically mention as to whether he desires to cross-examine any of the witnesses proposed in the charge sheet or whether he wants to produce any witness or any document in support of his defense. Sub-Rule-V provides for the procedure how the charge sheet is to be served upon the charged government servant. Sub-Rule-VI provides if the charges are admitted by the charged government servant, the Enquiry Officer shall submit its report to the disciplinary authority on the basis of such admission. Sub-Rule-(vii) provides when the charges are denied by the government servant, then the Enquiry Officer shall proceed to call for the witnesses proposed in the charge sheet and record their oral evidence in presence of the charged government servant and shall also afford the opportunity to cross-examine such witnesses by the charged government servant and after recording the evidence of the witnesses proposed in the charge sheet, he will also call for the witnesses proposed by the charged government servant in his reply/written statement and thereupon conclude the proceeding, apply its mind, and submit the report.

13. In view of the aforesaid rules, if applied to the facts of the case, in the instant charge sheet, no witness was proposed by the Enquiry Officer. Therefore, there was no question of examining any witness on the part of the Enquiry Officer. Likewise, the petitioner has also not proposed any witness in his reply in support of his defence. Therefore, oral examination of any witness is not called for in the instant case at all. Therefore, it was only the charge sheet as well as the material available on record, copies whereof were already supplied to the petitioner herein, have been analyzed by the Enquiry Officer and thereupon the enquiry report has been submitted.

14. Therefore, this Court do not find any illegality in the procedure adopted by the Enquiry Officer while conducting the enquiry against the petitioner herein and submitting the enquiry report against the petitioner. The fairness of the enquiry is apparent as out of the three charges, the Enquiry Officer has exonerated the petitioner for one charge and has found guilty of the two

15. Therefore, this Court do not find any good ground to interfere with the impugned order dated 05.10.2023 passed against the petitioner herein. Accordingly, the Writ- A No. 12078 of 2024 is hereby **dismissed**.

16. Since the punishment order dated 05.08.2023 has already been upheld by this Court, still the petitioner is definitely entitled for other benefits barring the two increments on his retirement, which has taken place on 28th February 2025.

17. In view thereof, the Writ- A No. 15424 of 2025 is **disposed of** with a direction to the respondent no.1 to grant all the retiral dues as well as the fixation of regular pension etc. including the leave encashment and gratuity etc., to which the petitioner is entitled to subject to the order dated 05.10.2023 passed by the disciplinary authority.

(2026) 1 ILRA 980
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.01.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 18923 of 2025

Smt. Reena **...Petitioner**
State of U.P. & Ors. **Versus**
...Respondents

Issue for Consideration

(1) Permissibility of initiating disciplinary proceeding for a misconduct not committed during service.

Headnotes

(A) Service law – Disciplinary proceeding – Punishment – Dismissal – Assistant Teacher – Charge of misconduct – Petitioner performed marriage in the year 2009 with a person already married – Appointment was made in 2015 after 6 years to such marriage – Provision of Conduct Rules was invoked – Permissibility. (E-1)

Held : Punitive provisions, such as those contained in the Uttar Pradesh Government Servants Conduct Rules, 1956 or the Discipline and Appeal Rules, 1999, apply only to persons who are validly appointed and are government servants in the eyes of law. These provisions cannot be invoked to punish a person for an act which renders her ineligible for appointment itself – A violation of Rule 12 may render the appointment voidable, subject to adjudication, but cannot attract disciplinary punishment unless the appointment was secured by fraud, suppression of material facts, or deliberate misrepresentation. In the absence of such elements, initiation of disciplinary proceedings would be legally unsustainable – The case does not involve

misconduct attracting punishment under the Conduct Rules or the Discipline and Appeal Rules, but concerns a statutory disqualification existing at the time of appointment itself. [Para 30, 36 and 39]

Case Law Cited

Writ A No. 5111 of 2022, Balram Panwar vs. State of U.P. and another decided on 18.09.2024; Khursheed Ahmad Khan vs. State of U.P. and others, (2015) 8 SCC 439. – **referred to.**

List of Acts

Uttar Pradesh Basic Education (Teachers Service) Rules, 1981 – Rule 12; Uttar Pradesh Government Servants Conduct Rules, 1956 – Ss. 3 and 29; U.P. Government Servants (Discipline and Appeal) Rules, 1999; Uttar Pradesh Basic Education Act, 1972 – Ss. 6 and 19.

List of Keywords

Dismissal, Major punishment, Void ab initio appointment, Misconduct, Disciplinary jurisdiction, Relationship of employer and employee, Disciplinary proceedings, Performing marriage during subsistence of first marriage, Eligibility for appointment, Punitive provision, Directive in nature, Non-penal, Misrepresentation, Suppression of material facts, Statutory qualification, Opportunity of hearing.

Case Arising From

Impugned dismissal order dated 12.11.2025 passed by District Basic Education Officer.

Appearances for Parties

Advs. for the Appellant : Grijesh Tiwari.

Advs. for the Respondents : Shashi Prakash Singh, SC and Dr. Shiv Bahadur Singh.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. Grijesh Tiwari, learned counsel for the petitioner, Mr. Shashi Prakash Singh, learned counsel for respondent nos.2 & 3 and learned Standing Counsel for the State. Dr. Shiv Bahadur Singh, learned counsel has assisted the Court on the legal issue.

2. The present writ petition has been filed inter-alia for the following reliefs:-

"1. Issue a writ, order or direction in the nature of certiorari quashing the impugned dismissal order dated 12.11.2025 (Annexure no.1 to this writ petition) passed by the District Basic Education Officer, Mau, i.e. by the respondent no.3.

2. Issue a writ, order or direction in the nature of mandamus commanding / directing the respondents not to take any coercive action against the petitioner in pursuance of the impugned order dated 12.11.2025 passed by the District Basic Education Officer, Mau, i.e. by the respondent no.3.

3. Issue a writ, order or direction in the nature of mandamus commanding / directing the respondents to reinstate the petitioner in service and not to interfere in his peaceful functioning as Assistant Teacher and to pay her salary regularly month to month as and when it falls due.

4. Issue any other suitable writ order or direction which this Hon'ble Court made deem fit and proper under the facts and circumstances of the case.

5. Award the cost of the petition to the petitioner."

3. Placing brief facts of the case, learned counsel for the petitioner submits that the petitioner was selected and appointed as an Assistant Teacher in a primary school on 07.11.2015. Subsequently, on the basis of a complaint made by one Rampravesh Rajbhar, alleging that the petitioner had performed marriage with one Arvind Yadav, who already had a living wife, the impugned order has been passed relying upon the provisions of Rule 12 of the Uttar Pradesh Basic Education (Teachers Service) Rules, 1981 (hereinafter referred to as "the Rules, 1981"), which is arbitrary, illegal, and unreasonable.

4. Learned counsel for the petitioner further submits that the impugned order has been challenged on the ground that the services of the petitioner have been terminated without holding any detailed disciplinary inquiry, as required under law. It is further submitted that the petitioner was not aware of the fact that the first wife of Arvind Yadav was alive at the time when the petitioner performed marriage with him. Even assuming the applicability of the Rules, 1981, the alleged charge does not prescribe termination as a major punishment under the said Rules. In support of his submissions, learned counsel for the petitioner has relied upon the judgment of the Division Bench of the Lucknow Bench of this Court in the case of **Balram Panwar vs. State of U.P. through Secretary, Nyay Vibhag, U.P. & Another¹**, as well as the interim order dated 05.11.2024 passed in Writ-A No. 11264 of 20242. Therefore, for the aforesaid reasons, the impugned order is liable to be set aside.

5. Learned counsel for the respondents could not dispute the aforesaid facts. However, he submits that in view of the provisions of Rule 12 of the Rules, 1981, though the termination order could not have been passed, but the appointment of the petitioner could have been cancelled on the ground that she had married a person whose first wife was alive at the relevant time.

6. Learned counsel Dr. S. B. Singh, while assisting the Court, has placed reliance upon the judgment of the Apex Court in the case of Khursheed Ahmad Khan vs. State of U.P. and Others³, wherein the applicability of Rule 29 of the U.P. Government Servant Conduct Rules, 1956, has been considered. It has been contended that, in view of the above Rule 12 of the Rules of 1981 is applicable in facts of present case and the appointment of the petitioner is void ab initio, as the same was obtained by concealment of a material fact, namely, that the petitioner had married a person whose first marriage was still subsisting at the relevant time. He has placed emphasis upon Para no.11 of the aforesaid judgment, which is as follows:-

"11. As already mentioned above, there is adequate material on record in support of the charge against the appellant that he performed second marriage during the currency of the first marriage. Admittedly, there is no intimation in any form on record that the appellant had divorced his first wife. In service record she continued to be mentioned as the wife of the appellant. Moreover, she has given a statement in inquiry proceedings that she continued to be wife of the appellant. The appellant also admitted in inquiry conducted on directions of the Human Rights Commission that his first marriage had continued. In these circumstances, the finding of violation of Conduct Rules cannot be held to be perverse or unreasonable so as to call for interference by this Court. In these circumstances, the High Court was justified in holding that the penalty of

removal cannot be held to be shockingly disproportionate to the charge on established judicial parameters”

7. Before discussing the merits of the case, it would be appropriate to place on record certain provisions which are necessary for the proper adjudication of the matter.

8. Rule 3 of the U.P. Government Servant's Conduct Rules, 1956 reads as follows:-

"3. General.

(1) Every Government servant shall at all times maintain absolute integrity and devotion to duty.

(2) Every Government servant shall at all times conduct himself in accordance with the specific or implied orders of Government regulating behaviour and conduct which may be in force."

9. Rule 29 of the U.P. Government Servant's Conduct Rules, 1956 reads as follows:-

"29. Bigamous marriages.

(1) No Government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.

(2) No female Government servant shall marry any person who has a wife living without first obtaining the permission of the Government.

(3) The minimum punishment to be imposed for contravention of sub-rule (1) or sub-rule (2) shall be the withholding of increments for three years."

10. Section 6 of the U.P. Basic Education Act, 1972 reads as follows:-

"6. Officers and other employees of the Board. -

(1) For the purpose of enabling it efficiently to discharge its functions under this Act the Board may appoint such number of officers, teachers and other employees as it may, with the previous approval of the State Government, think fit.

(2) [* * *] [Omitted by U.P Act No. 12 of 1978 (w.e.f. 27.4.1978).]

(3) [* * *] [Omitted by U.P Act No. 21 of 1975 (w.e.f. 3.5.1975).]"

11. Section 19 of the U.P. Basic Education Act, 1972 reads as follows:-

"19. Power to make Rules. -

[(1) The State Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely -

(a) the recruitment, and the conditions of service of persons appointed to the posts of officers, teachers and other employees under Section 6;

(b) the tenure of service, remuneration and other terms and conditions of service of officers, teachers and other employees transferred to the Board under Section 9;

(c) the recruitment, and the conditions of service of the persons appointed, to the posts of teachers and other employees of basic schools recognised by the Board;

(d) any other matter for which insufficient provision exists in the Act and provision in the rules is considered by the State Government to be necessary;

(e) any other matter which is to be or may be prescribed.]"

12. Rule 12 of the U.P. Basic Education (Teachers) Service Rules, 1981 reads as follows:-

"12. Marital status.

- A male candidate who has more than one wife living or a female candidate who has married a person already having a wife living, shall not be eligible for appointment to the service :

Provided that the Board may, if satisfied that there exists special ground for doing so, exempt any person from the operation of this rule."

13. Upon a plain and literal interpretation of Rule 3 read with the relevant part of Rule 29 of the U.P. Government Servants Conduct Rules, 1956, it is manifest that the misconduct contemplated thereunder, which is made punishable by the U.P. Government Servants (Discipline and Appeal) Rules, 1999, is relatable only to a government servant namely, a person who is already borne on the cadre and in government service. The said rules do not envisage their application to a person prior to his or her entry into service.

14. The disciplinary jurisdiction under the 1999 Rules can be invoked only when the relationship of employer and employee subsists. In the absence of such a relationship, initiation of disciplinary proceedings or imposition of punishment would be wholly without authority of law and unsustainable.

15. It is a settled principle of service jurisprudence that conduct rules operate prospectively and regulate the behaviour of a government servant during the tenure of service, and not prior

thereto. Any action taken dehors the existence of a master servant relationship would be arbitrary and violative of Articles 14 and 16 of the Constitution of India.

16. A conjoint reading of Section 6 with Section 19 of the Uttar Pradesh Basic Education Act, 1972 clearly indicates that the Board has been constituted for the purpose of appointment of teachers, as well as for regulating the recruitment and conditions of service of persons appointed as teachers and other employees of basic schools recognized by the Board. In exercise of the powers conferred under sub-section (1) of Section 19 of the Act of 1972, the State Government has accordingly framed the Uttar Pradesh Basic Education Teachers Service Rules, 1981.

17. Rule 12 of the Rules of 1981, deals with the marital status of a candidate and provides that a person shall be ineligible for appointment to the service on the grounds specified therein. However, the Rule further empowers the Board to grant exemption from the operation of this provision, if it is satisfied that special grounds exist in favour of such person.

18. In the facts of the present case, it is undisputed that the petitioner contracted marriage with Arvind Yadav in the year 2009, during the subsistence of his first marriage with another woman. However, the petitioner was appointed as an Assistant Teacher only in the year 2015.

19. Rule 29 of the Uttar Pradesh Government Servants Conduct Rules, 1956 applies to the conduct of a government servant during the period of service. Acts or omissions that took place prior to entering into government service do not fall within the ambit of the said rule. Since the alleged marital irregularity pertains to the year 2009, i.e., much prior to the petitioner's appointment in 2015, the provisions of Rule 29 of the Conduct Rules, 1956 are clearly inapplicable to the petitioner's case.

20. Accordingly, any action sought to be taken against the petitioner by invoking Rule 29 of the Conduct Rules, 1956, on the basis of an event that occurred before she entered government service, is legally unsustainable and cannot be upheld.

21. To be more specific, Rule 3 and Rule 29 of the Uttar Pradesh Government Servants Conduct Rules, 1956 makes it manifest that these provisions govern the conduct of a government servant. Rule 3 opens with the expression 'every government servant' while Rule 29 expressly begins with the words 'no government servant'. The deliberate and consistent use of this phraseology leaves no manner of doubt that the Rules are intended to regulate the conduct of persons who are already in government service.

22. Consequently, the applicability of the Conduct Rules, 1956 is confined to those who have entered government service, and the said Rules cannot be invoked against a person at a stage prior to appointment. Any interpretation extending their operation to candidates or persons not yet in service would be contrary to the plain language of the Rules and the settled principles of statutory construction.

23. Be that as it may, the issue which falls for consideration in the facts of the present case is not the applicability of the Conduct Rules, 1956, but the eligibility of the candidate with respect to

marital status, as prescribed under Rule 12 of the Rules of 1981. It is this statutory provision which governs the eligibility for appointment and, therefore, the same alone is required to be examined in the context of the present facts.

24. Accordingly, the determination of the controversy must rest upon an assessment of the petitioner's eligibility under the Rules of 1981, rather than upon any alleged infraction of the Conduct Rules, 1956, which operate only after a person has entered government service.

25. The present case is required to be examined in the context of the applicability of Rule 12 of the Uttar Pradesh Basic Education Teachers Service Rules, 1981. The determinative issue is whether the petitioner was eligible for appointment as an Assistant Teacher, having contracted marriage in the year 2009 with a person whose first marriage was subsisting at the relevant time. Consequently, the further question that arises for consideration is the nature of consequences or punishment, if any, that may ensue, and the statutory provision under which such action is permissible.

26. Thus, the present case must be examined primarily with reference to Rule 12 of the Uttar Pradesh Basic Education Teachers Service Rules, 1981, which governs the eligibility of a candidate at the stage of initial appointment. Rule 12 creates a statutory bar on appointment where a candidate has contracted a marriage with a person whose spouse is living, unless an exemption is granted by the competent authority on special grounds.

27. In the facts of the present case, it is not in dispute that the petitioner solemnized her marriage in the year 2009 with a person whose first marriage was subsisting at the relevant time. Therefore, the crucial question is not one of misconduct during service, but whether the petitioner was eligible for appointment at all when she was appointed as an Assistant Teacher.

28. A clear distinction must be drawn between: (i) ineligibility at the threshold of appointment; (ii) misconduct committed by a government servant after entering service.

29. Rule 12 of the Rules of 1981 does not prescribe any punishment. It merely stipulates a condition of eligibility. If such condition is violated, the appointment itself becomes void ab initio, having been made in contravention of statutory rules.

30. On the other hand, punitive provisions, such as those contained in the Uttar Pradesh Government Servants Conduct Rules, 1956 or the Discipline and Appeal Rules, 1999, apply only to persons who are validly appointed and are government servants in the eyes of law. These provisions cannot be invoked to punish a person for an act which renders her ineligible for appointment itself.

31. Where an appointment is found to be in violation of Rule 12 of the Rules of 1981: the consequence is cancellation of appointment, not punishment and in such a case, no departmental inquiry or disciplinary proceedings are required, as the issue is not misconduct but lack of statutory eligibility.

32. The question of imposing punishment under the Conduct Rules, 1956 does not arise, as those rules presuppose a lawful entry into service.

33. To make it more clear, Rule 12 of the Rules of 1981 prescribes a condition relating to the marital status of a candidate at the stage of eligibility for appointment. The said provision neither defines any act as misconduct nor prescribes any penalty for its breach. It is well settled that eligibility conditions governing entry into service stand on a different footing from rules regulating conduct after appointment.

34. Punishment can be imposed only when an act falls within the ambit of misconduct as defined under the applicable Conduct Rules, namely, the U.P. Government Servants Conduct Rules, 1956, read with the U.P. Government Servants (Discipline and Appeal) Rules, 1999. A rule governing eligibility cannot, by itself, be elevated to the status of a penal provision unless the statute expressly so provides.

35. Further, Rule 12 itself empowers the competent authority to grant exemption on special grounds, which clearly indicates that the provision is directory in nature and non-penal. A provision containing a power of relaxation cannot ordinarily be construed as creating an offence or misconduct.

36. At best, a violation of Rule 12 may render the appointment voidable, subject to adjudication, but cannot attract disciplinary punishment unless the appointment was secured by fraud, suppression of material facts, or deliberate misrepresentation. In the absence of such elements, initiation of disciplinary proceedings would be legally unsustainable.

37. The Supreme Court has consistently held that breach of eligibility conditions relates to the validity of appointment and not to misconduct, unless accompanied by fraud or deception.

38. It is settled law that no punishment can be imposed unless the act complained of is defined as misconduct under the service rules. Where an appointment is obtained by misrepresentation or suppression of material facts, disciplinary action is permissible; otherwise not, presence of a power to relax conditions indicates that the rule is not intended to be punitive.

39. In view of the above discussion, this Court is of the considered opinion that the petitioner, having contracted marriage in the year 2009 with a person whose first marriage was subsisting, was rendered ineligible for appointment under Rule 12 of the Uttar Pradesh Basic Education Teachers Service Rules, 1981. The defect goes to the very root of the appointment, rendering it void ab initio. The case does not involve misconduct attracting punishment under the Conduct Rules or the Discipline and Appeal Rules, but concerns a statutory disqualification existing at the time of appointment itself.

40. In view of the aforesaid, the impugned order dated 12.11.2025 passed by respondent no.3 is hereby **quashed**. The matter is remitted to the respondent no.3, District Basic Education Officer, Mau, to pass a fresh reasoned and speaking order in accordance with law, after issuing a show-cause notice to the petitioner and affording her an opportunity of hearing, keeping in mind the

relevant statutory provisions as well as the observations of the Court, as expeditiously as possible, preferably within a period of two months from the date of production of certified copy of this order, if there is no legal impediment.

41. The writ petition stands **allowed** accordingly. No order as to costs.

(2026) 1 ILRA 988
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.01.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 19185 of 2025
 alongwith other cases

Samita

...Petitioner
Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

- (1) Effect of non-fulfilling the pre-condition as provided u/s 18 of the Act of 1982 to the entitlement of the adhoc Principal to get salary as regular Principal.
- (2) Exception to the Rule of Precedent regarding binding effect of judgment rendered by the Division bench over the bench of Single Judge.

Headnotes

(A) Service law – Salary – Adhoc Principal/Headmaster – Promotion of senior most qualifying teacher to the adhoc vacancy of Principal was made – Salary as the regular Principal was claimed – Permissibility – Precondition provided u/s 18 of the Act of 1982 was not fulfilled – Effect – Exception to the Rule of Precedent regarding binding effect of judgment of Division Bench over the Bench of Single Judge explained. (E-1)

Held : Judgments of year '1980', '1982' and '1985' were decided mainly on basis of a Government Order dated 18.01.1974, which provides that a teacher officiating the post of Principal is entitled to receive salary of Principal grade – Court takes note that all these judgments are passed by Division Benches of this Court, therefore, present Bench being a Single Bench has to follow except if some provisions of law were not specifically considered – In none of above referred cases, Section 18 of Act of 1982 as inserted in the year 2000 was interpreted or considered since enacted subsequently – Preconditions mentioned in Section 18 of the Act of 1982 has to be complied with being mandatory and only thereafter, such ad-hoc promotee on the post of Principal or Head Master would be entitled for salary of said post. [Para 11, 12, 16 and 23]

(B) Precedent – Rules regarding binding effect of judgment of Division Bench over the Bench of Single Judge – Exception – Applicability. (E-1)

Held : Court takes note that all these judgments are passed by Division Benches of this Court, therefore, present Bench being a Single Bench has to follow except if some provisions of law were not specifically considered – The Full Bench in Dr. Jai Prakash Narayan Singh has only made a reference of judgments of 1980, 1982 and 1985 and Radha Raizada (supra) but has not taken note of effect of Section 18 of Act of 1982 as it was not an issue for consideration before the Full Bench – The above questions were not answered in Narbadeshwar Misra and being prior to said amendment, therefore, this Court has a jurisdiction to interpret the issue in terms of Section 18(2) of Act of 1982. [Para 12, 17 and 21]

Case Law Cited

Dhaneshwar Singh Chauhan vs. DIOS, Budaun, 1980 UPLBEC 286; Narbadeshwar Misra vs. DIOS Deoria, 1982 UPLBEC 171; Soloman Morar Jha vs. DIOS, Deoria, 1985 UPLBEC 113; Dr. Jai Prakash Narayan Singh vs. State of U.P. and others, (2014) 4 UPLBEC 2642; Radha Raizada, 1994 (2) ESC 342 ALD (FB). – **referred to.**

List of Acts

U.P. Intermediate Education Act, 1921 – Chapter-II; Regulation under Act of 1921 – Clause 2(1) and 2(3) – Proviso, U.P. Secondary Education Service Selection Board Act, 1982 – Section 18; U.P. Secondary Education Service Selection Board Rules, 1998 – Rule 11(2)(b); U.P. State Universities Act, 1973 and U.P. Higher Education Service Commission Act, 1980.

List of Keywords

Promotion, Temporary vacancy, Preconditions for promotion, Salary, Highest grade in the institution, Senior most teacher, Jurisdiction to interpret the issue, Legal consequence.

Case Arising From

Claim of entitlement of salary by the adhoc Principal as paid to the regular Principal.

Appearances for Parties

Advs. for the Appellant : Prabhakar Awasthi, Senior Advocate; Adarsh Shukla; Tanuj Shahi; Prashant Shukla; Anurag Shukla; Dharmendra Kumar Tripathi; Manish Tiwari and Saurabh Tripathi.

Advs. for the Respondents : Kartikeya Saran, Additional Advocate General; J.N. Maurya, C.S.C.; R.P. Dubey, A.C.S.C.; Dharendra Pratap Singh and Saurabh.

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

1. The issues for consideration before this Court in present bunch of writ petitions are as follows :-

(a) In a case where an ad-hoc vacancy of Principal or Head Master, as the case may be, of an institution is filled by promotion of senior most qualifying teacher in terms of provisions of Regulations described under Chapter-II of U.P. Intermediate Education Act, 1921 (for short "Act of 1921") read with Regulations under Sections 16-E, 16-F and 16-FF of Act of 1921, whether such ad-hoc Principal or Head Master would be entitled for salary of Principal or Head Master or it would still be governed by the provisions of Section 18 of U.P. Secondary Education Service Selection Board Act, 1982 (for short "Act of 1982") i.e. such ad-hoc Principal or Head Master would be entitled for salary of regular Principal or Head Master, only after preconditions prescribed therein are fulfilled.

(b) Whether issue of payment of salary of post of Principal or Head Master, as the case may be, while working on promotion on Ad-hoc basis is already settled by the judgments passed by Division Benches of this Court in **Dhaneshwar Singh Chauhan vs. DIOS, Budaun, 1980 UPLBEC 286; Narbadeshwar Misra vs. DIOS Deoria, 1982 UPLBEC 171 and Soloman Morar Jha vs. DIOS, Deoria, 1985 UPLBEC 113** (for short "judgments of 1980, 1982 and 1985").

(c) Whether aforesaid judgments of 1980, 1982 and 1985 were considered in a Full Bench judgment of **Dr. Jai Prakash Narayan Singh vs. State of U.P. and others, (2014) 4 UPLBEC 2642** and despite said Full Bench was in regard to U.P. State Universities Act, 1973 and

U.P. Higher Education Service Commission Act, 1980 would still govern the facts and circumstances of present case arisen out of Act of 1921 and regulations made therein and Act of 1982.

2. Arguments of Sri Prabhakar Awasthi, learned Senior Advocate assisted by S/Sri Adarsh Shukla, Tanuj Shahi, Prashant Shukla, Anurag Shukla, Dharmendra Kumar Tripathi, learned advocates for petitioners in all writ petitions are that issue has already been settled in above referred three judgments of 1980, 1982 and 1985 and judgment of Full Bench of this Court in **Dr. Jai Prakash Narayan Singh (supra)** so much as that even preconditions prescribed in Section 18 of Act of 1982 are not complied with, still if the promotion is made on a temporary vacancy in the post of Principal or Head Master, such appointee shall be entitled for salary as Principal or Head Master, as the case may be, from the date he joined at such post in pursuance of said order of promotion. There is no scope for reconsideration of the issue.

3. Per contra, it is the argument of Sri Kartikeya Saran, learned Additional Advocate General assisted by S/Sri J.N. Maurya, learned C.S.C., R.P. Dubey, learned Addl. C.S.C., Dharendra Pratap Singh and Saurabh, learned Standing Counsel that judgments of Division Benches were of the year 1980, 1982 and 1985 and Section 18 of Act of 1982 was substituted by enactment of U.P. Act No. 5/2001 (w.e.f. 03.12.2000) i.e. subsequent to said judgments, therefore, this Court can still look, consider and interpret the effect of said Section 18 of Act of 1982 which has certain preconditions for promotion of Ad-hoc Principal or Head Master, as the case may be and its effect on payment of salary of said post.

4. The next argument of learned Additional Advocate General is that Full Bench in **Dr. Jai Prakash Narayan Singh (supra)** was considering different statutes i.e. U.P. State Universities Act, 1973 and Act of 1980, therefore, it is not applicable in facts and circumstances of the present case as here ad-hoc promotion is governed by different set of Statutes viz. Act of 1921 and Act of 1982.

5. Learned Additional Advocate General has further submitted that in **Dr. Jai Prakash Narayan Singh (supra)**, a judgment passed in case of **Radha Raizada, 1994 (2) ESC 342 ALD (FB)** was referred and was considered only qua to effect of order of Removal of Difficulties and power of ad-hoc appointment which is not an issue in present case. The judgments of 1980, 1982 and 1985 were only mentioned in the Full Bench judgment but were not considered at detail except to follow an analogy that issue of payment of salary to ad-hoc Principal under Act of 1921 was considered and accordingly directed for payment.

6. Learned Senior Advocate for petitioners have submitted that even if the preconditions prescribed in Section 18 of Act of 1982 are mandatory and Committee of Management has failed to notify the vacancy, it could not have an adverse effect so far as adhoc Principal or Head Master are concerned since Section 18(2) of Act of 1982 provides that DIOS concerned has a duty to take care of such defaults.

7. Before considering rival submissions, relevant provisions of Act of 1921 as well as its Regulations and Act of 1982 are mentioned hereinafter :-

"Regulations of U.P. Intermediate Education Act, 1921

2(1) The post of the Head of Institution shall except as provided in clause (2) be filled by direct recruitment after reference to the Selection Committee constituted under sub-section (1) of Section 16-F or, as the case may be, under sub-section (1) of Section 16-FF:

Provided that in the case of any institution not being an institution referred to in Section 16-FF a temporary vacancy caused by the grant of leave to an incumbent for a period not exceeding six months or by death, retirement or suspension of an incumbent occurring during an educational session in the post of the Head of Institution shall be filled by the promotion of the senior most qualified teacher, if any, in the highest grade in the institution.

(2) (a) Where an institution is raised from a High School to an Intermediate College, the post of Principal of such college shall be filled by promotion of the Headmaster of such High School if he was duly appointed as Headmaster in substantive capacity in accordance with law for the time being in force and possesses a good record of service and the minimum qualifications prescribed in that behalf or has been granted exemption from such qualifications by the Board.

(b) The Committee of Management of such institution shall submit the proposal for promotion of the Headmaster concerned to the Regional Deputy Director of Education for his concurrence.

(c) The proposal referred to in sub-clause (b) shall be accompanied by a copy of the resolution of the Committee of Management approving such Headmaster for promotion, his service Book and Character Roll and shall contain the following particulars in relation to him, namely"

(i) date of birth,

(ii) examinations passed by him stating the subjects, divisions and year of passing such examinations.

(d) The Regional Deputy Director of Education shall communicate his decision on such proposal within two weeks from the date of receipt thereof, failing which the Regional Deputy Director shall be deemed to have given his concurrence to such proposal.

(e) The decision of the Regional Deputy Director of Education under sub-clause (d) shall be communicated to the Committee of Management as well as the Headmaster concerned.

(f) Any person aggrieved from the decision of the Regional Deputy Director of Education, including the Committee of Management may within 10 days from the date of communication of the order under sub-clause (e) make a representation against it to the Director whose decision in the matter shall be final.

(g) A Headmaster of a High School who is not found fit for promotion as Principal of the upgraded Intermediate College or a Headmaster of a Junior High School who on its being raised as

a High School, is not selected by the Selection Committee for the post of the Headmaster of upgraded High School, shall be retained as an assistant teacher on the highest post for which he is qualified, provided that this pay-scale shall not be reduced.

Explanation" Nothing in this sub-clause shall apply to a person who was not permanent or was not duly appointed in accordance with law on the date on which the institution was raised to the level of a High School or an Intermediate College, as the case may be.

(3) Where the temporary vacancy in the post of head of institution is, for a period not exceeding thirty days, the senior-most teacher in the highest grade may be allowed to work as acting head of institution, but he shall not be entitled to pay in a scale higher than the scale of pay in which he is drawing salary as such teacher.

(4) In all cases in which promotions are made under this regulation a copy of the resolution of the Committee of Management together with particulars in the pro forma prescribed in Appendix 'B' shall be immediately forwarded by the Manager to the Inspector as well as the Regional Deputy Director of Education."

"U.P. Secondary Education Service Selection Board Act, 1982

Section 18: Ad hoc Principals or Headmasters

(1) Where the Management has notified a vacancy to the Board, in accordance with sub-section (1) of Section 10 and the post of the Principal or the Headmaster actually remained vacant for more than two months, the management shall fill such vacancy on purely ad hoc basis by promoting the seniormost teacher.

(a) in the lecturer's grade in respect of a vacancy in the post of the Principal.

(b) in the trained graduate's grade in respect of a vacancy in the post of the Headmaster.

(2) Where the Management fails to promote the senior most teacher under sub-section (1) the inspector shall himself issue the order of promotion of such teacher and the teacher concerned shall be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he joins such post is pursuance of such order of promotion.

(3) Where the teacher to whom the order of promotion is issued under sub-section (2) is unable to join the post of the Principal or the Headmaster, as the case may be, due to any act or omission on the part of the management, such teacher may submit his joining report to the Inspector, and shall thereupon be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he submits the said report.

(4) Every appointment of an ad hoc Principal or Headmaster under sub-section (1) or sub-section (2) shall cease to have effect from when the candidate recommended by the Board joins the post."

8. Learned Senior Advocate for petitioners has placed heavy reliance on judgments of 1980, 1982 and 1985. Said judgments being short judgments are mentioned below in entirety :-

"Dhaneshwar Singh Chauhan vs. DIOS, Budaun :- (1980)

The petitioner is a permanent lecturer in Sri Krishna Intermediate College, Budaun, an aided and recognized institution. On 30-7-72, the petitioner was promoted to officiate as Principal in the vacancy caused by the suspension of one Sri Hari Om Goel. The Committee of Management requested the District Inspector of Schools to approve the petitioners officiating promotion. The Manager of the institution as well as the petitioner made representation to the District Inspector of Schools that the petitioner be granted pay in the Principals grade as he was officiating on that post. The District Inspector of Schools by his order dated 14-4-77 upheld the petitioners claim and observed that the petitioner was entitled to Principals grade as he was officiating on that post. The petitioners salary was fixed at the rate of Rs. 816 per mensem with effect from 1-11-76.

The petitioner thereafter continued to draw his salary in the Principals grade till January, 1978. The Directorate of Education appeared to have advised the District Inspector of Schools not to allow an officiating Principal to draw his salary in Principals grade. In pursuance of that direction, the District Inspector of Schools by his letter dated 31-8-77 informed the petitioner that he was not entitled to draw his salary in Principals grade and he was directed to refund the amount which had already been paid to him. The petitioner made representation to the District Inspector of Schools but he met with no success. Aggrieved, the petitioner has approached this court under Article 226 of the Constitution challenging the order of the District Inspector of Schools as contained in his letter-dated 31-8-77 for the issue of a writ of mandamus directing the respondents to permit the petitioner to draw his salary in the Principals grade for the period he continues to officiate as Principal.

2. The petitioner is a teacher in aided and recognised institution and the liability for the prejoint his salary is on the State Government under the U.P. High School and Intermediate College (Payment of Salary of Teacher and other Employees) Act, 1971. The salary of a teacher in aided and recognised institution is regulated by the regulation framed under the U.P. Intermediate Education Act and the order issued by the State Government from time to time Regulation 46 in Chapter III lays down that employees of an aided and recognised institution shall be given the pay scale sanctioned by the State Government from time to time. The State Government has prescribed the scales of pay for teachers. The State Government issues an order on 18th January 1974 accepting the recommendations of the U.P. Pay Commission prescribing scales of pay for teachers. Paragraph 5(2) of the Government order lays down that a teacher while officiating on the post carrying higher grade is entitled to officiating salary in the higher grade and it further prescribed procedure for determining the salary of officiating teacher in the higher grade. A copy of the Government order was before us by the petitioner. Respondents do not deny the petitioners averment that the State Government issued orders sanctioning officiating pay to a teacher in the

higher grade. The petitioners claim for salary in Principals grade was sanctioned by the District Inspector of Schools in pursuance of the aforesaid Government order. Respondents have failed to show any subsequent Government order or rule superseding the direction contained in Government order dated 24-1-74. The respondents have further failed to place any material before the court showing that the petitioner was not entitled to the salary in the Principal's grade while officiating on the post of Principal. The order of the District Inspector of Schools dated 31-8-77 is therefore not sustainable in law.

3. In the result we allow the petition and quash the order of the District Inspector of Schools and direct the respondents to pay salary to the petitioner in the Principals grade for the period during which he has been officiating as Principal in accordance with the orders contained in the letter of the District Inspector of Schools dated 14-4-79. The petitioner is entitled to his cost."

(Note -: The above judgment has not considered any relevant provisions of applicable Act and passed judgments only on basis of a GO dated 24.01.1974)

Narbdeshwar Misra vs. DIOS, Deoria (1982)

"1. The petitioner was a confirmed lecturer in Mathematics in the Shivaji Inter College, Knukhondoo, Deoria.

2. Purporting to exercise powers under the proviso to clause 2 of Chapter II of the Regulations framed under the Intermediate Education Act, 1921 on the retirement of the permanent Principal namely Sri Banshidhar Dixit of the aforesaid College. the committee of management passed a resolution dated 9th of October, 1977 appointing the petitioner as the officiating Principal of the College. It is not disputed that the petitioner has since been working as the officiating Principal of the College. When however, the Manager of the College forwarded the bills of the petitioners salary as the Principal of the College to the District Inspector of Schools, the latter refused to clear the bills of the petitioner on the ground that there was no provision for payment of salary in the principals grade to those who were appointed merely to net as affiliating Principal. The petitioner, thereafter, personally met the District Inspector of schools and placed before him his grievance that under the proviso to Regulation 2 of Chapter II of the aforesaid Regulations read with Regulations 46 of Chapter III of the Regulations the petitioner was entitled to be paid the salary of a Principal. Having failed to obtain any redress from the District Inspector of Schools, the petitioner has approached this court under Article 226 of the Constitution of India.

3. The petitioner contends that the proviso to Regulation 2 of Chapter II was clearly attracted to his case and that consequently he was entitled under Regulation 46 of Chapter III to be paid the salary of a Principal. Learned Standing counsel on the other hand submitted that under the various Removal of Difficulties Orders issued by the Government from time to time the petitioner could be appointed as officiating Principal for a period not exceeding six months. He was hence not entitled to be paid any salary beyond that period.

4. Having heard learned counsel for the parties, we are clearly of the opinion that the contention of the petitioner is well founded. Regulation 2 of Chapter II of the aforesaid Regulations reads as follows:

"2. (1) The posts of the Head of Institution shall, except as provided in clause (2) be filled by direct recruitment after reference to the Selection Committee under Sub-section (1) of section 16-F or, as the case may be, under Sub section (1) of Section 16-FF.

Provided that in the case of any instruction not being an institution referred to in Section 16-FF a temporary vacancy caused by the grant of leave to an incumbent for a period not exceeding six months or by death retirement or suspension of any incumbent occurring during an educational session in the post of the Head of Instruction shall be filled by the promotion of the senior most qualified teacher, if any, in the highest grade in Institution.

5. The next relevant provision is clause (3) of Regulation No. 2 of Chapter II which reads thus:-

"Where the temporary vacancy in the post of the head of institution is for a period not exceeding thirty days, the senior most teacher in the highest grade may be allowed to work as acting head of institution, but he shall not be entitled to pay in a scale higher than the scale of pay in which he is drawing salary as such teacher."

6. A perusal of the proviso to Regulation No. 2 (1) shows that the petitioner's case was squarely covered by it. The petitioner was appointed in the vacancy caused by the retirement of Banshidhar Dixit, to officiate as the Principal of the College. The petitioner was the senior most teacher. He was, therefore, lawfully appointed as the officiating Principal contemplated by the proviso.

7. In Dhaneshwar Singh Chauhan v. District Inspector of Schools, Badaun 1980 UPLBEC 286, a Division Bench of this court rules that a teacher officiating on the post of Principal is entitled to receive salary in the Principals grade as provided by the Government Order dated/18-1-1974. This decision does support the petitioners contention.

8. The same conclusion also flows from clause (3) of Regulation No. 2 quoted above. The provision that where the temporary vacancy in the post of the Head of the institution is for a period exceeding thirty days, the senior most teacher may be allowed to work as acting head of the Institution but that he would not be entitled to pay in a scale higher than that in which he was drawing his salary as a teacher clearly suggests that where the vacancy in the post of Principal lasts more than 180 days, the teacher appointed to officiate as the Principal under the aforesaid proviso would be entitled to the salary admissible to a Principal.

9. The aforesaid statutory provisions, therefore, clearly point to the conclusion that the petitioner was, as the officiating principal of the College, entitled to be paid the salary of a principal. The respondent no. 1 was consequently not justified in refusing the salary of a Principal to the petitioner on the ground that the petitioner was merely officiating as the Principal.

10. As regards the contention of the learned Standing Counsel that under the various Removal of Difficulties Orders the officiating appointment could last only for a period of six months, it is sufficient to say that, that was not the ground on which the payment of salary in the Principals grade was refused by the District Inspector of Schools. On the other hand from annexure 4 to the writ petition which is a copy of the letter of the Deputy Director of Education dated 3rd of July 1981 addressed to the District Inspector of Schools (with a copy forwarded to the petitioner) it is clear that the petitioner was still being treated as the officiating Principal of the College, The Deputy Director of Education pointed out the relevant statutory provisions applicable to the payment of salary to officiating Principals and observed that the District Inspector of Schools should comply with those provisions. We, therefore, find no substance in this submission raised by the learned Standing counsel.

11. In the result, the petition succeeds and is allowed. The District Inspector of Schools, Deoria is directed to pay salary to the petitioner admissible to the Principals as long as the petitioner continues to be the officiating Principal of the aforesaid College. We, however, make no orders as to costs."

(Note :- In above judgment, relevant provision i.e. Proviso to Regulation 2(1) and 2(3) of Chapter-II of Regulations were considered, however, the words "in the highest grade in institution" was not specifically considered and further G.O. dated 24.01.1973 was also followed.)

Soloman Morar Jha vs. DIOS, Deoria (1985)

"By means of this petition under Article 226 of the Constitution, the petitioner claimed relief for issue of a writ of certiorari quashing the order of the District Inspector of Schools, Deoria (hereinafter referred to as the D.I.O.S.), dated April 30, 1983 and for the issue of a writ of mandamus commanding the D.I.O.S. to pay the petitioner's salary in Principal's grade, and also to pay him the entire arrears of salary.

The petitioner is a seniormost lecturer in B.G.M. College, Bhagalpur, district Deoria, an aided and recognised institution. On the retirement of the permanent Principal of the College, the Committee of Management appointed the petitioner as the acting Principal, by resolution dated 26-6-1981. The petitioner took charge of the office of the principal, on July 1, 1981 and since then he has been working as the acting Principal of the institution, with the approval of the D.I.O.S. The Committee of Management made a reference to the D.I.O.S. for the payment of the salary in the Principal's grade, but the Inspector, by his letter dated April 30, 1983, refused to pay the salary to the petitioner, in the principal's grade, on the ground that there is no provision in the U. P. Intermediate Education Act or the Regulations framed thereunder, for paying the salary to a person officiating on the post of Principal. Aggrieved, the petitioner has filed this petition.

There is no dispute that a permanent vacancy arose in the post of principal in the institution. There is, further, no dispute that the petitioner, being a seniormost teacher, was appointed to officiate on the post of Principal. Admittedly, the petitioner has been functioning as the acting Principal since 1-7-1981 and in that capacity, he has been discharging the functions of

the Principal. Since the petitioner has been performing the duties and functions of the Principal, he is entitled to salary in the Principal's grade, for the period during which he continues to work as the Principal. In *Dhaneshwar Singh Chauhan v. D.I.O.S. Budaun* 1980 UPLBEC 286 as well as in *Narvadeshwar Misra v. D.I.O.S. Deoria*, 1982 UPLBEC 171, two Division Benches of this Court held that a lecturer officiating in the post of Principal is entitled to salary in the Principal's grade. The D.I.O.S. is under a legal obligation to pay the salary to a person for the period during which he acts as a Principal. The law is very well settled in this respect. The D.I.O.S. has refused to pay the salary to the petitioner in an unjustified manner.

On behalf of the respondents, it was urged that Regulation 2 (1) of Chapter II of Regulations framed under the U. P. Intermediate Education Act is not applicable to the minority institution. No doubt, the institution in which the petitioner is acting as Principal is a minority institution but that does not affect the legal position. Proviso to Regulation 2 (1) of Chapter II of the Regulations does not prohibit the payment of salary to a lecturer in the Principal's grade, for the period during which he officiates on that post. The view taken by the DIOS is unjustified.

In the result, we allow the petition and quash the order of the DIOS, Deoria, dated April 30, 1983 and direct the Inspector to pay the arrears of salary to the petitioner in the Principal's grade, for the period during which he had been working as acting Principal in the institution and also to pay to the petitioner the salary for the period during which he continues to act as officiating Principal."

(Note :- Above judgment was in regard to Minority Institution and that judgment of 1980 and 1982 were held to applicable to said institution also and not above decision is applicable to said institution also.)

9. Relevant paragraphs of Full Bench judgment of **Dr. Jai Prakash Narayan Singh (supra)** are quoted below :-

"Issues

1. Whether there is a conflict between the ratio of the decisions in the cases, of *Daljeet Singh v. State of U.P.* (2007 (7) AWC 7687) and *Om Saran Tripathi v. State of U.P.* (2010 (1) AWC 374) and if so, which of the views lays down the law correctly; and whether an officiating Principal appointed under Statute 10.20 of Purvanchal University, is entitled to claim payment of salary in the regular grade of the Principal or not.

Essentially, the issue is whether a teacher who is appointed to officiate as principal on the permanent post of a principal falling vacant in a college affiliated to a State University, is entitled to the pay scale and grade of a regular principal.

2. In the following decisions, Division Benches of this Court directed the payment of salary drawn by a principal to an officiating principal of a degree college:

(1) Durga Prasad Dwivedi v. Director of Higher Education (CMWP No. 8738, 1988, decided on 11 July, 1994). This judgment was referred to and followed in:

(i) Raghu Nath Mishra v. State of U.P. (CMWP No. 39699 of 1993, decided on 13 November, 1997);

(ii) Anand Prakash Tyagi v. State of U.P. (CMWP No. 46257 of 1999, decided on 2 November, 1999); and

(iii) Madan Gopal Mittal v. State of U.P. (CMWP No. 42012 of 2004, decided on 7-October, 2004);

(2) Paras Nath Pandey v. District Inspector of Schools ((1995) AWC 603": 1995 All LJ 1136);

(3) Dr. Govind Nam Niranjana v. District Inspector of Schools, Jalaun at Orai, 1996 AWC 1757 : (1997 All LJ 172); and

(4) Om Saran Tripathi v. State of U.P., 2009 (4) ESC 3023.

3. However, in Daljeet Singh (supra), a Division Bench of this Court held that under the Statutes of the University, the senior most teacher is not appointed as officiating principal but is only permitted to discharge the duties of a principal. In coming to this conclusion, the Division Bench placed reliance on the following decisions of Division Benches of the Court:

(1) Sheo Shanker Tripathi v. Director of Education (Sanskrit), UP Allahabad, 2007 (4) AWC 3636 : (2007 (4) All LJ (NOC) 687); and

(2) Vijay Rani v. Regional Inspectress of Girls Schools, Region I, Meerut, 2007 (2) ESC 987 : (2007 (2) All LJ 694).

4. For the completeness of the record, we note that Division Benches of this Court in the following decisions directed the payment of salary drawn by a principal to an officiating principal of a secondary school:

(1) Dhaneshwar Singh Chauhan v. District Inspector of Schools, Budaun (1980 UPLBEC 286),

(2) Narbadeshwar Misra v. District Inspector of Schools, Deoria (1982 UPLBEC 171); and

(3) Solomon Morar Jha v. District Inspector of Schools, Deoria (1985 UPLBEC 113).

A conflict of decisions has arisen. That, the Full Bench is called upon to resolve.

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29. A somewhat similar situation had arisen under the provisions of the UP Secondary Education Service Selection Board Act, 1982. That Act was enacted to establish a Secondary Education Service Commission for the selection of teachers in institutions recognized under the Intermediate Education Act 1921. The expression "teacher" was defined to include a principal. Section 16 provided that subject to the provisions of Sections 18 and 33 and certain other sections, every appointment of a teacher upon the commencement of the Act would be made by the management only on the recommendation of the Commission and an appointment made in contravention of the provisions would be void. Section 18 dealt with ad hoc appointments of teachers. Since the provisions of Section 16 were made subject to Section 18, ad hoc appointments could be validly made under Section 18. However, after the enactment of UP Act 1 of 1993, Section 16 was substituted and Section 18 of the Principal Act was sought to be deleted. Section 33 empowered the State Government to issue and notify Orders for removing any difficulty, during such period as may be specified in the Order, whereupon the provisions of the Act would have effect subject to adaptations whether by way of modification, addition or omission. Two notified Orders were issued under Section 33(1). Neither of the two Orders provided for any time limit during which the orders would remain effective.

30. These provisions came up for consideration before a Full Bench of this Court in *Radha Raizada v. Committee of Management, Vidyawati Darbari Girls Inter College*, (1994) 3 UPLBEC 1551 : (1994 All LJ 1077) Dealing with the situation, the Full Bench held as follows:

""After enforcement of U.P. Act No. 1 of 1993 except Section 13 thereof the situation that emerges is that by new Section 11 of Amendment Act which has substituted Section 16 of the Principal Act, has come into force whereas the omission of Section 18 from the principal Act by Section 13 of this amending Act has not been enforced which means Section 18 still continues in the Principal Act. In view of this legislative development a peculiar situation has arisen that new Section 16 which has come into force is no longer subject to Section 18 of the Act which means that no appointment on ad hoc basis can be made under Section 18 of the Act. New Section 16 begins with a non-obstante clause which means in spite of other provision, no appointment shall be made except on the recommendation of the Board. Where a section begins with a non-obstante clause, it indicates that the provision should prevail despite anything to the contrary in the provisions in the Act. Thus after omission of Section 18 from Section 16 no ad hoc appointment is permissible under Section 18 and if made, would be void under sub-section (2) of Section 16 of the Act. It has not been brought to my notice that First Removal of Difficulties Order 1981 issued by the State Government has either been revoked or rescinded. On the contrary, it was asserted that the said Removal of Difficulties Order is continuing. Now the question for consideration is that if no ad hoc appointment of teacher or Principal can be made under Section 18 of the Act, whether it is

permissible to appoint a teacher or Principal on ad hoc basis under the First Removal of Difficulties Order? A perusal of Section 16 would show that Section 16 is still subject to Section 33 of the Act which empowers the State Government to issue Removal of Difficulties Order. Since Removal of Difficulties Orders have been issued under Section 33 of the Act, an ad hoc appointment either by direct recruitment or by promotion under the Removal of Difficulties Order would be a valid appointment."

31. Hence, the Full Bench took the view that even after the omission of a reference to the provisions of Section 18 in Section 16 following UP Act 1 of 1993, since Section 16 was still subject to Section 33, ad hoc appointments could be made both under the First and Second Removal of Difficulties Orders that had been issued under Section 33.

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33. Hence, as the Supreme Court noted, the State Government could have provided the period during which the Removal of Difficulties Orders could operate but such a provision was not made in these Orders limiting the period of operation. The Removal of Difficulties Orders were, therefore, construed to be permanent and not transient and reliance was placed on the decisions of the Full Bench of this Court in *Radha Raizada* (1994 All LJ 1077) (*supra*).

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45. We may again note that several decisions have taken the view that a person who has officiated on the post of a principal of a secondary school would be entitled to the salary of a principal. These decisions were in:

(i) *Dhaneshwar Singh Chauhan v. District Inspector of Schools* (*supra*);

(ii) *Narbdeshwar Misra v. District Inspector of Schools* (*supra*); and

(iii) *Soloman Morar Jha v. District Inspector of Schools* (*supra*).

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57. We, accordingly, dispose of the reference in the following terms:

(i) The decision in Daljeet Singh (supra) does not lay down the correct position in law; and (ii) An officiating principal appointed under the Statutes of the University, which are pari materia to the provisions of Statute. 10-B of the First Statutes would be entitled to claim the payment of salary in the regular grade of principal for the period during which he or she has worked until a regularly selected candidate has been appointed and has assumed charge of the office."

10. Court also takes note of a judgment passed by Division Bench of this Court in **Secretary, U.P. Basic Education Board and others vs. Tripurari Dubey, 2025 (5) ADJ 561 (DB)** and relevant paragraphs thereof are quoted below :-

"16. Those of the assistant teachers who are allowed to discharge the work of headmaster discharge various administrative and supervisory duties in addition to the post of assistant teacher. Such teachers when are allowed to discharge additional work would be entitled to payment of salary. Though in somewhat different factual scenario, a Full Bench of this Court in Dr. Jai Prakash Narayan Singh (supra) has observed as under:

"If no power is to be construed to exist in a management to make an officiating appointment, when a vacancy arises in the office of a principal until a regular appointment is made in accordance with the provisions of the Commission Act, serious prejudice would have been caused in the functioning of educational institutions including affiliated colleges. There is a vital element of public interest in the proper functioning of educational institutions and if the cause of education is not to suffer, some arrangement would have to be made during the period when there is a vacancy in the office of a principal. The power to make an officiating appointment is traceable to the provisions of the Statutes of the State Universities, analogous to Statute 10-B of the First Statutes. Once the nature of that power is construed as a power to make an appointment albeit on an officiating basis till a regularly selected candidate becomes available, there would be no justification to deny a claim for the payment of salary to such a person who has been appointed on an officiating basis. The power to make an officiating appointment under the Statutes of the University after the deletion of Section 16 from the Commission Act with effect from 22 November 1991 is preserved. Such a provision in the Statutes would not be inconsistent with or contrary to the Commission Act so as to attract the overriding provisions contained in Section 30. Where a person has been appointed as an officiating principal until a regularly selected candidate takes charge, this involves an assumption of duties and responsibilities of a greater importance than those attaching to the post of a teacher. The Universities Act in several provisions, which have been noted earlier, adverts to the duties and responsibilities which are required to be performed by a principal. Hence, a person who is appointed as an officiating principal under the Statutes of the University until a regularly selected candidate is made available, would be entitled to the payment of salary attached to the post of principal."

17. We are thus of the view that headmaster's salary ought not be denied to the assistant teachers when they are regularly performing work on the higher post of headmaster for the last several years.

18. Lastly, learned counsel for the appellants submits that the direction of learned Single Judge to pay the salary for the post of headmaster since 2014 is otherwise impermissible in as much as no grievance was earlier raised by the writ petitioners with regard to denial of salary for the higher post and the writ petitions have been filed only in the year 2022 to 2024. Reliance is placed upon the judgment of Supreme Court in *Union of India and others v. Tarsem Singh*, (2008) 8 SCC 648, to contend that at best a direction for arrears up to a period of three years could have been issued in favour of the writ petitioners. The judgment in *Tarsen Singh (supra)* has been followed in subsequent judgment of Supreme Court in *Bichitrananda Behera v. State of Orissa and others*, 2023 SCC OnLine SC 1307. A Lucknow Bench of this Court in *Urmila Devi Pal v. State of U.P. and others*, 2023(6) ADJ (DB)(LB), also followed the similar judgment.

19. We find substance in the contention of Sri K. Shahi that the direction to pay arrears could not have been issued in a mechanical manner particularly when no grievance was raised by such persons earlier. Though it is stated that previous representations were made by the writ petitioners but such grievance apparently was not pressed till filing of the writ we are thus of the view that even if the petitioners have continued for long as headmaster the direction to pay the arrears could only extend up to three years prior to filing of the writ petition.

20. In view of the discussions and deliberations held above this bunch of special appeal stands disposed of with following observation: (i) we grant liberty to the concerned District Basic Education Officer to examine and determine the factual issue as to whether the petitioner has experience of five years and has actually been continuing as headmaster of the institution; (ii) if the petitioners have continued for long as headmaster the direction to pay the arrears would only extend up to three years prior to filing of the writ petition; (iii) we also make it open for the District Basic Education Officer to ensure at the district level that only senior assistant teachers are allowed to officiate in the educational institution, as far as, it is possible. This would eliminate possibility of heart burning on account of junior assistant teachers functioning as officiating headmaster; (iv) requisite exercise in this regard shall be undertaken within a period of two months and the amount in term of above determination shall be calculated and released without any further loss of time."

11. As referred above, judgments of year "1980", "1982" and "1985" were decided mainly on basis of a Government Order dated 18.01.1974, which provides that a teacher officiating the post of Principal is entitled to receive salary of Principal grade as well as further judgment of "1982" also took note of proviso to Clause " 2(1) and 2(3) of Regulations under Chapter II of Act of 1921 that in case there is a temporary vacancy on the post of Head of Institution remain vacant for more than 180 days, a senior most qualified teacher can be promoted as Ad-hoc Principal would be entitled to get salary of Principal though words used "in the highest grade in the institution" therein were not interpreted specifically.

12. Court takes note that all these judgments are passed by Division Benches of this Court, therefore, present Bench being a Single Bench has to follow except it some provisions of law were

not specifically considered. Court also takes note that at a particular time, present roster was within the Division Bench of this Court and now said roster is cognizable by a Single Bench.

13. In **Narbdeshwar Misra (supra) (1982)**, the Division Bench has not interpreted that what would be the interpretation of Proviso to Clause 2(1). So far as Clause (3) of Chapter II is concerned, it is specifically provided that if a temporary vacancy is for a period not exceeding thirty days, senior most teacher in the highest grade may be allowed to work as Acting Head Master of institution but he shall not be entitled to pay higher grade of pay, therefore, in such cases, Acting Principal or Head Master, as the case may be, is not entitled for salary of higher side.

14. So far as Proviso to Clause (2) is concerned, it provides a procedure that a temporary vacancy of the post of Head of Institution exists but not more than 180 days, the said post shall be filled up by promotion of senior most qualified teacher "in the highest grade in the Institution". The words "highest grade in the Institution" does not mean that it would be grade of Principal or Head Master, as the case may be. Being used in continuing in Statute, it would be highest grade in the Institution on post of a teacher.

15. At this stage, Court also takes note of Rule 11(2)(b) of U.P. Secondary Education Service Selection Board Rules, 1998 and its Explanation that "senior most teachers" means the senior most teachers in the post of "highest grade in the institution", therefore, same words used in Proviso to Clause 2(1) of Regulations has to be read in same manner and not that "highest grade" would mean grade of the post of Principal. For reference, said Rule is mentioned hereinafter :-

"11. Determination and notification of vacancies :-

(1) xxxxx

(2) xxxx

(a)xxxxx

(b) With regard to the post of Principal or Headmaster, the Management shall also forward the names of two seniormost teachers, along with copies of their service records (including character rolls) and such other records or particulars as the Board may require from time to time.

Explanation For the purpose of this sub-rule 'seniormost teachers' mean the seniormost teachers in the post of the highest grade in the institution, irrespective of total service put in the institution."

16. Clause (3) of Regulations is contemplating a situation when senior most teacher may not be in highest grade of the institution and that it is for a stop gap arrangement, therefore, word "qualified" is also missing. Therefore, there is no provision of payment of salary of Principal in the case of promotion on a temporary vacancy. The Court is of the view that in none of above referred cases, Section 18 of Act of 1982 as inserted in the year 2000 was interpreted or considered since enacted subsequently.

17. The Full Bench in **Dr. Jai Prakash Narayan Singh (supra)** has only made a reference of judgments of 1980, 1982 and 1985 and **Radha Raizada (supra)** but has not taken note of effect of Section 18 of Act of 1982 as it was not an issue for consideration before the Full Bench.

18. The Full Bench was considering only the provisions of State Universities Act whereas present bunch of similar matters are arising of The U.P. Intermediate Education Act, 1921. Similarly, the other Division Bench of this Court in Tripurari Dubey (*supra*) is considering cases arising out of University.

19. In aforesaid circumstances, now outcome of all these writ petitions would fall on interpretation of Section 18 of Act of 1982 which is already quoted in preceding paragraphs.

20. Above referred Section has following parts :-

a. The Section provides a mandatory prior condition, as to when Management can fill vacancy of Principal or Head Master on temporary/ad-hoc basis by promotion of a qualified senior most teacher that the Management has to notify the Vacancy to Board in accordance with subsection-1 of Section 10 of Act of 1982.

b. Post of Principal or Head Master actually remains vacant for more than 2 months.

c. After such preconditions are followed and such promotion is made on temporary/ad-hoc basis, then only such promotee shall be entitled to get salary of Principal or Head Master from the date he joined such post, therefore, if said preconditions are not fulfilled and exercise is undertaken to fill up vacancy of a Head of institution by way of ad-hoc promotion, such promotee shall not be entitled for salary of the post of Principal or Head Master.

d. A reference of Section 18 (2) of Act of 1982 given by learned Senior Advocate for petitioners would not be applicable in present case since it is only in regard to when Management fails to promote the senior most teacher in said institution even after preconditions are complied. It does not cast any duty on D.I.O.S. concerned to force the Management to notify vacancy to the Board. There is an object behind these preconditions that Committee of Management of College may not allow to continue with ad-hoc Principal to avoid a Principal appointed by the Board being a person outside the College.

21. In aforesaid circumstances, Court is of the view that above questions were not answered in **Narbdeshwar Misra (supra)** and being prior to said amendment, therefore, this Court has a jurisdiction to interpret the issue in terms of Section 18(2) of Act of 1982 and consequence of above directions as follows.

22. The judgment passed by Full Bench has also not considered the effect of Act of 1982 and was considering the provisions which are admitting not applicable in present facts and circumstances.

23. In aforesaid circumstances, Court is of the view that preconditions mentioned in Section 18 of the Act of 1982 has to be complied with being mandatory and only thereafter, such ad-hoc promotee on the post of Principal or Head Master would be entitled for salary of said post.

24. Accordingly, all writ petitions are **disposed of** with a direction that D.I.O.S. concerned will examine the facts of each case that in case preconditions of Section 18 that Management had notified the vacancy and it remained vacant for two months and ad-hoc promotion was made, then only such ad-hoc promotee will be entitled for salary of the post of Principal.

25. In case vacancy was not notified, such ad-hoc Principal will not be entitled for payment of salary on the post of Principal or Head Master and it is directed that in such case college will notify the vacancy within four weeks from the date of present judgment. In an event, even though the conditions referred above was not complied with and such ad-hoc Principal were paid salary of the post of Principal or Head Master is paid, it shall be stopped from the date of present judgment,

26. Now U.P. Secondary Education Service Selection Board 2023 and Rules therein namely Uttar Pradesh Education Service Selection Rules, 2023 are being enacted and are enforced and Act of 1982 is now repealed. There is no provision in Act, 2023 of Ad-hoc Principals or Head Masters. As held above there is no provision to grant salary of post of Principal to Ad-hoc Principal under the provisions of Act of 1921 and its Regulations, therefore, its legal consequence would follow. An argument that after ad-hoc vacancy is filled by promotion and such promotee have discharged duties with higher responsibility, therefore also, they are entitled for salary of promoted post especially when it is for more than a year is also unacceptable since it would be against the provisions, as discussed above.

27. The Court takes note that in other cases, salary if already paid to earlier appointed ad-hoc Principal or Head Master, it is directed that it shall not be recovered but shall not be paid from the date of pronouncement of this judgment.

28. All writ petitions are, accordingly, **disposed of**.

(2026) 1 ILRA 1005
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.01.2026

BEFORE

THE HON'BLE VIKAS BUDHWAR, J.

Writ A No. 19604 of 2025

Malti Devi

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

(1) Permissibility of stopping the family pension, granted earlier.

Headnotes

(A) Service law – Family pension – Petitioner’s husband was retired from the post of Assistant Accountant and was expired afterwards – Earlier family pension was granted, but subsequently stopped – Family pension claimed – Permissibility. (E-1)

Held : The writ petition is being disposed off granting liberty to the writ petitioner to prefer a comprehensive representation along with the self-attested copy of the writ petition before the second respondent, who shall on the receipt of the same within a period of two weeks, proceed to decide the claim of the petitioner strictly in accordance with law within a period of two months from the date of presentation of the certified copy of the order. [Para 6]

List of Keywords

Family pension, Comprehensive representation.

Case Arising From

Stopping the family pension.

Appearances for Parties

Adv. for the Appellant : Manish Kumar Kashyap and Virendra Pal Singh.

Adv. for the Respondents : Standing Counsel.

(Delivered by Hon’ble Vikas Budhwar, J.)

1. Heard Sri Virendra Pal Singh, learned counsel for the petitioner and Sri Rahul Malviya, learned Standing Counsel, who appears for State-respondents.

2. The case of the writ petitioner is that the husband of the writ petitioner was an employee in State Government, working on the post of Assistant Accountant, retired on 31.02.2020 and expired on 14.06.2020. The writ petitioner claims to release of the family pension which was granted on 16.07.2020 which has been stopped by the authority since November, 2024 till date.

3. Prayer in the present petition is for a direction to the respondents to consider the claim.

4. Learned Standing Counsel submits that the claim of the writ petitioner needs adjudication at the first instance by the second respondent, District Magistrate, Budaun.

5. To such a submission, learned counsel for the petitioner has no objection and he gracefully accepts the same.

6. Considering the submissions of the rival parties as well as stand taken by them, the writ petition is being **disposed off** granting liberty to the writ petitioner to prefer a comprehensive representation along with the self-attested copy of the writ petition before the second respondent, who shall on the receipt of the same within a period of two weeks, proceed to decide the claim of the petitioner strictly in accordance with law within a period of two months from the date of presentation of the certified copy of the order. In case the second respondent is of the opinion that the matter is to be decided by some other authorities then the papers shall be transmitted to the same.

7. Needless to point out that the writ petition has been decided without seeking any response from the respondents. Thus, passing of this order may not be construed to an expression that this Court has gone into the merits of the case.

8. With the aforesaid observation, the writ petition is **disposed off**.

(2026) 1 ILRA 1007
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 12.01.2026

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ B No. 11 of 2026

Ramjage & Ors.

...Petitioners

Versus

Deputy Director of Consolidation, Barabanki & Ors. ...Respondents

Issue(s) for consideration

Whether the suit proceedings, where the rights of the parties were not decided, can be of any consequence or entitling the petitioner to raise the plea of estoppel in deciding the objection u/s 9A(2) of the Consolidation of Holdings Act?

Headnotes

A. Land Reform Law – U.P. Zamindari Abolition & Land Reforms Act, 1950: Section(s) 117, 229 B; U.P. Land Revenue Act: Section 34/35; U.P. Consolidation of Holdings Acts 1953: Section(s) 9A(2), 49 - Merely by dismissal of the suit on the ground of maintainability, without going into the merits of the case, without returning any finding on any issue cannot benefit the other party in any subsequent litigation nor can he claim that mere dismissal of such suit proceedings would vest any right in the opposite party. (Para 22)

The findings returned by all the three authorities w.r.t. effect of the order dated 4.4.1978 is illegal, arbitrary and perverse. In a suit proceedings initiated u/s 229 B the preliminary objection raised by the petitioner w.r.t. maintainability of the suit was upheld. The suit was thrown out at the threshold on the very ground of maintainability and the court did not adjudicate upon the aspect of declaration sought by the private respondents. **Once the rights of the parties were not decided in the suit proceedings then the said proceedings cannot be of any consequence or entitling the petitioner to raise the plea of estoppel in deciding the objection u/s 9A(2) of the Consolidation of Holdings Act.** In case, the suit has been decreed or rejected on merits after taking evidence and deciding the rival contentions of the parties then certainly the finding returned in the said proceedings would have had a bearing on the proceedings u/s 9A(2) of the Consolidation of Holdings Act. (Para 20, 21)

B. The Deputy Director of Consolidation has decided the entire controversy and has considered various evidence, which aren't available on record by which it can be established that Angenu is the original recorded tenure holder of the entire property while finding returned by the Deputy Director of Consolidation is that undisputedly the entire property was recorded in his name initially. Neither any evidence has been considered by him but he has only stated that this aspect of the matter is undisputed. (Para 23)

No evidence in this regard was led by either of the parties nor this aspect was considered by the Consolidation Officer in his judgment and order dated 13.9.2018. Accordingly, order of Deputy Director of Consolidation is also perverse and arbitrary. (Para 25)

The Consolidation Officer has misdirected himself by deciding the entire controversy merely on noticing that the suit proceedings initiated by the private respondents was dismissed and the said order was affirmed by the Appellate Authority. The Appellate Authority has also rejected the appeal affirming the order of Consolidation Officer but the Deputy Director of Consolidation has considered totally fresh facts and evidence which we do not find to be available on record. (Para 26)

The orders of all three authorities are illegal, arbitrary and deserve interference.

Writ petition allowed. (E-4)

List of Acts

U.P. Consolidation of Holdings Acts 1953; U.P. Zamindari Abolition & Land Reforms Act, 1950; U.P. Land Revenue Act.

List of Keywords

consolidation, tenant, maintainability, co-tenancy, rights, estoppels.

Appearances for Parties:

For Petitioner(s)

Ghufran Hussain

For Respondent(s)

C.S.C., Adarsh Tripathi, Pradeep Kumar

(Delivered by Hon'ble Alok Mathur, J.)

1- Heard Sri Ghufran Hussain, learned counsel for the petitioners as well as learned Standing counsel for respondent No.1 on behalf of respondent No.1 and Shri Pradeep Kumar, who has filed his vakalatnama on behalf of respondent No.s 2 to 5.

2 - By means of the present writ petition, the petitioners have challenged the order of the Deputy Director of Consolidation dated 8.9.2025, thereby allowing the revision preferred by the private respondents, setting aside the order of Consolidation Officer dated 13.9.2018 as well as order of Settlement Officer of Consolidation dated 27.4.2023 and directing the parties to maintain status-quo ante and also for recording the name of co-tenants in the revenue records.

3 - It has been submitted by learned counsel for the petitioners that the dispute in the present case pertains to Khata no.25 situated in Village Sohilpur, Pargana Satrikh, Tehsil Nawabganj, District Barabanki (old No.24), which according to the petitioners initially was recorded in the name of Mangre.

4.- It has been submitted that Mangre had two sons, namely, Gayadeen and Parmeshwar and all the petitioners are descendants of Mangre. On the other hand, the opposite parties are the sons of Sitaram, who is the grandson of Anganu and according to the opposite parties the land belonged to Anganu, who had four sons, namely, Mangre, Mataee, Garibe and Sahai and accordingly claimed co-tenancy in the disputed land along with the petitioners.

5.- It has been submitted that a suit under Section 229 B of U.P.Z.A. and L.R. Act was filed by the private respondents before the Additional Officer, First/Assistant Collector, Barabanki who had dismissed the suit proceedings on the ground of maintainability. He was of the view that the suit proceedings were barred by Section 49 of the Consolidation of Holdings Act, which was decided by issued No.4, which was framed by him. The suit was accordingly dismissed on the aforesaid ground by means of the order dated 4.4.1978 and subsequently the private respondents preferred an appeal before Additional Commissioner, Faizabad where also the order dated 4.4.1978 was affirmed and the appeal was dismissed on 21.2.1979. The appellate authority also noticed that the suit was defective for non compliance of Section 117 of U.P.Z.A. and L.R. Act and despite opportunity given to the private respondent to make necessary amendments, no action was taken by them. Apart from the aforesaid fact the suit was barred under Section 49 of the Consolidation of Holding Act and he was of the view that it is only on the ground of maintainability that the appellate authority was of the view that the suit proceedings had rightly been rejected.

6.- Subsequently, the private respondents moved an application under Section 34/35 of U.P. Land Revenue Act before the Naib Tehsildar, who by means of the order dated 13.2.1987 allowed their application and their names were also added in the revenue record along with the predecessor-in-interest of the petitioners.

7. - Counsel for the petitioners submits that the order dated 13.2.1987 was passed on the basis of compromise but in fact was never entered by the petitioner and they were not aware of the proceedings before Naib Tehsildar and accordingly had moved an application for recall. It has been submitted that it is during the pendency of the recall application that the notification under Section 4 of the Consolidation of Holdings Act was passed and accordingly the proceeding stood abated.

8. - It is onset of a fresh consolidation proceedings that the objections were filed by both the parties under Section 9A(2) before the Consolidation Officer, which came to be decided by means of the order dated 13.9.2018.

9. - Before the Consolidation Officer, it was contended on behalf of the petitioners that the dispute is no longer res-integra in as much as the same has been decided by the competent authority under Section 229 of U.P.Z.A. and L.R. Act and the suit filed by the private respondents has been rejected by means of order dated 4.4.1978 and even the appeal preferred by them has been dismissed on 21.2.1979 and accordingly the said suit proceedings became final and no order can be passed contrary to the suit proceedings.

10.- The Consolidation Officer has framed six issues for determination and the first issue was with regard to the fact as to whether the private respondents are entitled to any right, interest in the disputed land the same being their ancestral property. The Consolidation Officer decided issue No.4 and found that the suit was instituted by the private respondents seeking the relief of co-tenancy which was rejected by means of order dated 4.4.1978 and subsequently even the appeal was dismissed and only on this fact rejected the contention of the private respondents.

11. - With regard to issue No.1 he did not independently consider any evidence but merely because the suit proceedings under Section 229 B had been dismissed, decided issue No.1.

12. - Assailing the order dated 13.9.1978 passed by the Consolidation Officer an appeal was preferred before Settlement Officer of Consolidation by the private respondents, which was also dismissed upholding the order of the Consolidation Officer.

13. - It has further been submitted that it is before the Deputy Director of Consolidation that the revision preferred by the private respondents has been allowed by means of order dated 8.9.2025, which has been assailed in the present case.

14. - It has been submitted that the Deputy Director of Consolidation has allowed the revision on merits and has also returned the findings that there is no dispute that the original recorded tenure holder was Anganu and this fact was undisputed. He submits that this finding is perverse and contrary to the records, in as much as, this aspect of the matter was never considered at the stage of Consolidation Officer and once the trial court has not considered the evidence.

15. - He submits that this finding is perverse and contrary to the records in as much as this aspect was never considered at the stage of Consolidation Officer. Once the Consolidation Officer has not considered or recorded the aforesaid evidence the revisional authority could not have returned a finding in this regard for the first time. It was further submitted that once the suit proceedings initiated by the respondents have been dismissed then the benefit of the same would accrue to the petitioner and this would operate as an estoppel against the private respondents in the present litigation. It is in aforesaid circumstances that a prayer was made for setting aside of the impugned order dated 8.9.1985 for allowing the writ petition.

16. - As per the previous directions of this Court the entire original record has been produced by learned Standing counsel from which it is clear that due opportunity was given to the parties to adduce evidence and they have, in fact, produced the evidence at length before the Consolidation Officer. Though the Consolidation Officer, in turn has not considered any of the evidences.

17. - Learned counsel for the respondents, on the other hand, have supported the impugned order. They have submitted that Deputy Director of Consolidation has rightly returned a finding that the disputed property being ancestral property on which the original tenure holders was Anganu of which the petitioners and the private respondents are descendants and consequently their prayer is for co-tenancy. It was further submitted that it is in this regard that some agreement has also been arrived at between the parties which has also been considered by Deputy Director of Consolidation and accordingly prayed for dismissal of the writ petition and for affirming the order of the Deputy Director of Consolidation dated 8.9.2025.

18. - I have heard the rival contentions of the parties and also perused the record.

19. - The validity of the order dated 8.9.2025 has been questioned by the petitioner in the present writ petition. The petitioner and the private respondents are claiming co-tenancy while the petitioner has disputed the family tree stating that the original recorded tenure holder was Mangre of which the petitioners are the descendants while, on the other hand, it is the contention of the private respondents that the property belongs to Anganu who had four sons, namely Mataee,

Mangre, Garib and Sahai and the private respondents are the successor in interest of the another son, namely Meetai.

20. - It is in this regard that suit proceedings under Section 229 B was initiated by the private respondent which was dismissed on the ground of maintainability on 4.4.1978 and even the appeal was dismissed on 21.9.1979. Much arguments have been raised about effect of the aforesaid proceedings which would have on the present proceedings while deciding the application under Section 9A of the Consolidation of Holdings Act, 1953. The judgment and order dated 4.4.1978 was passed by Assistant Collector, Barabanki and the suit was dismissed being barred by provisions of Section 49 of Consolidation of Holdings Act as well as for non-joinder of the parties. The court of Assistant Collector, Barabanki did not decide the issue on merits and the suit proceedings were dismissed only on the ground of maintainability. When the matter was adjudicated by the Consolidation Officer he had framed four issues which was the effect of the judgment and order dated 4.4.1978 passed in suit proceedings initiated by the private respondents. The suit was decided in favour of the petitioner where a finding was returned that once the suit of the private respondents has been rejected then the matter has to be decided in favour of the petitioner and he has also considered that the order dated 4.4.1978 has become final in as such as the appeal has also been rejected.

21. - Considering the rival contentions, this Court is of the considered view that the findings returned by all the three authorities with regard to effect of the order dated 4.4.1978 is illegal, arbitrary and perverse. In a suit proceedings initiated under Section 229 B the preliminary objection raised by the petitioner with regard to maintainability of the suit was upheld. The suit was thrown out at the threshold on the very ground of maintainability and the court did not adjudicate upon the aspect of declaration sought by the private respondents. Once the rights of the parties were not decided in the suit proceedings then the said proceedings cannot be of any consequence or entitling the petitioner to raise the plea of estoppel in deciding the objection under Section 9 A (2) of the Consolidation of Holdings Act. In case, the suit has been decreed or rejected on merits after taking evidence and deciding the rival contentions of the parties then certainly the finding returned in the said proceedings would have had a bearing on the proceedings under Section 9 A (2) of the Consolidation of Holdings Act.

22. - In the present case, objections were filed by the petitioner as well as private respondents which ought to have been decided by the Consolidation Officer on the basis of the material and evidence adduced before him. The Consolidation Officer has chosen to decide the matter in favour of the petitioner only on the basis that suit proceedings initiated by private respondents have been dismissed. Accordingly, this Court is of the considered view that the Consolidation Officer has misdirected himself and wrongly appreciated the aspect of dismissal of the suit under Section 229 B. In the present case, we find that merely by dismissal of the suit on the ground of maintainability, without going into the merits of the case, without returning any finding on any issue cannot benefit the other party in any subsequent litigation nor can he claim that mere dismissal of such suit proceedings would

vest any right in the opposite party. Similar was the issue in appeal and accordingly has rejected the appeal affirming the order of Consolidation Officer.

23. - The Deputy Director of Consolidation, on the other hand, has decided the entire controversy and has considered various evidence and we find that no such evidence is available on record by which it can be established that Angenu is the original recorded tenure holder of the entire property while finding returned by the Deputy Director of Consolidation is that undisputedly the entire property was recorded in his name initially. Neither any evidence has been considered by him but he has only stated that this aspect of the matter is undisputed.

24. - The petitioner vehemently has contested this aspect and submits that the findings are clearly perverse and contrary to record. The arguments raised by the petitioner have been rejected in absence of any evidence on record either before the Consolidation Officer or before Settlement Officer of Consolidation or even before Deputy Director of Consolidation.

25. - Considering the said arguments, we find that no such evidence in this regard was led by either of the parties nor this aspect was considered by the Consolidation Officer in his judgment and order dated 13.9.2018. Accordingly we find that the order of Deputy Director of Consolidation is also perverse and arbitrary.

26. - From the aforesaid discussions, we find that the Consolidation Officer has misdirected himself by deciding the entire controversy merely on noticing that the suit proceedings initiated by the private respondents was dismissed and the said order was affirmed by the Appellate Authority. The Appellate Authority has also rejected the appeal affirming the order of Consolidation Officer but the Deputy Director of Consolidation has considered totally fresh facts and evidence which we do not find to be available on record.

27. - It is for the aforesaid reasons that we find that the orders of all three authorities are illegal, arbitrary and deserve interference. We accordingly while allowing the writ petition, set aside the order of Deputy Director of Consolidation dated 8.9.2025 and remit the matter back to the Deputy Director of Consolidation who would be at liberty to remand the matter to Settlement Officer of Consolidation, who, in turn would also be at liberty to remand the matter back to the Consolidation Officer for determination afresh after giving opportunity of hearing to all the parties considered.

28. - In light of the above, the writ petition is **allowed**.

29. - The Deputy Director of Consolidation is directed to pass fresh order in accordance with law within a period of three months considering that the matter is very old and pending since more than forty years. While deciding the matter the authorities shall not be influenced by the findings recorded under Section 229 B of U.P. Revenue Code.

30. On the joint request of the parties, they are directed to appear before the Deputy Director of Consolidation on 3.2.2026.

**(2026) 1 ILRA 1013
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.01.2026**

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ B No. 1168 of 2025

Tilak Ram

...Petitioner

Versus

Deputy Director of Consolidation, Barabanki & Ors. ...Respondents

Issue(s) for consideration

Whether the order for DNA test can be passed when there is substantial material already available on record on the basis of which the dispute can be decided?

Headnotes

A. Property Law/Land Reform Law – The order for DNA test cannot be passed routinely. Only in rarest of rare cases where there is no other cogent and reliable evidence available on record that with the consent of the parties such order can be passed as DNA test and its result also involves right to privacy of the parties concerned. (Para 8)

Both the counsel have jointly informed this Court that no application was filed by either of the parties for conducting DNA test and the impugned order has been passed *suo moto* by the Deputy Director of Consolidation himself. Accordingly, there is no dispute that the matter can be decided on the basis of the evidence available on record and none of the parties insist that DNA test should be done to verify the parentage of both the parties. (Para 6)

There is substantial material already available on record on the basis of which the dispute can be decided. It is noticed that there are two sale deeds which are available on record dealing with the aspect of parentage, copy of the family register and voter list are available on record and there are several revenue records pertaining to various fasli years filed by either of the parties claiming their rights to the property of Sita Ram. **It is not a case where there is no material available on record and the matter could have been decided only after adducing those evidence but it seems that substantial evidence is available on record which has been adduced by either of the parties. It is on the basis of such evidence that the matter ought to have been decided. (Para 7)**

Impugned order dated 17.11.2025 (directing the DNA test) is set aside. Deputy Director of Consolidation is directed to consider and decide the matter on merits as well as relying upon the material available on record in accordance with law.

Writ petition allowed. (E-4)

Case Law Cited

1. Ashok Kumar Vs. Raj Gupta and others, (2022) 1 SCC 20 (Para 8)
2. Ivan Rathinam V. Milan Joseph, Supreme Court, Criminal Appeal No.413 of 2025, dated 28.1.2025 (Para 9)

List of Keywords

evidence, succession, privacy, consolidation, substantial material.

Appearances for Parties**For Petitioner(s):** Kaustubh Singh, Ashok Kumar Mishra**For Respondent(s):** C.S.C., Diwakar Prasad Tiwari

(Delivered by Hon'ble Alok Mathur, J.)

1. - Heard learned counsel for the petitioner, learned Standing counsel on behalf of respondent No.1 and Sri Diwakar Prasad Tiwari on behalf of respondent No.2.

2. - Since respondent No.s 3, 4 and 5 are proforma parties and petitioner and respondent No.2 are the main contesting parties, hence notices to respondent No.s 3, 4 and 5 are dispensed with.

3. - The controversy raised in the present petition is with regard to the order dated 17.11.2025 passed by Deputy Director of Consolidation wherein he has directed that DNA samples of Sadhu Lal, resident of Village Rangarh Gulariha, Pargana and Tehsil Ikauna, District Shravasti as well as Tilak Ram resident of Village Bakwa Da Pure Pasad, Pargana and Tehsil Bhinga, District Shravasti be collected and matched with Sitaram by the Director, State Legal Forensic Laboratory, Lucknow and report be submitted within one month thereafter.

4. - It has been submitted that the dispute in the presents pertains to succession of the properties of one Sita Ram. According to the petitioner, Sita Ram had two sons, namely Tilak Ram and Sadhu Lal and after death of Tilak Ram his wife, namely Indrawati had married with Budhram and shifted to another village. It is submitted that initially mutation in the revenue records was made jointly in favour of Sadhulal and Tilak Ram, sons of Sitaram but subsequently it is stated that Sadhulal had filed an appeal and suppressed the aspect of compromise and sought a declaration that he is himself entitled to the property of Sitaram exclusively and order was passed on 21.1.2024 by the appellate authority.

5. - The petitioner thereafter had filed a revision before Deputy Director of Consolidation which is pending consideration and it is during pendency of the said proceedings that the order dated 17.11.2025 has come to be passed. It is during the said proceedings that Sadhulal has raised the question about parentage of Tilak Ram stating that in all probability Tilak Ram was born from Budhram with whom their mother Indrawati had remarried subsequently. The Deputy Director of Consolidation in his zeal to decide the matter has passed the impugned order directing that DNA samples of Sadhulal and Tilak Ram be collected and report be submitted in this regard.

6. - Both the counsel have jointly informed this Court that no such application was filed by either of the parties for conducting DNA test and the impugned order has been passed suo moto by the Deputy Director of Consolidation himself. Accordingly, there is no dispute that the matter can be decided on the basis of the evidence available on record and none of the parties insist that DNA test should be done to verify the parentage of both the parties.

7. - Apart from the above, we find that there is substantial material already available on record on the basis of which the dispute can be decided. It is noticed that there are two sale deeds which are available on record dealing with the aspect of parentage, copy of the family register and voter

list are available on record and there are several revenue records pertaining to various fasli years filed by either of the parties claiming their rights to the property of Sita Ram. Accordingly, it is submitted that it is not a case where there is no material available on record and the matter could have been decided only after adducing those evidence but it seems that substantial evidence is available on record which has been adduced by either of the parties. It is on the basis of such evidence that the matter ought to have been decided.

8. - This Court also is of the view that the order for DNA test cannot be passed routinely. Only in rarest of rare cases where there is no other cogent and reliable evidence available on record that with the consent of the parties such order can be passed as DNA test and its result also involves right to privacy of the parties concerned. **Hon'ble Supreme Court in the case of Ashok Kumar Vs. Raj Gupta and others, (2022) 1 Supreme Court Cases 20** has held as under:-

"12. It was also the view of the Court that normal rule of evidence is that the burden is on the party that asserts the positive. But in instances where that is challenged, the burden is shifted to the party, that pleads the negative. Keeping in mind the issue of burden of proof, it would be safe to conclude that in a case like the present, the Court's decision should be rendered only after balancing the interests of the parties, i.e, the quest for truth, and the social and cultural implications involved therein. The possibility of stigmatizing a person as a bastard, the ignominy that attaches to an adult who, in the mature years of his life is shown to be not the biological son of his parents may not only be a heavy cross to bear but would also intrude upon his right of privacy.

13. DNA is unique to an individual (barring twins) and can be used to identify a person's identity, trace familial linkages or even reveal sensitive health information. Whether a person can be compelled to provide a sample for DNA in such matters can also be answered considering the test of proportionality laid down in the unanimous decision of this Court in K.S Puttaswamy v. Union of India⁵, wherein the right to privacy has been declared a constitutionally protected right in India. The Court should therefore examine the proportionality of the legitimate aims being pursued, 52019 (1) SCC 1 i.e whether the same are not arbitrary or discriminatory, whether they may have an adverse impact on the person and that they justify the encroachment upon the privacy and personal autonomy of the person, being subjected to the DNA Test."

9. - Same view has been reiterated in recent case of **Ivan Rathinam V. Milan Joseph** passed by Supreme Court in **Criminal Appeal No.413 of 2025** on 28.1.2025.

10. - In light of the above, the writ petition is **allowed**. Impugned order dated 17.11.2025 is set aside.

11. - Deputy Director of Consolidation is directed to consider and decide the matter on merits as well as relying upon the material available on record in accordance with law.

12. - As requested by the parties, let the matter be decided expeditiously, say within a period of four months from the date a certified copy of this order is placed before him, in accordance with law.

(2026) 1 ILRA 1016
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.01.2026

BEFORE

THE HON'BLE SIDDHARTH NANDAN, J.

Writ B No. 5318 of 2025

Prem Singh

...Petitioner

Versus

The State of U.P. & Ors.

...Respondents

Issue(s) for consideration

- (a) Whether there was lack of bonafides imputable to parties seeking condonation of delay?
- (b) Whether in the present facts on account of the inordinate delay, the Doctrine of Prejudice is attracted or not?
- (c) Whether the conduct, behaviour and attitude of a party leading to its inaction or negligence can be an attributable factor and the balance of justice between the parties in the background of a liberal approach, can be an acceptable factor, for condonation of delay?

Headnotes

A. Land Law – Land Revenue Act, 1901: Section 28 – Condonation of delay - The object of the period of limitation is that every legal remedy must be kept alive for a legislatively fixed period of time and the extension to the same or the condonation for the delay must be examined judiciously and whether 'sufficient cause' has been pleaded in the application or not. (Para 18)

In the background of the criminal cases between the parties and the nature of land being a 'Road', filing of a Restoration Application by merely stating that on getting the knowledge of the order dated 26-11- 2007, only after 11 years of delay, cannot be seen as a "sufficient cause" and shows lack of bonafide by the Applicant/Petitioner, to re-agitate an order passed on merit, after hearing the State, who was a necessary party and petitioner only a third party. (Para 20)

B. In the garb of the application for restoration/recall the review of the earlier order which has been passed decade ago cannot be permitted; as serious prejudice shall be caused to the respondent no.6. **The merit of the Recall Application could only have been considered, after giving a finding of "sufficient cause" and adequate explanation for the inordinate delay in filing the Application, which cannot be borne out of either of the restoration applications** i.e., of the petitioner or the State. (Para 23)

The Doctrine of Prejudice is fully attracted to the facts of the present case. It is not a case of delay of short duration or few days, which would warrant a liberal approach and as such issue no. 2 is decided in favour of the respondent no.6. Once order dated 26-11-2007 was passed on merit, after seeking a fact finding report and hearing the State, application on behalf of a person who is pivoted against the Respondent no. 6 in a criminal proceeding, could not warrant a liberal approach, as it seriously prejudices the other side and Law of Limitations has to be read in, to put at knot the proceedings. (Para 24)

C. When there is a plea for condonation of delay, be it at the instance of private litigant or a State, the delay is to be explained right from the time, the limitation starts, till it ends.

The Principle that the date of knowledge, if sufficiently pleaded and can be borne out from the facts of the case, is an adequate explanation for condonation of delay and the applicant is not required to furnish explanation for the period prior to the date of knowledge, cannot be made applicable in the facts of the present case; since the conduct, behaviour and attitude of a party relating to its in action or negligence, are found to be wanted, in the facts of the present case. This Court when weighs the scale of balance of justice in respect of both the parties, finds that the respondents are in settled position and no other villager has come forward to dispute the said settled position but for the petitioner, who admittedly is in conflict of interest and engaged in a legal battle with the respondent no.6. (Para 25)

D. It is no longer res integra that while considering application for condonation of delay, the Court do not enjoy unlimited and unbridled discretionary power. All discretionary power, specially judicial power have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reasons. Whims and fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary power. It is for the general welfare that a period be put to litigations and once the said period exceeds certain positive rights accrues in favour of the litigant, which can only be disturbed by showing "sufficient cause" and the explanation given has to be judged on the touchstone of some parameters evolved over time. (Para 27)

Impugned order dated 4.11.2025 was not an ex parte order and prior to passing of the order dated 26.11.2007 reports were called upon and as stated herein above the report categorically stated that an area from plot no.75 was taken out and merged in plot no.25. The order dated 26.11.2007 was an order on merit and could not have been recalled merely on the asking, as the rights have already matured and being exercised by the respondent no.6 for more than a decade now. The Board of Revenue has also given a finding that no explanation has been given in the restoration application/ Section 5 Application explaining the delay of 11 years for recall of the order dated 26.11.2007 which was an order on merit after hearing the affected parties. (Para 29)

There is a long drawn litigation between the petitioner and respondent no.6 and as such the settled position could not have been disturbed on an application at the behest of the Petitioner and the nature of the land being "public road", being used since long, is also a mitigating factor. The order dated 19.4.2023 was also an order not based on merit and as such the order dated 4.11.2025 passed by Board of Revenue cannot be faulted. From the perusal of the order date 19-04-2023, it also appears that without recording any reason whatsoever and by passing a cryptic order, the revision has been allowed. (Para 28, 30)

Writ petition dismissed. (E-4)

Case Law Cited:

1. Surajdeo Vs. Board of Revenue, U.P. Allahabad and others, AIR 1982 All. 23 (Para 6)
2. Vinay Kumar Chowdhary Vs. Ghanshyam Narain Kohli, 2001 (92) RD 453 (Para 7)
3. Union of India and others Vs. Jahangir Byramji Jeejeebhoy (D) through his L.R, AIR 2024 SC 1884 (Para 11)
4. N. Balakrishnan Vs. M. Krishnamurti, 1998 (7) SCC 123 (Para 12)
5. Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Others, (2013) 12 SCC 649 (Para 13)
6. State of Madhya Pradesh Vs. Ram Kumar Chaudhary, 2024 SCC Online SC 3612 (Para 19)
7. Smt. Shiv Raji and others Vs. Deputy Director of Consolidation and others, 1997 RD 562 (Para 22)
8. Surendra Kumar Jain Vs. Santo Bhai and others, 2025 INSC 230: MANU/SC/0226/2025 (Para 31)

List of Acts

Land Revenue Act, 1901.

List of Keywords

Condonation, delay, sufficient cause, liberal, prejudice, application, restoration.

Appearances for Parties:

For Petitioner(s): Vishal Khandelwal

For Respondent(s): Ajai Kumar Malviya, Avinash Chandra Srivastava, C.S.C., Rajesh Kumar Singh

(Delivered by Hon'ble Siddharth Nandan, J.)

1. Heard Sri Vishal Khandelwal, Advocate, learned counsel appearing for the petitioner, learned Standing Counsel on behalf of respondents no. 1 to 4, Sri Avinash Chandra Srivastava, Advocate, learned counsel appearing for the respondent no.5 and Sri Ajai Kumar Malviya, learned counsel for the respondent no.6.

2. Since the question involved is purely legal in nature, therefore, with the consent of the parties, the present writ petition is being decided at the admission stage itself.

Facts:-

3. The petitioner has assailed the order dated 4.11.2025 passed by the respondent no.2 in Revision No.86 of 2023 (Computerized No.AG202301010086) by way of which the remand order dated 19.4.2023 has been set aside. It is admitted between the parties that in proceedings under Section 28 of the Land Revenue Act, 1901 an order dated 26.11.2007 was passed in favour of the respondent no.6; and against which after more than 11 years a restoration application dated 23.6.2018 was filed by the State for recall of the order dated 26.11.2007 and similarly a restoration application dated 15.6.2018 was also filed by the petitioner for the recall of the very same order dated 26.11.2007, which was initially rejected vide order dated 29.1.2020 but subsequently the revision was allowed vide order dated 19.4.2023 and the matter was remanded back for fresh decision on the restoration application. It is against this order dated 19.4.2023 that a revision was filed before the Board of Revenue by respondent no.6 and vide order dated 4.11.2025 the said revision has been allowed, which is impugned to the present writ petition.

Arguments:-

4. Learned counsel for the petitioner has argued that a report which was submitted by Naib Tehsildar was only with respect to plot no.25 and no measurements were made regarding plot no.75, which admittedly belongs to respondent no.6 and as per his claim; and which was reduced by merging a part of the area in plot no.75 to plot no. 25. He has attracted our attention to the said report to state that the area of plot no.25 was found to be 0.553 hectares and the same remain unchanged but still vide the order dated 26.11.2007 the area from plot no.25 was merged into plot no.75, whereby giving unwarranted benefit to respondent no.6.

5. Per contra Sri Ajai Kumar Malviya, learned counsel for the respondent no.6 has submitted that the report dated 20.9.2007 (annexure-3) clearly indicates that an area out of plot no.75 was taken out and merged into plot no.25 and further that the order dated 26.11.2007 was passed after hearing the State and being passed on the basis of the report dated 20.9.2007; and at the behest of the petitioner, the same cannot be re-agitated, as such the present petition not being in the nature of

public interest litigation, the petitioner has no locus standi to challenge the said proceedings. He has further submitted that there are various criminal cases which are pending between the petitioner and respondent no.6, the details of which are given herein below:-

(i) Application U/S 482 No. 40621 of 2022, Prem Pratap Singh Vs. State of U.P. and another (S.T. No. 664 of 2018 (State Versus Jagvir and others), arising out of Case Crime No. 863 /2018, under Section 308, 506 IPC, Police Station- New Agra, District-Agra)

(ii) Application U/S 482 No. 4558 of 2024, Prem Singh and 6 others Vs. State of U.P. and others (S.T. No.1077 of 2023, arising out of Complaint Case No.136 of 2022 (Ranjeet Singh Vs. Prem Singh & others), under Section 395 I.P.C., P.S. Tajganj, District- Agra, pending in the court of learned Special Judge (D.A.A.)/Additional Sessions Judge, Court No.13, Agra.)

(iii) Criminal Misc. Bail Application No.42140 of 2023, Prem Singh Vs. State of U.P. and others (S.T. No.1077 of 2023, under Section 395 IPC, Police Station Tajganj, District Agra)

6. In response the counsel for the petitioner while relying upon the judgement of this Court in ***Surajdeo Vs. Board of Revenue, U.P. Allahabad and others***¹ has submitted that even a third person can bring correct facts to the notice of the courts concerned and the courts concerned will be fully justified in acting upon the information received. He has relied upon the para 14 & 18 of the said judgement which is reproduced herein below:-

"14. No doubt the observations made in the above case support the contention raised on behalf of the contesting opposite parties. To my mind, the observations made by the learned Member are too wide and they cannot be accepted as laying down quite correct law. There may be cases where a third per-son can bring correct facts to the notice of the courts concerned and the courts concerned will be fully justified in acting upon the information received and in exercising powers u/s 151 C. P. C. In the present case I think that the petitioner was fully justified in bringing correct facts to the notice of the trial court which rightly proceeded on the information received and has rightly set aside the ex parte decrees in favour of the contesting opposite parties.

18. The perusal of the judgment dated 10-6-1969 delivered by the trial court indicates that the trial court has set aside the ex parte decrees on the ground that fraud had been practised upon the Court and that there was no previous approval of the Assistant Collector in charge of the Sub-division for allotting the disputed land to the contesting opposite parties as Sirdars. To my mind, the trial court has set aside the ex parte decrees in favour of the contesting opposite parties on the ground that the ex parte decrees were passed in favour of the contesting opposite parties without looking into the provisions of law, hence the Court had committed an error of law in passing the ex parte decrees in favour of the contesting opposite parties which deserved quashing and were rightly set aside by the trial court through the order dated 10-3-1969. Thus a wrong committed by the trial court on 7-9-1962, in passing ex parte decrees in favour of the contesting opposite parties has been set right by the trial court through its later order dated 10-6-1969."

7. He has also relied upon the judgement of this Court in ***Vinay Kumar Chowdhary Vs. Ghanshyam Narain Kohli***², to submit that an application for condonation of delay can be filed by

a person not a party to the proceeding, merely with an averment that he has moved the application for recalling the order when he came to know with the order and as such he is not required to explain the delay. He has relied upon para 6 & 7 of the said judgement which is reproduced herein below:-

"6. Another reason for not interfering in the order is that application for condonation of delay in this case was only a formality, which was not at all required. The opposite party who moved the application was not a party to the proceedings and he moved the application for recalling the order when he came to know of the order. Therefore, he was not required to explain the delay. The only requirement was to show as to when he came to know the order. Therefore, the main question for consideration was regarding the ground for recalling the order. The first argument of the learned counsel for the revisionist therefore, cannot be accepted.

7. It is further contended that order 9 Rule 13 C.P.C. does not apply in the present case. It is contended that the opposite party was not party to the proceedings, therefore, he cannot take resort to the provisions of order 9, Rule 13 C.P.C. and his application was not maintainable. It is also contended that proceedings are miscellaneous proceedings and therefore, the provisions of Order 9, Rule 13 C.P.C. does not apply. "

Factual Consideration/Findings:-

8. The application dated 15.6.2018 indicates that the petitioner had gained the knowledge about the order dated 26.11.2007 from the Pradhan, Gram Panchayat on 4.6.2018 and accordingly he has filed the restoration application. Similarly, the restoration application dated 23.6.2018 filed by the State also contains the averments that when a complaint was made on 18.6.2018 and the records were checked, the State also came to know about the order dated 26.11.2007.

9. Learned counsel for the respondents have urged at this stage that the nature of the land is that of a road and the respondent no.6 was exercising his right over the area which was allowed to him vide order dated 26.11.2007 and accordingly, by merely stating that they got the knowledge subsequently in the year 2018 i.e. after 11 years, cannot be an acceptable explanation for filing the restoration application. As far as the judgement in the case of **Surajdeo (Supra)** is concerned it pertains to an ex-parte decree and was assailed on the ground of fraud, which is not applicable to the facts of the present case. The judgement in the case of **Vinay Kumar Chowdhary (Supra)** also pertains to reasoning given in the delay condonation application i.e. the date of knowledge is an acceptable explanation for not explaining the delay otherwise. However the statement regarding the date of knowledge cannot be accepted in the facts of the present case, as the nature of the Plot no. 25 is that of the 'Road' and since after the order dated 26-11-2007, Respondent no. 6 was exercising his rights over the same, it would have been a public knowledge; and also the criminal cases between the parties cannot be lost sight of. Therefore the ratio of **Vinay Kumar Chowdhary (Supra)** case is also not applicable in the present case.

10. This Court also takes note of the fact that it has become an increasing tendency between the litigants that in order to settle some score, the parties tend to open old settled issues, in order to harass the other side. However, this is not to mean that in case there is a "sufficient cause"

and inspite of due diligence but due to want of knowledge, an exercise of remedy has been omitted, then by way of providing a sufficient explanation to the delay, the parties cannot be precluded from exercising their remedy, which otherwise is available qua a proceedings.

11. The Apex Court while considering the law of limitation, in the case of **Union of India and others Vs. Jahangir Byramji Jeejeebhoy (D)** through his L.R.3 has recently re-affirmed a ratio, that the "Rules of Limitation" are based on the Principles of sound public policy and principles of equity and keeping in mind that the "Sword of Damocles" should not be left hanging over the head of one party, for indefinite period of time, to be determined at the whims and fancies of another party. It is also not the intent of the Legislatures, that "Rules of Limitation" are meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics, but seek their remedy promptly.

12. The Apex Court in the case of **N. Balakrishnan Vs. M. Krishnamurti**⁴ in para 11 held as follows:-

"... It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

13. In the case of **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Others**,⁵ the Apex Court laid down the following Principles:

"21. From the aforesaid authorities, the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

21.7. (vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8. (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9. (ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

21.10. (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11. (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

21.12. (xii) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

21.13. (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

22.2. (b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

22.3. (c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

22.4. (d) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."*

Issues:-

14. From the aforesaid broader Principles, though they are not exhaustive, this Court finds that the questions to be determined in the facts of the present case are:-

(i) whether there was lack of bonafides imputable to parties seeking condonation of delay; and

(ii) whether in the present facts on account of the inordinate delay, the Doctrine of Prejudice is attracted or not; and

(iii) whether the conduct, behaviour and attitude of a party leading to its inaction or negligence can be an attributable factor and the balance of justice between the parties in the background of a liberal approach, can be an acceptable factor, for condonation of delay?

Issue No. 1

15. The admitted facts of the present case are that in proceeding under Section 28 of the Code, 2006 an order was passed in favour of the respondent no.6, as long back as on 26.11.2007; and it is only in the year 2018 that the recall applications have been filed, with a sole explanation that the date of knowledge for the petitioner as well as the State was in June, 2018 and whereafter the recall applications dated 23.6.2018 and 15.6.2018 have been filed. It is also not disputed between the parties that plot no.25 is in the nature of a "road" which is being utilized by the public at large, in the village.

16. It is a specific case of Respondent no.6, that he was utilizing the area which had merged in plot no.75 of which he is the tenure-holder; soon after the passing of the order dated 26.11.2007. In the said factual position, it cannot be lost sight of the fact that the reduced area of the road which is over Plot no.25, would have been evident and was an acceptable factor for the villagers, soon after passing of the order dated 26.11.2007.

17. Therefore, in the aforesaid admitted facts, it cannot be reasonably conceived that the petitioner was not aware of the area which has been reduced; and as such the maxim "*interest reipublicae ut sit finis litium*" (it is for the general welfare that a period be put a litigation) is attracted, and a cloak of Elvenkind, cannot be permitted, as a camouflage, from giving a reasonable explanation to the delayed Application, sans a "sufficient cause".

18. The object of the period of limitation is that every legal remedy must be kept alive for a legislatively fixed period of time and the extension to the same or the condonation for the delay must be examined judiciously and whether "sufficient cause" has been pleaded in the application or not.

19. The Apex Court in the case of **State of Madhya Pradesh Vs. Ram Kumar Chaudhary**⁶ examined the question regarding the discretion to condone the delay and held that the delay has to be exercised judiciously based on the facts and circumstances of each case and that, the expression "sufficient cause" cannot be liberally interpreted, if negligence in action or lack of bona fide is attributed to the party; and delay cannot be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. The ratio of **Union of India v. Jahangir Byramji Jee Jee Bhoy (D) (Supra)** has also been referred with affirmation in **State of Madhya Pradesh v. Ram Kumar Chaudhary (Supra)**. The relevant passage of the same is profitably extracted below:-

" 24. In the aforesaid circumstances, we made it very clear that we are not going to look into the merits of the matter as long as we are not convinced that sufficient cause has been made out for condonation of such a long and inordinate delay.

25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.

26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the "Sword of Damocles" hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

34. In view of the aforesaid, we have reached to the conclusion that the High Court committed no error much less any error of law in passing the impugned order. Even otherwise, the High Court was exercising its supervisory jurisdiction under Article 227 of the Constitution of India.

35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.

36. For all the foregoing reasons, this appeal fails and is hereby dismissed. There shall be no order as to costs."

20. In consideration of the settled legal position, there is no hesitation in my mind that in the background of the criminal cases between the parties and the nature of land being a "Road", filing of a Restoration Application by merely stating that on getting the knowledge of the order dated 26-11-2007, only after 11 years of delay, cannot be seen as a "sufficient cause" and shows lack of bonafide by the Applicant/Petitioner, to re-agitate an order passed on merit, after hearing the State, who was a necessary party and petitioner only a third party.

Issue No. 2

21. A perusal of the order dated 26.11.2007 and the report dated 20.9.2007 gives sufficient evidence that area out of Plot no.75 was taken out and merged into plot no.25 and accordingly the prejudice was caused to respondent no.6; which cause of action resulted in the order dated 26.11.2007 passed under Section 28 of the Code, 2006 in favour of the respondent no.6.

22. The aforesaid order and the report also makes it evident that the same was passed after hearing the State and perusal of the report dated 20.9.2007. Now the question which also requires consideration is whether a third party after an inordinate delay of 11 years can move a restoration application, by merely stating that the date of knowledge was subsequent and as already stated herein above considering the nature of the land being "road", can such a plea be accepted on the face of it. It will also be fruitful to have reference to the Full Bench decision of this Court reported in ***Smt. Shiv Raji and others vs. Deputy Director of Consolidation and others***⁷ wherein it was found that once after service of notice upon the opposite parties (State/Gaon Sabha) an order has been passed on merit, an application in the garb of recall/restoration cannot lie before the authorities. The State/Gaon Sabha was fully aware of the proceedings and even the petitioner who claims himself to be the resident of the same village, cannot plead that though the area of the road was reduced as long back in the year 2007, he was not aware and suddenly when there arose a criminal dispute between the parties, he was informed about the order dated 26.11.2007 and as such, as a third party, he filed a recall application.

23. That the Board of Revenue vide its order dated 4.11.2025 while allowing the revision has unsettled the position which existed since 2007 and the respondent no.6 is now being subjected to a fresh proceeding altogether. In the garb of the application for restoration/recall the review of the

earlier order which has been passed decade ago cannot be permitted; as serious prejudice shall be caused to the respondent no.6. The merit of the Recall Application could only have been considered, after giving a finding of "sufficient cause" and adequate explanation for the inordinate delay in filing the Application, which cannot be borne out of either of the restoration applications i.e., of the petitioner or the State.

24. In view of the aforesaid, I have no hesitation in holding that the Doctrine of Prejudice is fully attracted to the facts of the present case. It is not a case of delay of short duration or few days, which would warrant a liberal approach and as such issue no. 2 is decided in favour of the respondent no.6. Once order dated 26-11-2007 was passed on merit, after seeking a fact finding report and hearing the State, application on behalf of a person who is pivoted against the Respondent no. 6 in a criminal proceeding, could not warrant a liberal approach, as it seriously prejudices the other side and Law of Limitations has to be read in, to put at knot the proceedings.

Issue no.3

25. It is also an admitted fact that there exist various criminal litigations between the petitioner and the respondent no.6 and suddenly when the said dispute arose between the parties, respondent no.6 procures the knowledge that the order dated 26.11.2007 is to be challenged, unsettling a settled position. In the said background, it cannot be said that a party who has lost his right because of his own in action for a long, is to be heard and the substantial justice deserves to be preferred as against the technical consideration. When there is a plea for condonation of delay, be it at the instance of private litigant or a State, the delay is to be explained right from the time, the limitation starts, till it ends. The Principle that the date of knowledge, if sufficiently pleaded and can be borne out from the facts of the case, is an adequate explanation for condonation of delay and the applicant is not required to furnish explanation for the period prior to the date of knowledge, cannot be made applicable in the facts of the present case; since the conduct, behaviour and attitude of a party relating to its in action or negligence, are found to be wanted, in the facts of the present case. This Court when weighs the scale of balance of justice in respect of both the parties, finds that the respondents are in settled position and no other villager has come forward to dispute the said settled position but for the petitioner, who admittedly is in conflict of interest and engaged in a legal battle with the respondent no.6.

26. In view of the aforesaid the conduct of the petitioner is seriously questionable and as such the date of knowledge cannot be a sufficient explanation for condonation of delay and for not providing "sufficient cause" for the condonation of delay. As far as the State is concerned, they were party to the proceedings under Section 28 of the Code, 2006 which culminated in the order dated 26.11.2007 and as such their explanation that when a complaint was made, they came to know about the order dated 26.11.2007, again cannot be accepted.

Conclusion:-

27. It is no longer res integra that while considering application for condonation of delay, the Court do not enjoy unlimited and unbridled discretionary power. All discretionary power, specially judicial power have to be exercised within reasonable bounds, known to the law. The discretion has

to be exercised in a systematic manner informed by reasons. Whims and fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary power. It is for the general welfare that a period be put to litigations and once the said period exceeds certain positive rights accrues in favour of the litigant, which can only be disturbed by showing "sufficient cause" and the explanation given has to be judged on the touchstone of:-

- (1) lack of bona fide imputable to a party seeking condonation of delay.
- (2) Liberal, pragmatic, justice oriented, non-pedantic approach for condonation of delay cannot be used to legalise injustice.
- (3) No presumptions can be attached but for gross negligence on the part of the counsel or litigant is to be taken note of.
- (4) the Doctrine of Prejudice is to be seen in cases of inordinate delay and as to whether any mischief is sought to be caused for which the conduct behaviour and attitude of a party is also to be seen.
- (5) The explanation has to be seen in the facts of each case and merely by emphasising a particular date of knowledge, it cannot form basis of relieving the applicant from giving explanation from the date of the limitation, till the actual date of filing of the application.
- (6) Fraud, misinterpretation can be an exception, but subject to the same being established by cogent evidence. State or a public body or an entity representing a collective cause can be given some acceptable latitude but before the same, the factual controversy is to be examined meticulously and cannot be allowed in a routine manner.

28. In the present case since plot no.25 pertains to a road and respondent no.6 having given a right vide order dated 26.11.2007, it can not be presumed that he was not exercising his right over the said road and as such the delay cannot be condoned merely on the statement that the date of knowledge was procured subsequently.

29. I have also perused the impugned order dated 4.11.2025. It is admitted that the order was not an ex parte order and prior to passing of the order dated 26.11.2007 reports were called upon and as stated herein above the report categorically stated that an area from plot no.75 was taken out and merged in plot no.25. The order dated 26.11.2007 was an order on merit and could not have been recalled merely on the asking, as the rights have already matured and being exercised by the respondent no.6 for more than a decade now. The Board of Revenue has also given a finding that no explanation has been given in the restoration application/Section 5 Application explaining the delay of 11 years for recall of the order dated 26.11.2007 which was an order on merit after hearing the affected parties.

30. The Court is also conscious of the fact that there is a long drawn litigation between the petitioner and respondent no.6 and as such the settled position could not have been disturbed on an application at the behest of the Petitioner and the nature of the land being "public road", being used

since long, is also a mitigating factor. The order dated 19.4.2023 was also an order not based on merit and as such the order dated 4.11.2025 passed by Board of Revenue cannot be faulted. From the perusal of the order date 19-04-2023, it also appears that without recording any reason whatsoever and by passing a cryptic order, the revision has been allowed.

31. The Apex Court in the case of **Surendra Kumar Jain Vs. Santo Bhai and others**⁸ has held that recording of reasons are sine qua non, after considering the factual matrix of each and every case.

32. In view of the aforesaid facts and circumstances, no succor can be given to the petitioner, as I do not find any merit in the writ petition and accordingly the same stands dismissed. However no order as to costs.

33. Before parting with the judgement, I would like to put in a word of appreciation for my Research Associate Miss Pratibha Verma for her dexterity in research and superlative assistance in drafting of this judgement.

(2026) 1 ILRA 1028
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 20.01.2026

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ C No. 27 of 2026

Masjid Gaura Sailak Waqf

...Petitioner

Versus

Addl. Survey Waqf Commissioner D.M., Barabanki & Ors.

...Respondents

Issue(s) for consideration

Whether the petition is maintainable in proceedings u/s 34 of U.P. Revenue Code?

Headnotes

A. Writ Law – U.P. Revenue Code: Section 34/35; Waqf Act, 1995: Section 28, 85 – Maintainability - Orders of mutation are passed on the basis of possession and since no substantive rights of the parties are decided, ordinarily a writ petition would not be entertainable against such orders unless the same are found to be wholly without jurisdiction or have the effect of rendering findings which are contrary to title already decided by a competent court. (Para 16)

The High Court does not entertain a writ petition arising out of mutation proceedings u/Article 226 of the Constitution of India for the reason that mutation proceedings are only summarily drawn on the basis of possession and the parties have a right to get the title adjudicated by regular suit. (Para 14)

The mutation proceedings being of a summary nature drawn on the basis of possession do not decide any question of title and the orders passed in such proceedings do not come in the way of a person in getting his

rights adjudicated in a regular suit. It is for this reason that it has consistently been held that such petitions are not to be entertained in exercise of powers under Article 226 of the Constitution of India. (Para 26)

Writ petition dismissed. (E-4)

Case Law Cited

1. Jaipal Vs. Board of Revenue, U.P., Allahabad & Ors., AIR 1957 ALL 205 (Para 13)
2. Sri Lal Bachan Vs. Board of Revenue, U.P., Lucknow & Ors., 2002 (93) RD 6 (Para 14)
3. Bindeshwari Vs. Board of Revenue & Ors., 2025 (1) AWC 498 (Para 15)
4. Vinod Kumar Rajbhar Vs. State of U.P. and others, 2012 (1) ADJ 792 (Para 16)
5. Buddh Pal Singh Vs. State of U.P. & Ors., 2012 (5) ADJ 266 (Para 17)
6. Bhimabai Mahadeo Kambekar Vs. Arthur Import and Export Company & Ors., (2019) 3 SCC 191 (Para 18)
7. Balwant Singh Vs. Daulat Singh¹¹ and Narasamma Vs. State of Karnataka, (2009) 5 SCC 591 (Para 18)
8. Faqrudin Vs. Tajuddin, (2008) 8 SCC 12 (Para 19)
9. Narain Prasad Aggarwal Vs. State of Madhya Pradesh, (2007) 11 SCC 736 (Para 20)
10. Union of India and others Vs. Vasavi Cooperative Housing Society Limited & Ors., (2014) 2 SCC 269 (Para 21)
11. Corpn. of the City of Bangalore Vs. M. Papaiah, (1989) 3 SCC 612 (Para 21)
12. Guru Amarjit Singh Vs. Rattan Chand, (1993) 4 SCC 349 (Para 21)
13. H.P. Vs. Keshav Ram, (1989) 11 SCC 257 (Para 21)
14. Sawarni (Smt.) Vs. Inder Kaur (Smt.) and others, (1996) 6 SCC 223 (Para 22)
15. Suraj Bhan and others Vs. Financial Commissioner and others, (2007) 6 SCC 186 (Para 23)
16. Harish Chandra Vs. Union of India & Ors., 2019 (5) ADJ 212 (DB) (Para 24)
17. Mahesh Kumar Juneja and another Vs. Additional Commissioner Judicial Moradabad Division and others, 2020 (146) RD 545 (Para 24)
18. Jitendra Singh Vs. State of Madhya Pradesh and others., 2021 SCC OnLine SC 802 (Para 25)
19. Suman Verma Vs. Union of India, (2004) 12 SCC 58 (Para 25)
20. Rajinder Singh Vs. State of J & K, (2008) 9 SCC 368 (Para 25)
21. Municipal Corporation, Aurangabad Vs. State of Maharashtra, (2015) 16 SCC 689 (Para 25)
22. T Ravi Vs. B. Chinna Narasimha, (2017) 7 SCC 342 (Para 25)
23. Bhimabai Mahadeo Kambekar Vs. Arthur Import & Export Co., (2019) 3 SCC 191 (Para 25)
24. Prahlad Pradhar Vs. Sonu Kumhar, (2019) 10 SCC 259 (Para 25)
25. Ajit Kaur Vs. Darshan Singh, (2019) 13 SCC 70 (Para 25)

List of Acts

U.P. Revenue Code; Waqf Act, 1995.

List of Keywords

property, mutation, title, revenue, record, maintainable, possession, substantive, summary.

Appearances for Parties

For Petitioner(s): Sajjad Husain, Badar Iftikhar, Kulsoom Firoz

For Respondent(s): Ajay Kumar Pandey, Mohammed Hamza Shamim, Mohan Singh

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Sri Sajjad Husain, learned counsel for the petitioner, Dr. Krishna Singh, learned Standing counsel on behalf of respondent No.s 1 and 2 and Sri Mohammed Hamza on behalf of respondent No.5.

2. The dispute in the present case pertains to mutation of property situated at gata No.s 137/0.840 hectare, 401/0.296 hectare, 397/0.679 hectare total three numbers having a total area of 1.815 hectare of khata No.152 in Village Gaura Sailak, Pargana and Tehsil Fatehpur, District Barabanki. It has been submitted that on the aforesaid land a mosque is existing which is in the name and style of Masjid Gaura Sailak and previously name of Sri Puttu Khan was recorded as Mutwalli as per the order dated 17.7.1979 passed by Tehsildar, Tehsil Fatehpur, District Barabanki. It has been submitted that all the Mutwallis are replaced from time to time and subsequently an application was preferred by one Aqif Kamaal Ayoobi for mutating his name in the revenue records against gata No.s 137/0.840 hectare, 401/0.296 hectare, 397/0.679 situated in Village Gaura Sailak, Pargana and Tehsil Fatehpur, District Barabanki. It has been submitted that recommendations in favour of the applicant has been made by opposite party No.4, namely Sunni Central Waqf Board.

3. The application was opposed by filing objections by one Mohammad Naseem i.e. opposite party No.8 stating that the society Madarsa Darul Uloom Gulshan A Raza Gaura Sailak is the competent authority to look after the working of the said masjid and consequently opposed the application of the petitioner under Section 34/35 of U.P. Revenue Code. The Tehsildar rejected the objections filed by opposite party No.8 and allowed the application of the petitioner vide order dated 4.4.2024 directing that name of the applicant be recorded in the revenue records.

4. Against the order dated 4.4.2024 an appeal was filed before Sub Divisional Magistrate, who also considered the entire records produced by rival parties and found that the term of the society of the petitioner had expired on 17.9.2018 and had not been renewed thereafter and consequently found that the order of Tehsildar was illegal and arbitrary and, hence, allowed the appeal setting aside order dated 4.4.2024 and also remanded the matter to the Tehsildar for consideration afresh.

5. Learned counsel for the petitioner has vehemently submitted that as per the provisions of Section 28 of Waqf Act, 1995 District Magistrate, Additional District Magistrate or Sub Divisional Magistrate have to implement the orders of the Sunni Central Waqf Board. He submits that the appellate authority was sub Divisional Magistrate, therefore, he was bound to comply with the directions issued by Sunni Central Waqf Board and the Sub Divisional Magistrate could not have passed an order contrary to the order passed by Sunni Central Waqf Board.

6. Learned counsel for the petitioner has further submitted that as per provisions of Section 85 of the Waqf Act, 1995 no suit or other legal proceeding shall lie in any civil court, revenue court and any other authority in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under this Act to be determined by a Tribunal.

7. Learned Standing counsel, on the other hand has opposed the prayer made by the petitioner. He submits that it is the petitioner who had approached the Tehsildar by moving application under Section 34/35 of U.P. Revenue Code for mutating the name of the petitioner in the revenue records against the disputed property. Once the Tehsildar has considered the entire matter and passed appropriate orders by means of order dated 4.4.2024, it cannot be said that no appeal would lie before Sub Divisional Magistrate in accordance with the provisions contained under Section 28 and 85 of the Waqf Act, 1995. He has further submitted that the words 'District Magistrate', 'Additional

District Magistrate', or 'Sub Divisional Magistrate' in respect of Section 28 and 85 of the Waqf Act, 1995 would not mean the competent authority under U.P. Revenue Act i.e. Tehsildar, Sub Divisional Officer and the appellate authority constituted under the said Act to decide the dispute in exercise of the powers under Sections 34/35, 207 i.e. appellate authority and 210 i.e. revisional authority. He further submits that bar of jurisdiction of civil courts and other authorities is only as per the provisions of Section 85 of the Waqf Act, 1995 and it only states that any disputed questions or other matters related to the working of a waqf committee or other such matters which is mentioned under the Waqf Act be determined or adjudicated when there is no provision under the Waqf Act to decide upon the questions of mutation proceedings in the revenue records and, therefore, submits that the objections raised by the petitioner are baseless and the petition deserves to be dismissed.

8. I have heard the rival contentions and perused the records.

9. It is noticed that the disputed questions of fact as emerged with regard to mutation of the property on which masjid is existing i.e. the land situated at gata No.s 137/0.840 hectare, 401/0.296 hectare, 397/0.679 situated in Village Gaura Sailak, Pargana and Tehsil Fatehpur, District Barabanki, the application of the petitioner was duly considered and allowed by Tehsildar by means of order dated 4.4.2024 and it seems that recommendation in favour of the petitioner are also accepted by the Sunni Central Waqf Board. It is only in the appellate proceedings before the Sub Divisional Magistrate that it has been found that there are certain infirmities with regard to tenure of the society of the petitioner, according to which, his term had expired in 2018 and has not been renewed and subsequently even though the petitioner has submitted that the finding is perverse and the term has been extended but considering that the dispute in the present case pertains to only mutation of the property which pertains to only to a person who is entitled to pay revenue to the government and does not declare right, title or interest of the person who is entitled to the said property and in case any person wants to seek declaration with regard to right, right or interest over the disputed land, that power is provided to the civil court of competent jurisdiction and such a declaration cannot be sought in mutation proceedings under Section 34/35 of U.P. Revenue Code. Apart from the above, this Court finds that the objections of the petitioner pertains to jurisdiction of Sub Divisional Magistrate under Section 28 and 85 of the Waqf Act are baseless and are accordingly rejected.

10. It is only the District Magistrate, Additional District Magistrate or Sub Divisional Magistrate who are in their capacity under any other enactment as the District Magistrate, Additional District Magistrate or the Sub Divisional Magistrate are directed to implement the orders of Waqf Board but while exercising the powers under U.P. Revenue Code that competent authority to consider appropriate application, appeal and revisions and accordingly such discharge of powers cannot be controlled by the provisions contained under Section 28 of Waqf Act, 1995. Waqf Tribunals have jurisdiction only over properties notified in the 'list of Auqaf' as provided in Chapter II or registered under Chapter V of the Waqf Act, and not over disputes concerning unregistered properties.

11. Apart from the above, we are in agreement with the arguments of learned Standing counsel that bar under Section 85 would not come in the way of proceedings for mutation under Section 34

of U.P. Revenue Code but bar under Section 85 only extends to such matters which can be determined by the Tribunal pertaining to a person who is entitled to pay revenue or any other aspect pertaining to Waqf Act and accordingly we find that bar under section 85 is also not attracted in the present case. Section 83 of Waqf Act, 1995 mentions the constitution of Tribunal for determination of any disputed question or other matters relating to a waqf or waqf property and the aforesaid Act bars the jurisdiction of courts to entertain the dispute relating to waqf or waqf property but the dispute in the present matter does not relate to the right and title as well as nature of waqf property rather it relates to mutation proceedings and admittedly the waqf Tribunal has got no power to pass an order of mutation because the aforesaid power lies with revenue officials.

12. The aspect as to whether the petition is maintainable in proceedings under Section 34 of U.P. Revenue Code has been considered by this Court in numerous judgments and it has consistently been held that normally the High Court in exercise of its discretionary jurisdiction does not entertain writ petitions against such orders which arise out of summary proceedings.

13. In the case of **Jaipal Vs. Board of Revenue, U.P., Allahabad & Ors. AIR 1957 ALL 205**, notice was taken of the consistent practice of this Court not to interfere with the orders made by the Board of Revenue in cases in which the only question at issue was whether the name of the petitioner should be entered in the record of rights. The observations made in the judgment in this regard are as follows:-

"3. ...It has however been the consistent practice of this Court not to interfere with orders made by the Board of Revenue in cases in which the only question at issue is whether the name of the petitioner should be entered in the record of rights.

That record is primarily maintained for revenue purposes and an entry therein has reference only to possession. Such an entry does not ordinarily confer upon the person in whose favour it is made any title to the property in question--"

14. The question with regard to the maintainability of a writ petition arising out of mutation proceedings fell for consideration in the case of **Sri Lal Bachan Vs. Board of Revenue, U.P., Lucknow & Ors., 2002 (93) RD 6**, and it was held that the High Court does not entertain a writ petition under Article 226 of the Constitution of India for the reason that mutation proceedings are only summarily drawn on the basis of possession and the parties have a right to get the title adjudicated by regular suit. The observations made in the judgment are extracted below:-

"11. This Court has consistently taken the view as is apparent from the decisions of this Court referred above that writ petition challenging the orders passed in mutation proceedings are not to be entertained. To my mind, apart from there being remedy of getting the title adjudicated in regular suit, there is one more reason for not entertaining such writ petition. The orders passed under Section 34 of the Act are only based on possession which do not determine the title of the parties. Even if this Court entertains the writ petition and decides the writ petition on merits, the orders passed in mutation proceedings will remain orders in summary proceedings and the orders passed in the proceedings will not finally determine the title of the parties."

15. Reiterating a similar view in the case of **Bindeshwari Vs. Board of Revenue & Ors., 20025 (1) AWC 498**, it was stated that mutation proceedings do not adjudicate the rights of parties and orders passed in the said proceedings are always subject to adjudication by the competent court and therefore a writ petition against an order in mutation proceedings would not be entertainable. It was observed as follows:-

"11. ...The present writ petition arising out of the summary proceeding of mutation under Section 34 of U.P. Land Revenue Act, cannot be entertained under Article 226 of the Constitution of India. The mutation proceedings do not adjudicate the rights of the parties and orders passed in the mutation are always subject to adjudication by the competent court."

16. The settled legal position that orders of mutation are passed on the basis of possession and since no substantive rights of the parties are decided, ordinarily a writ petition would not be entertainable against such orders unless the same are found to be wholly without jurisdiction or have the effect of rendering findings which are contrary to title already decided by a competent court, was reiterated in the case of **Vinod Kumar Rajbhar Vs. State of U.P. and others, 2012 (1) ADJ 792**.

17. Taking note of the nature and scope of mutation proceedings which are summary in nature and also the fact that orders in such proceedings are passed on the basis of possession of the parties and no substantive rights are decided, this Court in **Buddh Pal Singh Vs. State of U.P. & Ors., 2012 (5) ADJ 266**, restated the principle that ordinarily a writ petition in respect of orders passed in mutation proceedings is not maintainable. It was observed as follows:-

"7. It is equally settled that the orders for mutation are passed on the basis of the possession of the parties and since no substantive rights of the parties are decided in mutation proceedings, ordinarily a writ petition is not maintainable in respect of orders passed in mutation proceedings unless found to be totally without jurisdiction or contrary to the title already decided by the competent court. The parties are always free to get their rights in respect of the disputed land adjudicated by competent court."

18. The proposition that mutation entries in revenue records do not create or extinguish title over land nor such entries have any presumptive value on title has been restated in a recent decision in the case of **Bhimabai Mahadeo Kambekar Vs. Arthur Import and Export Company & Ors., (2019) 3 SCC 191**, placing reliance upon earlier decisions in **Balwant Singh Vs. Daulat Singh¹¹ and Narasamma Vs. State of Karnataka, (2009) 5 SCC 591**. The observations made in the judgment are as follows:-

"6. This Court has consistently held that mutation of a land in the revenue records does not create or extinguish the title over such land nor has it any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. (See Sawarni v. Inder Kaur, Balwant Singh v. Daulat Singh and Narasamma v. State of Karnataka)."

19. Reference may also be had to the judgment in *Faqrudin Vs. Tajuddin*, (2008) 8 SCC 12, wherein it was held that the revenue authorities cannot decide questions of title and that mutation takes place only for certain purposes. The observations made in this regard are as follows:-

"45. Revenue authorities of the State are concerned with revenue. Mutation takes place only for certain purposes. The statutory rules must be held to be operating in a limited sense... It is well-settled that an entry in the revenue records is not a document of title. Revenue authorities cannot decide a question of title."

- 20. A similar observation was made in **Narain Prasad Aggarwal Vs. State of Madhya Pradesh**, (2007) 11 SCC 736, wherein it was held as follows:-

"19. Record-of-right is not a document of title. Entries made therein in terms of Section 35 of the Evidence Act although are admissible as a relevant piece of evidence and although the same may also carry a presumption of correctness, but it is beyond any doubt or dispute that such a presumption is rebuttable--"

21. In **Union of India and others Vs. Vasavi Cooperative Housing Society Limited & Ors.**, (2014) 2 SCC 269, the principle that entries in revenue records do not confer any title was reiterated and referring to the previous decisions in **Corpn. of the City of Bangalore v. M. Papaiah**, (1989) 3 SCC 612; **Guru Amarjit Singh v. Rattan Chand**, (1993) 4 SCC 349, and **H.P. v. Keshav Ram**, (1989) 11 SCC 257, it was stated thus :-

"21. This Court in several judgments has held that the revenue records do not confer title. In Corpn. of the City of Bangalore v. M. Papaiah this Court held that: (SCC p. 615, para 5)

"5. ...It is firmly established that the revenue records are not documents of title, and the question of interpretation of a document not being a document of title is not a question of law."

In Guru Amarjit Singh v. Rattan Chand this Court has held that: (SCC p. 352, para 2)

"2. ...that entries in the Jamabandi are not proof of title."

In State of H.P. v. Keshav Ram this Court held that: (SCC p. 259, para 5)

"5. ...an entry in the revenue papers by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs."

22. A similar view was taken in the case of **Sawarni (Smt.) Vs. Inder Kaur (Smt.) and others**, (1996) 6 SCC 223. and it was observed that the mutation of name in the revenue records does not have the effect of creating or extinguishing the title nor has any presumptive value on title and it only enables the person concerned to pay land revenue. It was stated thus :-

"7...Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question--"

23. The principle that an entry in revenue records is only for fiscal purpose and does not confer title on a person whose name appears in record-of-rights and title to the property can only be decided by a competent civil court was reiterated in the decision of Suraj Bhan and others Vs. Financial Commissioner and others, (2007) 6 SCC 186, and it was stated as follows :-

"9...It is well settled that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. It is settled law that entries in the revenue records or jamabandi have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil court--"

24. The legal position that entries in revenue records do not confer any title has been considered and discussed in a recent decisions of this Court in Harish Chandra Vs. Union of India & Ors., 2019 (5) ADJ 212 (DB), and Mahesh Kumar Juneja and another Vs. Additional Commissioner Judicial Moradabad Division and others, 2020 (146) RD 545 and it was restated that ordinarily orders passed by mutation courts are not to be interfered in writ jurisdiction as they are summary proceedings, and as such subject to a regular suit.

25. The settled legal position that an entry in revenue records does not confer title on a person whose name appears in record-of-rights and that such entries are only for "fiscal purpose" and no ownership is conferred on the basis thereof and further that the question of title of a property can only be decided by a competent civil court has again been restated in a recent decision of the Supreme Court in **Jitendra Singh Vs. State of Madhya Pradesh and others., 2021 SCC OnLine SC 802**, wherein after referring to the previous authorities on the point in **Suraj Bhan Vs. Financial Commissioner, (2007) 6 SCC 186, Suman Verma Vs. Union of India, (2004) 12 SCC 58, Faqrudhin Vs. Tajuddin, Rajinder Singh Vs. State of J & K, (2008) 9 SCC 368, Municipal Corporation, Aurangabad Vs. State of Maharashtra, (2015) 16 SCC 689, T Ravi Vs. B. Chinna Narasimha, (2017) 7 SCC 342, Bhimabai Mahadeo Kambekar Vs. Arthur Import & Export Co., (2019) 3 SCC 191, Prahlad Pradhar Vs. Sonu Kumhar, (2019) 10 SCC 259 and Ajit Kaur Vs. Darshan Singh, (2019) 13 SCC 70**, it was observed thus :-

"8. In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only "fiscal purpose", i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faqrudhin v. Tajuddin, (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70."

26. The mutation proceedings being of a summary nature drawn on the basis of possession do not decide any question of title and the orders passed in such proceedings do not come in the way of a person in getting his rights adjudicated in a regular suit. It is for this reason that it has consistently been held that such petitions are not to be entertained in exercise of powers under Article 226 of the Constitution of India. The consistent legal position with regard to the nature of mutation proceedings, as has been held in the previous decisions, may be stated as follows :-

(i) mutation proceedings are summary in nature wherein title of the parties over the land involved is not decided;

(ii) mutation order or revenue entries are only for the fiscal purposes to enable the State to collect revenue from the person recorded;

(iii) they neither extinguish nor create title;

(iv) mutation in revenue records does not have any presumptive value on the title and no ownership is conferred on the basis of such entries;

(v) the order of mutation does not in any way effect the title of the parties over the land in dispute; and

(vi) such orders or entries are not documents of title and are subject to decision of the competent court.

27. Accordingly, this Court finds that the petition is bereft of merits and is accordingly **dismissed**.

28. However, we observe that in case the petitioner wishes to seek declaration with regard to his right, title or interest in the disputed property, it shall be open for him to approach the court of competent jurisdiction for seeking appropriate reliefs in this regard.

(2026) 1 ILRA 1036
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 09.01.2026

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ C No. 130 of 2026

Shivdhari

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

Whether not raising construction within three years (the prescribed time) can automatically lead to cancellation of allotment?

Headnotes

A. Property Law/Land Law – U.P. Revenue Code Rules, 2016: Section 66, Rule 64 - Contingencies for invoking the provisions of Section 66(1) for cancellation of allotment - The first being that the Collector may take cognizance on his own motion and secondly he can initiate proceedings on an application by a person who is aggrieved by the allotment. The Collector on his own motion can, at any time, initiate proceedings for cancellation of the allotment within a reasonable time but any person, who is aggrieved by the allotment, is bound to move such an application within three years of the date of allotment.

In the present case, the petitioner has gone at length to indicate that he is an aggrieved person in as much as the private respondents started construction on the portion of the allotted land on which the petitioner also claims his rights and, therefore, he claims himself to be an aggrieved person. Accordingly, in such a situation the three years limitation prescribed u/s 66(2) would come into operation and such application by an aggrieved person can be moved only within three years from the date of allotment. (Para 14)

B. Rule 64(2)(b) - In case an allottee fails to comply with the terms and conditions w.r.t. construction of house within the time prescribed, the Collector may cancel the allotment in accordance with Section 66. (Para 15)

The issue pertaining to allotment of *patta* sites is a beneficial piece of legislation and should be interpreted in a liberal manner so as to fulfill the objects sought to be achieved rather than to curtail rights of the person for whom the allotment has been made. (Para 16)

With regard to the persons belonging to scheduled castes and scheduled tribes the period of limitation has been done away with which fact also goes to show that the time period for constructing a house on *patta* sites is not mandatory condition. This Court is also of the considered view that merely because a person has not raised construction within three years can automatically lead to cancellation of his allotment. (Para 17)

C. To ensure effectiveness of the provision for allotment of residential sites and to ensure its compliance it is undoubtedly necessary that the land should be used for the purpose of construction of a house within a reasonable time.

In case, for any reason, the allottee has not been able to construct house, notice should certainly be given to him requiring him to construct his house within the time prescribed and even if within the time prescribed he or she does not construct house it would certainly be open for the Collector to invoke the powers under Sub clause 2 (b) of Rule 64 and cancel the allotment. (Para 18)

No merit is found in the challenge made to the impugned orders rejecting his claim for cancellation for allotment after a period of three years which was highly belated and the application was rightly rejected by both the authorities below. (Para 19)

Writ petition dismissed. (E-4)

List of Acts

U.P. Revenue Code Rules, 2016.

List of Keywords

revenue, allotment, application, house, residential, cancellation, reasonable time.

Appearances for Parties

For Petitioner(s): Hari Shanker Tewari, Ajay Tiwari

For Respondent(s): C.S.C., Mohan Singh

(Delivered by Hon'ble Alok Mathur, J.)

1- Heard Sri H. S. Tiwari, learned counsel for the petitioner, learned Standing counsel on behalf of respondent No.s 1, 2 and 3 and Sri Govind Kumar Chaurasiya holding brief of Sri Mohan Singh on behalf of for opposite party No.4.

2- In light of the proposed order notice to private respondent No.5 is dispensed with.

3- It has been submitted that a housing lease was granted in favour of predecessor-in-interest of private respondent No.5 which was duly approved on 4.12.1991. The petitioner moved a complaint under Section 66 of U.P. Revenue Code Rules, 2016 (hereinafter referred to as the Rules of 2016) alleging that the private respondent has not constructed the house within three years of the grant of the said lease and, therefore, by operation of law as provided under Rule 64 of the Rules of 2016, the lease ought to be cancelled.

4- Notices were issued to the private respondents who participated in the said proceedings and also filed their objections. In the said objections the complaint was vehemently opposed. It was stated that the complainant is an extremely wealthy person who has 12 rooms' house constructed on gata No.720 and has residential land near Nagar Panchayat Lambhuwa and even in New Delhi has three storyed house in Sangam Vihar. Apart from the above, he has a housing plot in Sonia Vihar and does not come into the category of eligible person to be granted a lease, who belongs to other backward class category. It was further stated that the housing leased was allotted in favour of Ram Harakh, the father of respondent No.5 and similar lease was also granted in favour of Ram Ajore, who is father of the complainant and after his death the petitioner is in occupation of the said land. It is further stated that even two brothers of the petitioner, namely Ramdhari and Tilakdhari had also been allotted the housing lease along with father of the petitioner and further submitted that entire proceedings were conducted in accordance with law after due publication and there is no infirmity in the same. It was further stated that the complaint was highly belated and barred by the provisions of Section 66 (2) of the Rules of 2016 and accordingly the same be rejected.

5- Collector, Sultanpur duly considered the rival contentions and after considering the entire factual aspects of the matter was of the view that that the complaint submitted by the petitioner was highly time barred and beyond the limitation prescribed for in Section 66 (2) of the Rules of 2016 in as much as the same was filed after 32 years of the date when the lease was executed and hence proceeded to reject the complaint only on the ground of expiry of the period of limitation prescribed therein.

6- Thereafter, against the order of Collector, Sultanpur dated 19.4.2024 the petitioner had preferred a revision before Additional Commissioner (Judicial), Ayodhya Division, Ayodhya. The revisional authority also after considering the objections of the petitioner found that there was no infirmity in the order of the Collector in rejecting the complaint on the ground of limitation and, therefore, also rejected the revision preferred by the petitioner.

7- Before this Court, it has been contended by the petitioner that undoubtedly three years' period is prescribed for filing a complaint against a lease from the date of its allotment but submits that as per rule 64 of the Rules of 2016 an allottee has to complete the house within three years from the date of delivery of possession and consequences of the same are provided in sub clause (b) of Rule 64 (2) which provides that in case the allottee fails to comply the terms and conditions of the rules then the Collector may cancel the allotment under Section 66 of the said Rules. Accordingly, it was stated that the period of limitation as prescribed under Section 66 (2) will not apply to the complaint pertaining to non construction of a house within the period prescribed and accordingly submits that both the authorities below have not considered the case of the petitioner in this regard and, therefore, prayed for allowing the writ petition and setting aside both the impugned orders.

8- Learned counsel for the respondents, on the other hand, have opposed the writ petition. It is submitted on their behalf that period of limitation for challenging the validity of any allotment is prescribed under Sub clause 2 of Section 66 which is three years from the date of its allotment. He further submits that the conditions for allotment are provided for under Section 64 of sub section 2 which provides that an allottee shall complete the house and shall begin to reside in it within a period of three years from the date of delivery of possession and if the allottee fails to comply with the said terms and conditions the Collector may cancel the allotment in accordance with Section 66. It is further submitted that sub clause (b) of Rule 64 (2) specifically provides that in case a person belongs to scheduled caste/scheduled tribe category then the time limit for completing the house shall not apply.

9- It is on a conjoint reading of aforesaid Sections that it was submitted that firstly in clause (b) it has been specifically stated that in case a person fails to comply the conditions of constructions of a house, the Collector may cancel the allotment and, therefore, submits that the condition is directory and not mandatory. He further submits that even in the same provision time limitation has not been prescribed in case a persons belonging to scheduled caste / scheduled tribe category and, therefore, it was not the intention of the legislature to make the time period a mandatory condition subsequent to which the allotment could have been cancelled. It is further submitted that allotment is made for house construction to such persons who are landless agricultural laborers belonging to very poor classes of rural citizenry and the condition for construction within the time limit may prove to be fatal which may defeat the very purpose for which the provision has been made. Such a beneficial piece of legislation may not be read in isolation which may prove to be contrary to the interests of such persons for the benefit of whom the same has been framed. Accordingly, in the aforesaid circumstances prayed for dismissal of the writ petition.

10- This Court has considered the rival contentions of the parties and perused the record.

11- The order of Collector, Sultanpur dated 19.4.2024 as well as order dated 6.12.2025 passed by Additional Commissioner (Judicial) Ayodhya Division, Ayodhya falls for consideration in the present petition. Both the authorities have rejected the complaint preferred at the behest of the petitioner on the ground that the same was filed after thirty two years of the grant of the lease and according to Section 66 (2) of U.P. Revenue Code, no such application can be entertained after

expiry of the period of three years from the date of allotment and consequently has rejected the application of the petitioner on the ground of delay.

12- We have considered the argument of the petitioner that under Rule 64 of U.P. Revenue Code, a person has to construct house within a period of three years and consequence of the aforesaid time limit is also prescribed under Section 64 (2) where in case house is not constructed within such time limit the lease may be canceled. It was vehemently submitted on behalf of the petitioner that the word 'may' used in clause 2 of Rule 64 is mandatory and not directory and accordingly wherever house is not constructed within three years such a lease is liable to be cancelled.

13- We have given our anxious consideration to the submissions made on behalf of the petitioner but are unable to accept the same. Section 64 of U.P. Revenue Code provides for allotment of patta sites and we find that the persons who are working as agricultural labourers or village artisans and belong to scheduled castes and scheduled tribes or other backward class category or general category persons living below poverty line are granted preference for allotment of such site. A detailed procedure has also been prescribed with regard to identification of such persons and subsequently allotment of land belonging to gaon sabha. To prevent any misuse of aforesaid powers of allotment, Section 66 provides for inquiry into the irregular allotment of patta sites which may be conducted by Collector on his own motion or on an application of any person aggrieved by the allotment of land made under Section 64 and if the Collector is satisfied that the allotment is irregular he may cancel the allotment. In sub clause 2 of Section 66 it is provided that no application shall be entertained which have been made after expiry of three years from the date of allotment.

14- Considering the aforesaid provisions, this Court is of the considered view that two contingencies for invoking the provisions of Section 66 (1) for cancellation of allotment have been provided. The first being that the Collector may take cognizance on his own motion and secondly he can initiate proceedings on an application by a person who is aggrieved by the allotment. Sub clause 2 of Section 66 provides that "No application under sub-section (1) shall be entertained," meaning thereby that the Collector on his own motion can, at any time, initiate proceedings for cancellation of the allotment within a reasonable time but any person, who is aggrieved by the allotment, is bound to move such an application within three years of the date of allotment. In the present case, the petitioner has gone at length to indicate that he is an aggrieved person in as much as the private respondents started construction on the portion of the allotted land on which the petitioner also claims his rights and, therefore, he claims himself to be an aggrieved person. Accordingly, in such a situation the three years limitation prescribed under Section 66 (2) would come into operation and such application by an aggrieved person can be moved only within three years from the date of allotment.

15- It is in aforesaid circumstances that we find that under Rule 64 (2) (b) it has been provided that in case an allottee fails to comply with the terms and conditions with regard to construction of house within the time prescribed, the Collector may cancel the allotment in accordance with Section 66.

16- We are also in agreement with the arguments raised by learned Standing counsel that the issue pertaining to allotment of patta sites is a beneficial piece of legislation and should be interpreted in a liberal manner so as to fulfill the objects sought to be achieved rather than to curtail rights of the person for whom the allotment has been made.

17- With regard to the persons belonging to scheduled castes and scheduled tribes the period of limitation has been done away with which fact also goes to show that the time period for constructing a house on patta sites is not mandatory condition. This Court is also of the considered view that merely because a person has not raised construction within three years can automatically lead to cancellation of his allotment.

18- To ensure effectiveness of the provision for allotment of residential sites and to ensure its compliance it is undoubtedly necessary that the land should be used for the purpose of construction of a house within a reasonable time. In case, for any reason, the allottee has not been able to construct house, notice should certainly be given to him requiring him to construct his house within the time prescribed and even if within the time prescribed he or she does not construct house it would certainly be open for the Collector to invoke the powers under Sub clause 2 (b) of Rule 64 and cancel the allotment.

19- Accordingly, for the aforesaid reasons we do not find any merit in the challenge made to the impugned orders rejecting his claim for cancellation for allotment after a period of three years which was highly belated and the application was rightly rejected by both the authorities below. In view of the above, no infirmity in the impugned orders can be found to interfere in the said matter. The petition being devoid of merits is accordingly **dismissed**.

(2026) 1 ILRA 1041
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.01.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE MRS. SWARUPAMA CHATURVEDI, J.

Writ C No. 9771 of 2025

Poem Jaiswar

...Petitioner

Versus

U.O.I. & Anr.

...Respondents

Issue(s) for consideration

Whether parental disputes or pending matrimonial and criminal matters between the natural guardians or absence of consent from one parent can constitute a valid statutory reason for refusal to process and issue the passport?

Headnotes

A. Fundamental Rights and Personal Liberty – Passport Act, 1967: Section 6; Passport Manual, 2020: Chapter 4 - Right to obtain a passport and travel abroad is a facet of the fundamental right to personal liberty u/Article 21 of the Constitution and cannot be arbitrarily denied on account of parental disagreements. (Para 12)

It is well-settled that the expression "person liberty" in Article 21 of the Constitution includes right to travel abroad and no person can be deprived of that right except according to the procedure established in law and also the procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary. (Para 13)

The mere issuance of a passport does not itself confer a right to travel abroad in violation of any law, but it is a prerequisite for exercising the right to freedom of movement internationally. A passport is a document issued to a citizen by the State, which enables its holder to apply for a visa and, subject to compliance with applicable laws and governmental orders, to cross international borders.

B. In the context of minors, while administrative authorities are required to verify the consent of natural guardians, such verification cannot be used as a tool to indefinitely frustrate the exercise of rights, and procedural compliance should be ensured without unnecessary delay. (Para 15)

C. A passport application can be refused only on the specific grounds enumerated in Section 6 of the Act, which include national security concerns, ongoing criminal proceedings, or restrictions imposed by a competent court. The authorities do not have a general or discretionary power to deny a passport on other extraneous or administrative grounds.

In the present case of a minor, no such conditions exist that would justify rejection of the application. **Parental disputes or pending matrimonial and criminal matters between the natural guardians cannot constitute a valid statutory reason for refusal.** Therefore, the passport authorities are duty-bound to process and issue the passport once the prescribed formalities are completed and there is no prohibitory order. (Para 17)

D. The Passport Rules, 1980, and the Passport Manual reinforces this approach by providing mechanisms for issuing passport to minors even in cases of parental discord, ensuring that the minor's rights are not subordinated to disagreements between guardians. As per provisions provided for the minor in the passport rules, in case one of the parents of the minor child has not given consent for issuance of passport, the parent who has applied for passport is required to submit declaration in the form of Annexure (C). (Para 18)

The statutory declarations u/Annexure-C is specifically provides to address the situation where one parent is unavailable or refuses consent without lawful justification and therefore the passport authority cannot sit over an application indefinitely on the basis of unsubstantiated objections or delay formal decision making beyond reasonable bounds, particularly when all required documents and declarations are in place and there is no court order restraining the issuance of the passport. (Para 19, 25)

E. The Manual's requirements are not rigid obstacles but must be construed flexibly to ensure that a minor's welfare is not held hostage to the mutual acrimony of parents. (Para 20)

The absence of consent from one parent ...cannot nullify the constitutional rights of a minor, and a mechanical refusal to process the application cannot be countenanced. (Para 22)

While doing statutory formalities, authorities must not create undue barriers that frustrate the minor's fundamental rights. (Para 24)

Writ petition allowed. (E-4)

Case Law Cited:

1. Maneka Gandhi Vs. Union of India, (1978) 1 SCC 248 (Para 13)
2. Mahesh Kumar Agarwal Vs. Union of India & Another, 2025 SCC OnLine SC 2887 (Para 14)
3. Smita Maan Vs. Regional Passport Officer 2023 SCC OnLine Del 2323 (Para 20)
4. Yushika Vivek Gedam Vs. Union of India & ors., 2025 SCC OnLine Bom 46 (Para 23)
5. Devyani Nitish Bharadwaj and Others Vs. Union of India and Others, 2025 SCC OnLine MP 154 (Para 24)

List of Acts

Passport Manual, 2020; Passport Act, 1967.

List of Keywords

parental disputes, personal, liberty, constitution, fundamental, passport, rights, minor.

Appearances for Parties:

For Petitioner(s): Chandra Mohan Singh, Rajesh Kumar

For Respondent(s): A.S.G.I., Sanjay Dwivedi

(Delivered by Hon'ble Mrs. Swarupama Charurvedi, J.)

1. Heard Shri Gaurav Pandey, Advocate holding brief of Shri Rajesh Kumar, learned counsel for the petitioner and Shri Sanjay Dwivedi, learned Standing Counsel for the State-respondents.

2. By means of the present petition filed under Article 226 of the Constitution of India, the petitioner, a minor girl of two years, represented by her mother, seeks issuance of a writ, order or direction in the nature of mandamus commanding respondent no.2 to issue a passport in her favour.

3. Learned counsel for the petitioner submits that since the petitioner is a minor, she applied for issuance of a passport through her mother on 17.01.2025, which was registered on 27.01.2025 and allotted Passport Application No. LK3060650744225. He further submits that the application was filed before the Office of the Regional Passport Officer, Lucknow after completion of all formalities required under the Passport Act, 1967 and the rules framed thereunder and yet no decision is passed on her application.

4. Learned counsel further submits that matrimonial disputes have arisen between the parents of the petitioner leading to the FIR being lodged by the mother against father of the petitioner and his family members, being Case Crime No. 0042 of 2024, under Sections 498-A, 323, 504, 506, 406 IPC and Sections 3/4 of the Dowry Prohibition Act, at Police Station Mahila Thana, District Jaunpur. Learned counsel for the petitioner further submits that solely due to the pendency of the aforesaid criminal case between her parents, the concerned passport authority has orally declined to proceed with issuance of the passport.

5. Learned counsel representing petitioner further contends that due to the ongoing matrimonial dispute, the father of the petitioner is not cooperating and is unwilling to grant consent for issuance of the passport. The petitioner asserts that such non-cooperation on the part of the father cannot be acceptable reason to violate the rights of a minor child, which is guaranteed under Article 21 of the Constitution of India.

6. Learned counsel further submits that the right to obtain a passport is an integral part of the right to personal liberty guaranteed under Article 21 of the Constitution of India, and the same cannot be curtailed for the minor due to dispute in between parents. He further submits that despite repeated follow up with the office of respondent no.2, no decision has been taken on the passport application, and such continued pendency of the application is in violation of the provisions of the Passport Act, 1967 and against the settled principles of administrative law.

7. Having considered the pleadings on record and the submissions advanced by learned counsel for the petitioner, the principal issue which arises for consideration by this Court is whether the passport application of a minor child can be kept pending merely on account of matrimonial or criminal disputes between her parents.

8. During the pendency of the present petition, this court, by order dated 10.04.2025, after hearing the parties, directed the learned counsel representing respondents to obtain written instructions explaining the reasons for non-issuance of the passport, or otherwise to place instructions regarding issuance of the passport in favour of the petitioner.

9. Pursuant to the order dated 10.04.2025, learned counsel appearing for the respondent authorities, on the basis of written instructions, submits that a letter was sent to the petitioner by the Assistant Passport Officer/Senior Superintendent on 22.04.2025. A copy of the letter has been placed on record, which states that, for processing the passport application of the petitioner in accordance with law and for completion of the required formalities relating to issuance of the passport, the petitioner is required to appear before the concerned office on working days, between 10:00 a.m. and 1:30 p.m., along with the documents specified in the letter.

10. It is evident from the submissions and the letter placed on record by the counsel representing respondent that the passport authorities have not refused the application outright but have sought certain documents to comply with legal requirements. Learned counsel submits that upon compliance with these requirements, the passport application shall be processed in accordance with law.

11. After considering the submissions made by counsels representing parties and the material on record, we find it appropriate to examine the legal position regarding the issuance of a passport to a minor child where one parent is not cooperating due to matrimonial disputes.

12. Right to obtain a passport and travel abroad is a facet of the fundamental right to personal liberty under Article 21 of the Constitution and cannot be arbitrarily denied on account of parental disagreements. At this stage, we consider it appropriate to peruse relevant statutory provisions and judgements of other Courts on the issue of minor's right in similar facts and circumstances.

13. It is well-settled that the expression "person liberty" in Article 21 of the Constitution includes right to travel abroad and no person can be deprived of that right except according to the procedure established in law and also the procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary. Apex Court has held in **Maneka Gandhi v. Union of India, (1978) 1 SCC 248**, that the right to travel is encompassed within the ambit of the right to

life and personal liberty, and that any administrative action impinging upon such right must satisfy the test of fairness, reasonableness and non-arbitrariness. In **Maneka Gandhi (supra)** it was observed by Justice M.H. Beg that:

"193. It seems to me that there can be little doubt that the right to travel and to go outside the country, which orders regulating issue, suspension or impounding, and cancellation of passports directly affect, must be included in rights to "personal liberty" on the strength of decisions of this Court giving a very wide ambit to the right to personal liberty."

14. The legal principle discussed above has been consistently followed, and recently, in **Mahesh Kumar Agarwal v. Union of India & Another, 2025 SCC OnLine SC 2887**, the Supreme Court observed that:

"2. Liberty, in our constitutional scheme, is not a gift of the State but its first obligation. The freedom of a citizen to move, to travel, to pursue livelihood and opportunity, subject to law, is an essential part of the guarantee under Article 21 of the Constitution of India. The State may, where statute so provides, regulate or restrain that freedom in the interests of justice, security or public order but such restraint must be narrowly confined to what is necessary, proportionate to the object sought to be achieved, and clearly anchored in law. When procedural safeguards are converted into rigid barriers, or temporary disabilities are allowed to harden into indefinite exclusions, the balance between the power of the State and the dignity of the individual is disturbed, and the promise of the Constitution is put at risk."

15. It is a common assumption that the document enabling a citizen to apply for permission to cross border with the permission to leave the country to go to a particular country. It is important to distinguish between the possession of a valid passport and the act of travelling abroad. A passport is a document issued to a citizen by the State, which enables its holder to apply for a visa and, subject to compliance with applicable laws and governmental orders, to cross international borders. The mere issuance of a passport does not itself confer a right to travel abroad in violation of any law, but it is a prerequisite for exercising the right to freedom of movement internationally. In the context of minors, while administrative authorities are required to verify the consent of natural guardians, such verification cannot be used as a tool to indefinitely frustrate the exercise of rights, and procedural compliance should be ensured without unnecessary delay. In **Mahesh Kumar Agarwal (supra)** the Supreme Court observed that:

"22. It is important to keep distinct the possession of a valid passport and the act of travelling abroad. A passport is a civil document that enables its holder to seek a visa and, subject to other laws and orders, to cross international borders?"

16. Section 6 of the Passport Act, 1967 relates to provisions for specific refusal of Passport, travel documents etc., enumerating various conditions for refusal of passport, which are reproduced below:

"6. Refusal of passports, travel documents, etc.?(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country

under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and no other ground, namely:?

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India:

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country,

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:?

(a) that the applicant is not a citizen of India.,

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India.,

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.

(Emphasis added)"

17. Having regard to the above statutory provisions, it is evident that a passport application can be refused only on the specific grounds enumerated in Section 6 of the Act, which include national security concerns, ongoing criminal proceedings, or restrictions imposed by a competent court. The authorities do not have a general or discretionary power to deny a passport on other extraneous or administrative grounds. In the present case of a minor, no such conditions exist that would justify rejection of the application. Parental disputes or pending matrimonial and criminal matters between the natural guardians cannot constitute a valid statutory reason for refusal. Therefore, the passport authorities are duty-bound to process and issue the passport once the prescribed formalities are completed and there is no prohibitory order.

18. The Passport Rules, 1980, and the Passport Manual reinforces this approach by providing mechanisms for issuing passport to minors even in cases of parental discord, ensuring that the minor's rights are not subordinated to disagreements between guardians. As per provisions provided for the minor in the passport rules, in case one of the parents of the minor child has not given consent for issuance of passport, the parent who has applied for passport is required to submit declaration in the form of Annexure (C). Declarant is required to declare that there is an ongoing case between the parents for divorce and custody of minor child is also pending but the competent Court has not issued any prohibitory order for issuance of passport without consent of other parent and also that the child is being exclusively in the physical custody of that parent. There is no prohibition in the Passport Rules that without any consent of the father, passport cannot be issued to minor child. Even there is no provision that in the absence of any prohibitory order, the permission from the Court is required.

19. The statutory declarations under Annexure-C is specifically provides to address the situation where one parent is unavailable or refuses consent without lawful justification and therefore the passport authority cannot sit over an application indefinitely on the basis of unsubstantiated objections or delay formal decision making beyond reasonable bounds, particularly when all required documents and declarations are in place and there is no court order restraining the issuance of the passport.

20. Chapter 4 of the Passport Manual, 2020, lays down the provisions governing the issuance of passports to minors. Clause 4 of the said Chapter specifically addresses special categories of minor applicants and comprehensively provides the procedure to be followed in all such specific cases, including circumstances where matrimonial disputes or divorce proceedings between the parents are pending, as well as cases involving single or separated parents seeking issuance of a passport for the minor child. Delhi High Court in **Smita Maan Vs Regional Passport Officer 2023 SCC OnLine Del 2323** has observed that the Manual's requirements are not rigid obstacles but must be construed flexibly to ensure that a minor's welfare is not held hostage to the mutual acrimony of parents.

21. Delhi High Court in **Smita Maan (supra)** has made following observations after dealing with office memorandum, Passport Manual 2020 and relevant statutory provisions:

"23. In all the three decisions quoted above, the biological father had in effect disowned the child and had severed all ties with the child. Irrespective of the fact that the applicable clauses in the Manual may be different, the spirit behind the said decisions is clear, i.e., that under certain circumstances the name of the biological father can be deleted and the surname can also be changed. Both the Passport Manual and the OM relied upon by the Respondents recognise that passports can be issued under varying circumstances without the name of the father. Such a relief ought to be considered, depending upon the factual position emerging in each case. No hard and fast rule can be applied. There are myriad situations in the case of matrimonial discord between parents, where the child's passport application may have to be considered by the authorities. Such situations include ?

- divorce with sole custody and mere visitation;
- divorce with joint custody and visitation;
- divorce with sole custody and no visitation;
- divorce with complete disowning of the child;
- divorce with some rights being given to the child;
- divorce between the couple but rights vesting in either side's grandparents;
- Separation with divorce pending and visitation issues pending in Court;
- Desertion by either parent;
- Divorce or Separation with conditions relating to subsequent marriages which may alter the relationship with the child;
- Legal disowning of the child by either parent;
- Situations where the couple are in different countries and an attempt is made to remove the child from a jurisdiction;

24. The situations set out above are not exhaustive but are illustrative to show how the passport applications of minors may have to be considered and examined under varying circumstances. The Manual merely contemplates some of the situations and provides for certain mechanisms. However, the need for flexibility exists depending upon the fact situation. A thorough examination and understanding of court orders may also be required."

22. On the issue of passport issuance to the minor where parents had dispute, Bombay High Court observed that a minor's right to travel abroad cannot be prejudiced merely because the father, involved in ongoing matrimonial proceedings, refuses to give his consent or no objection certificate. The absence of consent from one parent in such circumstances cannot nullify the constitutional rights of a minor, and a mechanical refusal to process the application cannot be countenanced.

23. Relevant paragraph in the judgement of Bombay High Court in **Yushika Vivek Gedam vs. Union of India & ors., 2025 SCC OnLine Bom 46**, reads as under :

"23. We may also observe that in the contemporary times traveling abroad cannot be considered to be a fanciful affair but has become an essential requirement of modern life. Such need to travel which may be the requirement of a child, a student or an employee, professional or a person from any other strata of the society, has undergone a monumental change. Thus, the right to travel is required to be not only recognized but made more meaningful. This can be achieved and supported by the authorities implementing the provisions of the Passport Act by effectively recognizing such contemporary needs in dealing with passport applications. The present case is an example of a student being given an opportunity to undertake a study tour by visiting a foreign country. Any action of the Passport Authority in denying the passport would have severe consequence not only adversely affecting the applicant in a given situation, but it may cause irreparable harm to the prospects of the applicant, for any venture she or he intended to undertake. Thus, a mechanical approach in this regard by the Passport Authority cannot be countenanced.

24. We thus find that such valuable constitutional right of the petitioner cannot be prejudiced much less be taken away, and merely on the ground as contained in the impugned communication dated 18 November, 2024 issued by respondent no. 2. Further Section 6 of the Passport Act, 1967 provides for Refusal of passports, travel documents etc. The ground on which the application of the petitioner is not being processed is in no manner whatsoever recognized by Section 6 of the Passport Act. In the aforesaid circumstances, we find that there is no warrant in law for respondent no. 2 to deny the re-issuance of passport to the petitioner when the declaration in Annexure-C was submitted by the petitioner's mother."

24. Madhya Pradesh High Court has also taken the similar view in **Devyani Nitish Bharadwaj and Others Vs Union of India and Others, 2025 SCC OnLine MP 154**, and granted relief to petitioners, minor daughters, who had applied for renewal of their passports at the Regional Passport Office, Bhopal, Ministry of External Affairs, through their mother. These judgements highlights the importance of statutory compliance but it also demonstrates that while doing statutory formalities, authorities must not create undue barriers that frustrate the minor's fundamental rights.

25. It appears that the Passport Rules, 1980, have specifically foreseen the situation where the consent of one parent of a minor may not be obtainable due to unavoidable circumstances. In such cases, the Rule provide a complete procedural mechanism to ensure that the minor's right to a passport is not defeated. The prescribed Annexure C is required to be submitted along with the passport application by the applying parent. This annexure is a recognized declaration that takes

care of necessary procedural requirements, enabling the passport authorities to process and issue the passport, even in the absence of consent from one parent. Accordingly, where the minor's application is otherwise in order and all formalities under the Rules are complied with, there exists no lawful reason to deny the passport.

26. In view of the foregoing discussion, the respondent authorities are directed to process and issue the passport of the petitioner forthwith, subject to the completion of routine verification formalities, as per the provisions of the Passport Act, 1967, and the Passport Rules, 1980 and applicable government notifications. The passport authorities shall ensure that the passport is issued within a period of four weeks from the date petitioner complies with the procedural requirements through her mother, which is already communicated by the authorities if there is no legal impediment. 27. The writ petition is therefore allowed in terms of the above directions. There shall be no order as to costs.

(2026) 1 ILRA 1050
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.01.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE MANJIVE SHUKLA, J.

Writ C No. 12211 of 2025

Khalsa Medical Store

...Petitioner

Versus

R.B.I. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the notice under Sections 94/106 of the B.N.S.S., 2023, seeking "DEBIT FREEZE" of the account of the petitioner, without any seizure order, without any indication as to the amount that is required to be put in lien, without furnishing copy of the F.I.R. and without providing information with regard to the Court wherein the particular case is pending, can be sustained; and whether the mechanism adopted by the Investigating Officer, wherein the entire account of the petitioner has been frozen, is justified in law.

HEADNOTE

Freezing of bank account – Notice under Sections 94/106, Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 106 of BNSS should not be interpreted to empower police officers to intervene in money disputes by seizing property especially based on mere suspicion but it must be bolstered by reasonable belief – Investigating Officer is required to issue notice containing the amount for which lien is sought – Blanket notice without indicating the amount on which lien is being sought held illegal and arbitrary – Freezing of entire bank account without seizure order, without copy of F.I.R. and without indicating the Court wherein the case is pending held unjustified and illegal – Impugned notice quashed – Direction to immediately de-freeze the account and allow normal banking activities.

HELD:

Petitioner's bank account was subjected to debit freeze in connection with a cyber crime investigation pursuant to a notice issued by the Investigating Officer under Sections 94/106 of the B.N.S.S., 2023.

Court held that Section 106 of the BNSS should not be interpreted to empower police officers to intervene in money disputes by seizing property especially based on mere suspicion, but that it must be bolstered by reasonable belief; that the Investigating Officer is required to not only issue notice under Sections 94/106 of the B.N.S.S., 2023 to the banks concerned but that the same must contain the amount for which lien is sought; and that a blanket notice without indicating the amount on which lien is being sought would be illegal and arbitrary. Court further held that the Investigating Officer is required to intimate the jurisdictional Magistrate of the said cyber crime and inform the banks of the case number that has been registered on the basis of which such lien/freezing is sought.

Court found that in the present case, no amount had been indicated in the notice issued to the bank, copy of the F.I.R. had not been provided, nor any seizure order had been provided to the bank, in spite of the bank having written to the Investigating Officer to provide the same. In light of the same, Court held that it was unable to sustain and countenance the mechanism that was used by the Investigating Officer wherein the entire account of the petitioner had been frozen. The impugned notice was quashed and set aside with a direction upon the banks concerned to immediately de-freeze the accounts of the petitioner and allow the petitioner to carry on his normal banking activities. **(Paras 4, 7–9, 12–18)** (E-5)

CASE LAW CITED

State of Maharashtra v. Tapas D. Neogy, (1999) 7 SCC 685;
Teesta Atul Setalvad v. State of Gujarat, (2018) 2 SCC 372;
Nevada Properties (P) Ltd. v. State of Maharashtra, (2019) 20 SCC 119;
Dharmendra Chawra Harish Bhai v. State of Rajasthan, S.B. Criminal Miscellaneous Application No. 557 of 2025 (Raj);
Dr. Sajeer v. Reserve Bank of India, (2024) 1 KLT 826.

List of Acts

Constitution of India, 1950;
Bharatiya Nagarik Suraksha Sanhita, 2023;
Bharatiya Sakshya Adhiniyam, 2023.

List of Keyword

Cyber crime; Freezing of bank account; Debit freeze; Seizure of bank account; Section 94 BNSS; Section 106 BNSS; Lien on bank account; Reasonable belief; Intimation to Magistrate; Blanket freeze of account; De-freezing of account.

CASE ARISING FROM

Notice under Sections 94/106 of the Bharatiya Nagarik Suraksha Sanhita, 2023 issued by the Investigating Officer, Cyber Crime Police Station, Rachakonda, Hyderabad, Telangana, directing debit freeze of the petitioner's bank account without indicating the amount for which lien was sought and without furnishing seizure order or FIR details.

Appearances for Parties

Advs For Petitioner: Jalaj Kumar Gupta
Advs For Respondents: Amit Jaiswal , C.S.C.

(Delivered by Hon'ble Shekhar B. Saraf, J.)

1. Heard Shri Jalaj Kumar Gupta, learned counsel for the petitioner and Shri Amit Jaiswal Ojus, learned counsel appearing for the Axis Bank.

2. In spite of several notices given to the Investigating Officer, Police Station Cyber Crime, Rachakonda, Hyderabad, Telangana, none has appeared on behalf of the same.

3. The office report indicates that service of the previous orders has been done upon the Respondent No. 4.

4. Learned counsel appearing on behalf of the Axis Bank has fairly submitted that till date, they have neither received any seizure order from the Respondent No. 4, nor received any indication as to the amount that is required to be put in lien with regard to the petitioner's bank account. Shri Amit Jaiswal refers to the notice under Section 94/106 of the B.N.S.S., 2023 received by the Bank on November 21, 2025, that has sought for debit freeze of the account of the petitioner. No further documents have been received by the bank in spite of several letters written by the bank to the Investigating Officer concerned. He has further relied upon the judgment of the Rajasthan High Court that has specifically dealt with this issue in great detail in the case of **Dharmendra Chawra Harish Bhai Vs. State of Rajasthan** passed in S.B. Criminal Miscellaneous Application No. 557 of 2025, wherein certain directions have been issued in relation to how an account may be seized as per Section 106 read with Section 94 of the BNSS.

5. Before proceeding to come to a finding as to whether the action of the respondents is in consonance with the law, one needs to place on record the provision under which the present actions have been initiated. Ergo, Section 106 and Section 94 of the B.N.S.S., 2023 are delineated below:-

"106. (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same:

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 505 and 506 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

94. (1) *Whenever any Court or any officer in charge of a police station considers that the production of any document, electronic communication, including communication devices which is likely to contain digital evidence or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Sanhita Appeal from order rejecting application for restoration of attached property. Issue of warrant in lieu of, or in addition to, summons. Power to take bond for appearance. Arrest on breach of bond for appearance. Provisions of this Chapter generally applicable to summonses and warrants of arrest. Summons to produce document or other thing. 5 10 15 20 25 30 35 40 45 27 by or before such Court or officer, such Court or officer may, by a written order, either in physical form or in electronic form, require the person in whose possession or power such document or thing is believed to be, to attend and produce it, or to produce it, at the time and place stated in the summons or order.*

(2) *Any person required under this section merely to produce a document, or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.*

(3) *Nothing in this section shall be deemed-*

(a) *to affect sections 129 and 130 of the Bharatiya Sakshya Adhiniyam, 2023 or the Bankers' Books Evidence Act, 1891; or*

(b) *to apply to a letter, postcard, or other document or any parcel or thing in the custody of the postal authority."*

6. It is also imperative to bring on record the intimation of debit freeze issued by the investigating officer to the respondent- Bank. The same is extracted below:-

"NOTICE U/S 94/106 BNSS

It is directed to DEBIT FREEZE Account bearing A/C No.-:917030037515043, Ifsc Code-:UTIB0000291 as required for investigation in Cr.No:520/2025 of Cyber Crime Police Station, Rachakonda, Hyderabad, Telangana. The account holder using this account for fraudulent transfers of money from the victim account to this account. Also, the following details be provided through email.

- 1. Statement of account, from date of opening to till today.*
- 2. Scanned copy of Account Opening Form along with documents submitted as proof of Identity & address.*
- 3. Mobile number, email address, PAN, ATM card number(s) & Aadhaar number linked to the account.*

4. *The balance in the account.*

5. *If any Notice(s) was/were received from any Law Enforcement Agency/Agencies earlier, the details of the sender be shared with us (Police station name and investigation officer details).*

6. *Provide the Branch details (Branch manager contact details).*

7. *Provide the Login & Logout IP details of Internet Banking/Mobile Banking for last (03) months.*

8. *Provide the Sec.65(B) I.E.Act certificate with above information and sent hard copies to the below mentioned address.*

9. *Also provide the NEFT, RTGS, IMPS and UPI transactions for both Source and Beneficiary transactions. The details required be provided on priority."*

7. The Supreme Court in **State of Maharashtra v. Tapas D. Neogy** reported in (1999) 7 SCC 685 has given a wide interpretation to the word 'Property' used in Section 102 of CrPC/ Section 106 of B.N.S.S. and categorically held that a bank account is a property and police officer in course of investigation can seize or prohibit the operation of the said account if there is a suspicion with relation to any offence. The relevant paragraph of the judgment is quoted herein below:

"12. Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be "property" within the meaning of the said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore, persuaded to take the view that the bank account of the accused or any of his relations is "property" within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into. The contrary view expressed by the Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law. It may also be seen that under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the courts in fixing the amount of fine shall take into consideration the amount or the value of the property which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources

or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon. Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating his account, and so, we do not interfere with the same."

8. The Supreme Court in **Teesta Atul Setalvad v. State of Gujarat reported in (2018) 2 SCC 372** has expounded that prior notice is not required before or simultaneously attaching a bank account but a post facto report is mandatorily required to be submitted to the jurisdictional magistrate. The relevant paragraph of the judgment is quoted hereinbelow:

"20. As regards the procedure for issuing instructions to freeze the bank accounts, it is noticed that the same has been followed by giving intimation to the Magistrate concerned on 21-11-2014 as required in terms of Section 102 of the Code. There is nothing in Section 102 which mandates giving of prior notice to the account-holder before the seizure of his bank account. The Magistrate after noticing that the principle stated by the Division Bench of the Bombay High Court in Shashikant D. Karnik v. State of Maharashtra [Shashikant D. Karnik v. State of Maharashtra, 2008 Cri LJ 148 (Bom)] has been overruled in terms of the Full Bench judgment of the Bombay High Court in Vinodkumar Ramachandran Valluvar [Vinodkumar Ramachandran Valluvar v. State of Maharashtra, 2011 SCC OnLine Bom 402 : 2011 Cri LJ 2522] , rightly negated that contention. The Full Bench of the Bombay High Court has expounded that Section 102 does not require issuance of notice to a person before or simultaneously with the action attaching his bank account. In Adarsh Coop. Housing Society Ltd. v. Union of India [Adarsh Coop. Housing Society Ltd. v. Union of India, 2011 SCC OnLine Bom 974 : 2012 Cri LJ 520] , the Division Bench of the Bombay High Court once again considered the issue and rejected the argument that prior notice to the account-holder was required to be given before seizure of his bank account. It also noted that the bank account need not be only of the accused but it can be any account creating suspicion about the commission of an offence. The view so taken commends us."

9. The Supreme Court in **Nevada Properties (P) Ltd. v. State of Maharashtra reported in (2019) 20 SCC 119** has held that Section 102 of CrPC should not be interpreted to empower police officers to intervene in money disputes by seizing property especially based on mere suspicion but it must be bolstered by 'reasonable belief'. The relevant paragraph of the judgment is quoted hereinbelow:

"31. The expression "circumstances which create suspicion of the commission of any offence" in Section 102 does not refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not "any property" is required to be seized. The word "suspicion" is a weaker and a broader expression than "reasonable belief" or "satisfaction". The police officer is an investigator and not an adjudicator or a decision maker. This is the reason why the Ordinance

was enacted to deal with attachment of money and immovable properties in cases of scheduled offences.

10. The Rajasthan High Court in **Dharmendra Chawra Harish Bhai (supra)** has categorically enumerated the steps to be followed in case of a cyber crime and wherein the Investigating Officer requires lien to be put on account of persons in various locations, including locations outside the state wherein the investigation is going on and held as follows:

"50. Considering the aforesaid, it is appropriate to direct as under:-

i) after receipt of any information about cyber crime either through a victim or through NCRP including 1930, the same shall be analyzed and investigated as early as possible by a designated and trained police officer, not below the rank of ASI or Sub-Inspector, subject to availability in police station.

(ii) The DGP shall ensure that all such personnel who are involved in the process of investigating a matter relating to cyber crime are well trained within six months so that an innocent person may not be prosecuted in an ordinary and casual manner.

(iii) As soon as information about the commission of a crime or suspicion of a crime is received and an FIR is registered, then before procuring any information from any bank or payment system operator (PSO or payment aggregator), a copy same shall be forwarded to the Superintendent of Police and his approval be obtained expressly or orally. An entry to this effect be recorded in Daily Diary of police station as well in the case diary.

(iv) As soon as any information is received about the transfer of money or transaction of crime proceed(s) in any bank account or by using any digital payment instrument, including UPI or a wallet, then information shall be sent immediately to the noul officer of said bank of the beneficiary or payment service system, including the payment aggregator, so as to take action at their end. The information should accompany a copy of the FIR or information received by the police. The bank or the payment system operator (PSO) may decline a request, if it is received without a copy of any complaint or FIR.

(v) In no case, bank account operated by any financial entity, such as a Payment System operator (PSO), payment aggregator, or a merchant, be blocked or put on hold by any of the bank on the request of any police official for a suspicious transaction of any third party. This instruction shall not be applicable in cases of CBI or ED, including under the PMLA or under the PC Act.

(vi) All banks and payment system operators, including payment aggregators and financial service providers, are stakeholders as per Guideline No. 7 prepared by the Indian Cybercrime Coordination Centre and are participants of CFCFRMS, Therefore, they shall appoint one nodal officer with whom the police may establish contact as and when any emergent situation arises. The duties of such officer shall be assigned in a manner that one of the officer is available to contact round the clock. The institution may also use its customer care support for this purpose.

(vii) *The police shall not request to any bank to block or put on hold any amount in bank account or escrow account maintained and operated by any payment System Operator (PSOs) including payment aggregator and payment wallet operator, or a merchant. If any bank puts on hold any bank account or escrow account maintained by any such entity on the request of the police, then the bank shall be personally liable for the Civil and Criminal consequences for the loss including financial and damage to the reputation of such PSO or merchant.*

(viii) *As soon as any information is received about unauthorized transaction from any bank account or any digital transaction, the police may act immediately after informing the concerned Superintendent of Police and intimate the payment system operator (PSO), including payment aggregator or digital wallet service provider, to mark lien on a specific amount (money allegedly transferred from bank account of victim), but in no case the police may ask or request any bank or payment system operator (PSO) including payment aggregator, to block or suspend entire financial account of any individual, including any merchant. In case if any of the saving bank account is used frequently for transferring the crime proceed(s) or for fraudulent transactions, then the police may inform the concerned bank branch to provide details of said bank account operator including the transaction history along with location.*

(ix) *If any credit card or debit card is used to purchase merchandise online money is transferred to the bank account of a merchant, including financial intermediary or any bank or payment system operator (PSO) including Payment aggregator, nor any amount be marked as lien, as the amount has been used and converted to a merchandise, thus the stolen property is not the money. A misuse of credit/debit card is a disputed transaction between bank and the customer.*

(x) *As soon as information to block or put on hold or marking of a lien is forwarded to a bank or any financial intermediary, including a payment system operator (PSO), then the information shall simultaneously be sent to the concerned jurisdictional Judicial Magistrate within 24 hours. Failing to inform may render such action as void or actionable wrong against police. These guidelines shall not be applicable upon the blocking and marking a lien on mule accounts operated by individuals to transfer money crime proceed(s)."*

11. The Kerela High Court in **Dr. Sajeer v. Reserve Bank of India** reported in (2024) 1 KLT 826 has held that if there is a suspicion of alleged crime then the amount frozen must be not be in its entirety but must be proportionate to the amount alleged to be under suspicion as an order of freezing the entire bank account of the petitioner has a serious and adverse implication and invades and encroaches upon his invaluable rights to earn and live with dignity. The relevant paragraphs of the judgment are quoted hereinbelow:

"11. In the afore perspective, when the requisitions in these cases - by various Police Authorities in several States of India - mention the exact amount suspected to have been credited to the accounts of the petitioners herein, one fails to fathom why their bank accounts in full, should remain frozen. This is more so because, even when the sums in question may have found credit in the accounts of the petitioners, unless the investigation eventually reveals that they were complicit in the Cyber Crime, or had received the same being aware of it, they could never be construed to be accused.

13. In the conspectus of the above, I order these Writ Petitions with the following directions: a. The respondent Banks arrayed in these cases, are directed to confine the order of freeze against the accounts of the respective petitioners, only to the extent of the amounts mentioned in the order/requisition issued to them by the Police Authorities. This shall be done forthwith, so as to enable the petitioners to deal with their accounts, and transact therein, beyond that limit. b. The respondent - Police Authorities concerned are hereby directed to inform the respective Banks as to whether freezing of accounts of the petitioners in these Writ Petitions will require to be continued even in the afore manner; and if so, for what further time, within a period of eight months from the date of receipt of a copy of this judgment. c. On the Banks receiving the afore information/intimation from the Police Authorities, they will adhere with it and complete necessary action - either continuing the freeze for such period as mentioned therein; or withdrawing it, as the case may be. d. If, however, no information or intimation is received by their Banks in terms of directions (b) above, the petitioners or such among them, will be at full liberty to approach this Court again; for which purpose, all their contentions in these Writ Petitions are left open and reserved to them, to impel in future."

12. After sifting through the ratios laid down in the catena of judgments mentioned above, and upon applying our mind to the issue at hand, the following principles may be laid down for freezing a bank account under a suspicion of cyber crime:-

A. Section 106 of BNSS should not be interpreted to empower police officers to intervene in money disputes by seizing property especially based on mere suspicion but it must be bolstered by reasonable belief.

B. Information for freezing the bank account by the investigating officer shall be sent immediately to the nodal officer of the bank of the beneficiary or payment service system, including the payment aggregator, so as to take action at their end. The police officer must furnish information with relation to the alleged crime and should accompany a copy of the FIR or information received. The bank or the payment system operator (PSO) may decline a request, if it is received without a copy of any complaint or FIR.

C. The notice under Section 106 of the BNSS may require to mark lien on a specific amount (money allegedly transferred from or to the bank account of accused), but in no case the police may ask or request any bank or payment system operator (PSO) including payment aggregator, to block or suspend entire financial account.

D. As soon as information to block or put on hold or marking of a lien is forwarded to a bank or any financial intermediary, including a payment system operator (PSO), then the information shall simultaneously be sent to the jurisdictional Judicial Magistrate within 24 hours. Failure to inform may render such an action as void.

E. If any bank puts on hold any bank account or escrow account maintained by any entity / citizen on the request of the police without following the proper procedure, then the bank shall be personally liable for the Civil and Criminal consequences for the loss including financial and reputational damage of such entity / citizen.

13. From a perusal of the above, we are of the view that in case of a cyber crime, the Investigating Officer is required to not only issue notice under Section 94/106 of the B.N.S.S., 2023 to the banks concerned but the same must contain the amount for which lien is sought. A blanket notice without indicating the amount, on which lien is being sought, would be illegal and arbitrary. Furthermore, the Investigating Officer is required to intimate the jurisdictional Magistrate of the said cyber crime and inform the banks of the case number that has been registered on basis of which said lien / freezing is sought.

14. In several of these cases, we are finding that the debit freeze is sought on the entire account of the petitioners without providing to the bank the seizure notice that is required to be issued by the Investigating Officer. Furthermore, details of cases that have been registered before the court concerned are also not provided to the banks, who in turn cannot provide it to the persons whose accounts are being frozen / lien being created.

15. In our view, this entire action is unjustified and illegal. One may understand a situation wherein there is a requirement for freezing an account for a limited period so that the proceeds of crime are not removed. However, even in these extreme cases, it is incumbent upon the Investigating Officer to provide the bank within three to four days the seizure order passed for putting a lien on the bank account, the case number on the basis of which such lien/freezing is being conducted, as well as, provide the amount on which the lien is sought to be created.

16. In the present case, it is clear that no amount has been indicated in the notice that has been issued to the bank. Furthermore, copy of the F.I.R. has not been provided nor any seizure order has been provided to the bank, in spite of the bank having written to the Investigating Officer to provide the same.

17. In light of the same, we are unable to sustain and countenance the mechanism that has been used by the Investigating Officer wherein the entire account of the petitioner has been frozen. No information has also been provided to the bank with regard to the court wherein the particular case is pending. In light of the same, the impugned notice is quashed and set aside with a direction upon the banks concerned to immediately de-freeze the accounts of the petitioner and allow the petitioner to carry on his normal banking activities. Liberty is also granted to the petitioner to inform the bank for immediate de-freezing of the account in the course of the day today.

18. The writ petition is **disposed of** in the aforesaid terms.

(2026) 1 ILRA 1060
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 12.01.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Writ C No. 12619 of 2025

Sujeet Kumar

...Petitioner

Versus

State of U.P.& Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the appellate order passed by the Deputy Commissioner (Food) under Para 13(3) of the U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 was without jurisdiction; and whether the writ petition challenging the appellate order was liable to be dismissed on the ground of laches.

HEADNOTE

U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016, Para 13(3) – Appeal – Delay in filing writ petition – Laches – Dismissal at admission stage. (E-5)

HELD:

Petitioner challenged the appellate order dated 31.07.2025 passed by the Deputy Commissioner (Food) setting aside the S.D.M.'s rejection of compassionate allotment of a fair price shop to opposite party No. 5 and remanding the matter, which was assailed after unexplained delay.

Para 13(3) of the U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 provides that any person aggrieved by an order of the competent authority denying the issue or renewal of the agreement to the fair price shop owner, suspension or cancellation of the agreement, may appeal to the appellate authority.

When the application submitted by opposite party No. 5 for issuance of a fair price shop licence after the death of his father, who himself was a fair price shop owner, was denied, the rejection order was appealable under Para 13(3) of the U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016. Therefore, it could not be said that the impugned appellate order dated 31.07.2025 was passed by the appellate authority without jurisdiction.

The appellate order was passed on 31.07.2025 and the writ petition challenging the appellate order was filed on 18.12.2025; the delay in filing the writ petition had not been explained. This Court found no good ground to entertain the writ petition, which was dismissed at the admission stage. **(Paras 7–12)**

CASE LAW CITED

Nil.

List of Acts

Constitution of India, 1950 – Article 226;

U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order

List of Keyword

Fair price shop; Appeal under Control Order; Jurisdiction; Delay; Laches.

CASE ARISING FROM

Order dated 31.07.2025 passed by the Deputy Commissioner (Food), Devipatan Mandal, Gonda in Case No. 839 of 2024 under Para 13(3) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016.

Appearances for Parties

Advs For Petitioner: Faiz Ahmad Khan, Nitin Srivastava

Advs For Respondents: C.S.C.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Shri Nitin Srivastava, the learned counsel for the petitioner, Shri Ram Kumar Maurya, the learned Standing Counsel for the State of U.P. representing the opposite parties no.1 to 4 and Shri Saurabh Tiwari, the learned counsel for the opposite party No.5.

2. By means of the instant petition filed under Article 226 of the Constitution of India, the petitioner has challenged the validity of an order dated 31.07.2025 passed by the Deputy Commissioner (Food), Devipatan Mandal, Gonda in Case no.839 of 2024 filed under Para 13(3) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016.

3. The appeal was filed by the opposite party No.5 against an order dated 12.03.2024 passed by the S.D.M., Mankapur, Gonda rejecting the application filed by the opposite party No.5 for allotment of fair price shop in Village- Bairipur Ramnath, Development Block and Tehsil-Mankapur, District- Gonda on compassionate basis, consequent to death of father of the opposite party No.5- Bhupendra Kumar Tripathi, who was the fair price shop owner and who died on 22.12.2023. The application of the opposite party No.5 was rejected as he was not found to be eligible for allotment of the fair price shop on compassionate ground, as he was an accused in a criminal case bearing Case Crime No. 10 of 2024 under Sections registered in Police Station Rehra Bazar under Sections 323, 504, 506 IPC lodged by one Chhail Bihari and, therefore, he could not produce the character certificate.

4. In appeal, the Additional Commissioner, Food has set-aside the order dated 12.03.2024 holding that during investigation, the Investigating Officer could not trace out and it appears that the case was lodged by a fake person. Accordingly, the Investigating officer has submitted a closure report on 12.02.2024, which was accepted by the learned Additional Civil Judge (Junior Division) / Judicial Magistrate, Utraula, Balrampur by means of an order dated 15.02.2025, wherein it is recorded that the complainant has not filed any protest application against the final report in spite of having been granted numerous opportunities.

5. The Additional Commissioner, Food held that after the opposite party no. 5 submitted the application dated 15.01.2024 for allotment of the fair price shop on compassionate basis, an FIR was lodged on 17.01.2024 by a fake person, which later on resulted in a closure report. It is possible that it was done in order to deprive the opposite party no. 5 from allotment of the fair price shop under a conspiracy. In these circumstances, the opposite party no. 5 deserves to be granted an opportunity to present his case. Accordingly, the Additional Commissioner, Food allowed the

appeal, set-aside the order dated 12.03.2024 passed by the S.D.M., Mankapur and remanded the matter to the S.D.M. for being decided afresh within a period of two months.

6. After remand of the matter by the impugned order dated 31.07.2025, the fair price shop in question has been allotted in favour of the opposite party No.5 by means of an order dated 11.12.2025 which has not been challenged by the petitioner.

7. Learned counsel for the opposite parties have submitted that the appellate order was passed on 31.07.2025 and in the writ petition filed challenging the appellate order on 18.12.2025, the delay in filing his writ petition has not been explained.

8. Replying to the aforesaid submissions, the learned counsel for the petitioner submitted that the impugned order has been passed without jurisdiction and it is liable to be set-aside.

9. Learned counsel for the petitioner could not advance any submission in opposition to the objection that the petition suffers from laches.

10. Para 13(3) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 provides that *any person aggrieved by an order of the competent authority denying the issue or renewal of the agreement to the fair price shop owner, suspension or cancellation of the agreement, may appeal to the appellate authority.* This paragraph provides for filing of appeal by a person whose request for issuance of agreement of fair price shop has been denied.

11. When an application submitted by the opposite party No.5 for issuance of a fair price shop license after death of his father, who himself was a fair price shop owner, has been denied, the rejection order would be appealable under Para- 13(3) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016.

12. Therefore, it cannot be said that the impugned appellate order dated 31.07.2025 has been passed by the appellate authority without jurisdiction. This Court finds no good ground to entertain the writ petition which is **dismissed** at the admission stage.

(2026) 1 ILRA 1062
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 14.01.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Writ C No. 38368 of 2025

Chetram

State of U.P. & Ors.

...Petitioner

Versus

...Respondents

ISSUE FOR CONSIDERATION

Whether the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908, which contemplate rejection of a plaint, are applicable to summary proceedings initiated under Section 67 of the U.P. Revenue Code, 2006; and whether the Assistant Collector is mandatorily required to adjudicate such objection as a preliminary issue.

HEADNOTE

U.P. Revenue Code, 2006, Sections 67, 210, 214 – U.P. Revenue Code Rules, 2016, Rule 186 – Code of Civil Procedure, 1908 – Order VII Rule 11 – Proceedings under Section 67 are summary proceedings – Provisions of the Code of Civil Procedure, 1908 shall not be applicable to the summary proceedings – Proceedings under Section 67 are administrative-cum-quasi-judicial summary proceedings and do not constitute civil suits – Proceedings under Section 67 do not originate from a plaint but are triggered upon information furnished culminating in an RC Form–19 report – RC Form–19 report cannot be equated with a plaint, either in form, substance, or legal character – Order VII Rule 11 CPC is plaint-centric and suit-oriented and has no application proprio vigore to summary proceedings under Section 67 – Application seeking rejection of proceedings under Order VII Rule 11 CPC would not be maintainable – Objections as to maintainability are ordinarily required to be considered in conjunction with, and not in isolation from, the merits of the case – Interlocutory orders in summary proceedings not amenable to interference in exercise of writ jurisdiction – Impugned orders declined to interfere – Writ petition dismissed with direction to expeditiously conclude proceedings.

HELD:

Proceedings under Section 67(1) of the U.P. Revenue Code, 2006 was initiated against the petitioner on the allegation of unauthorised occupation of Gram Sabha land. Assistant Collector issued show-cause notice. Petitioner filed an application invoking Order VII Rule 11 CPC, seeking rejection of the proceedings at the threshold on the ground of non-maintainability. Tehsildar (Judicial)/Assistant Collector, passed an order dated 24.03.2025, declining to decide the application under Order VII Rule 11 CPC at the threshold, and held that the objection as to maintainability would be considered along with the objections on merits at the stage of final adjudication under Section 67(3). The revision was also dismissed. Petitioner filed a writ petition challenging the order dated 24.03.2025.(E-5)

Held : Proceedings under Section 67 of the U.P. Revenue Code, 2006 are administrative-cum-quasi-judicial summary proceedings and do not constitute civil suits. On a conjoint reading of Section 214 of the Code, 2006 and Rule 186 of the U.P. Revenue Code Rules, 2016, the Court held that the provisions of the Code of Civil Procedure, 1908 are expressly excluded from summary proceedings, and only the principles of CPC and natural justice apply. Proceedings under Section 67 do not originate from a plaint but are triggered upon information furnished, culminating in an RC Form–19 report. The RC Form–19 report cannot be equated with a plaint, either in form, substance, or legal character. Order VII Rule 11 CPC is plaint-centric and suit-oriented, and since proceedings under Section 67 do not originate from a plaint but from an RC Form–19 report, the provision has no application proprio vigore to such proceedings. Consequently, an application seeking rejection of such proceedings by invoking Order VII Rule 11 CPC would not be maintainable. A person proceeded against under Section 67 can raise objections relating to jurisdiction or maintainability, but there is no vested right to demand that such objections must be decided as separate preliminary issues. The authority may decide them along with the merits, unless a patent jurisdictional defect is apparent. Interlocutory or procedural orders passed in the course of summary proceedings are not amenable to interference in exercise of writ jurisdiction under Article 226 of the Constitution of India. The writ petition was dismissed.(Paras 3–7, 10, 13–17, 20–26, 29–35, 36)

CASE LAW CITED

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List of Acts

Uttar Pradesh Revenue Code, 2006;
Uttar Pradesh Revenue Code Rules, 2016;

Code of Civil Procedure, 1908

List of Keyword

Section 67 proceedings; Summary proceedings; RC Form-19; Order VII Rule 11 CPC; Rejection of plaint; Non-applicability of CPC; Maintainability objection; Interlocutory orders; Writ jurisdiction; Gram Sabha land.

CASE ARISING FROM

Order dated 24.03.2025 passed by the Tehsildar (Judicial)/Assistant Collector, Tehsil Dadri, Gautam Budh Nagar, in Case No.14775 of 2023 and revisional order dated 19.08.2025 passed by the Additional Commissioner (Administration)-III, Meerut Division, Meerut.

Appearances for Parties

Advs For Petitioner: Sanjay Kumar Mishra; Shrawan Kumar Pandey
Advs For Respondents: C.S.C.; Rakesh Kumar Srivastava; Sunil Kumar Singh

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

Heard Sri Shrawan Kumar Pandey, learned counsel for the petitioner and Sri J N Maurya, learned Chief Standing Counsel appearing along with Sri O P Sharma, learned Additional Chief Standing Counsel for the State-respondents.

2. The present writ petition under Article 226 of the Constitution of India has been instituted for quashing the order dated 24.03.2025 passed by respondent no.4, namely the Tehsildar (Judicial)/Assistant Collector, Tehsil Dadri, District Gautam Budh Nagar, in Case No.14775 of 2023 (Computer Case No. T202311270214775), *Land Management Committee versus Chetram*, arising out of proceedings under Section 67 of the Uttar Pradesh Revenue Code, 2006, as also the order dated 19.08.2025 passed by respondent no.2, the Additional Commissioner (Administration)-III, Meerut Division, Meerut, whereby the revision preferred by the petitioner under Section 210 of the Code has been rejected.

3. Though the impugned orders are interlocutory in nature, the writ petition raises a substantial and recurring question of law concerning the applicability of Order VII Rule 11 of the Code of Civil Procedure, 1908 to summary proceedings under Section 67 of the Code, 2006. The question assumes significance, inasmuch as proceedings under Section 67 are intended to provide an expeditious remedy, whereas the power of rejection of a plaint under Order VII Rule 11 operates at the threshold to terminate proceedings that are barred in law or do not disclose a cause of action. The issue has repeatedly arisen before the revenue courts and, therefore, calls for a considered exposition of the legal position.

4. Proceedings under Section 67 (1) of the Code, 2006 were initiated against the petitioner on the allegation of unauthorised occupation of Gram Sabha land. The initiation of proceedings was founded upon information furnished in the manner prescribed by the concerned revenue authority, culminating in a report submitted in RC Form 19, as contemplated under Section 67(1). Consequent thereto, a show-cause notice in RC Form 20 was issued to the petitioner under Section 67(2), affording him opportunity to submit objections within the time prescribed.

5. Upon receipt of the notice issued under Section 67(2), the petitioner, instead of confining himself to objections contemplated thereunder, filed an application captioned under Order VII Rule 11 CPC, seeking rejection of the proceedings at the threshold on the ground of alleged non-maintainability. Subsequently, the petitioner also filed detailed objections on merits on 21.04.2024, as contemplated under Section 67(2).

6. The Assistant Collector, by order dated 24.03.2025, declined to decide the application under Order VII Rule 11 CPC at the threshold, holding that the objection as to maintainability would be considered along with the objections on merits at the stage of final adjudication under Section 67(3).

7. Aggrieved thereby, the petitioner preferred a revision under Section 210 of the Code, 2006, which came to be dismissed by the Additional Commissioner on 19.08.2025, holding that no jurisdictional error or illegality was made out.

8. Learned counsel for the petitioner vehemently contended that the application under Order VII Rule 11 CPC raised a pure question of maintainability, which ought to have been decided as a preliminary issue prior to adjudication on merits. Reliance was placed upon Section 214 of the Code, 2006, contending that principles of CPC apply and deferment of such adjudication amounts to jurisdictional error warranting interference under Article 226.

9. Per contra, learned Chief Standing Counsel appearing for the State-respondents submitted that proceedings under Section 67 are summary proceedings, to which provisions of CPC stricto sensu do not apply by virtue of Rule 186 of the U.P. Revenue Code Rules, 2016. It was submitted that integrated adjudication of objections aligns with the statutory scheme and legislative intent of expeditious removal of encroachments over public land.

10. The seminal question that arises for consideration is whether the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908, which contemplate rejection of a plaint, are applicable to summary proceedings initiated under Section 67 of the U. P. Revenue Code, 2006, and, if so, whether the Assistant Collector is mandatorily required to adjudicate such objection as a preliminary issue ?

11. In order to appreciate the controversy, the relevant provisions under the U.P. Revenue Code, 2006 and the U.P. Revenue Code Rules, 2016 are being set out herein below:

“Section 67. Power to prevent damage, misappropriation and wrongful occupation of Gram Panchayat property. - (1) Where any property entrusted or deemed to be entrusted under the provisions of this Code to a Gram Panchayat or other local authority is damaged or misappropriated, or where any Gram Panchayat or other authority is entitled to take possession of any land under the provisions of this Code and such land is occupied otherwise than in accordance with the said provisions, the Bhumi Prabandhak Samiti or other authority or the Lekhpal concerned, as the case may be, shall inform the Assistant Collector concerned in the manner prescribed.

(2) Where from the information received under sub-section (1) or otherwise, the Assistant Collector is satisfied that any property referred to in sub-section (1) has been damaged or misappropriated, or any person is in occupation of any land referred to in that sub-section in contravention of the provisions of this Code, he shall issue notice to the person concerned to show cause why compensation for damage, misappropriation or wrongful occupation not exceeding the amount specified in the notice be not recovered from him and why he should not be evicted from such land.

(3) If the person to whom a notice has been issued under sub-section (2) fails to show cause within the time specified in the notice or within such extended time as the Assistant Collector may allow in this behalf, or if the cause shown is found to be insufficient, the Assistant Collector may direct that such person shall be evicted from the land, and may, for that purpose, use or cause to be used such force as may be necessary, and may direct that the amount of compensation for damage or misappropriation of the property or for wrongful occupation as the case may be, be recovered from such person as arrears of land revenue.

(4) If the Assistant Collector is of opinion that the person showing cause is not guilty of causing the damage or misappropriation or wrongful occupation referred to in the notice under sub-section (2), he shall discharge the notice.

(5) Any person aggrieved by an order of the Assistant Collector under sub-section (3) or sub-section (4), may within thirty days from the date of such order, prefer an appeal to the Collector.

(6) Notwithstanding anything contained in any other provision of this Code and subject to the provisions of this section every order of the Assistant Collector under this section shall, subject to the provisions of sub-sections (5) be final.

(7) The procedure to be followed in any action taken under this section shall be such as may be prescribed.

Explanation.- For the purposes of this section, the word land shall include the trees and building standing thereon.

Section 214. Applicability of Code of Civil Procedure, 1908 and Limitation Act, 1963.- Unless otherwise expressly provided by or under this Code, the provisions of the Code of Civil Procedure, 1908 and the Limitation Act, 1963 shall apply to every suit, application or proceedings under this Code.

“Rule 186. Non-applicability of CPC (Section 214) - The provisions of the Code of Civil Procedure, 1908 shall not be applicable to the summary proceedings under the Code or these Rules, but the principles enshrined in the Code of Civil Procedure, 1908 and the principles of natural justice, shall be observed in the disposal of such proceedings.

12. Section 67 of the Uttar Pradesh Revenue Code, 2006 confers power upon the revenue authorities to prevent damage, misappropriation and wrongful occupation of property entrusted or deemed to be entrusted to a Gram Panchayat or other local authority. Sub-section (1) obligates the Bhumi Prabandhak Samiti, the concerned local authority or the Lekhpal, as the case may be, to inform the Assistant Collector in the prescribed manner upon damage, misappropriation or unauthorized occupation of such land. Sub-section (2) empowers the Assistant Collector, upon receipt of such information or otherwise, and upon being satisfied that damage, misappropriation or unauthorized occupation exists, to issue a show-cause notice calling upon the person concerned to explain why compensation should not be recovered and why eviction should not be ordered. Sub-sections (3) and (4) vest the Assistant Collector with authority, upon failure to show cause or upon insufficiency thereof, to order eviction and recovery of compensation as arrears of land revenue, or alternatively, to discharge the notice if no contravention is found. Sub-section (5) provides a statutory appeal to the Collector within thirty days. Sub-section (6) accords finality to orders passed under the section, subject to the appellate remedy. Sub-section (7) mandates that the procedure to be followed shall be such as may be prescribed.

13. The applicability of the Code of Civil Procedure to proceedings under the Code is governed by Section 214 of the Code, 2006, which makes the CPC applicable unless otherwise expressly provided. Such express exclusion is contained in Rule 186 of the U.P. Revenue Code Rules, 2016, which categorically provides that the provisions of the CPC shall not apply to summary proceedings, though the principles thereof and the principles of natural justice shall be followed.

14. A conjoint reading of Section 67, Section 214, and Rule 186 makes the statutory position explicit. Section 67 creates a summary mechanism for protection of Gram Sabha and public land, empowering the Assistant Collector to act on information or official report without recourse to civil litigation. The proceedings are designed to be swift, preventive, and remedial. While Section 214 provides for application of CPC provisions generally, it does so subject to express exclusion. Rule 186 is such an express exclusion. It categorically bars application of CPC provisions to summary proceedings, while preserving only their principles, coupled with principles of natural justice. Thus, the statutory scheme consciously balances procedural fairness with administrative efficiency, ensuring that the rigours of civil procedure do not obstruct the legislative object of prompt eviction of persons found to be in wrongful occupation of Gram Panchayat property.

15. Proceedings under Section 67 of the U.P. Revenue Code, 2006 are administrative-cum-quasi-judicial summary proceedings and do not constitute civil suits. A civil suit under the Code of Civil Procedure commences with the presentation of a plaint under Order IV Rule 1 CPC, followed by service of summons, framing of issues, recording of evidence, and adjudication through a full-fledged trial.

16. In stark contrast, proceedings under Section 67 do not originate from a plaint but are triggered upon information furnished in accordance with sub-section (1) by the Bhumi Prabandhak Samiti, the concerned local authority or the Lekhpal, or where the Assistant Collector, upon such information or otherwise under sub-section (2), is satisfied regarding damage, misappropriation or unauthorized occupation of land vested in the Gram Panchayat.

17. The procedural trajectory under Section 67 of the U.P. Revenue Code, 2006 commences with the receipt of information or an official report regarding alleged unauthorized occupation of Gram Sabha land, upon which a show-cause notice is issued to the person concerned, who is thereafter afforded opportunity to file objections, followed by a summary enquiry as the authority deems fit, culminating in the passing of a reasoned final order in accordance with law.

18. Where a statute creates a special forum and prescribes a distinct and self-contained procedure, concepts and technicalities drawn from ordinary civil court procedure cannot be imported into such proceedings unless the statute itself expressly so provides. Revenue ejectment proceedings, particularly those relating to removal of unauthorised occupation over public land, have consistently been understood to be summary in nature, intended to secure swift and effective remedy, and are not governed by the technical rigours of the Code of Civil Procedure.

19. The manifest legislative object underlying Section 67 of the U.P. Revenue Code, 2006 is the expeditious vacation of public and Gram Sabha land so as to prevent public mischief and protect community property. The introduction of procedural trappings of civil litigation such as elaborate pleadings, technical objections, and threshold applications designed for adversarial litigation would frustrate this object and dilute the summary character of the statutory mechanism.

20. Order VII Rule 11 of the Code of Civil Procedure confers power upon the Court to reject a plaint at the very threshold on grounds, inter alia, that it does not disclose a cause of action or that the suit appears, from the statements contained in the plaint, to be barred by any law. The provision is premised on the salutary principle that frivolous, vexatious or legally untenable litigation ought not to be permitted to occupy the time of the Court or subject parties to avoidable proceedings.

21. The provision, it must be noted, is essentially procedural, suit centric and threshold-oriented. It presupposes, in the strict sense, the institution of a civil suit by presentation of a plaint and is intended to operate at the inception of such adversarial civil proceedings. Its conceptual foundation is, therefore, inextricably linked to the existence of a plaint, and it does not apply *proprio vigore* dehors the framework of an ordinary civil suit.

22. Procedural provisions of the Code of Civil Procedure are not to be mechanically or automatically applied to proceedings under special statutes, particularly where such statutes prescribe a distinct procedure and expressly limit or exclude the application of the Code. Rule 186 of the U.P. Revenue Code Rules, 2016 expressly excludes the application of the provisions of the Code of Civil Procedure to summary proceedings, while preserving only the guiding principles thereof along with the principles of natural justice. Applying the maxim *expressio unius est exclusio alterius*, once CPC provisions are expressly excluded, their indirect importation through Section 214 is impermissible.

23. Proceedings under Section 67 of the U.P. Revenue Code, 2006 do not originate from a plaint in the sense understood under the Code of Civil Procedure. The initiation of such proceedings is founded upon an RC Form 19 report, which is an official report submitted by a revenue functionary in discharge of a statutory duty. Such a report is neither an adversarial pleading nor a statement of claim asserting private rights, but merely a piece of administrative

information which sets in motion the statutory obligation of the Assistant Collector to enquire into an alleged unauthorized occupation of public land.

24. The RC Form 19 report, therefore, cannot be equated with a plaint, either in form, substance, or legal character. Any attempt to treat it as a plaint so as to attract the rigours of Order VII of the Code of Civil Procedure would be conceptually erroneous and legally untenable, and would amount to importing civil suit jurisprudence into a summary statutory proceeding where the legislature has consciously excluded its application.

25. Equating such a report with a plaint would be wholly misplaced and would amount to a fundamental category error. In the absence of a plaint, the very foundation for invoking Order VII Rule 11 is lacking, thereby rendering the said provision wholly inapplicable to proceedings under Section 67 of the Code. The exclusion of its applicability stands further reinforced by Rule 186 read with Section 214 of the U.P. Revenue Code, 2006.

26. A person proceeded against under Section 67 is entitled to raise objections relating to jurisdiction, maintainability, or the existence of a legal bar as part of the objections contemplated under Section 67(2). However, the statute does not mandate that such objections must invariably be segregated and adjudicated as preliminary issues. The decision as to whether a preliminary objection should be taken up separately or considered along with the merits lies within the procedural discretion of the competent authority, to be exercised having regard to the nature of the objection and the overall statutory scheme.

27. In summary proceedings, insistence on isolated adjudication of preliminary objections often operates as a dilatory device and has the potential to defeat the very purpose of providing a swift and efficacious remedy. Unless a jurisdictional defect is apparent on the face of the record and goes to the very root of the proceedings, integrated adjudication remains both permissible and desirable.

28. In the present context, the requirements of natural justice stand fully satisfied as the petitioner has been served with notice, afforded opportunity to file objections, permitted to participate in the proceedings, and has availed the remedy of revision. The principles of natural justice do not mandate fragmented or piecemeal hearings, nor do they require every objection to be adjudicated in isolation at a preliminary stage.

29. The order dated 24.03.2025 is purely procedural and interlocutory in nature, merely deferring consideration of objections as to maintainability to the stage of final adjudication. It does not decide any substantive right of the parties.

30. The legislative declaration of finality under sub-section (6) of Section 67, subject only to the statutory appeal, further underscores the legislative intent to restrict procedural obstructions and reinforces judicial restraint against interference with interlocutory procedural orders in summary proceedings.

31. It is well settled that the extraordinary jurisdiction under Article 226 of the Constitution is not to be exercised against interlocutory or procedural orders passed in the course of summary proceedings, unless such orders disclose a patent lack of jurisdiction or result in manifest injustice.

32. In view of the aforesaid discussion, this Court is of the considered opinion that Order VII Rule 11 of the Code of Civil Procedure, 1908, being plaintiff centric and suit-oriented, has no application *proprio vigore* to summary proceedings under Section 67 of the U.P. Revenue Code, 2006, which are not instituted by presentation of a plaintiff but are set in motion by an RC Form 19 report. Consequently, an application seeking rejection of such proceedings by invoking Order VII Rule 11 CPC, in its strict sense, would not be maintainable.

33. At the same time, it cannot be gainsaid that the revenue courts are not denuded of the authority to examine, at the threshold, whether the very initiation of proceedings is wholly without jurisdiction, barred by law, or constitutes an abuse of the statutory process. While the formal machinery of Order VII Rule 11 CPC cannot be imported into Section 67 proceedings, the underlying principle that legally untenable proceedings ought not to be permitted to continue may, in an appropriate case, be applied in a limited manner, consistent with the summary scheme and legislative intent of the Code.

34. The legal position that emerges from the foregoing discussion may be summarised thus :

34.1 Proceedings initiated under Section 67 of the U.P. Revenue Code, 2006 are summary in character, administrative-cum-quasi-judicial in nature, and do not partake the character of civil suits governed by the Code of Civil Procedure, 1908.

34.2 The provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908, which contemplate rejection of a plaintiff, are wholly inapplicable to proceedings under Section 67, inasmuch as such proceedings do not originate from any plaintiff.

34.3 Rule 186 of the U.P. Revenue Code Rules, 2016 expressly excludes the application of the Code of Civil Procedure, 1908 to summary proceedings under the Code, save and except for adherence to the underlying principles thereof and the principles of natural justice.

34.4 A person against whom proceedings are initiated under Section 67 is entitled to raise objections relating to maintainability, jurisdiction, or the existence of any statutory or legal bar; however, no vested, absolute, or indefeasible right accrues to such person to demand that those objections be taken up, isolated, and adjudicated as separate or independent preliminary issues, divorced from consideration of the merits of the proceedings

34.5 Objections as to maintainability constitute an integral part of the objections contemplated under Section 67(2) of the Code and are ordinarily required to be considered in conjunction with, and not in isolation from, the merits of the case.

34.6 Segregated or threshold adjudication of preliminary objections is warranted only in exceptional situations where a patent and apparent jurisdictional defect is discernible on the face of the record.

34.7 Interlocutory or procedural orders passed in the course of summary proceedings under Section 67 are not amenable to interference in exercise of writ jurisdiction under Article 226 of the Constitution of India, unless such orders disclose a patent lack of jurisdiction or result in manifest injustice.

35. The impugned orders disclose no jurisdictional error, illegality or procedural impropriety warranting interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. The writ petition is, therefore, held to be devoid of merit and is, accordingly, **dismissed**.

36. However, to serve the ends of justice, Respondent no.4-Tehsildar (Judicial)/Assistant Collector, Tehsil Dadri, Gautam Budh Nagar is directed to expeditiously conclude adjudication of Case No.14775 of 2023 by passing reasoned and speaking final order considering all objections including those on maintainability within a period of eight weeks from the date of production of certified copy of this order.

(2026) 1 ILRA 1071
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.01.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE MRS. SWARUPAMA CHATURVEDI, J.

Writ C No. 44710 of 2025

M/S Wizitec Pvt. Ltd.

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the indefinite blacklisting order is legal and valid; whether the District Basic Education Officer was competent to pass the blacklisting order in view of the Government Order dated 26.07.2024; and whether the blacklisting order is vitiated for non-supply of material, non-consideration of the petitioner's replies, and failure to specify the duration of debarment.

HEADNOTE

Administrative Law – Blacklisting/Debarment – Indefinite blacklisting – Petitioner blacklisted without specification of period – Principles of natural justice – Replies submitted by petitioner not considered – Material forming basis of decision not supplied – Government Order dated 26.07.2024 – Competent authority – Authority issuing blacklisting order not competent – GeM contractual framework – Requirement to prepare merit list of 504 candidates not part of original engagement. (E-5)

HELD:

Petitioner, a manpower outsourcing agency engaged under the GeM bid pursuant to Government Order dated 26.07.2024 for supply of ECCE Educators and Technical Instructors under the Samagra Shiksha Abhiyan, was placed under an indefinite blacklisting order by the District Basic Education Officer, allegedly for deficiencies in performance and the selection process, despite the petitioner having submitted replies, and the scope of work having been unilaterally expanded.

Debarment is recognised and often used as an effective method for disciplining deviant suppliers or contractors; however, debarment is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor. An indefinite blacklisting order could not be legally justified as it carried serious civil consequences. As blacklisting had serious civil consequences, the show cause notice proposing blacklisting is required to specifically indicate such proposed action so as to put the noticee to clear notice and enable an effective response.

Impugned blacklisting order was passed for an indefinite time period; the impugned order did not specify the period of blacklisting and failed to refer to or consider the detailed replies and supporting documents submitted by the petitioner. Absence of any document providing the basis for such extreme action and the indefinite nature of the blacklisting order indicated arbitrariness and unfairness in action, rendering the impugned order legally unsustainable, arbitrary, disproportionate, and violative of Articles 14 and 19(1)(g) of the Constitution.

The Government Order dated 26.07.2024 provided that discrepancies or complaints concerning the selection process were to be placed before the District Magistrate, who was empowered to consider and decide disputes related to the selection of candidates. The blacklisting order passed by the District Basic Education Officer was bad for want of lawful authority, as the District Basic Education Officer, having put allegations on the petitioner for wrong selection of candidates, could not be the authority to pass the order of blacklisting, being a judge in his own cause.

The impugned order was quashed; the matter was remitted to the District Magistrate for fresh consideration after affording fair opportunity of hearing; and the petitioner was permitted to participate in future tenders for the stipulated period. **[Paras 14, 16–17, 18–20, 23, 25, 26–28]**

CASE LAW CITED

M/s Erusian Equipment & Chemicals Ltd. v. State of West Bengal & Anr., (1975) 1 SCC 70;
Gorkha Security Services v. Govt. (NCT of Delhi), (2014) 9 SCC 105;
Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project BSNL, (2014) 14 SCC 731;
Vetindia Pharmaceuticals Ltd. v. State of U.P., (2021) 1 SCC 804

List of Acts

Constitution of India, 1950 ;
Government Order dated 26.07.2024 (Samagra Shiksha Abhiyan);

List of Keyword

Blacklisting; Indefinite debarment; Civil consequences; Natural justice; Competent authority; Arbitrariness; Proportionality; Non-consideration of reply; Public contracts; Outsourcing agency; GeM portal; Samagra Shiksha Abhiyan.

CASE ARISING FROM

From the order dated 26.11.2025 passed by District Basic Education Officer.

Appearances for Parties

Advs For Petitioner: Narendra Singh
Advs For Respondents: C.S.C.

(Delivered by Hon'ble Mrs. Swarupama Charurvedi, J.)

1. Heard Sri Ashwini Kumar Yadav, learned advocate holding brief of Sri Narendra Singh, learned counsel for the petitioner and Sri Mukul Tripathi, learned Standing Counsel for the State respondents.

2. By means of present writ petition filed under Article 226 of the Constitution of India, petitioner seeks issuance of appropriate writs, orders or directions, including a writ in the nature of certiorari for quashing the impugned indefinite blacklisting order bearing Letter No. SSA/J.S.P./12226-34/2025-26 dated 26.11.2025 as well as the letter bearing No. SSA/District Resource Training/9852-60/2025-26 dated 29.09.2025, issued by Respondent No. 4, as the letter expands the scope of work of the petitioner and runs contrary to the Government Order dated 26.07.2024, and further seeks issuance of a writ in the nature of mandamus commanding the respondents, jointly and severally, to forthwith reinstate and restore the contract awarded to the petitioner for supply of 168 ECCE Educators and 40 Technical Instructors in District Shahjahanpur under Bid No. GEM/2025B5794364, to remove the petitioner's name from the blacklist maintained on the GeM portal and from all records of the State of Uttar Pradesh and its authorities, to permit the petitioner to participate in future tenders and continue the existing contract without reference to the impugned blacklisting order.

3. The petitioner company is engaged in the business of providing manpower and outsourcing services to various government departments, and it challenges certain administrative actions taken by the respondents under the Samagra Shiksha Abhiyan, culminating in the blacklisting order dated 26.11.2025, which does not specify the period for which the petitioner company has been blacklisted.

4. The record indicates that the State Government issued Government Order No. 68-5099/178/2024 (Basic Education) dated 26.07.2024 governing contractual engagements under the Samagra Shiksha Abhiyan. Pursuant thereto, a GeM bid bearing No. GEM/2025/B/5794364 was floated on 11.01.2025 along with the Additional Terms and Conditions. The petitioner participated in the said bid process and was selected for execution of training-related work.

5. In furtherance thereof, Respondent No. 4, vide communication dated 16.06.2025, required the petitioner to publish an advertisement on the Seva Yojna portal for engagement of 168 ECCE Educators. Thereafter, vide communication dated 29.09.2025, Respondent No. 4 called upon the petitioner to prepare a merit-wise list of 504 candidates after verification of their original documents, while also raising certain issues with regard to performance. The petitioner submitted its response to the said communication on 21.10.2025.

6. Further communications were issued by Respondent No. 4 on 28.10.2025 and 31.10.2025, to which the petitioner submitted replies on the respective dates along with supporting material. Subsequently, Respondent No. 4 passed the impugned order dated 26.11.2025 placing petitioner under blacklisting, without even specifying the duration thereof.

7. Learned counsel for the petitioner submits that the impugned order dated 26.11.2025 placing the petitioner under blacklisting is arbitrary, and violative of the principles of natural justice, hence unsustainable in law. He contends that the order does not specify the period of

blacklisting and, therefore, operates as an indefinite and open-ended debarment, which is impermissible in law. Reliance was placed on settled legal principles that blacklisting has serious civil consequences and must be for a defined duration supported by reasons.

8. Learned counsel further submits that the actions preceding the impugned order were *dehors* the government order dated 26.07.2024, the bid conditions, and the additional terms and conditions. He contends that the direction issued on 29.09.2025, requiring preparation of a merit list of 504 candidates after verification of original documents amounted to an unilateral expansion of the scope of work, which was neither contemplated under the contractual framework nor part of the original engagement and non-compliance with such an extraneous requirement could not have been treated as a breach of contract.

9. Learned counsel appearing for the petitioner also contends that despite the petitioner having submitted detailed replies on 21.10.2025, 28.10.2025, and 31.10.2025, along with supporting materials, the same were neither considered nor dealt with in the impugned order. No document forming the basis of the blacklisting was supplied to the petitioner prior to passing of the blacklisting order. The impugned order itself discloses that the replies submitted by the petitioner were not considered, as the defence taken by the petitioner finds no mention therein.

10. Per contra, learned counsel appearing for the respondents supports the impugned action and submits that the petitioner failed to perform its contractual obligations, resulting in administrative difficulties in the implementation of the scheme. He further contends that repeated deficiencies were noticed in the petitioner's performance, particularly in relation to the engagement and verification process of personnel, which necessitated corrective directions by Respondent No.4.

11. Learned counsel submits that sufficient opportunities were provided to the petitioner through multiple communications dated 29.09.2025, 28.10.2025, and 31.10.2025 to explain its conduct, and that the petitioner had submitted replies thereto. He further contends that blacklisting is an administrative measure taken to protect public interest and to prevent engagement of agencies whose performance is found to be unsatisfactory. Learned counsel argued that the decision to blacklist the petitioner was taken after due consideration of the material on record.

Respondent No.4 had the authority, under the GeM Incident Management Policy, to pass an order of indefinite blacklisting, and whether the impugned order dated 26.11.2025 is vitiated for arbitrariness in action and also for it being in violation of the principles of natural justice, inasmuch as the material forming the basis of the decision was not supplied, the petitioner's submissions were not considered, and the order fails to specify the duration of blacklisting.

13. This Court now examines the facts on record, the submissions advanced by the learned advocates for the parties, and the settled legal position as laid down in the judgments cited, for the purpose of answering the aforesaid issues.

14. On a careful examination of records, including the communications exchanged between the parties, the replies submitted by the petitioner, and the contents of the impugned order, it is evident that blacklisting order is passed for indefinite time period. The impugned order does not

specify the period of blacklisting and failed to refer or consider the detailed replies and supporting documents submitted by the petitioner. It also appears from records that the requirement to prepare a merit list of 504 candidates after verification of original documents was not in the original engagement terms.

15. Supreme court in **M/s. Erusian Equipment & Chemicals Ltd. v. State of West Bengal & Anr. (1975) 1 SCC 70**, has held that the purpose of serving a show cause notice is giving a person opportunity to meet the allegations which were the basis for the authority who was contemplating blacklisting. The judgment observes that:

“12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

... ..?

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

16. The **Supreme Court in Gorkha Security Services v. Government (NCT of Delhi) and Others, (2014) 9 SCC 105**, has dealt with the question of law pertaining to the form and content of show cause notice, that is required to be served, before deciding as to whether the noticee is to be blacklisted or not and held that a show cause notice proposing blacklisting must specifically indicate such proposed action, as blacklisting entails serious civil consequences and the affected party must be put to clear notice to enable an effective response.

17. Supreme Court in **Gorkha Security Services (Supra)** observed that:

“16. It is a common case of the parties that the blacklisting has to be preceded by a show cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the

person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting many civil and/ or evil consequences follow. It is described as 'civil death' of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in Government Tenders which means precluding him from the award of Government contracts."

18. The Apex Court in **Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others, (2014) 14 SCC 731**, has observed that:

"25. Suffice it to say that 'debarment' is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the 'debarment' is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor."

19. The Supreme Court has followed the same principle in **Vetindia Pharmaceuticals Ltd. v. State of Uttar Pradesh and Another, (2021) 1 SCC 804**, and held that the show cause notice must clearly indicate that the contemplated action is blacklisting. The Court observed that:

"12. In view of the aforesaid conclusion, there may have been no need to go into the question of the duration of the blacklisting, but for the arguments addressed before us. An order of blacklisting operates to the prejudice of a commercial person not only in praesenti but also puts a taint which attaches far beyond and may well spell the death knell of the organisation/institution for all times to come described as a civil death. The repercussions on the appellant were clearly spelt out by it in the representations as also in the writ petition, including the consequences under the Rajasthan tender, where it stood debarred expressly because of the present impugned order. The possibility always remains that if a proper show-cause notice had been given and the reply furnished would have been considered in accordance with law, even if the respondents decided to blacklist the appellant, entirely different considerations may have prevailed in their minds especially with regard to the duration."

20. In the judgement rendered in **Vetindia Pharmaceuticals Ltd. (Supra)**, the Supreme Court has reiterated the same principle and further observed that:

"13. This Court in **Kulja Industries Ltd. v. Western Telecom Project BSNL [Kulja Industries Ltd. v. Western Telecom Project BSNL, (2014) 14 SCC 731]**, despite declining to interfere with an order of blacklisting, but noticing that an order of permanent debarment was unjustified, observed : (SCC p. 744, para 28)

"28.2. Secondly, because while determining the period for which the blacklisting should be effective the respondent Corporation may for the sake of objectivity and transparency formulate broad guidelines to be followed in such cases. Different periods of debarment depending upon the gravity of the offences, violations and breaches may be prescribed by such guidelines. While it may not be possible to exhaustively enumerate all types of offences and acts of misdemeanour, or

violations of contractual obligations by a contractor, the respondent Corporation may do so as far as possible to reduce if not totally eliminate arbitrariness in the exercise of the power vested in it and inspire confidence in the fairness of the order which the competent authority may pass against a defaulting contractor.”

21. After perusal of records, hearing counsel for parties and having examined the settled legal position as above, we proceed to apply the same to the facts of the present case.

22. The respondents assert that blacklisting was taken in public interest, but absence of any document to provide basis for such extreme action, failure to consider petitioner's defense, and indefinite nature of the blacklisting order indicates towards the arbitrariness and unfairness in action, which cannot be permitted in law. The blacklisting order impugned in the petition does not disclose any duration and therefore the order is legally unsustainable and liable to be quashed as arbitrary, disproportionate, and violative of Articles 14 and 19(1)(g) of the Constitution.

23. Debarment has been recognized as a method of disciplining deviant suppliers, however, an order of debarment can never be for an indefinite period as it is in the present case. Therefore, in the light of settled legal principles, the Court must balance the need to protect public interest with procedural fairness, ensuring that administrative measures such as blacklisting are neither excessively punitive nor devoid of reasoned legal justification. Indefinite blacklisting order cannot be legally justified as it carries serious civil consequences and therefore, it must be based on clear reasons, a defined duration, and adherence to principles of natural justice. The impugned order is against the principle of law established by the Supreme Court in **Kulja industries ltd. (supra)** and **Vetindia Pharmaceuticals Ltd. (supra)**.

24. Another significant question for consideration is whether the authority that issued the blacklisting order was competent to do so. The Government Order dated 26.07.2024 makes the provision that any discrepancy or complaint concerning the selection process must be submitted to the District Magistrate through the District Basic Education Officer and this makes it indicative of a fact that the District Magistrate is empowered to consider and decide disputes related to the selection of candidates. The dispute started with the fact that there were complaints regarding selection of candidates and, therefore, it was appropriate that the District Magistrate decided the dispute regarding allegations against the petitioner, which led to the blacklisting order. In our considered view the District Basic Education Officer, having put allegation on the petitioner for wrong selection of candidates cannot be the authority to pass the order for blacklisting as he cannot be judge in his own cause.

25. In the present case, the impugned blacklisting order was issued by Respondent No.4, who, in our considered view, in the light of the Government Order, does not possess the authority to adjudicate such issues. The District Basic Education Officer's role is limited to forwarding complaints to the District Magistrate, who is the designated as decision-making authority. Therefore, the blacklisting order passed by the District Basic Education Officer is bad for want of lawful authority and hence, deserves to be quashed.

26. In view of the foregoing discussion and the settled legal position, the impugned order dated 26.11.2025 cannot be sustained and is hereby **quashed** and the writ petition is **partly allowed to that extent**.

27. The matter is remitted to the District Magistrate, Shahjahanpur for fresh consideration in accordance with law, after affording petitioner a fair opportunity of hearing. The petitioner is directed to submit a fresh representation to the District Magistrate, Shahjahanpur raising all the grounds on the point of letter dated 29.09.2025 along with a certified copy of this order within four weeks from today. In the event, petitioner moves such a representation, as directed hereinabove, the District Magistrate concerned shall pass a reasoned order on the letter and decide the issue of blacklisting and all ancillary issues within a further period of four weeks.

28. It is further provided that for a period of eight weeks or till decision is taken by the District Magistrate, whichever is earlier, petitioner shall be entitled to participate in future tenders.

29. No order as to costs.

(2026) 1 ILRA 1078
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.01.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1002800 of 2001

Prahlad Gond

...Petitioner

Versus

U.P. Co-operative Tribunal Lko & Ors....Respondents

Issue(s) for consideration

Whether a writ petition in the nature of certiorari will lie against a Cooperative Society or it comes within the meaning of the words 'other Authority' occurring in Article 226 of the Constitution?

Headnotes

A. Writ Law – Maintainability of writ petition – Constitution of India: Article 12, 226 - The writ petition in the nature of certiorari will lie against a Co-operative Society only when such Society has ingredient of an 'Authority' within the meaning of Article 226 of the Constitution and not otherwise. The following guidelines are culled out from the various decisions of the Supreme Court:—

1. The constitution of the Managing Body/Committee constitutes the functionaries of the Government.
2. There is an existence of deep and pervasive control of the management and policies of the Co-operative Society by the Government.
3. The function of the Co-operative Society is of public importance and closely related to the Governmental functions.
4. The financial control is by the Government or it provides financial aid controlling its affairs.
5. The violation of statutory rules applicable to the Society in regard to the service matters of its employees, and
6. Statutory violations or non-compliance of it by an authority under the Act. (Para 13)

B. Mere statutory regulation under the Cooperative Societies Act or the fact that orders have been passed by the Arbitrator and in the appeal by the Tribunal does not, by itself, confer maintainability of a writ petition under Article 226 against a private cooperative society in matters arising out of contractual or service-related disputes. The respondent co-operative society is a private co-operative society, who has established a bank in private capacity. In the entire writ petition, there is no pleading or assertion that the respondent bank is an instrumentality of the State or is discharging any public duty so as to fall within the ambit of Article 12 of the Constitution of India. (Para 14)

C. Writ jurisdiction cannot be invoked for adjudication of private disputes involving co-operative societies unless the society is shown to be State or an instrumentality of State, or the action complained of has a direct public law element. The present dispute is purely inter se between the member/employee and the society, involving disputed questions of fact, for which the remedy lies elsewhere and not u/Article 226 of the Constitution. (Para 15)

Writ petition dismissed. (E-4)

Case Law Cited

1. Krishna Mohan Vs. State of U.P. and others, Writ-A No.2329 of 2019) (Para 3)
2. Kulwinder Singh Vs. State of Haryana and others, 2019 (2) ILR Punjab and Haryana 1036 (Para 3)
3. Anand Prakash Vs. The Delhi State Co-operative Bank Ltd. and another (Para 3)

List of Acts

Constitution of India.

List of Keywords

writ jurisdiction, constitution, state, instrumentality, cooperative, societies, authority, maintainability.

Appearances for Parties:

For Petitioner(s): Anuj Kudesia, Himanshu Shukla, Vikas Kumar Agrawal

For Respondent(s): C.S.C., Kapil Muni Dubey, Rakesh Nigam, Sati Prasad Singh @ Satish Kumar Singh

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard learned counsel for the petitioner, Sri Divesh Mishra, learned Standing Counsel for State-respondent No.1 and Sri Satish Kumar Singh, learned counsel for respondent No.5.

2. By means of the present writ petition, the petitioner is challenging the orders dated 29.5.2001, passed by respondent No.1 in Appeal No.92 of 2006 and order dated 20.9.1996,

3. A preliminary objection has been raised by learned counsel for respondent No.5 that the co-operative society, which is running the bank, is a private society, therefore, the writ petition is not maintainable under Article 226 of the Constitution of India. In support of his

(i) Krishna Mohan Vs. State of U.P. and others (Writ-A No.2329 of 2019)

(ii) Kulwinder Singh Vs. State of Haryana and others [2019 (2) ILR Punjab and Haryana 1036]

(iii) Anand Prakash Vs. The Delhi State Co-operative Bank Ltd. and another

4. Learned counsel for the petitioner by placing facts of the case, submitted that although this is a private co-operative society, but he is challenging the order of the Arbitrator passed on 20.9.1996 and the order of the Tribunal.

5. Factual matrix of the case is that the petitioner was posted as Class IV employee and member of the society (respondent No.4). Sri Virendra Bahadur Singh was Secretary of the society till he was suspended by the society. He was also posted in the Establishment Section of the Bank and prepared the pay bills of the employees of the bank as well as made deductions from the salary of the employees towards the repayment of loan taken by the employees from the society.

6. On 10.8.1994, the bank sanctioned credit limit to the society for the year 1994-95. On 20.8.1994, the list was submitted by the society to the Branch Manager of the bank showing the amounts of loan outstanding against individual members of the society, which list was then forwarded to the Senior Branch Manager of the bank.

7. On 2.9.1994, the Branch Manager of the bank sent the list dated 20.8.1994, prepared by the Secretary to the Enquiry Officer, Special Investigation Branch Co-operative, Lucknow, which was certified by the District Assistant Registrar, Basti. The Secretary of the society directed the members to check the interest levied on loan amount, who had received the passbooks and in case of any discrepancy, file objections, since the documents of the society were being checked by him as the enquiry had commenced. The Secretary-Sri Virendra Bahadur Singh absconded with the relevant records of the society.

8. The Chairman of the Enquiry Committee required Sri Virendra Bahadur Singh to produce the record of the society, who did not handover the relevant record of the society, except some records in respect of individual members upto the year 1986 and the balance sheet up to the year 1993-94. Sri Virendra Bahadur Singh forged and fabricated document dated 25.11.1994 to the effect that he had furnished all the records of the society to Sri Hira Lal Mishra, Chairman of the Enquiry Committee. The said document had never been signed by Sri Hira Lal Mishra.

9. On 18.10.1994, on detection of embezzlement, the auditors made a report to the District Assistant Registrar, recommending the seizure of record and office of the society. On 27.10.1994, the District Assistant Registrar issued order under Section 37 of the Act, appointing A.D.C.O. instead of seizing the record, lodged F.I.R against Sri Virendra Bahadur Singh, who was then suspended by the bank from the services. Sri Virendra Bahadur Singh did not deposit the amount shown by him, which had been recovered from the members of the society. The society lodged F.I.R. against Sri Virendra Bahadur Singh for embezzlement of Rs.50 Lakhs on 17.1.1995. Detailed information regarding the act of Sri Virendra Bahadur Singh was sent to the District Assistant Registrar, Co-operative society, Basti.

10. On 9.3.1995, demand notice was issued to the petitioner by the bank for an amount of Rs.1,26,776/-. Thereafter, another demand notice was sent to the petitioner by the bank, showing that no deductions have been made from his salary since 1991. The petitioner filed an application under Section 70 before the Registrar, Co-operative societies, Lucknow. The bank filed reply, admitting stoppage of deduction of loan from the petitioner's salary and the list dated 20.8.1994,

given by Sri Virendra Bahadur Singh wherein Nil outstanding loan was indicated against the name of the petitioner.

11. Thereafter, the society also filed reply, admitting issuance of passbook by Sri Virendra Bahadur Singh and the list dated 20.8.1994, indicating Nil outstanding loan against the name of the petitioner. On 5.7.1996, the Arbitrator rejected the petitioner's application dated 21/22.2.1996 for summoning the documents from Sri Virendra Bahadur Singh and the claim of the petitioner was also dismissed. The petitioner preferred an appeal before the Tribunal. In the meanwhile, Sri Virendra Bahadur Singh was dismissed from the service, after a departmental enquiry in which it was found that he had embezzled an amount of Rs.58,58,403/-. Vide order dated 29.5.2001, appeal of the petitioner was also dismissed.

12. Learned counsel for the petitioner, in support of his submission, also placed reliance upon a Division Bench judgment in Special Appeal No.297 of 2025. Relevant paragraph is being quoted below :-

"As we have rendered differing opinions, we frame the following questions/ points for consideration by a Bench of such strength as Hon'ble the Chief Justice may deem fit to constitute under Chapter VIII Rule 3 of the Allahabad High Court Rules, 1952:-

i. Whether, the order of learned Single Judge in Writ-C No.7497 of 2025 [Bahujan Nirbal Varg Sahkari Grih Nirman Samiti Ltd. & Ors. vs. State of U.P. & Ors.] which is impugned in Special Appeal No.297 of 2025 is without jurisdiction, in toto, or in part? If so, its consequences on the question of maintainability of special appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 and merits of the issues involved therein.

ii. Whether the order passed by the writ court which is impugned in Special Appeal No.297 of 2025 is beyond the scope of the writ petition?

iii. Which of the two opinions rendered by Members of the Division Bench in Special Appeal No.297 of 2025 expresses the correct view? "

12. On perusal of the judgment aforesaid, it is evident that in the said judgment, the question of passing of interlocutory order by the Tribunal as well as interim order passed in the writ petition that whether the special appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 is not maintainable or against the interlocutory order passed by the Tribunal is maintainable or not, no other question was referred to the Larger Bench, therefore, ratio of the judgment relied upon by the petitioner's counsel is not applicable to the facts and circumstances of the present case.

13. For deciding the controversy, relevant paragraphs of the judgment relied upon by learned counsel for the respondent No.5 are being quoted as under :-

(i) **Krishna Mohan** (Supra). Relevant paragraph is being quoted below :-

"3. Sri. H.R. Mishra, learned Senior Counsel has raised a preliminary objection regarding maintainability of the writ petition. He has relied upon the judgment of Full Bench of this Court in case of *Vijay Bihari Srivastava v. U.P. Postal Primary Co-operative Bank Ltd.*, (2003) 1 UPLBEC 1. It was held as under:?"

"35. In the light of foregoing discussions, we answer question as to whether a writ petition in the nature of certiorari will lie against a Co-operative Society or it comes within the meaning of the words ?other Authority? occurring in Article 226 of the Constitution, as follows:

The writ petition in the nature of certiorari will lie against a Co-operative Society only when such Society has ingredient of an ?Authority? within the meaning of Article 226 of the Constitution and not otherwise. The following guidelines are culled out from the various decisions of the Supreme Court, referred to above:?

1. The constitution of the Managing Body/Committee constitutes the functionaries of the Government.

2. There is an existence of deep and pervasive control of the management and policies of the Co-operative Society by the Government.

3. The function of the Co-operative Society is of public importance and closely related to the Governmental functions.

4. The financial control is by the Government or it provides financial aid controlling its affairs.

5. The violation of statutory rules applicable to the Society in regard to the service matters of its employees, and

6. Statutory violations or non-compliance of it by an authority under the Act.?"

(ii) *Kulwinder Singh (Supra)*. Relevant paragraph is being quoted below :-

"7. In the present case, learned counsel for the petitioner has not been able to point out even one of the factor necessary so as to treat respondent No. 3 as the instrumentality of the State. It has not been shown to this Court whether any finances have been extended by the Government of Haryana to respondent No. 3-Cooperative Society, or any of the officer is controlling the respondent No. 3-Cooperative Society administratively in any manner. None of the conditions laid down by the Hon'ble Supreme Court of India in *Satrughan Nishad's case (supra)*, has been fulfilled in the present case so as to treat the said Cooperative Society as instrumentality of the State so as to amenable to the writ jurisdiction of this Court."

(iii) *Anand Prakash (Supra)*. Relevant paragraph is being quoted below :-

"7. The counsel for the petitioner during the hearing has referred to:

(i) *W.B. State Co-operative Bank Ltd. v. Paritosh Bagchi*, (1995) 6 SCC 562.

(ii) *Deokinandan Prashar v. The Agra District Co-operative Bank*, (1973) 3 SCC 303 : AIR 1972 SC 2497.

to contend that in those cases writ petitions against the Co-operative Banks were maintained. However, neither of the two judgments is found to contain any discussion on the maintainability of the writ petition. The Supreme Court in the judgment cited by me above has not ruled out the possibility of maintainability of a writ petition against a Co-operative Society but has laid down the tests therefor. It may be that the Co-operative Banks in the judgments cited by the counsel for the petitioner satisfied the said tests and thus the issue of maintainability of the writ petition was not raised. However, merely because writ petitions against another Co-operative Bank were entertained, would still not justify the maintainability of the present writ petition without the petitioner establishing before this Court that the tests are satisfied qua the respondent and which has not been done by the petitioner in spite of opportunity."

14. On perusal of the record, it is evident that the respondent co-operative society is a private co-operative society, who has established a bank in private capacity. In the entire writ petition, there is no pleading or assertion that the respondent bank is an instrumentality of the State or is discharging any public duty so as to fall within the ambit of Article 12 of the Constitution of India. Mere statutory regulation under the Co-operative Societies Act or the fact that orders have been passed by the Arbitrator and in the appeal by the Tribunal does not, by itself, confer maintainability of a writ petition under Article 226 against a private co-operative society in matters arising out of contractual or service-related disputes.

15. The Supreme Court as well as this Court in catena of judgments have consistently held that writ jurisdiction cannot be invoked for adjudication of private disputes involving co-operative societies unless the society is shown to be State or an instrumentality of State, or the action complained of has a direct public law element. The present dispute is purely inter se between the member/employee and the society, involving disputed questions of fact, for which the remedy lies elsewhere and not under Article 226 of the Constitution. The judgments relied upon by learned counsel for the respondent No.5 are fully applicable to the case in hand.

16. In view of the fact that in none of the paragraphs of the writ petition, it has been incorporated that present co-operative society is the instrumentality of the State and in view of the aforesaid facts and settled legal position, this Court is of the considered opinion that the writ petition is not maintainable and it is hereby **dismissed**.

(2026) 1 ILRA 1083
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 12.01.2026

BEFORE
THE HON'BLE IRSHAD ALI, J.

Writ C No. 3000122 of 2002

Shiv Darshan

Addl. Collector F/R & Ors.

...Petitioner
Versus
...Respondents

Issue(s) for consideration

Whether the finding recorded in the impugned appellate order that no khasras were produced before the authority concerned and the burden lies upon the appellant to produce the same, is justified?

Headnotes

A. Land Law – U.P. Imposition of Ceiling on Land Holdings Act, 1960: Section(s) 4-A, 10(2) - Burden to produce the relevant khasras lies on the State, therefore, the finding recorded in the impugned appellate order that no khasras of 1378-1380 fasli was produced before the authority concerned and the burden lies upon the appellant to produce the same, is wholly erroneous in nature and not justified in law. (Para 11, 15)

It is clear that while passing the order by the prescribed authority and appellate court, **the relevant provision of Section 4-A was not taken into consideration and the matter was decided without considering the same. The provision of Section 5(3)(b) was also not taken into consideration** while deciding the dispute in regard to the proceeding initiated against the petitioner u/s 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act. (Para 13)

The prescribed authority has failed to take into consideration that the land is irrigated or not without examining the khasra of the year 1378-80 and other relevant records including the village map or by making local inspection, therefore, the impugned order is not sustainable in law and is liable to be set aside. (Para 14)

In regard to the married daughter, the controversy in regard to that shall again be decided by the authority concerned. (Para 15)

The impugned orders dated 31.12.1999, passed by the prescribed authority and 7.11.2002, passed by the appellate court are hereby quashed. (Para 17)

Writ petition allowed. (E-4)

Case Law Cited

1. Jaswant Singh Vs. State of U.P. & others, 1978 SCC OnLine ALL 345 (Para 6)
2. Vyas Prasad Vs. Additional Commissioner, Gorakhpur, 2018 (1) AWC 863 (Para 6)
3. Adi Kumar Jain Vs. Additional Commissioner, Faizabad, 2016 (2) JCLR 337 (ALL) LB (Para 6)

List of Acts

U.P. Imposition of Ceiling on Land Holdings Act, 1960.

List of Keywords

khasra, burden, inspection, sustainable.

Appearances for Parties

For Petitioner(s): Jai Prakash Mishra, Kumar Ayush, Sudhanshu Chauhan

For Respondent(s): C.S.C.

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Jai Prakash Mishra, learned counsel for the petitioner and Sri Rajiv Srivastava, learned Additional Chief Standing Counsel for the State-respondent.

2. By means of the present writ petition, the petitioner is challenging the orders dated 31.12.1999, passed by the prescribed authority and 7.11.2002, passed by the appellate court.

3. Factual matrix of the case is that a notice under Section 10 (2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 was issued to the petitioner on 13.7.1999. In pursuance thereof, the petitioner submitted his objection on 12.8.1999. The prescribed authority passed the impugned order, holding 1.9 acres land as surplus, against which, appeal was filed before the Commissioner, Lucknow Region, Lucknow, who has passed an order on 7.11.2002, affirming the order of the prescribed authority.

4. Submission of learned counsel for the petitioner is that while passing the impugned order, the prescribed authority has not complied with Section 4-A of the U.P. Imposition of Ceiling on Land Holdings Act and has proceeded to decide the proceeding illegally. The prescribed authority has also not examined the report submitted by the Advocate Commissioner on the ground that he did not examine personally to depose the report to be correct. The burden lies on the court to summon the Advocate Commissioner to record the statement and on his failure, the contents of the report is to be examined before passing the order. The prescribed authority has not examined the same and has committed apparent illegality in the eyes of law.

5. Next submission is that the appellate authority on examination of material, has stated that burden lies to produce khasra of 1378-1380 fasli on the appellate, which is incorrect. In this regard, it is submitted that it is settled law that the burden lies on the State to produce the khasras, therefore, his submission is that non-compliance to produce the khasras to examine the nature is wholly misconceived and unjustified. Next submission is that the appellate court has wrongly affirmed the order of the prescribed authority and has proceeded to pass the impugned order.

6. In support of the submission advanced, learned counsel for the petitioner placed reliance upon the following judgments :-

(i) Jaswant Singh Vs. State of U.P. & others [1978 SCC OnLine ALL 345].

(ii) Vyas Prasad Vs. Additional Commissioner, Gorakhpur [2018 (1) AWC 863].

(iii) Adi Kumar Jain Vs. Additional Commissioner, Faizabad [2016 (2) JCLR337 (ALL) LB].

7. On the ground of married daughter, submission of learned counsel for the petitioner is that relevant date for consideration is 8.6.1973, which is the date of amendment. Notice was issued in the year 1999 and on the relevant point of time when notice was issued, she was married.

8. On the other hand, learned Additional Chief Standing Counsel submits that there was no occasion to comply with Section 4-A of U.P. Imposition of Ceiling on Land Holdings Act, the material was before the court below and on that basis, the order is passed. Next submission is that the burden to produce the khasras lies on the person, whose land was taken under U.P. Imposition of Ceiling on Land Holdings Act. After making submission, learned Additional Chief Standing Counsel submits that in case the impugned orders are set aside, the matter is to be remanded to the prescribed authority to consider the same and pass the order.

9. After having heard the submission advanced by learned counsel for the parties, I perused the material on record as well as the law report cited by petitioner's counsel.

10. For deciding the controversy involved, relevant paragraphs the judgments relied upon on the point that the burden to produce the relevant khasras lies on the State and not on the appellant are being quoted as under :-

(i) **Jaswant Singh** (Supra). Relevant paragraphs 9 to 13 are being quoted as under :-

"9. A perusal of the above would show that Sec. 4-A makes it obligatory on the Prescribed Authority, to examine khasras for the years are 1378, 1379 and 1380 Faslis. It further makes it obligatory for the Prescribed Authority also to examine the latest village map. It then confers a discretion on the Prescribed Authority to examine such other records as it may consider necessary and also to make local inspection, if that too be necessary. The section then proceeds to say that thereafter, if the Prescribed Authority be of opinion, as mentioned in sub-sections Firstly, Secondly and Thirdly, he shall determine the land to be ?irrigated land.? The word ?thereupon? occurring in Sec. 4-A of the Act, to our mind, is meaningful. According to Webster's New International Dictionary, the word ?thereupon? means ?as a result of some specified things.? Reading the word ?thereupon? occurring in Sec. 4-A in that manner, the mandate contained in Sec. 4-A appears to be that the opinion specified in sub-sections Firstly, Secondly and Thirdly of Sec. 4-A has to be formed by the Prescribed Authority upon the khasra for the years 1378, 1379 and 1380 faslis, upon the village map, upon such other records as it may consider necessary and upon local inspection, if the Prescribed Authority considers it necessary to make one. There are no words in Sec. 4-A to justify anything other than that specified therein to be made use of by the Prescribed Authority for the formation of opinion on the points specified in sub-sections Firstly, Secondly and Thirdly thereof. The legislature thought it fit to confine the scope of enquiry to the examination of documents and local inspection presumably because almost everything that is mentioned in various sub-sections of Sec. 4-A was capable of being ascertained on the basis thereof and, indeed, where any fact can be ascertained on the basis of documents, oral evidence can serve no useful purpose.

10. In order to illustrate what we have said above, we may briefly refer to various sub-sections of Sec. 4-A. Accordingly to sub-section, Firstly of Sec. 4-A, the Prescribed Authority has to form an opinion (a) whether irrigation facility was available for any land in respect of any crop in any one of the aforesaid years by; (i) any canal included in schedule no. 1, of irrigation rates notified in the notification dated March 31, 1953, as amended from time to time, (ii) any lift irrigation canal, (iii) any State tube-well or private irrigation work, and (b) whether that at least two crops were grown in such land in any one of the aforesaid years.

11. Now the information regarding source of irrigation as well as the information regarding crops grown in any plot in any year can be gathered from village record. There may be some dispute about the existence of some private irrigation work inasmuch as one party may confirm its existence and the other may deny it. To resolve that conflict the Prescribed Authority can himself make a local inspection which would reveal beyond any shadow of doubt whether or not any private irrigation work exists. It would thus appear that no oral evidence is necessary for forming an opinion on what is stated in clause ?Firstly? of Sec. 4-A.

12. According to clause Secondly of Sec. 4-A the Prescribed Authority has to form an opinion whether irrigation facility became available to any land by a State irrigation work coming into operation subsequent to the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972; and at least two crops were grown in such land in any agricultural year between the date of such or coming into operation and the date of issue of notice under Sec. 10. Now, the fact whether or not any irrigation facility became available to any land by a State irrigation work coming into operation subsequent to the commencement of the Amending Act, 1972, is a fact which can best be established by documents. Similarly the fact whether or not two crops are grown in such land in any agricultural year between the date of such work coming into operation and the date of the issue of notice under Sec. 10 came also be conclusively established by documents particularly the khasra. For purposes of clause Secondly also, therefore, oral evidence can hardly serve any purpose.

13. This takes us to clause Thirdly of Sec. 4-A, what the Prescribed Authority has to conclude thereunder is; (a) whether the land is situated within the effective command area of a life irrigation canal of a State tube-well or a private irrigation work; and (b) whether the class and composition of its soil is such that it can grow at least two crops in an agricultural year."

(ii) **Vyas Prasad** (Supra). Relevant paragraphs 24, 25, 26 and 28 are being quoted as under :-

"24. Thereafter, the Division Bench of this Court has observed that provisions of the section 4-A make it obligatory on the Prescribed-Authority, to Texamine Khasras for the years are 1378, 1379 and 1380 Faslis. It further makes it obligatory for the Prescribed Authority also to examine the latest village map. It then confers discretion on the Prescribed Authority to examine such other records as it may consider necessary ?and also to make local inspection, if that too be necessary. The section then proceeds to say that thereafter, if the Prescribed Authority be of opinion, as mentioned in sub-sections Firstly, Secondly and Thirdly, he shall determine the land to be ?irrigated land.? There are no words in section 4-A to justify anything other than that specified therein to be made use of by the Prescribed Authority for the formation of op...

.....??The legislature thought it fit to confine the scope of enquiry to the examination of documents and local inspection presumably because almost everything that is mentioned in various sub-sections of section 4-A was capable of being ascertained on the basis thereof and, indeed, where any ?fact can be ascertained on the basis of documents, oral evidence can serve no useful purpose ????????? It is worthy of notice that the documents, which it is obligatory for the Prescribed Authority to examine under section 4-A, include the village map. It can be found out on an examination of the village map coupled with the Khasra, whether or not particular land is situate within the effective command area of any State or private irrigation work, Even if there remains any doubt after examining the Khasras, the village map, or such other records as may be available, the Prescribed Authority can himself visit the site and inspect it to himself find out whether the land in question does or does not fall within the command area of any State or private irrigation work. As far composition of soil, that too is mentioned in village records. In any case, oral evidence regarding composition of soil can be most conflicting and consequently, if on any particular case village records do not contain any information regarding composition of soil, that fact as well can be ascertained by local inspection. It would thus appear that on all the points

?specified in the various subjections of section 4-A the. Prescribed Authority can form an opinion on the basis of records and local inspection. The legislature,? therefore thought it fit that the enquiry under section 4-A should remain confined to examination or records and local inspection and not to production and examination of oral evidence. ...

25. Counsel for the petitioner has relied upon. Division Bench judgment of this Court in the case of Jaswant Singh (supra). More or less the same view has been taken by the Hon'ble Supreme Court in Knllu v. State of U.P.1 wherein the Hon'ble Supreme Court observed

“Para 6. On reading of section 4-A, it may be seen that the Legislature has prescribed different kinds of tests on the basis of which the Authorities have to determine whether land is irrigated land or not for the purpose of determining the ceiling area of tenure-holder. The two broad tests are (I) availability of irri-gation facilities and (II) the factum of raising the capability of the soil for, raising at least two crops in an agricultural year.....

“Para.??? In order? to form an opinion whether irrigation facility was available for any land from one of the sources mentioned in subclauses (i), (ii) and (iii) in respect of any crop in any one of the aforesaid

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years, viz., Fastis 1378 to 1380, the Prescribed Authority is enjoined to examine the Khasras for those three Fasli years, the village map, other relevant records considered necessary, and also to make local inspection whenever it is necessary. Hence, there is no scope for contending that. Prescribed Authority may form his opinion without reference to relevant material, in an arbitrary or capricious manner to the detriment of tenure-holder as regards the availability of assured irrigation facility to land from one of the enumerated sources?..?

26. It is true that other arguments raised by learned Counsel for the petitioner for challenging the -order impugned passed by the Prescribed Authority may not hold on merit, but most certainly the argument with regard to determination of irrigated land having been made on the basis of oral evidence of the Lekhpal, without examining the Khatuani of the relevant dates or examining other relevant records including village map or making local inspection still holds good.

28. It is also the case of the Counsel for the petitioner that all these grounds were raised in appeal before the Appellate Authority i.e. Additional Commissioner, Gorakhpur Division, Gorakhpur, but the Appellate Authority failed to look into the same and decided the appeal in summary manner, learned Senior Counsel has relied upon section 38 of the Rural Ceiling Act, wherein it has been provided that Civil Procedure Code shall apply to all appeals before the Appellate Authority. He has relied upon the judgment rendered by the Hon'ble Supreme Court in Madhukar v. Sangram,1 that it is the duty of the Court of first appeal that it must record its finding only after dealing with all issues of law as well as facts and with the evidence, oral as well as documentary led by the parties. In case, the Court of first appeal does not fulfill its obligation to consider all oral and documentary evidence placed before it on behalf of the both the parties, it

fails to discharge its obligation and therefore, the valuable right of the parties that is right to be heard on both questions of law and fact is defeated."

(iii) **Adi Kumar Jain** (Supra). Relevant paragraphs 16 to 18 are being quoted as under :-

"16. According to section 4-A of the Act, after examination of khasra 1378-F, 1379- F and 1380-F, latest village map and such other records, Prescribed Authority was required to record a findings that land of the petitioner were irrigated from State or private irrigation work and at least two crops were grown in 1378-F, 1379-F and 1380-F or new irrigation facility became available and composition of soil is such that it is capable of growing at least two crops in an agricultural year. No such finding has been recorded.

17. If entire area of 48-1-1 bigha of plot 939 was un-irrigated then its area in terms of irrigated land would be 32-14-0 bigha and the petitioner would be entitled to benefit of 16-7-0 bigha but Prescribed Authority gave benefit of 7-7-1 bigha. It is not possible to say that only an area of 22-1-1 bigha was un-irrigated and remaining land is irrigated. In any case specific findings that land was irrigated from State/private irrigation work is required to be recorded. Findings of Prescribed Authority regarding irrigated land is illegal.

18. Usar land has to be determined according to the provisions of Rule 3-A, which provides that any land included in the holding, was not used for growing crop during 1376-F to 1380-F due to presence of salinity, stone, grit or kankar, shall be treated to be usar land. Admittedly, some part of plot No. 939 was not used for growing crop in the aforesaid years. Kulvant Singh, Lekhpal of village Tipahar, has stated that over a part of the land, due to salinity, it was unfit for growing crop. Prescribed Authority has illegally ignored the statement of Lekhpal and contined his finding only on the basis of khasra although khasra are relevant for examination as to whether crops were grown in it or not. In khasra of relevant years, some part of the land was shown to be not used for growing crops and reason has been given in the oral statement of Lekhpal that soil was having salinity and unfit for growing crops, which was admissible in evidence, but it has been illegally ignored."

11. On perusal of the judgments relied upon, it is evident that burden to produce the relevant khasras lies on the State, therefore, the finding recorded in the impugned appellate order that no khasras of 1378-1380 fasli was produced before the authority concerned and the burden lies upon the appellatant to produce the same, is wholly erroneous in nature and not justified in law.

12. For ready reference, Section 4-A is being quoted below :-

"4A. Determination of irrigated land. - The prescribed authority shall examine the relevant Khasras for the years 1378 Fasli, 1379 Fasli and 1380 Fasli, the latest village map and such other records as it may consider necessary, and may also make local inspection where it considers necessary and thereupon if the prescribed authority is of opinion :-

firstly, (a) that, irrigation facility was available for any land in respect of any crop in any one of the aforesaid years; by-

(i) any canal included in Schedule NO. 1 of irrigation rates notified in Notification No. 1579-W/XXIII-62-W-1946, dated March 31, 1953, as amended from time to time; or

(ii) any lift irrigation canal; or

(iii) any State tube-well or a private irrigation work; and

(b) that at least two crops were grown in such land in any one of the aforesaid years; or

secondly, that irrigation facility became available to any land by a State Irrigation Work coming into operation subsequent to the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, and at least two crops were grown in such land in any agricultural year between the date of such work coming into operation and the date of issue of notice under Section 10; or

thirdly, (a) that any land is situated within the effective command area of a lift irrigation canal or a State tube-well or a private irrigation work; and

(b) that the class and composition of its soil is such that it is capable of growing at least two crops in an agricultural year; then the Prescribed Authority shall determine such land to be irrigated land for the purposes of this Act.

Explanation I. - For the purposes of this section the expression 'effective command area' means an area, the farthest field whereof in any direction was irrigated-

(a) in any of the years 1378 Fasli, 1379 Fasli and 1380 Fasli; or

(b) in any agricultural year referred to in the clause 'secondly'.

Explanation II. - The ownership and location of a private irrigation work shall not be relevant for the purpose of this section.

Explanation III. - Where sugarcane crop was grown on any land in any of the years 1378 Fasli, 1379 Fasli and 1380 Fasli, it shall be deemed that two crops were grown on it any of these years, and that the land is capable of growing two crops in an agricultural year."

13. On its perusal, it is clear that while passing the order by the prescribed authority and appellate court, the relevant provision of Section 4-A was not taken into consideration and the matter was decided without considering the same. The provision of Section 5 (3) (b) was also not taken into consideration while deciding the dispute in regard to the proceeding initiated against the petitioner under Section 10 (2) of the U.P. Imposition of Ceiling on Land Holdings Act.

14. The judgment placed by learned counsel for the petitioner is fully applicable to the present facts and circumstances of the case. The prescribed authority has failed to take into consideration that the land is irrigated or not without examining the khasra of the year 1378-80 and other relevant

records including the village map or by making local inspection, therefore, the impugned order is not sustainable in law and is liable to be set aside.

15. The appellate court has also erred in law in affirming the judgment of the prescribed authority without examining the aforesaid facts and circumstances of the case.

16. Submission advanced by learned Additional Chief Standing Counsel that the burden lies upon the appellant to produce the relevant khasras is not correct. In fact, the burden lies on the State to produce the relevant khasras of the aforesaid years, therefore, the argument advanced is not admissible in law. In regard to the married daughter, the controversy in regard to that shall again be decided by the authority concerned.

17. In view of the aforesaid reasons, the impugned orders dated 31.12.1999, passed by the prescribed authority and 7.11.2002, passed by the appellate court are hereby quashed. The writ petition succeeds and is **allowed**.

18. However, the matter is remanded to the prescribed authority to consider the grievance of the petitioner afresh and pass order in accordance with law after affording fullest opportunity of hearing to the parties concerned within six months.

(2026) 1 ILRA 1091
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 29.01.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 3000168 of 1998

Babu Khan

...Petitioner

Versus

Addl. Commissioner Admin. Lko & Ors.

...Respondents

Issue(s) for consideration

- (a) Whether holding of the petitioner has wrongly been shown and he has lesser holding?
- (b) Whether the burden of proof, which squarely lies upon the State to prove land is surplus through cogent evidence, was duly discharged?
- (c) Whether the impugned orders suffer from internal contradictions and lack of proper reasoning, thereby violating the principles of natural justice and fair adjudication?
- (d) Whether authorities conducted a fair, objective, and comprehensive enquiry in the present proceedings?

Headnotes

A. Land Law – Ceiling Act: Section 10(2); U.P. Imposition of Ceiling on Land Holdings Act, 1960: Section 29. The proceedings initiated u/s 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act involved the holdings of the deceased petitioner in Village Barethi and Village Rasoolpur. On 18.06.1996, the petitioner filed objections asserting that the CLH Form 3 statement was prepared with "vengeance" by the

Lekhpal. The petitioner maintained that his actual holdings totaled only 21.11 Acres, much of which was un-irrigated, single-crop land. (Para 39)

Determination of surplus land - (a) Although "submerged land" is not expressly defined under the Ceiling Act, consistent judicial pronouncements have held that submerged land is outside the purview of ceiling proceedings and cannot be included in the holding of a tenure holder. (Para 25)

The authorities below failed to exclude such submerged land while determining surplus area, despite settled legal position. 10 Acres of the holding lay along the banks of the River Gomti and remained submerged/flood-affected. Under the Act, such land does not qualify for inclusion in the ceiling limit, potentially reducing the petitioner's relevant holding to 11.11 Acres (equivalent to roughly 7.5 irrigated acres). (Para 40)

(b) Major sons do not fall within the definition of "family" u/s 2(7) of the Ceiling Act. Despite specific objections raised by the deceased petitioner, the authorities illegally clubbed the land independently held by major sons (Taiyab, Tauhid, and Vaheed) with that of the petitioner. Furthermore, 3.13 acres had been transferred to Akbari Begam in 1989, who was in physical possession and recorded as Bhumidhar. (Para 26, 40)

The inclusion of submerged land and independent holdings of major sons in the petitioner's holding, in disregard of statutory provisions and binding precedents, renders the determination of surplus land wholly unsustainable. (Para 47)

B. Burden of proof - The burden of proof, which squarely lies upon the State to prove land is surplus through cogent evidence, was illegally shifted onto the tenure holder. Mere reliance upon revenue entries, statements of subordinate officials, or assumptions regarding possession cannot substitute for legally admissible and cogent evidence. (Para 43)

Once a notice u/s 10(2) is served upon the tenure-holder he has to show cause and while showing cause if the tenure-holder establishes by *prima facie* evidence by filing documents or by giving evidence that the land was being held by other persons in their own capacity, the burden shifts upon the State to establish the fact that the land is being held by the tenure-holder ostensibly in the name of others. Merely because in the notice the State has clubbed the land belonging to others under the pretext that it is being held ostensibly in the name of sons or any other person, the burden cannot be said to have been discharged. (Para 38)

The Prescribed Authority (on 29.05.1997) declared 15.65 Acres as surplus, deciding all issues against the petitioner by claiming "no evidence was led," despite witnesses being produced. (Para 41)

C. The impugned orders also suffer from internal contradictions and lack of proper reasoning, thereby violating the principles of natural justice and fair adjudication. It is manifest that the proceedings initiated under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, and the consequential orders passed by the authorities below suffer from patent illegality, arbitrariness and non-application of mind. (Para 44, 47)

The authorities ignored the finality attained by the consolidation proceedings recognizing the petitioner's rights and erred in applying an incorrect cut-off date, contrary to the statutory provisions and settled judicial precedents. (Para 46, 23, 32, 35)

Upon appeal, the Appellate Authority (Opposite Party No. 1) acknowledged that findings regarding Gata Nos. 62, 97, 125, and 250 were self-contradictory, initially noting they lacked irrigation sources but ultimately declaring them irrigated. Despite these discrepancies, the appeal was dismissed resulting in a limited and self-contradictory remand. The authorities failed to consider the testimony of State witnesses who admitted that parts of the land were Aabadi (settled) and Graveyards, which are legally exempt from surplus calculations.

The classification of land as "irrigated" was done without perusing the Khasra entries of 1378–1380 Fasli or verifying the actual source of irrigation at the spot. **The Appellate Authority issued "mutually destructive findings"—admitting the Prescribed Authority's order was baseless while simultaneously upholding the bulk of its conclusions.** (Para 41, 42, 48)

D. The present proceedings being statutory and quasi-judicial in nature, cast an affirmative duty upon the authorities to conduct a fair, objective, and comprehensive enquiry. The findings recorded by the authorities below are further vitiated by their failure to conduct spot inspection and proper enquiry, despite specific disputes regarding submergence, irrigation facilities, and cultivability of the land. The classification of land as irrigated and cultivable has been made mechanically, without due verification from revenue records and without physical inspection, resulting in arbitrary and unsustainable conclusions. (Para 49, 50)

The impugned orders dated 29.05.1997 passed by the Prescribed Authority and the appellate order dated 18.07.1998 are vitiated by errors apparent on the face of record, non-consideration of relevant material, misapplication of law, and procedural irregularities. Therefore, are legally unsustainable and hereby quashed. The declaration of surplus land against the deceased petitioner stands set aside. The respondents are directed to treat the petitioner's holding in accordance with law and in consonance with the findings recorded herein.

Writ petition allowed. (E-4)

Case Law Cited

1. Mahadeo Vs. Civil Judge, Basti (Para 25)
2. Smt. Rani Prem Kunwar Vs. D.J., Bareilly (Para 25)
3. Tej Pal Singh Vs. State of U.P. (Para 25)
4. Vibhuti Kumar Bajpai Vs. State of U.P. (Para 25)
5. Shishu Pal Singh Vs. Prescribed Authority, 2008 (105) RD 548 (Para 26)
6. State of U.P. Vs. Commissioner Kumaon Division (Uttarakhand), 2006 (100) RD 827 (Para 30)
7. State of U.P. Vs. Additional Commissioner Meerut Div. Meerut, 2006 (100) RD 491 (Para 30)
8. Noorullah Vs. Additional Commissioner, Meerut Division, Meerut, 2007 (102) RD 763 (Para 30)
9. Mahadeo Vs. Civil Judge, Basti (Allahabad), 1978 RD 309 (Para 30)
10. Rani Prem Kunwar vs. The District Judge, Bareilly (Allahabad), 1978 (4) ALR 508 (Para 30)
11. Tej Pal Singh Vs. State of Uttar Pradesh, 1999 (90) RD 424 (Para 30)
12. Vibhuti Kumar Bajpai Vs. State of U.P., 2008 (105) RD 185 (Para 30)
13. Shishu Pal Singh Vs. Prescribed Authority, 2008 (105) RD 548 (Para 30)
14. Kishundeo Rout and others Vs. Govind Rao and Others, SLP (Civil) No.22070 of 2025 (Diary No.30361), decided on 08.08.2025 (Para 37)
15. Bechan Pandey and others Vs. Dulhin Janki Devi and others, (1976) 2 SCC 286 (Para 37)
16. T.H. Musthaffa Vs. M.P. Varghese and others, (1999) 8 SCC 692 (Para 37)
17. Kalyan Singh Chouhan Vs. C.P. Joshi, (2011) 11 SCC 786 (Para 37)

List of Acts

U.P. Imposition of Ceiling on Land Holdings Act, 1960; Ceiling Act.

List of Keywords

holding, declaration, surplus, burden of proof, revenue, finality, self, contradictory, flood, affected, submerged, family, independent.

Appearances for Parties

For Petitioner(s): M.A. Siddiqui, Bhanu Bajpai

For Respondent(s): C.S.C., Bhanu Bajpai, Mohd Qaseem

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Aftab Alam, learned counsel for the petitioner and Sri S.P. Maurya, learned Additional CSC for the respondent – State.

2. The present writ petition has been filed challenging the impugned order dated 18.07.1998 passed by respondent No.1 and order dated 29.05.1997 passed by respondent No.2 and notice viz. From-III part C contained as annexures 1 to 3 to the writ petition.

3. Factual matrix of the case is that a notice under Section 10(2) / CLH Form 3-C was issued to the deceased petitioner on 29.02.1996 mentioning therein 15.65 Acres of irrigated land as ceiling surplus. In the said notice the holdings of the deceased petitioner of Village Barethi, Tahsil Gola, District Kheri was mentioned.

4. On 18.06.1996 objection was filed by the deceased petitioner asserting therein that even the statement as prepared under CLH Form 3 has been issued with vengeance of the Lekhpal and neither the same nor proper. Deceased is correct petitioner apart from his holdings of Village Barethi also gave details of his holdings in Village Rasoolpur and also specifically asserted that in the notice all the lands with area, which has been shown to be the holding of the deceased petitioner, has also been fraudulently shown and the co-owners of the Khatas have deliberately not been mentioned and if entire land is taken together, the total holding of the deceased petitioner is 21.11 Acres. It was also asserted in the objection that holdings of the deceased petitioner un-irrigated and single crop land having no source of irrigation.

5. It was also taken as a ground in the objection that 10 Acres land of the deceased petitioner lies along the banks of the river Gomti on both sides and remain submerged and as such, 10 Acres land even does not fall within the definition of land and the total holding of the deceased petitioner as such remains 11.11 Acres, which in irrigated means comes to 7.5 Acres only.

6. It was also stated in the objection that by the son of deceased petitioner 3.13 Acres land was transferred to the opposite party no.6 - now represented by 6/1, in the year 1989 and on 25.05.1990 her name was duly mutated and since then she is in actual physical possession at the spot as well as recorded as Bhumidhar and the deceased petitioner has no concern with the said land.

7. As Apart from it, the inclusion of the holding of the major sons of the deceased petitioner in his holdings well as taking into consideration number of major sons and total number of family members, the legal entitlement of the deceased petitioner to hold 15 Acres excess land was also stated and on the basis of all these objections asserting notice having been issued by the Lekhpal merely to harass the deceased petitioner and being baseless was requested cancelled/withdrawn.

8. Apart from deceased petitioner, his sons viz. opposite parties nos.4 & 5 as well as the transferee of one son viz. the opposite party no.6 also appeared and filed their written objections. (copy of objection is attached in annexure no.4 to the writ petition).

9. By the Prescribed Authority i.e. the opposite party no.2, after registering Ceiling Case No.34/32 under Section 10(2) of Ceiling Act namely State Vs. Babu Khan and others" and taking into consideration the objections so preferred, 6 issues were framed viz. -

(i) Whether in the statement, holdings of the objector has wrongly been shown and he has lesser holding? If so, its effect.

(ii) Whether the holding is unirrigated under Section 4-A?

(iii) Number of children of objectors and area for which he is entitled?

(iv) Whether land transferred to Begum cannot be clubbed? Akbari

(v) Whether area of Gata No.97 of Khata No. 122 has been shown 4 Acres extra?

(vi) Relief to which entitled?

10. Before the opposite party no.2, by the State as well as deceased petitioner evidence was lead and matter was heard. (statement of State witnesses are attached as annexure no.5 to 9 to the writ petition)

11. On 29.05.1997 the judgment and order was passed by the opposite party no.3/Prescribed Authority (copy of judgment and order dated 29.05.1997 is attached in annexure no.2 to the writ petition) and 15.65 Acres land of the deceased petitioner was declared surplus. While deciding the matter, issues no.1 to 3 were decided together and issues nos.4 & 5 were decided separately but all the issues were decided against the deceased petitioner merely saying that no evidence has been lead by the deceased petitioner.

12. Two separate appeals, one by deceased petitioner and other by the opposite parties no.4 & 5 were filed (copy of the memo of appeal are attached in annexure no.9 & 10 to the writ petition). In the memo of appeal, notice being prepared as a result of enmity was again stated, as the Lekhpal who prepared the notice was suspended because of the complaint of the deceased petitioner, the clubbing of the land of major sons, 10 Acres of land remaining submerged in water and hence not Land being not considered by the Prescribed Authority were taken as a ground.

It was also stated in the appeal that from the evidence led by the State no holding could be said to be irrigated and was illegally and wrongly held to be irrigated which was also taken as a ground. Apart from it, other grounds regarding number of family members, Non-extension of benefit of 3 major sons in the family, the wrong and illegal mention of the area, discarding of the statements and pleas taken by the appellant and even non-consideration of the arguments and judgments relied by the appellant as well as statement of witnesses produced by the State was also taken. Moreover the land mentioned to be Aabadi and Graveyard in their statement by the witnesses of the State itself having not been considered was also taken as a ground in the memo of appeal.

13. In the memo of appeal as preferred by the opposite party no.4 & 5 they being independent, living separately, having land duly recorded in their name, being wrongly clubbed in the holding of the deceased petitioner, was stated by them and both the appeals were registered as Appeal No.278 (96-97) and 285 (96-97).

7. 18.07.1998 : Judgment and order by the opposite party no.2 in the appeal connecting both the appeals and deciding them together, was passed wherein giving reference to Rule 8 of U.P. Imposition of Ceiling on Land Holdings Rules. 1961. Issuance of notice to the opposite parties no.3 to 6 and filing of objections by them was also mentioned.

14. The opposite party no.1 reproducing the averments made by the deceased petitioner and other objectors, from para-7 onwards the observations and findings have been given, wherein firstly the land submerged and affected by floods being not a land as well as another ground i.e. land being not irrigated rather unirrigated as per Section 4-A was considered by the opposite party no.1. With regard to "submerged land" it was recorded by the opposite party no.1 that no provision of the Act could be shown by the counsel for the appellant wherein "submerged land is not land" is provided. It was observed by the opposite party no.1 that under Section 3 land is not defined and under sub-section (8) Grove land and under sub-section (4) Usar land, has been provided. In Section 3 and 4 classification of irrigated and unirrigated land is there. Moreover there is no evidence which land is flood affected/submerged. It was observed by the opposite party no.1 that this objection is very vague and against the provisions of the Act and as such no issue was required to be framed for it and it has rightly not been framed.

15. The opposite party no.1 with regard to unirrigated land reference to Khasra of 1378 Fasli and 1379 Fasli, being available with the record of lower court was given further mentioning Gata No.23, 62, 97, 100, 101, 125 & 250. It was also mentioned in Village Barethi consolidation operation have been held but no evidence for Village Rasoolpur has been given.

16. By the opposite party no.1 referring to Khasra No.1378 to 1380 Fasli pertaining to above referred 7 gatas, it was mentioned that Wheat, Groundnut and Barley (गेहूँ, मूँगफली एवं जौ) is sowed and Gata No.23, 100 & 101 is recorded as Grove and Parti. The opposite party no.1 also mentioned that in CLH-3 no gata of village Rasoolpur is mentioned and only land of village Barethi is mentioned and it has been recorded erroneously but holding of Village Rasoolpur has not been included.

11. It was also observed by the opposite party no.1 that in 1378, 1379 & 1380 Fasli Khasra No.23, 62, 97, 100, 101 & 125 were shown and as per entries gata no.23 & 100 are Grove and gata no.101 is Parti but wrongly all gatas have been shown as irrigated and finding of the Prescribed Authority is wrong, arrived at without perusing the record.

17. The opposite party no.1 further observing that with regard to Gata No.62, 97, 125 & 250, Well is mentioned, which is not a source of irrigation under Section 4-A and thereafter holding Gata No.23 & 100 as Grove and Gata no.101 was held as unirrigated but going against the findings and discussions contained in the earlier portion of its order barring at a self contradictory conclusion Gata No.62, 97, 125 and 250 were held as irrigated by the opposite party no.1.

18. With regard to holdings of Village Barethi shown as irrigated, it has been recorded by the opposite party no.1 that Khasra No.1378-1380 Fasli are not available but Village has gone under consolidation as is apparent by CH 41. But no finding in this regard as per rule 3 of 1961 Rules has been given by the court below i.e. Prescribed Authority whereas all the Gatas have been shown as unirrigated and as such for the of Village Barethi, holding reconsideration by the Prescribed Authority under Section 4-A read with rule 3 to be proper was concluded by the opposite party no.1.

19. With regard to sons being major it was held by the opposite party no.1 that notice under Section 10(2) was issued treating 08.06.1973 as cut off date and no evidence regarding number of family members on 08.06.1973 being there, issue no.3 was held to be rightly decided.

20. With regard to the land transferred to opposite party no.6, the land transferred was held to be part of holding of deceased petitioner by the opposite party no.1 but was ordered not to be included in the land to be declared surplus. With regard to Village Rasoolpur, the opposite party no.1 required the Prescribed Authority specifically mentioning holdings of Village Rasoolpur dispute would be decided by the Prescribed Authority.

21. With all these observations and findings the appeal preferred by the deceased petitioner was allowed whereas the appeal preferred by the sons, opposite party no.4 & 5 was dismissed but in the operative portion it was mentioned that matter is remanded. To regard to Prescribed Authority with irrigated/unirrigated land of Village Barethi further mentioning that no other issues would be considered, whereas in the body of judgment on different aspects the observations given requiring and findings were reconsideration of the matter as a whole.

22. On 06.11.1998 the instant writ petition was filed and on 07.11.1998 interim order of status quo was ordered to be maintained during pendency of the writ petition which is continuing and no proceeding in furtherance of remand order as passed by the opposite party no.1 have yet taken place before the opposite party no.2.

23. Submission of learned counsel for the petitioner is that under Section 29 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, the deceased petitioner had lawfully acquired the land during consolidation proceedings by virtue of the order dated 20.03.1987 passed by the Consolidation Officer in Case No. 910 under Section 9-A(2), recognizing the petitioner's rights on the basis of adverse possession. The said order attained finality and was never challenged. Consequently, the cut-off date applicable in the case of the deceased petitioner could neither be 08.06.1973 nor 29.02.1996, but necessarily the date when consolidation proceedings became final, i.e., 20.03.1987, any determination of surplus land by taking 08.06.1973 as the cut-off date is legally untenable and contrary to settled law.

24. He further submitted that in proceedings under the Ceiling Act, the burden of proof squarely lies upon the State. Unless such burden is discharged by cogent oral and documentary evidence, no adverse inference can be drawn against the tenure holder. The Ceiling Act being a confiscatory legislation mandates strict adherence to statutory provisions, principles of natural justice, and procedural safeguards. The findings recorded by the Prescribed Authority are arbitrary,

cursory, and unsupported by legally admissible evidence, rendering the impugned orders unsustainable.

25. He next submitted that although "submerged land" is not expressly defined under the Ceiling Act, consistent judicial pronouncements have held that submerged land is outside the purview of ceiling proceedings and cannot be included in the holding of a tenure holder. The authorities below failed to exclude such submerged land while determining surplus area, despite settled legal position as laid down in the case of **Mahadeo v. Civil Judge, Basti, Smt. Rani Prem Kunwar v. D.J., Bareilly, Tej Pal Singh v. State of U.P. and Vibhuti Kumar Bajpai v. State of U.P.**

26. He next submitted that it is well settled that major sons do not fall within the definition of "family" under Section 2(7) of the Ceiling Act. Despite specific objections raised by the deceased petitioner, the authorities illegally clubbed the land independently held by major sons with that of the petitioner. Such clubbing is patently illegal and directly contrary to binding precedent, including **Shishu Pal Singh v. Prescribed Authority, reported in 2008 (105) RD 548.**

27. He further submitted that the Ceiling Act, being confiscatory in nature, obligates the authorities to consider each and every objection raised by the tenure holder and to pass a reasoned and speaking order. In the present case, vital issues such as actual landholding, nature of land (irrigated or unirrigated), independent holdings of major sons, and submerged land were neither properly examined nor adjudicated. The impugned orders thus suffer from apparent illegality and non-application of mind.

28. He submitted that even the statements of witnesses produced by the State substantiate the case of the deceased petitioner regarding exclusive ownership, co-tenure holdings, family composition, lack of irrigation sources and submerged nature of the land. Despite such material being on record, the Prescribed Authority failed to consider the same, rendering the order dated 29.05.1997 wholly unsustainable.

29. He lastly submitted that while passing the impugned appellate order, opposite party no.1 itself acknowledged the incorrectness and absurdity of the findings recorded by the Prescribed Authority and observed the necessity of reconsideration on several aspects. However, despite such observations, the appeal was dismissed and the matter was remanded in a limited manner, resulting in self-contradictory and mutually destructive findings, thereby vitiating the impugned judgment in its entirety.

30. In support of his submissions, he placed reliance upon following judgments:

a) **State of U.P. Vs. Commissioner Kumaon Division (Uttarakhand); 2006 (100) RD 827.**

b) **State of U.P. vs. Additional Commissioner Meerut Div. Meerut; 2006 (100) RD 491.**

c) Noorullah Vs. Additional Commissioner, Meerut Division, Meerut; 2007 (102) RD 763.

d) Mahadeo Vs. Civil Judge, Basti (Allahabad); 1978 RD 309.

e) Rani Prem Kunwar vs. The District Judge, Bareilly (Allhabad); 1978 (4) ALR 508.

f) Tej Pal Singh Vs. State of Uttar Pradesh; 1999 (90) RD 424.

g) Vibhuti Kumar Bajpai Vs. State of U.P.; 2008 (105) RD 185.

31. On the other hand, learned Additional CSC submitted that the petitioner has not disclosed the numbers of gatas allegedly acquired during consolidation proceedings either in the objections dated 18.06.1996 (Annexure-4) or in the memo of appeal (Annexure-9). No issue was framed nor any evidence adduced on this aspect before the Prescribed Authority. It is settled law that a case cannot be decided on grounds beyond pleadings. Any argument raised for the first time before this Hon"ble Court is not sustainable.

32. His next submission is that Form-3 was issued after due scrutiny of revenue records. If exemption was claimed on the basis of major sons or number of family members, the burden squarely lay upon the tenure-holder. The petitioner himself stated in para-4 of objections dated 18.06.1996 that Taiyab Khan, Tauhid Khan and Vaheed were aged 31, 26 and 24 years respectively on 18.06.1996, meaning thereby that all were minors on the cut-off date i.e. 08.06.1973. Consequently, no additional benefit under the Act was admissible. The petitioner also failed to produce any evidence to prove the total number of family members. These findings have been rightly affirmed by the appellate court.

33. He further submitted that though the petitioner vaguely alleged existence of 10 acres of submerged land, he failed to mention specific Gata numbers or to produce any documentary evidence. In absence of specific pleadings and proof, no issue could have been framed. The petitioner never challenged the framing of issues before the competent forum. The appellate court examined this plea and rejected it by a reasoned order.

34. His next submission is that the appellate court made an elaborate discussion on pages 18"19 of its judgment and, on the basis of Khasra entries of 1378"1380 Fasli, correctly held Gata Nos. 23, 62, 97, 100, 101, 125 and 250 as irrigated land and Gata Nos. 23 & 100 as grove land, while Gata No. 101 was declared unirrigated land of village Rasoolpur. Since Khasra entries of village Barethi were not filed, the limited issue of irrigated/unirrigated land of Barethi was rightly remanded under Section 4-A of the U.P. Imposition of Ceiling on Land Holdings Act.

35. His further submission is that Tauhid Khan and Taiyab Khan did not challenge the appellate order dated 29.05.1997 by filing any writ petition. Hence, the findings recorded therein attained finality against them. The petitioner cannot now seek exclusion of their land indirectly. Further, the sale deeds executed in favour of Akbari Begam in the year 1989, after the cut-off date,

were duly protected by the appellate court, and Gata Nos. 125 and 128 were rightly excluded from surplus declaration.

36. His last submission is that both the Prescribed Authority and the Appellate Authority have recorded concurrent findings on all material issues except a limited remand on irrigated/unirrigated land of village Barethi. The petitioner has unnecessarily lingered the matter for over 26 years. The writ petition lacks merit and is liable to be dismissed on the ground of delay, laches, and absence of any perversity or illegality. He also submitted that the present writ petition be dismissed with costs, as the impugned orders are just, legal, and based on proper appreciation of facts and law.

37. In support of his submissions, he placed reliance upon following judgments:

- a) **Kishundeo Rout and others Vs. Govind Rao and Others; Special Leave Petition (Civil) No.22070 of 2025 (Diary No.30361) decided on 08.08.2025.**
- b) **Bechan Pandey and others Vs. Dulhin Janki Devi and others; (1976) 2 SCC 286.**
- c) **T.H. Musthaffa Vs. M.P. Varghese and others; (1999) 8 SCC 692.**
- d) **Kalyan Singh Chouhan vs. C.P. Joshi; (2011) 11 SCC 786.**

37. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

38. To resolve the controversy involved in the matter, the judgments relied upon by learned counsel for the parties are being quoted below:

Judgments relied upon by learned counsel for the petitioners:

a) State of U.P. Vs. Commissioner Kumaon Division (Uttarakhand) (Supra):

5. The learned Counsel for the respondent Nos. 2 and 3 vehemently submitted that in the present case, the land was purchased and held by major sons of tenure-holder, hence that cannot be declared surplus under the U.P. Imposition of Ceiling on Land Holdings Act, 1961. In support of his contention, the learned Counsel for the respondents has placed reliance on a Division Bench Judgment of the Allahabad High Court in the case of "Mohammad Abbas v. State of U.P., [1979 (5) ALR 206.] wherein it has been held that "If land is held by the major sons of the tenure-holder, it is neither to be included in the holding of the tenure-holder nor can it be included in the land sought to be declared surplus." In para No. 4 it has been observed that "Since land held by the major sons of the tenure-holder was not land which would have been declared surplus under the Act, the transfer of that land could not be ignored in determining the ceiling area applicable to the tenure-holder although the land was transferred after the 24th day of January 1971. I have gone through the case-law and I am in full agreement with the view taken by the Allahabad High Court. As stated earlier, the fact that the respondent Nos. 2 and 3 were major at the time of purchase of land by them.

b) State of U.P. vs. Additional Commissioner Meerut Div. Meerut (Supra):

6. *I have heard Standing Counsel for the petitioner. No one has put up appear ance on behalf of the Respondent. Sri R.N. Singh has made submissions on his behalf as a friend of the Court. Following points arise for determination:*

(i) What is the relevant date for determining the surplus land in proceedings under section 29/30 of the Act? Is it the date of commencement of the amending Act. (i.e. 8.6.1973).

(ii) In case the relevant date for proceeding under section 29/30 of the Act is different then the date of enforcement of the amending Act (8.6.1973), then whether of the family members are to be determined with reference to 8.6.1973 or to the relevant date for the proceeding under section 29/30 of the Act.

POINT No. 1: THE DATE OF ACQUIRING LAND IS THE RELEVANT DATE

7. *Sub-section (1) of section 5 of the amended Act [(section 5(1))] provides that from the date of commencement of the amending Act (i.e. 8.6.1973) no tenure holder will be entitled to hold land in ex cess of the ceiling area applicable to him. The other sub-sections of section 5 provide the ceiling area applicable under the Act. Sub-section (7) of section 3 defines the word "family". It means the tenure holder his wife or husband as the case may be, minor sons and minor unmarried daughters. Sub section (3) of section 5 provides the ceiling limit of 7.30 hectares in case of a tenure holder who has a family of not more than 5 members. In case the family of a tenure-holder consist of more than 5 members then he is entitled to 2 additional hectares of land for each additional member, subject to maximum of 6 hectares of additional land.*

8. *Section 29 of the Act provides for the subsequent declaration of further land as surplus land. It provides that ceiling area is liable to be re-determined in case any tenure holder comes to hold any land in anyone of the following contingencies:*

(i) under the decree or order of any Court,

(ii) as a result of succession,

(iii) by transfer,

(iv) by prescription in consequence of adverse possession,

(v) any unirrigated land becoming irrigated land as a result of irrigation from the State irrigation Work,

(vi) any grove land loosing its character as grove land, and

(vii) any land exempted under the Act ceasing to fail under any of the categories exempted.

9. Section 30 of the Act provides determination of surplus land regarding future acquisition. It provides that where any land is liable to be treated as surplus land under section 29 of the Act, then the tenure holder is required to submit a statement to the Prescribed Authority in the manner provided under section 9 of the Act. It further provides that in case he fails to submit the same, the Prescribed Authority is to proceed for re-determination of land as provided under section 10 of the Act. The provisions of the Act in respect of declaration, acquisition, disposal and settlement of surplus land are to be applied as far as applicable in determination of surplus land in these proceedings.

10. In the earlier ceiling proceeding the ceiling area in the hands of the Respondent was determined with reference to 8th June, 1973. Smt. Lalli widow of Raghubir Singh died on 5th February, 1981 and her property devolved on the Respondent. The order of the Prescribed Authority records that the Respondent did not dispute these facts. As the Respondent acquired the land through succession, section 29 of the Act became applicable and the surplus land in the hands of the Respondent is liable to be redetermined.

11. Sections 29 and 30 provide for redetermination of ceiling area on happening of certain events in case they are applicable then it is logical that the ceiling area should be determined with reference to the date on which those events happened. The date "on which events contemplated under section 29 occurred" is the relevant date in proceeding under section 29 of the Act. The date of commencement of the amending Act (i.e. 8.6.1973) is not relevant for proceeding under section 29/30 of the Act.

12. I am not alone in taking this view. A Single Judge in *Swamidin v. State of U.P.* [1996 (87) RD 320.] (The *Swamidin* case) has held as follows:

The language of said section (section 29) is very clear which permits redetermination with reference to a date after enforcement of amending Act. This rules out the possibility of ceiling area being determined with reference to the date of enforcement of amending Act. The only date which can be taken into consideration for redetermining the ceiling area under section 29(b) can be the date on which an unirrigated land becomes irrigated as a result of irrigation from State Irrigation Work and it is on fulfilment of this condition alone that the jurisdiction gets conferred on the authority concerned to redetermine the ceiling area. It is a condition precedent for invoking the power for redetermination if petitioner holds land beyond ceiling limit.

13. A Division Bench in *Satish Chandra Mathur v. State of U.P.* [1985 (2) U.P.C. & RCR 1287.] (The *Satish Chandra* case) has held as follows:

"For the purpose of determining the ceiling area of a tenure holder on the enforcement of U.P. Act No. 18 of 1973, 8.6.1973 is relevant date with reference to which it has to be determined. But as regards the land acquired or came to be held by a tenure holder after 8.6.1973, the relevant date with reference to which the ceiling area has to be determined is the date on which he acquired the land or came to hold it."

21.(b) The date-on which events contemplated under Section 29 occurred is the relevant date in proceedings under Section 29 of the Act.

c) Noorullah Vs. Additional Commissioner, Meerut Division, Meerut (Supra):

7. After the conclusion of previous ceiling proceedings in favour of the petitioner, the petitioner was at complete liberty to transfer the land. If due to subsequent development of unirrigated land becoming irrigated or acquisition of some land by a person fresh ceiling proceedings are initiated under section 29/30 of the Ceiling Act then 24.1.1971 or 8.6.1973 cannot be taken as cut off dates. In that eventuality the cut off date will be the date on which subsequent acquisition takes place or unirrigated land becomes irrigated. Suppose on 8.6.1973 a person has got no surplus land. Thereafter in the year 1980 he purchases some land and the land already held by him and the land purchased by him clubbed together are more than the ceiling limit then ceiling proceedings may be initiated. However in that eventuality the cut off date would be the date on which he acquired fresh land. The number of family members the minority/majority of sons will also have to be seen on the date on which he purchased fresh land. Similarly if before purchasing the fresh land the purchaser had transferred some of his land then the said transfer will also have to be honoured and taken as correct. It cannot be said that as the said transfer is after 8.6.1973 hence it is void.

d) Mahadeo Vs. Civil Judge, Basti (Allahabad) (Supra):

It appears that the petitioner filed an application for the setting aside of that order on the ground that the same was passed ex parte and prayed for a re hearing of the appeal. That application was rejected by an order dated 13-3-1976. The petitioner then filed the instant writ petition challenging the orders of the two authorities below, inter alia, on the ground that the land forming part of the river bed of river Ghagra could not be included in the holding of the petitioner and was exempt from the operation of the Ceiling Act. He further contended that the two authorities below had erroneously held that no part of the petitioner's holding was uninigated land and no part of it was covered by grove. We have heard the learned counsel for the parties. The finding recorded on the question of irrigated nature of the petitioner's land is a finding of fact and cannot be disturbed in this petition. But we find force in the petitioner's contention that the land forming part of the bed of river Ghagra could not be taken into account for determining the ceiling area of the petitioner and declaration of the surplus land. The land forming part of river bed in our opinion is not a holding to which the Act applies. Holding is defined in S. 3(9) of the Act as follows:

"Holding means the land or lands held by a person as a Bhumidhar, Sirdar, Asami of a Gaon Sabha or an Asami mentioned in S. 11 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 or as a tenant under the U.P. Tenancy Act 1939 other than a sub-tenant, or as a Government lessee, or as a sub-lessee of a Government lessee, where the period of the sub-lease is co-extensive with the period of the lease."

Under S. 21(1)(c) of U.P. Zamindari Abolition and Land Reforms Act every person who on the date immediately preceding the date of vesting occupied or held land as a non-occupancy tenant of pasture land or of land covered by water and used for the purpose of growing Singhara

or other produce or of land in the bed of a river and used for casual or occasional cultivation shall be deemed to be an Asami thereof. S. 132(a) of that Act provides that no sirdari right shall accrue in pasture lands or lands covered by water and used for the purpose of growing singhara or other produce or in land in the bed of a river and used for casual or occasional cultivation. Thus a tenure holder of land in the bed of a river is an Asami of that land under S. 21(1)(e) read with Sec. 132 of the Z.A. and L.R. Act. S. 3(9) of the Act defines holding to include the holding of an Asami of only two categories. viz. Asami of a Gaon Sabha and Asami mentioned in S. 11 of the U.P. Zamindari Abolition and Land Reforms Act. An Asami under S. 21(1)(e) read with S. 132 of the U.P. Zamindari Abolition and Land Reforms Act, is not included in the categories of Asamis mentioned in S. 3(9). Accordingly, the land of an Asami other than an Asami of a Gaon Sabha or one mentioned under S. 11 cannot be included in the statement prepared under Section 10(1) of the Act for determining the ceiling area. It has been found by the two authorities below that part of the land of the petitioner formed part of the bed of river Ghagra. The petitioner accordingly became Asami of that land under S. 21 read with S. 132 of U.P. Zamindari Abolition and Land Reforms Act and this part of his holding could not be included in the ceiling operations unless some other kind of tenure was found to exist therein which was covered under the Ceiling Act. It may be possible for the State to show by reference to statutory provisions or other materials on record or by production of further material that the nature of tenure in respect of this land was of a different kind. But since there is nothing on the record of the present preceding to suggest that there was any other kind of tenure except that of an Asami of the kind mentioned above it seems appropriate to remand the case to the appellate authority to predetermine the ceiling area after allowing the parties to adduce such evidence in the case as they consider necessary.

e) Rani Prem Kunwar vs. The District Judge, Bareilly (Allahabad) (Supra):

4. Obviously plot no. 135 is not used for purposes connected with agriculture, horticulture or animal husbandry and it cannot be regarded as land. This question came up for consideration before the Board of Revenue in the case of Ram Autar v. Lala Laxminath [1975 R.D. 232.] , in which it was held that where all the land was under water and the use of a small portion of it for growing crops like Bajra and paddy cannot be considered use connected with the agriculture or use for any such other purpose as would render the land within the meaning of the definition of that word in section 3(14) of the U.P. Zamindari Abolition and Land Reforms Act (I of 1951). This view is obviously correct because the preamble of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, states as follows:

"Whereas it is necessary in the interest of the community to ensure increased agricultural production and to provide land for landless agricultural labourers and for other public purposes as best to subserve the common good;

And whereas a more equitable distribution of land is essential;

And, therefore, it is expedient to provide for the imposition of ceiling on land holdings in Uttar Pradesh for the aforementioned purposes;"

5. The preamble makes it clear that the Act has been passed to provide land for landless agricultural labourers and for a mere equitable distribution of land as also in the interest of community to ensure increased agricultural production and for other public purposes as best to subserve the common good. The object of the Act, therefore, is to carve out land from the large holdings so that the remaining holdings may be manageable and capable of more intensive cultivation as also to provide land to those who could not have got it or who have very little of it. Obviously this purpose cannot be achieved unless there is land. A land which remains submerged with water and which cannot be used for any purpose contemplated by Section 3(14) of U.P. Act I of 1951 cannot be regarded as land nor it can serve the purposes contemplated by the preamble of the U.P. Imposition of Ceiling on Land Holdings Act.

f) Tej Pal Singh Vs. State of Uttar Pradesh (Supra):

4. The question as to whether the land of the petitioner is submerged under water or not cannot be decided only from the entries mentioned in the records or upon the statement of Lekhpal. In view of the directions of the Apex Court, it was incumbent upon the Prescribed Authority to have made spot inspection in the presence of the petitioner and to have prepared a detailed report about the plots which are alleged to be submerged under water.

5. Similarly, for deciding the question of irrigated land under Section 4A of the Act, since the allegation of the petitioner was that the plots were sandy and the soil was not capable of growing double crop, the Prescribed Authority ought to have made spot inspection in the presence of the petitioner and prepared a detailed report about each of the plots in dispute separately.

g) Vibhuti Kumar Bajpai Vs. State of U.P. (Supra):

11. The only point which falls for consideration is whether the land covered by water i.e. to the extent of share of the petitioner in plots No. 226 and 227 in respect of Village Sisendi and 412 and 425 in respect of village Bhaundri is within the definition of land as contemplated under section 3(14) of the Z.A. Act. The evidence on record goes to show that the khasra entries indicate that the land on spot is tank. The Pradhan of Village Sisendi, Shri Nanhe Singh has appeared as witness and has stated that the land remains covered under water throughout the year and no cultivation takes place on the same.

12. The identical controversy arose in a case before this Court in the case of Tej Pal Singh v. State of U.P. [1999 (90) RD 424.] and the Court, while observing that in spite of directions of the Supreme Court dated 1.12.1987 given in S.L.P. No. 3654 of 1987 that the petitioner's ceiling area be re-determined after arriving at a finding as to whether the plots of the petitioner are irrigated and submerged under water or not, the Courts below have not adverted to the question involved in the light of judgment of the Supreme Court, allowed the writ petition and set aside the orders impugned and also remanded the matter to the Prescribed Authority for making spot inspection. The relevant portion of the said judgment is as follows:

"3. The Prescribed Authority and in appeal, the Additional Commissioner mentioned in their judgments the two directions given by the Supreme Court which were required to be followed

by the respondents, but while deciding the case of the petitioner, only gave lip service to the directions of the Supreme Court. The directions of the Apex Court are binding and its non-compliance directly or indirectly amounts to non-application of mind.

4. The question as to whether the land of the petitioner is submerged under water or not cannot be decided only from the entries mentioned in the records or upon the statement of Lekhpal. In view of the directions of the Apex Court, it was incumbent upon the Prescribed Authority to have made spot inspection in the presence of the petitioner and to have prepared a detailed report about the plots which are alleged to be submerged under water."

13. In another case *Rani Prem Kunwar v. District Judge, Bareilly* [1978 (4) ALR 508 : 1978 AWC 431.] again the question arose as to whether the land submerged with water can be treated to be the land for the purposes of the Act. This Court after considering the definition of the land laid down as under:

"5. The preamble makes it clear that the Act has been passed to provide land for landless agricultural labourers and for a more equitable distribution of land as also in the interest of community to ensure increased agricultural production and for other public purposes as best to subserve the common good. The object of the Act, therefore, is to carve out land from the large holdings so that the remaining holdings may be manageable and capable of more intensive cultivation as also to provide land to those who could not have got it or who have very little of it. Obviously this purpose cannot be achieved unless there is land. A land which remains submerged with water and which cannot be used for any purpose contemplated by section 3(14) of U.P. Act 1 of 1951 cannot be regarded as land nor it can serve the purposes contemplated by the preamble of the U.P. Imposition of Ceiling on Land Holdings Act.

6. The learned Standing Counsel has referred to sections 3(2), 3(9), 3(16) and 3(17) which define ceiling area, holding, surplus land and tenure-holders respectively. His contention is that if the petitioner is tenure-holder of plot No. 135 and it is not exempted from section 6 of the Act it will be included in determining the ceiling area. I am reluctant to subscribe to this view because in all these proceedings the word used is, "land" which is defined in section 3(14) of U.P. Act 1 of 1951 only. As discussed above, plot No. 135 does not fall within the definition of land and it cannot be taken into consideration in determining the ceiling area. The learned District Judge committed manifest error of law by including it in that area."

14. In the case in hand also khasra of 1380 fasli of village Sisendi goes to indicate that 28-3-18 in plot No. 226 has been recorded as talab in the name of the petitioner and the rest has been recorded as banjar. The khasra of 1378 fasli of village Bhaundri does not indicate any land covered with water but argument has been raised in respect of plots No. 412 and 425. The khasra of 1378 fasli with respect to village Govindpur also does not indicate any land covered with water except banjar and usar. The khasra of 1380 fasli pertaining to village Sisendi indicates that plot No. 226 to the extent of 28-3-18 and 6-3-19 is tank and plot No. 227 measuring 96-15-2 is also a tank to the extent of 29-15-2. The khasra of plot No. 1379 fasli of village Sisendi indicates only 6-3-19 as tank and khasra of 1378 fasli indicates in plot No. 226 petitioner's share as 28-3-18 and 6-3-19 and in plot No. 227 the joint name of all the three brothers has been shown and the area of tank

has been shown as 29-15-2. All these entries go to show that the question as to what extent the land is covered under water and is submerged in water and no cultivation is taking place on the same, has not been taken into consideration by the Prescribed Authority. The contention of the parties before the Prescribed Authority and the Appellate Authority can only be verified in a correct decisive manner after the Prescribed Authority makes a spot inspection, as held in the case of Tej Pal Singh (supra), if the Prescribed Authority comes to the conclusion that the land in question is submerged under water and no cultivation takes place on the same, then the same would be excluded from the ceiling area as ruled by this Court in Rani Prem Kunwar (supra).

h) Shishu Pal Singh Vs. Prescribed Authority (Supra):

4. The learned Counsel for the petitioners submitted that the petitioners are not included within the term "family" defined under Section 3(7) of the Act and in order to include their holding by placing reliance on Explanation-1 of Section 5 of the Act, heavy onus lies upon the State to prove that the holding was benami, i.e., "ostensibly in the name of any other person, though it is a land held by him in his own rights". In the case in hand, the respondents have proceeded otherwise by observing that the petitioners did not produce any evidence to show that the land was not held by petitioner's father in his own rights and, therefore, the basic approach of the respondents is clearly erroneous, illegal and contrary to law. He has also placed reliance on a single judgment of this Court in Writ Petition No. 2315 of 1977 *Banshi Singh v. District Judge, Moradabad* decided on 3-1-1979. The learned Standing Counsel opposed the submission and supported the reasons assigned by the respondents.

5. It would be appropriate to consider what the Act has prohibited and in what manner. Section 5 of the Act imposes ceiling on the land providing that no tenure holder shall be entitled to hold in the aggregate throughout U.P., any land in excess of ceiling area applicable to him. The term "tenure-holder" has been defined in Section 3, sub-section(17) of the Act and reads as under:

"3. Definitions.-"

(17) "tenure-holder" means a person who is the holder of a holding but except in Chapter III does not include"

(a) a woman whose husband is a tenure-holder;

(b) a minor child whose father or mother is a tenure-holder;"

6. The term "holding" has been defined in Section 3(9) and reads as under:

"3. (9) "holding" means the land or land held by a person as a bhumidhar, sirdar, asami or Gaon Sabha or an asami mentioned in Section 11 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, other than a sub-tenant, or as a Government lessee, or as a sub-lessee of a Government lessee, where the period of the sub-lease is co-extensive with the period of the lease:"

7. The term "family" in relation to tenure holder has been defined in Section 3, sub-section (7) and reads as under:

"3. (7) "family" in relation to a tenure-holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters);"

8. It is evident from the record that Het Ram had his own holding. Besides, the six petitioners, who are the sons of late Het Ram Singh, also have purchased certain holdings in their names through different sale-deeds which were exclusively in their names. However, the Lekhpal and Tehsildar included all the said holdings in the name of late Het Ram Singh showing that in total, he had 25.81 acres of land and, therefore, 17.40 acres of land was liable to be declared surplus. The case of the petitioners was that their holding were separate, they were residing separately and, therefore, their holdings, which they have purchased through their own separate sale deeds, cannot be included or clubbed with the holding of late Het Ram Singh. The appellate authority has rejected the appeal only on the ground that the petitioners contention that they were residing separately from their father cannot be accepted since one of the petitioners Shishu Pal Singh has obtained loan for purchasing a tractor after getting his father's land mortgaged and the onus to prove that they were residing separately lies upon the petitioners, which they did not discharge.

9. From the order of the appellate authority, it appears that he proceeded on the assumption that once notice under Section 10(2) of the Act has been issued based on the inquiry of the Lekhpal and Tahasildar etc. alleging that the noticee held certain holding in his own rights though ostensibly in the name of other, it is the liability of the noticee to prove otherwise. This approach is absolutely misconceived and contrary to law. Explanation-1 of Section 5 is in the nature of exception inasmuch normally every tenure holder is entitled to hold a land to the extent provided in the Act, but in a case where the land actually belongs to one but has been purchased in the name of some other person, that is a kind of benami transaction, in that case only to prevent such cases so as not to frustrate the very purpose of the Act, the explanation-1 has provided that such land shall be included in the holding area of a tenure holder, but to prove the existence of such fact, the onus lies on the State heavily and not otherwise. Explanation-1 read with Section 5 is very clear that neither it purports to add nor to limit the normal meaning of the expression "tenure-holder" as defined in Section-3, sub-section (17) of the Act and, thus, clearly shows that the land must be held by the tenure holder in his own rights. In case, the State claims that any land is held ostensibly by the tenure holder, the onus lies upon the State to establish the same. A somewhat similar issue came up for consideration before a Division Bench of this Court in *Mohammad Abbas v. State of U.P.*, 1979 AWC 23 : (1979 All LJ 326). There two major sons of the tenure holder executed sale deeds on 12-5-1971, 7-9-1971 and 8-3-1972 transferring the entire land recorded in their names. Thereafter, the tenure holder claimed two additional hectares of land on the ground that his two major sons did not hold any land on the appointed date, i.e., 8-6-1973, but the said claim was rejected by the ceiling authorities holding that the transfer of land by major sons after 24-1-1971 was liable to be ignored as they could not establish that the sale deeds were executed in good faith and for adequate consideration. Referring to Section 5, sub-section (3) of the Act, the Court held that the ceiling area to which a tenure holder is entitled is fixed with reference to the

number of members in the tenure-holder's family and land held by other members of the tenure-holder's family is to be aggregated with the land held by the tenure holder. The word "family" as defined in the Act in relation to a tenure holder, means himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband) minor sons and minor daughters (other than married daughters).

9. It shows that the said definition does not include the major sons of the tenure holder. By virtue of Section 5(3), if the tenure holder is a male, land recorded in the name of his wife, provided she is not a judicially separated wife, and minor sons and minor daughters can be clubbed in determining the ceiling area which the tenure holder is entitled to retain. This shows that the land held by the major sons is not to be included in the holding of the tenure holder. The only possibility for including the said land, therefore, would have been if Explanation-1 of Section 5(1) would have been applicable, namely, if the land is ostensibly held by the tenure holder in the name of any other person, but for the said purpose, heavy burden lies upon the State to prove this fact. Considering this aspect of the matter with reference to Explanation-1 to Section 5(1) of the Act, another Division Bench of this Court in Banshi Singh (supra) wherein this Court held as under:

"Explanation 1 of Section 5(1) clearly shows that when the State alleges that the land is ostensibly being held by a tenure-holder in the name of any other person which should be treated as the land belonging to the tenure-holder then the burden lies upon the State to prove this fact. Merely because in the notice the State has clubbed the land belonging to others under the pretext that it is being held ostensibly in the name of sons or any other person, the burden cannot be said to have been discharged. Once a notice under Section 10(2) is served upon the tenure-holder he has to show cause and while showing cause if the tenure-holder establishes by prima facie evidence by filing documents or by giving evidence that the land was being held by other persons in their own capacity, the burden shifts upon the State to establish the fact that the land is being held by the tenure-holder ostensibly in the name of others. In order to discharge this burden the State has to establish by some cogent and satisfactory evidence that the land is being held by the tenure-holder. Merely because the land has been clubbed in the land of petitioner No. 1 in the notice issued under Section 10(2) of U.P. Imposition of Ceiling on Land Holdings Act or merely because the Lekhpal gives a statement that the petitioner is in possession, is not sufficient to discharge that burden and to establish that the land was ostensibly being held by the tenure-holder in the name of others. In the present case petitioner No. 1 led evidence by showing that the names of the sons were entered in revenue records right from 1264-F and after the partition their names were entered separately on the basis of the partition decree. When the State was alleging that the land was being ostensibly held by petitioner No. 1, the State had to discharge that burden by giving cogent and satisfactory evidence. In the present case no such evidence was adduced and the mere statement of the Lekhpal was not sufficient to rebut the evidence and to hold that the land was being held ostensibly by petitioner No. 1 in the names of the sons."

10. Moreover, the only reason for non-suiting the petitioners given by the appellate authority that the land of Het Ram Singh was given as security for obtaining loan by one of the petitioners and thus shows that the entire holding belong to Het Ram Singh, in my view, is thoroughly misconceived. It is very difficult to co-relate the said transaction to the conclusion

which has been drawn by the learned appellate authority. A father and son having separate holding, residing separately but if help each other in their period of difficulty or whenever necessity arises, would not mean that they constitute one unit and entire thing belong to the father or the son, as the case may be. In Indian society and in common practice, if the sons or daughters or even brothers or other relatives needs help, the first helping hand would be that of normally the relatives or the friends and, therefore, for purpose of land, if Het Ram's land was mortgaged with respect to the petitioner No. 1, that itself would not justify the conclusion that the entire holding belong to Het Ram in his own right though ostensibly in the name of the petitioners. The petitioners gave their statements that they are all residing separately. Mere non-production of ration-card cannot justify an inference that the statements given on oath by the petitioners were false unless some evidence is produced by the State to show the said averment to be incorrect. From a bare reading of the appellate order, it is evident that it has solely proceeded on the assumption as if the onus lies upon the petitioners to show that the holding was separate, ostensibly in their names and did not belong to their father Het Ram Singh. The basic approach of the appellate authority in the present matter is clearly illegal and contrary to law.

Judgments relied upon by learned counsel for the respondent:

a) Kishundeo Rout and others Vs. Govind Rao and Others (Supra):

25. This rule that pleadings and proof must correspond, rests upon the principle that no party should be prejudiced by being taken by surprise by varying the case as originally Set up. In the words of Mahajan, J., in Trojan and Co., Ltd. v. RM. N. N. Nagappa Chettier, (1953) 1 SCC 456 : 1953 SCR 789 (806). "It is well settled that decision of a case cannot be based on grounds outside the pleadings of the parties and it is a case pleaded that has to be found."

26. The correct test as to when a plea of adverse possession, when not taken in the plaint, can be raised later on in appeal, was laid down by Calcutta High Court in Nepen Bala Debi v. Siti Kanta Banerji, 8 I.C. 41 in the following words:

"Where no case of acquisition of title by adverse possession is made in the plaint, nor is the question raised directly or indirectly in any of the issues, the plaintiff ought not to be allowed to succeed upon such a case. On the other hand, as pointed out by this court in the case of Lilabati Misrain v. Bishun Chobey, when the question reduces itself to one of law, upon facts admitted or proved beyond controversy, it is not only competent to the Court, but expedient in the interest of justice to entertain the plea of adverse possession, if such a case arises on the facts stated in the plaint and the defendant is not taken by surprise. The true test, therefore, to be applied to determine whether the plea of title by adverse possession should be allowed to be urged though not explicitly raised in the plaint, is, how far the defendant is likely to be prejudiced if the point is permitted to be taken."

29. In the case at hand if plea of adverse possession had been taken in the plaint, and if that plea had been traversed by the defendants and then proper issues framed, a heavy burden would have laid on the plaintiffs to lead evidence in support of their hostile claim and a corresponding opportunity of rebuttal would have been given by law to the defendants. In this case

it is inconceivable that the question of adverse possession can become the subject-matter of adjudication on this record in the absence of proper plea, issue or proof.

30. The above discussion leads us to the only conclusion, and that is, that, unless the plea of adverse possession has been specifically raised in the pleadings, put in issue, and then cogent and convincing evidence led on a multitude of points, and an opportunity to refute the case made out by the plaintiff, availed of by the defendant, the plea of adverse possession cannot be allowed to be flung as a surprise, on an unsuspecting defendant, for the first time in appeal.

b) Bechan Pandey and others Vs. Dulhin Janki Devi and others (Supra):

7. In appeal before us Mr Sarjoo Prasad on behalf of the appellants had made a number of contentions, but in our opinion, it is not necessary to go into all of them for the appeal is liable to be dismissed on the short ground that the plaintiff-appellants have failed to establish that the land in dispute is the same as had been purchased in auction by Maina Kuer as per sale certificate dated February 26, 1935 and was thereafter leased on her behalf in favour of the appellants as per two lease deeds dated September 27 and 30, 1940. It is not disputed that if on the above view of the matter the appellants are found to have not proved their title to the land in dispute, the question of going into other contentions would not arise. Mr Sarjoo Prasad, however, submits that the defendant-respondents did not dispute in the trial court that the land in dispute was the same which had been purchased by Maina Kuer in auction sale and had been leased in favour of the plaintiffs. We find it difficult to accede to this submission. In para 15 of their written statement Defendants 2, 3, 12 and 14 stated as under:

"That Maina Kuer was not at all auction purchaser of the property in dispute nor was she a proprietor nor zamindar nor was she at any time in possession and occupation of the lands in dispute. The allegation of the plaintiff in respect of these facts are altogether wrong."

In the same language is couched para 15 of the written statement of Defendant 7 who filed a separate written statement. It was incumbent in view of the averments in para 15 of the written statements for the plaintiff-appellants to establish by clear evidence that the land in dispute was the same which had been purchased in auction sale by Maina Kuer and had been subsequently leased by her in favour of the appellants. The learned Judges of the High Court discussed the oral and documentary evidence which had been adduced in the case and came to the conclusion that there was no cogent material to show that the land in dispute was the same which had been purchased by Maina Kuer and had been leased by her in favour of the appellants. After hearing Mr Sarjoo Prasad we find no sufficient ground to take a different view. The land which had been purchased by Maina Kuer in the auction sale as per sale certificate dated February 26, 1935 was situated in Balia district in the State of Uttar Pradesh on the left bank of the Ganges. The land which is the subject-matter of the present, litigation is situated in Shahbad district in the State of Bihar on the right bank of the Ganges. Although the land is subject to river action, the onus to prove that the land in dispute in Shahbad district represents the land which got submerged as a result of the river action in Balia district was upon the plaintiff-appellants. The appellants have failed, as held by the High Court, to discharge this onus.

8. Mr Sarjoo Prasad took us through the evidence of Ram Pachisa Lall (DW 3) and Nanku Lall Singh (DW 5), but the evidence of these witnesses is far from proving that the land in dispute is the same as was purchased by Maina Kuer. The evidence of Raghunath Prasad (PW 6), to which also passing reference was made, is not sufficient to connect the land in dispute with sale certificate dated February 26, 1935.

c) T.H. Musthaffa Vs. M.P. Varghese and others (Supra):

10. The pleading raised in the case does not refer to either Rule 39 or Rule 56 of the rules much less to the "Pamphlet Showing Illustrative Cases of Valid and Invalid Postal and Ordinary Ballot Papers" issued by the Election Commission of India, nor are any specific allegations found in the case. The allegation made in the course of the petition is that there is wrong acceptance of invalid votes polled for Respondent 1. It is not made clear as to how many votes are liable to be rejected for using wrong instrument by the voters for expressing their preference. There is no further indication as to how many of such votes had been polled in favour of Respondent 1 so as to materially affect the result of the election. In the absence of such plea the learned Judge could not have granted the relief of re-count. Therefore, the view taken by the High Court that the pleadings are insufficient to order re-count is perfectly in order. So far as the evidence that had been adduced in the case is concerned, it need not have been looked at by the learned Judge in the absence of appropriate pleadings in that regard. However Shri E.M.S. Anam, the learned counsel for the appellant submitted that the fact that votes in the two polling stations at Varikoli School and Puttannoor School had been cast by using a wrong instrument was not in dispute and the evidence of the Returning Officer clearly indicated the use of the wrong instrument in the two polling stations which amounted to an admission in the case and, therefore, even in the absence of an appropriate pleading in that regard the evidence could be looked at. We fail to appreciate this argument. Unless the appellant had put forth his case in the pleading and the respondents are put on notice, the respondents cannot make an admission at all and there is no such admission in the course of the pleadings. If the pleadings did not contain the necessary foundation for raising an appropriate issue, the same cannot go to trial. Any amount of evidence in that regard, however excellent the same may be, will be futile. Therefore, the learned counsel is not justified in making the said submission and the same is rejected. The learned Judge noticed that the appellant, though had raised objection in this regard in the application for re-count, did not reiterate the same in second application much less any averment is made in the petition. The learned Judge held, in our view, rightly that there is no pleading in this regard and the evidence adduced cannot be looked into as no issue thereto arises.

d) Kalyan Singh Chouhan vs. C.P. Joshi (Supra):

17. During the trial of an election petition, it is not permissible for the court to permit a party to seek a roving enquiry. The party must plead the material fact and adduce evidence to substantiate the same so that the court may proceed to adjudicate upon that issue. Before the court permits the recounting, the following conditions must be satisfied:

(i) The court must be satisfied that a *prima facie* case is established;

(ii) The material facts and full particulars have been pleaded stating the irregularities in counting of votes;

(iii) A roving and fishing inquiry should not be directed by way of an order to re-count the votes;

(iv) An opportunity should be given to file objection; and

(v) Secrecy of the ballot requires to be guarded.

[Vide Jagjit Singh (Dr.) v. Giani Kartar Singh [AIR 1966 SC 773] , Suresh Prasad Yadav v. Jai Prakash Mishra [(1975) 4 SCC 822 : AIR 1975 SC 376] , M. Chinnasamy v. K.C. Palanisamy [(2004) 6 SCC 341 : AIR 2004 SC 541] , Chandrika Prasad Yadav v. State of Bihar [(2004) 6 SCC 331 : AIR 2004 SC 2036] , Tanaji Ramchandra Nimhan v. Swati Vinayak Nimhan [(2006) 2 SCC 300 : AIR 2006 SC 1218] , Gursewak Singh v. Avtar Singh [(2006) 4 SCC 542 : AIR 2006 SC 1791] and Baldev Singh v. Shinder Pal Singh [(2007) 1 SCC 341] .]

39. Upon perusal of record, it is evident that the proceedings initiated under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act involved the holdings of the deceased petitioner in Village Barethi and Village Rasoolpur. On 18.06.1996, the petitioner filed objections asserting that the CLH Form 3 statement was prepared with "vengeance" by the Lekhpal. The petitioner maintained that his actual holdings totaled only 21.11 Acres, much of which was un-irrigated, single-crop land.

40. A primary contention was that 10 Acres of the holding lay along the banks of the River Gomti and remained submerged/flood-affected. Under the Act, such land does not qualify for inclusion in the ceiling limit, potentially reducing the petitioner's relevant holding to 11.11 Acres (equivalent to roughly 7.5 irrigated acres). The petitioner argued that three sons (Taiyab, Tauhid, and Vaheed) were majors and held land independently. Furthermore, 3.13 acres had been transferred to Akbari Begam in 1989, who was in physical possession and recorded as Bhumidhar.

41. The Prescribed Authority (on 29.05.1997) declared 15.65 Acres as surplus, deciding all issues against the petitioner by claiming "no evidence was led," despite witnesses being produced. Upon appeal, the Appellate Authority (Opposite Party No. 1) acknowledged that findings regarding Gata Nos. 62, 97, 125, and 250 were self-contradictory, initially noting they lacked irrigation sources but ultimately declaring them irrigated. Despite these discrepancies, the appeal was dismissed with only a limited remand for Village Barethi.

42. The authorities failed to consider the testimony of State witnesses who admitted that parts of the land were Aabadi (settled) and Graveyards, which are legally exempt from surplus calculations. The classification of land as "irrigated" was done without perusing the Khasra entries of 1378"1380 Fasli or verifying the actual source of irrigation at the spot. The Appellate Authority issued "mutually destructive findings""admitting the Prescribed Authority's order was baseless while simultaneously upholding the bulk of its conclusions.

43. The burden of proof, which squarely lies upon the State to prove land is surplus through cogent evidence, was illegally shifted onto the tenure holder. This Court further finds that the burden of proof, which squarely lies upon the State to establish that the land is liable to be declared surplus, was impermissibly shifted upon the petitioner. Mere reliance upon revenue entries, statements of subordinate officials, or assumptions regarding possession cannot substitute for legally admissible and cogent evidence. The approach adopted by the authorities is thus contrary to the principles laid down in the case of **Shishu Pal Singh (Supra)**.

44. In view of the aforesaid facts, circumstances, pleadings on record and the settled principles of law, it is manifest that the proceedings initiated under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, and the consequential orders passed by the authorities below suffer from patent illegality, arbitrariness and non-application of mind.

45. The material placed on record clearly establishes that the Prescribed Authority as well as the Appellate Authority failed to properly appreciate the evidence relating to the actual landholding of the deceased petitioner, the nature of land being irrigated or unirrigated, the existence of submerged land, and the independent holdings of major sons. Vital objections raised by the petitioner were neither adequately examined nor adjudicated in accordance with law.

46. It is further evident that the authorities ignored the finality attained by the consolidation proceedings recognizing the petitioner's rights and erred in applying an incorrect cut-off date, contrary to the statutory provisions and settled judicial precedents. The burden of proof, which squarely lay upon the State, was not duly discharged by cogent and reliable evidence, yet adverse findings were recorded against the petitioner in a cursory and mechanical manner.

47. The inclusion of submerged land and independent holdings of major sons in the petitioner's holding, in disregard of statutory provisions and binding precedents, renders the determination of surplus land wholly unsustainable. The impugned orders also suffer from internal contradictions and lack of proper reasoning, thereby violating the principles of natural justice and fair adjudication.

48. Moreover, the appellate authority itself acknowledged several infirmities in the findings of the Prescribed Authority, yet failed to grant effective and comprehensive relief, resulting in a limited and self-contradictory remand. Such an approach defeats the very object of appellate scrutiny and undermines the sanctity of judicial decision-making.

49. The findings recorded by the authorities below are further vitiated by their failure to conduct spot inspection and proper enquiry, despite specific disputes regarding submergence, irrigation facilities, and cultivability of the land. Such an approach is contrary to the law laid down in the case of **Tej Pal Singh (Supra)**, **Vibhuti Kumar Bajpai (Supra)** and other binding precedents. The classification of land as irrigated and cultivable has been made mechanically, without due verification from revenue records and without physical inspection, resulting in arbitrary and unsustainable conclusions.

50. So far as the judgments relied upon by learned counsel for the respondents regarding the necessity of proper pleadings and proof are concerned, this Court finds that the said authorities relate to civil and election disputes governed by strict rules of pleadings. The present proceedings being statutory and quasi-judicial in nature, cast an affirmative duty upon the authorities to conduct a fair, objective, and comprehensive enquiry. In the present case, there is no deficiency in the pleadings of the petitioner; rather, there is a manifest failure on the part of the authorities to adjudicate the objections in accordance with law.

The impugned orders also suffer from internal inconsistencies and mutually destructive findings. While certain infirmities in the order of the Prescribed Authority were acknowledged by the Appellate Authority, effective and complete relief was not granted, resulting in a limited and self-contradictory remand. Such an approach defeats the very purpose of appellate scrutiny and undermines the principles of fair adjudication.

51. In the considered opinion of this Court, the impugned orders dated 29.05.1997 passed by the Prescribed Authority and the appellate order dated 18.07.1998 are vitiated by errors apparent on the face of record, non-consideration of relevant material, misapplication of law, and procedural irregularities. The said orders, therefore, cannot be sustained in the eyes of law.

52. Accordingly, the writ petition succeeds and is hereby **allowed**. The impugned orders dated 29.05.1997 passed by the Prescribed Authority and the appellate order dated 18.07.1998 are hereby quashed.

53. The declaration of surplus land against the deceased petitioner stands set aside. The respondents are directed to treat the petitioner's holding in accordance with law and in consonance with the findings recorded herein.

54. There shall be no order as to costs.

(2026) 1 ILRA 1115
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 28.01.2026

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Application U/S 482 No. 1253 of 2020

T.T. Ltd. & Ors.

...Applicant

Versus

State of U.P. & Ors.

...Opposite Parties

Issue for consideration

Whether prima facie offence is made out?

Headnotes

Water (Prevention and Control of Pollution) Act, 1974 -Mandatory requirement of collecting the sample as envisaged under Section 21 of the Act, 1974 -can be looked into by the trial court-this Court lacks that jurisdiction to do trial-in discharge proceedings- the Court has to see whether the material collected on record do constitute the offence or not-it cannot be said that the offence is not made out. **Application rejected.** (E-9)

Case Law Cited

1. Century Spinning and Manufacturing Co. Ltd. and others Vs. State of Maharashtra, (1972) 3 SCC 282;
2. Kewal Krishna S/o Lachman Das Vs. Suraj Bhan and another, AIR 1980 SC 1780: 1980 Supp(1) SCC 499.

List of Acts

1. Water (Prevention and Control of Pollution) Act, 1974
2. Code of Criminal Procedure, 1973

List of Keywords

Trial; jurisdiction; constitute the offence

Appearances of parties

Counsel for Applicant(s) : AaroHi Bhalla, Saima Khan, Shilpi Jain Sharma, Sunil Kumar Singh
Counsel for Opposite Party(s) : G.A., A.K.Verma

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

1. The present application has been filed seeking quashing of the entire proceedings of Complaint Case No.368 of 2011, U.P. Pollution Control Board Vs. M/s T.T. Limited and others, under Section 43/44 of the Water (Prevention and Control of Pollution) Act, 1974 (for short 'the Act, 1974') as well as the order dated 23.01.2020 passed by the IVth Additional Sessions Judge/Special Judge, E.C. Act, Lucknow in Criminal Revision No.303 of 2015 and the orders dated 08.07.2015 and 19.02.2020 passed by the Special Judicial Magistrate, Pollution/C.B.I., Lucknow.

2. The facts giving rise to the present dispute are that applicant no.1, T.T. Limited, is a company having its registered office at 879, Master Prithvi Nath Marg, Opp. Azmal Khan Park, Karol Bagh, New Delhi engaged in the business of Cotton Yarn and Knitted Fabric. It carries out the non-polluting process of manufacturing yarn through its mill, namely, Gajroula Spinning Mill at Gajroula, which is 100% eco friendly and there is no use of water in the factory and as such no trade effluent is discharged from the factory. Applicant no.2 was the Chairman and Managing Director of the company at that time and he has engaged Sri. B.C. Jain, applicant no.5, as Factory Manager (Occupier) and Vice President (Technical), who was responsible for the day-to-day affairs of the Gajroula Unit. Applicant no.3 was the Director of the company at the relevant time and was not looking after the day-to-day activity of the Gajroula Unit. Applicant no.4 was the Secretary of the company at that time and he was also not looking after the day-to-day activity of the Gajroula Unit. Applicant no.5 was the Factory Manager (Occupier) and Vice President (Technical) of the company and was responsible for the day-to-day affairs of the Gajroula Unit. Applicant no.6 was the Director of the company at that time and he was not looking after the day-to-day activity of the Gajroula Unit. Applicant no.7 was the Vice President (Sales and Marketing) of the company at that time. Moreover, he is sitting and working at the Corporate Office, New Delhi only and has nothing to do with the day-to-day activity of the Gajroula Unit. Applicant no.8 was the Administrative

Officer of the company at that time and he was also sitting and working at the Corporate Office, New Delhi and had nothing to do with the day-to-day activity of the Gajroula Unit and presently he is retired. Applicant nos.9, 10 and 11 were independent non-executive Directors of the company at that time and were not involved in day-to-day affairs of the company.

3. It is stated that the Companies Act, 1956 does not provide the specific definition of an independent Director, but independent Directors are non-executive Director of a company, who helps the company in improving corporate credibility and governance standards. It is pertinent to mention here that all the Directors of applicant no.1 are respectable personalities having good reputation in the society and applicant no.9 is the recipient of the Padam Shree Award.

4. It is further stated that applicant no.1 had established a residential colony 500 meters away from the factory for the residential purpose of the employees working in its factory at Gajroula. Further, establishment of applicant no.1 is engaged in the manufacturing of yarn from cotton, in which there is no scope of any kind of water pollution as there is no industrial use of water at all and there is no effluent generated, hence no trade effluent is being discharged. It is alleged that while establishing its unit in the name and style of 'M/s Gajroula Spinning Mills?', applicant no.1 applied vide its application dated 25.04.1989 for No Objection Certificate under Section 25(2) of the Act, 1974 and the same was obtained from the U.P. Pollution Control Board in 1992 vide letter dated 17.12.1992. It is worthwhile to mention here that in the said No Objection Certificate, applicant no.1 was permitted to discharge 2500 Litres water for the purpose of domestic use via Soak Pit and Septic Tank. It is stated that since 1992, applicant no.1 bona fide and continuously has been moving an application for consent from opposite party no.2 and deemed acceptance was always granted under Section 25(7) of the Act, 1974. It is worthwhile to mention here that opposite party no.2 sometime also granted specific consent.

5. It is stated that on 05.05.2011, officials of opposite party no.2 visited the Gajroula Unit for the purpose of enquiry under Section 25/26 of the Act, 1974 without any notice to the Occupier or any other authorized Person. It is worthwhile to mention here that they took sample from the input of soak pit meant for domestic discharge of the residential premises without compliance of the provisions of Section 21 of the Act, 1974. It is also to be mentioned that upon enquiry under Section 25(3) of the Act, 1974, the Pollution Control Board may refuse to grant the consent under Section 25(4) of the Act, 1974. However, in the present case, application filed by applicant no.1 on 25.03.2011 was neither refused nor returned; thus, it deemed as granted under the purview of Section 25(7) of the Act, 1974. Moreover, Section 27 of the Act, 1974 provides that Board may refuse or withdraw its consent, which is appealable under Section 28 of the Act, 1974. Further, Section 21 of the Act, 1974 provides power to take samples of effluents and procedure to be followed in connection therewith, which provides the mandatory requirement of service of notice on person in-charge of or having control over i.e. Occupier, but the same was never complied with by opposite party no.2.

6. It is further stated that on 23.12.2011, opposite party no.2 filed Complaint Case No.368 of 2011 with the allegation that the industry is discharging 'Trade Effluent' without having any consent and made Directors, employees and independent Directors as party to the complaint without any averments against them under Section 47 of the Act, 1974. It was also alleged in the

complaint that site of the industry was inspected on 05.05.2011 in presence of Sri. P.L. Lohia, who is neither Occupier nor his agent nor authorized person, and it was found that the industry was functional despite the fact that it had no consent under the provisions of the Act, 1974 and the same time sample was collected from its premises. The sample was sent to the Laboratory and according to the analysis report dated 11.05.2011, it was not found to be within the standards laid down by the Board. It is said that the complaint was itself contradictory to the inspection report annexed to it, which only points out mere suspicion of pollution by domestic discharge. The inspection report is also defective as admitted sample from domestic discharge was compared with the standard laid down for Trade Effluent. However, the Special Judicial Magistrate, Pollution/C.B.I Lucknow without applying its judicial mind, took cognizance vide order dated 28.02.2012.

7. Being aggrieved, applicants approached this Court by filing Application U/s 482 Cr.P.C. No.5183 of 2012 challenging the complaint as well as the summoning order and had raised various legal procedures/provisions of the Act, 1974, which were not followed, violated by the opposite parties while conducting the alleged inspection on 05.05.2011. It is also prayed by the applicants that provisions of Section 43/44 of the Act, 1974 are not attracted in the present case. A coordinate Bench of this Court after hearing the parties, passed an order on 09.07.2013 with the observation that all the factual and legal aspects advanced by the applicants cannot be looked into by this Court and it is the trial court which can appreciate the entire facts.

8. In pursuance of the direction issued by this Court, applicants furnished personal bond of each applicant and filed an application under Section 245 Cr.P.C. before the trial court. However, the trial court rejected the said application vide order dated 08.07.2015. Being aggrieved by the said order, the applicants approached this Court again by filing Application U/s 482 Cr.P.C. No.3959 of 2015, but the said application was rejected as withdrawn on 19.08.2015 with liberty to the applicants to approach the appropriate forum. Thereafter, applicants filed Criminal Revision No.303 of 2015 before the revisional court, which too was dismissed by the revisional court vide order dated 23.01.2020.

9. It is stated that while rejecting the application under Section 245 Cr.P.C moved by the applicants, the Magistrate failed to appreciate the fact that applicants have also voluntarily got installed a Sewage Treatment Plant (STP) to discharge the residential colonies toilet water. The residential colonies have been constructed exclusively for the employees and their families in a separate compound. The sample collected from these residential colony Pit is not an "Industrial Effluent" or "Trade Effluent" as defined in the Act, 1974. A bare perusal of the complaint itself indicates the aforesaid fact. The trial court also failed to appreciate the fact that applicants no.9 to 11 were the independent Directors of the company and hence they were not responsible for the day-to-day activity as well as running the business of the Industry. Moreover, in the complaint itself nothing has been pleaded nor any role has been alleged or assigned to these applicants. It is stated that the trial court failed to appreciate the fact that only B.C. Jain is handling the day-to-day affairs of the company in the capacity of 'Occupier' while rest of the applicants were not personally responsible.

10. It is further stated that residential colony of the employees of the company is more than 500 meters away from the factory premises and the sample, as per the complaint itself, has been

alleged to have been collected from the pit of the residential colony. Thus, it is clear that the factory is situated at different premises and the residential colony is situated at different premises. A bare perusal of the definition makes it clear that domestic sewage does not fall within the ambit of 'trade effluent', hence the instant complaint prima facie is not maintainable under Section 43/44 of the Act, 1974 as there is no violation of the provisions of Section 24, 25 and 26 of the Act, 1974. It is also relevant to mention here that for invocation of Section 21 of the Act, 1974 for collection of sample, the pre-requisite has been elaborated under sub-section (3), (4) and (5) of Section 21 of the Act, 1974. However, in the instant case, the pre-requisite has been completely done away with by the authority concerned, who allegedly took the sample from the septic tank installed in the residential colony of the employees. The prosecution has failed to bring on record any notice to have been served on the person elucidated under sub-section (3) (a) of Section 21 of the Act. Non-observance of the mandatory requirement as defined under the provisions of the Act, 1974 vitiates the entire proceedings.

11. Sri Murtaza Ali, learned Senior Advocate, for the applicants has submitted that as per Section 25(7) of the Act, 1974, it is clear that application given by the applicants for the consent shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete all in all respects to the State Board. The trial court failed to appreciate the fact that applicants have also voluntarily got installed a Sewage Treatment Plant (STP) to discharge the residential colonies toilets water. The sample collected from the residential colony is not an 'industrial effluent' or 'trade effluent' as defined in the Act, 1974. In this regard, learned counsel for the applicants has drawn the attention of the Court towards Section 2(k) of the Act, 1974, which postulates that 'trade effluent' includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system other than domestic sewage. It has been submitted that the sample was collected from the Sewage Treatment Plant installed for the residential purposes, but the same was tested treating it to be 'trade effluent', but this material fact has been ignored by the trial court while issuing summons against the applicants.

12. Learned Senior Advocate for the applicants has further submitted that while collecting the sample, the statutory requirement as envisaged under Section 21 of the Act, 1974 has been done away by the authority concerned. The sampling of the sewage is pertaining to the residential colony and the same is not pertaining to trade effluent, therefore, the proceedings instituted by opposite party no.2 is vitiated in fact and law both. In support of his contention, learned Senior Advocate for the applicants has placed reliance upon the following decisions:-

1. *Century Spinning and Manufacturing Co. Ltd. and others Vs. State of Maharashtra*, (1972) 3 SCC 282;

2. *Kewal Krishna S/o Lachman Das Vs. Suraj Bhan and another*, AIR 1980 SC 1780: 1980 Supp(1) SCC 499.

13. On the other hand, Sri A.K. Verma, learned counsel for the U.P. Pollution Control Board has taken serious objection against the arguments advanced by the learned counsel for the

applicants and has submitted that applicants had earlier approached this Court by filing Application U/s 482 No.5183 of 2012 challenging the summoning order and the entire criminal proceedings. The said application was disposed of by a coordinate Bench this Court vide order dated 09.07.2013 with the observation that all the factual and legal aspects advanced by the applicants cannot be looked into by this Court and it is the trial court, which can appreciate the entire facts. This Court has further observed that whether the sample has been properly collected after observing the statutory formalities, is also a question of fact which can be scanned by the trial court. Similarly, this Court has further observed that whether the consent was refused or not, is also a question of fact, for which evidence is required. The question of facts are to be seen on the basis of material available on record by the trial court and this Court cannot go into the factual matrix of the case like the trial court.

14. Learned counsel for the Pollution Board has invited the attention of the Court towards the provisions of Section 25 of the Act, 1974, according to which the consent shall be given after completing all the formalities in all respects to the State Board. In the present case, all the formalities were not completed and the application filed by the applicants was returned by the Board to complete the necessary formalities. He has also invited the attention of the Court towards Section 2(d), which says that 'occupier' means in relation to any factory or premises means the person who has control over the affairs of the factory or the premises, and includes in relation to any substance, the person in possession of the substance and the 'sewage effluent' means effluent from any sewerage system or sewage disposal works and includes sullage from open drains.

15. Learned counsel for the Pollution Board has further submitted that the inspection report dated 05.05.2011 itself shows that the factory is using cotton as a material and there is production of cotton yarn and fabrics. The only outlet being the safety tank, from there the sample was collected and it was found that the discharge was obnoxious and not even conforming to the norms prescribed for sewage. Therefore, the complaint has been filed and it is a matter of evidence to be proved during the trial that whether there was any trade effluent in the sample or not, and for that purpose consent was necessarily to be obtained.

16. Learned counsel for opposite party no.2 has further submitted that while exercising its powers under Section 482 Cr.P.C. and hearing the discharge application, this Court has got very limited jurisdiction. After bare perusal of the complaint, the charges are made and this Court cannot weigh the evidence. It has been submitted that applicants have already challenged the summoning order as well as the entire proceedings by filing Application U/s 482 Cr.P.C. No.5183 of 2012, which was disposed of by this Court vide order dated 09.07.2013 with the observation that all the issues raised by the applicants have to be decided by the trial court; thus, this Court cannot be review the finding recorded by this Court in the earlier round of litigation.

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

18. The arguments advanced by the learned Senior Advocate for the applicants regarding Section 25(7) of the Act, 1974 as well as the mandatory requirement of collecting the sample as envisaged under Section 21 of the Act, 1974 can be looked into by the trial court. This Court while exercising its power under Section 482 Cr.P.C., cannot weigh the evidences for a definite finding,

for which the evidences are to be adduced and this Court lacks that jurisdiction to do trial. The evidences also required on the point whether the effluent was pertaining to trade effluent or pertaining to a Sewage Treatment Plant installed by the company for the residences of the employees. The applicants have already challenged the summoning order as well as the entire criminal proceedings by way of filing Application U/s 482 Cr.P.C. No.5183 of 2012 and the said application was disposed of by this Court vide order dated 09.07.2013 with the observation that for all the factual and legal aspects advanced by the applicants? counsel, the only remedy is trial. For the sake of convenience, the order dated 09.07.2013 is quoted below:-

“Heard learned counsel for the petitioner and learned counsel appearing on behalf of the pollution board and learned AGA.

A criminal complaint having No. 368 of 2011 (U.P. Pollution Control Board Vs. M/s T.T. Limited & 11 others) has been filed for prosecution of the accused persons under Section 43/44 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the Act).

The allegations in short made in the complaint are that there is contravention of Section 25 of the Act regarding discharge of sewage. It was also contended that on 5th May, 2011 the industry was inspected by the officer authorised by the Board in presence of opposite party No.2, Sr. P.L. Lohia. It was found that industry was functional the industry was being run without consent under the Act. During inspection, it was further found that effluent treatment plant was not installed by the industry and untreated effluent was being discharged. The notice in this regard was given on the same day. The sample was also taken of the trade effluent discharged from the sewage collection pit of the industry and the sample was analyzed in laboratory authorised by the Board and found substandard. The report was communicated by letter dated 04.10.2011 to the company. The aforesaid act of company was said to be in breach of Section 24 of the Act and as the punishable under Section 43 of the Act. Para 10 of the complaint relates to status of the opposite parties (petitioner in this petition) in the company. They have been shown that they being incharge of day to day business of the company and as such liable to be proceeded against them under the Act. The court took cognizance to issue process based on such allegation against the petitioners and opposite party No.3.

It has been submitted by learned counsel for the petitioner that the company has already nominated the person responsible for running the business and dealing with the issue by specific resolution which has also been communicated under the provision of factories Act to authorities under the Factories Act. It was further submitted that the sample collected in this case is not in conformity with the statutory provision contained in the Act and in view of Section 21 (3) of the Act, the report not is at all admissible. It was further submitted that no notice has been issued before inspection or taking sample. Mr. P.L. Lohia has no concerned with the factory.

It was further submitted that no effluent is being discharged from the manufacturer unit the inspection was made of residential premises of the factory and not of the manufacturing unit.

So far as the liability of the Directors are concerned para 10 of the complaint have averment in this regarding. However, it is a question of fact which has to be decided by the trial

court whether person responsible has been arrayed in complaint or the complaint to proceed against whom ?.

Similarly, the question whether sample has been properly collected after observing the statutory formalities is also a question of fact which has been scanned by the trial court.

Whether the consent was refused or not is also a question of fact because it is not in dispute that later seeking consent has been returned to the petitioners company. According to the counsel for the petitioner mere return of application will not amount to refusal. Hence no offence under Section 44 of the Act is made out.

The evidence is required on the point as to whether the treatment plant has been installed in pursuance of the direction issued by the Board after returning of the application or not. As the question of fact are to be scanned on the basis of material available on record by the trial court and it is not expected from this Court to go into factual matrix of the case like a trial court.

Hence petition is finally disposed of with the following directions that in case the petitioners appear before the court below and moved any application raising all these points before trial court, the court shall decide the question on the basis of material available on record.

It is directed that in case the petitioners' presence is not required for the disposal of the proceedings they should not compel to appear each and every date. Necessary order of exemption may be passed in case any application is moved for that purpose. If the objection, if any, are raised before the trial court, the trial court shall dispose of the same within a reasonable time and preferably within a period of three months from the date of production of certified copy of this order.

In case the petitioner Nos.1 to 11 appear before the trial court, they may be released on personal bond till the disposal of their objections. After disposal of the objection if presence of the petitioners are still required during the trial the court may consider to continue the petitioners either on the personal bond or pass any appropriate order in accordance with law.

With this observation, the petition is finally disposed of."

19. The aforesaid finding recorded by a coordinate Bench of this Court in the earlier round of litigation cannot be reversed while hearing the discharge application. It is settled law that in discharge proceedings, the Court has to see whether the material collected on record do constitute the offence or not. After bare perusal of the complaint and other material on record, it cannot be said that the offence is not made out. This Court while hearing the discharge application cannot do mini trial or weigh the evidences. The grounds raised by the applicants can only be looked into by the trial court after adducing the evidence on record.

20. Application is devoid of merit. It is accordingly **rejected**. Interim order, if any, stands vacated.

21. However, the trial court is directed to release the applicants on the personal bonds already furnished by them as they are very old and infirm. In case appearance of the applicants is required for framing of charges and other proceedings, the trial court is directed to take the assistance of video conferencing. The trial will be concluded expeditiously in accordance with law without giving any unnecessary adjournments.

(2026) 1 ILRA 1123
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 28.01.2026

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Application U/S 482 No. 3721 of 2021

Vishal Kumar Saroj

...Applicant

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for consideration

Matter pertains to maintainability of second complaint after rejection of protest petition in first FIR.

Headnotes

Maintainability of second complaint-Brothers and father of the applicant were brutally murdered by the brother and nephew of opposite party no.2- FIR was lodged- out of retaliation-opposite party no.2 filed an application under Section 156(3) Cr.P.C.- FIR- final report was filed- protest- rejected- Criminal Revision - dismissed -opposite party no.2 also moved an application for further investigation before the Chief Minister of U.P.- the matter was inquired -report submitted that final report was filed after fair investigation-the opposite party no.2 filed a criminal complaint before the Magistrate on the same very incident which was mentioned in the FIR lodged by opposite party no.2- summon issued-under challenge- once the negative report/final report on the original complaint was accepted after rejecting the written objection/protest petition-on the same set of facts, complaint under Section 2(D) Cr.P.C. is not maintainable as second complaint. **Application allowed.** (E-9)

Case Law Cited

1. Subrata Chaudhary @ Santosh Chaudhary & others Versus The State of Assam & another, 2024 INSC 834
2. Kusha Duruka vs. The State of Odisha, 2024 INSC 46
3. Rekha Sharad Ushir vs. Saptashrungi Mahila Nagari Sahkari Patsansta Ltd., 2025 INSC 399
4. Amar Singh vs. Union of India and others, (2011) 7 SCC 69
5. Ramjas Foundation and another vs. Union of India and others (2010) 14 SCC 38
6. Smt. Ramendri vs. State of U.P. and another (Application U/s 482 No.5094 of 2021), decided on 24.2.2022
7. Yogeshwar Raj Nagar and another vs. State of U.P. and another -Matters Under Article 224 No.4173 of 2018-Neutral Citation No.2025:AHC:31994.
8. Mahesh Chand v. B. Janardhan Reddy and Another, (2003) 1 SCC 734
9. Vishnu Kumar Tiwari v. State of U.P., Criminal Appeal No.1015 of 2019 SLP (Crl.) No.9654 of 2017- decided on 09.07.2018
10. Samta Naidu v. State of M.P., 2020 (1) ACC 660 (SC)

List of Acts

1. Indian Penal Code, 1860
2. Code of Criminal procedure, 1973

List of Keywords

Criminal complaint; Protest petition; second complaint; maintainable

Appearances of parties

Counsel for Applicant(s) : Lalji Yadav, Arun Sinha Counsel for Opposite Party(s) : G.A., Ashish Kumar Maurya, Sushil Kumar Singh

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

1. Heard Sri Siddharth Sinha along with Sri Lalji Yadav, learned counsel for the applicant, Sri Rao Narendra Singh, learned A.G.A. for the State and Sri Sushil Kumar Singh, learned counsel for opposite party no.2.

2. This application has been filed seeking quashing of the impugned summoning order dated 10.1.2020 passed by the Civil Judge (Junior Division)/Judicial Magistrate, Lalganj, Pratapgarh, as well as entire criminal proceedings of Complaint No.188 of 2017, under Sections 323, 325, 326, 504, 506 I.P.C. (Anil Singh vs. Vikas and others), pending in the court of Civil Judge (Junior Division)/Judicial Magistrate, Lalganj, Pratapgarh as well as order dated 01.04.2021 passed by the Civil Judge (Junior Division)/Judicial Magistrate, Lalganj, Pratapgarh, by which bailable warrant was issued against the applicant.

3. Brief facts of the case are that on 28.05.2015, brothers and father of the applicant were brutally murdered by the brother and nephew of opposite party no.2 and an FIR was lodged by the applicant. After lodging the said FIR, out of retaliation, opposite party no.2 filed an application under Section 156(3) Cr.P.C. for lodging the FIR against the applicant and 15 other persons and in pursuance of the direction of the court, FIR was lodged at Case Crime No.344 of 2015 under Sections 147, 148, 149, 323, 504, 506, 308, 324, 326 I.P.C. at Police Station Lalganj, District Pratapgarh. The investigation was concluded and final report was filed by the Investigating Officer before the court. Thereafter, opposite party no.2 moved a protest application before the Magistrate against the said FIR. After considering the objections, the Magistrate passed an order on 8.4.2017, accepting the final report submitted by the police. Against the order dated 8.4.2017, opposite party no.2 filed Criminal Revision No.111 of 2017 before the court of Sessions, which has also been dismissed on 01.08.2023. The opposite party no.2 also moved an application for further investigation before the Chief Minister of U.P., who directed the Director General of Police, U.P., to take appropriate action on the said application. The matter was inquired by the Superintendent of Police, Kaushambi, who had submitted a report on 27.6.2016 mentioning that final report was filed after fair investigation. The opposite party no.2 filed a criminal complaint before the Magistrate on 17.11.2017 on the same very incident, which was mentioned in the FIR lodged by opposite party no.2 and after recording the statements under Sections 200 and 202 Cr.P.C., summon has been issued which is under challenge.

4. Learned counsel for the applicant has submitted that if the opposite party no.2 has filed application under Section 156(3) Cr.P.C. raising his grievance and concerned court considered the same and directed for lodging the first information report and thereafter by the order of the Court,

Circle Officer investigated the matter and has submitted the final report against which, opposite party no.2 filed protest application on oath wherein he again raised the same grievance and the competent court was pleased to consider his grievance and passed the order dated 08.04.2017 thereby accepted the final report by holding that the investigation does not suffer from any infirmity, then applicant cannot file complaint on the same set of facts. He further submits that the revision filed by the opposite party No.2 against the order dated 08.04.2017 has also been dismissed on merit by the Additional Sessions Judge/F.T.C.-I, Pratapgarh.

5. Further submission of learned counsel for the applicant is that in Paras 18, 27, 30 & 32 of the judgment of the Supreme Court in the case of ***Subrata Chaudhary @ Santosh Chaudhary & others Versus The State of Assam & another, 2024 INSC 834*** has held that once the negative report/final report on the original complaint was accepted after rejecting the written objection/protest petition then on the same set of facts, complaint under Section 2(D) Cr.P.C. is not maintainable as second complaint. He further submits that opposite party No.2 has filed the complaint dated 17.11.2017, in which he has not disclosed the material facts and this Court as well as the Supreme Court in different cases held that if any person did not approach the court with clean hands, he cannot be entitled for any relief. It has been further submitted that the complaint of the opposite party No.2 is based on suppression of material facts as well as second complaint as held by the Supreme Court in the case of *Subrata Chaudhary @ Santosh Chaudhary (supra)*, therefore the complaint and proceedings of the complaint are liable to be quashed.

6. To buttress his argument, learned counsel for the applicant has relied upon the judgment of the Supreme Court in the cases of ***Kusha Duruka vs. The State of Odisha, 2024 INSC 46***; ***Rekha Sharad Ushir vs. Saptashruni Mahila Nagari Sahkari Patsansta Ltd., 2025 INSC 399***; ***Amar Singh vs. Union of India and others, (2011) 7 SCC 69***; ***Ramjas Foundation and another vs. Union of India and others (2010) 14 SCC 38***; ***Subrata Chaudhary @ Santosh Chaudhary & others Versus The State of Assam & another, 2024 INSC 834***. He has also relied upon the judgment of this Court in ***Smt. Ramendri vs. State of U.P. and another*** (Application U/s 482 No.5094 of 2021), decided on 24.2.2022; and ***Yogeshwar Raj Nagar and another vs. State of U.P. and another*** (Matters Under Article 224 No.4173 of 2018)(Neutral Citation No.2025:AHC:31994).

7. On the other hand, learned counsel for opposite party no.2 has opposed the submissions made on behalf of the applicant and has submitted that the respectful submission of opposite party no.2/complainant in his criminal complaint, under Chapter XV and Chapter XVI of Cr.P.C., referable to Sections 200, 202, 203 and 204 Cr.P.C., is that the second Final Report/Closure Report dated 07.01.2017 in FIR/Police Case Crime No.344 of 2015, P.S. Lalganj, District Pratapgarh, and the filing of a protest application by opposite party no.2 against the said second Final Report/Closure Report, as well as the order dated 08.04.2017 accepting the Final Report/Closure Report, would not acquire the character of a criminal complaint within the meaning of Chapter XV and Chapter XVI of Cr.P.C. It is submitted that a criminal complaint contemplates an enquiry or trial by the Court itself into an offence, including examination of witnesses in support of the complaint and consideration of other materials such as documentary and medical evidence. The order passed by the Magistrate under Section 203 Cr.P.C. (dismissal of complaint) or under Section 204 Cr.P.C. (issuance of process) is a judicial order passed by a trial court in the exercise of its judicial wisdom. Such an order cannot be equated with the acceptance of a Final Report/Closure

Report and protest application, as the conclusion of the Investigating Officer accepted by the Magistrate does not acquire the character of *res judicata*. Therefore, the Final Report/Closure Report and protest application cannot be termed as a first criminal complaint, and consequently, when a regular criminal complaint is filed by the complainant, the same cannot be termed as a second criminal complaint.

8. Learned counsel for opposite party no.2 has further submitted that the power and jurisdiction exercised by the Magistrate while considering a police report, particularly a Final Report/Closure Report submitted by the Investigating Officer, is not based upon deposition of witnesses in the witness box. It is submitted that in a criminal complaint under Section 200 Cr.P.C., the statements recorded before the Court under Sections 200 and 202 Cr.P.C. constitute evidence within the meaning of the Indian Evidence Act. In contrast, the material collected by the Investigating Officer in the case diary and the statements recorded under Section 161 Cr.P.C. (Section 180 BNSS) do not constitute evidence. At best, such material can be termed as investigative material, to which no legal evidentiary value can be attached. Even the protest application filed by the first informant does not acquire the character of evidence. Thus, there is a vast difference between a police case diary and a criminal complaint, and the statements recorded during enquiry or trial under Sections 200 and 202 Cr.P.C. stand on a much higher pedestal than the material collected during investigation.

9. It has further been submitted by learned counsel for opposite party no.2 that the jurisdiction exercised by the Magistrate while considering the Final Report/Closure Report submitted by the police and the protest application filed by the first informant is administrative in nature. He further submits that in the present case, the order dated 08.04.2017 passed by the Magistrate accepting the Closure/Second Final Report reflects perversity, particularly in respect of the injuries suffered by five injured persons, as noted by Dr. A.K. Gupta, who recorded injuries caused by a sharp-edged weapon. Despite this, the Magistrate treated the injuries of injured Ajay Singh (injury nos. 2 and 3) and injury no.1 of injured Vivek in a casual manner, without proper appreciation, thereby demonstrating a perverse approach. It is further submitted that the Magistrate did not consider the medical reports submitted by Swaroop Rani Nehru Medical College, Prayagraj, and recorded findings based on a perverse interpretation of the FIR, although the Magistrate himself referred to the Investigating Officer's report noting the existence of a cross-case.

10. It is further submitted that the Magistrate, in his order dated 08.04.2017, relied upon the alleged statement of the Deputy Superintendent of Police favouring the accused persons, without considering its relevance. The statement of the Deputy S.P. was recorded nearly three months after the incident, and therefore, its relevance to the offence is questionable. The Magistrate appears to have been influenced by the delay in filing the application under Section 156(3) Cr.P.C. Consequently, the order dated 08.04.2017 accepting the Final Report/Closure Report cannot be termed as a well-reasoned order. The Magistrate also failed to correctly consider the protest application dated 29.03.2017 filed by opposite party no.2. It is thus submitted that the acceptance of the Final Report/Closure Report dated 08.04.2017 and the dismissal of the criminal revision on 01.08.2023 by the Additional Sessions Judge/FTC-1, Pratapgarh, would not create any hurdle in filing the present criminal complaint under Chapter XV and Chapter XVI of Cr.P.C., referable to Section 200 Cr.P.C.

11. Learned counsel for opposite party no.2 has placed reliance upon the judgment of the Supreme Court in ***Mahesh Chand v. B. Janardhan Reddy and Another, (2003) 1 SCC 734***, and has submitted that the Supreme Court held that even after dismissal of a criminal complaint under Chapter XV of Cr.P.C., a second criminal complaint on the same facts would not be barred if the previous order of dismissal under Section 203 Cr.P.C. was passed on an incomplete record, on a misunderstanding of the nature of the complaint, or where the order was manifestly erroneous. A second complaint would be barred only where the previous complaint was dismissed after full consideration on merits. In the said case, the complainant initially lodged an FIR and during investigation filed a criminal complaint. Thereafter, the Investigating Officer submitted a Final Report dated 29.07.1997 before the Magistrate. The complainant also filed a protest application, whereupon the Magistrate accepted the Final Report and simultaneously considered the complainant's criminal complaint. Subsequently, a criminal complaint dated 08.11.2002 under Section 200 Cr.P.C. was filed, in which the accused were summoned. The accused challenged the proceedings by filing a petition under Section 482 Cr.P.C. before the High Court of Andhra Pradesh, which held that the complaint was barred as a second complaint.

12. Learned counsel for opposite party no.2 has also placed reliance upon ***Vishnu Kumar Tiwari v. State of U.P., Criminal Appeal No.1015 of 2019 (arising out of SLP (Crl.) No.9654 of 2017)***, decided on 09.07.2018. In the said case, the Supreme Court held in paragraph 51, while taking note of the judgment of the Additional Sessions Judge, that the complainant could very well file a criminal complaint under Section 200 Cr.P.C. In the said case, the complainant had filed an FIR under Section 304-B IPC. The Investigating Officer submitted a Final Report, which was accepted by the Chief Judicial Magistrate after dismissal of the protest application. The criminal revision filed by the complainant was also dismissed. A writ petition filed before the High Court was allowed, but the said judgment was challenged before the Supreme Court. The Supreme Court held that the High Court was incorrect in holding that the protest application was not considered. However, in paragraph 51 of the judgment, the Supreme Court clearly observed that the complainant was at liberty to file a criminal complaint under Section 200 Cr.P.C., despite acceptance of the Final Report and dismissal of the protest application.

13. Learned counsel for opposite party no.2 further submits that the judgment of the Supreme Court in ***Subrata Choudhury @ Santosh Choudhury*** (supra), relying upon ***Samta Naidu v. State of M.P., 2020 (1) ACC 660 (SC)***, is based on different facts. In ***Samta Naidu*** (supra), the first criminal complaint was dismissed under Section 203 Cr.P.C., after full consideration on merits, concluding that no prima facie case is made out against the accused-Samta Naidu & Dileep Naidu. Thereafter, second Criminal Complaint Case No.9296 of 2014 was filed by complainant on the same allegation. The Supreme Court held on the basis of previous judgments of the Supreme Court that if the first complaint has been disposed off on full consideration of the case of criminal complaint on merits, then the second criminal complaint on the same facts and same allegations would be barred and would not be maintainable. However, in ***Subrata Choudhury*** (supra), the factual matrix involved registration of an FIR, submission of a Final Report, filing of a protest application, acceptance of the Final Report, and dismissal of revision, after which the informant chose to file a criminal complaint under Section 200 Cr.P.C. It is submitted that the Supreme Court judgment dated 05.11.2024 did not consider the three-Judges' Bench decision in ***Mahesh Chand***

(supra). Therefore, the judgment in *Subrata Choudhury @ Santosh Choudhury* (supra) cannot be applied to the present case and this application deserves to be dismissed.

14. I have considered the submissions made by learned counsel for the parties and have gone through the record. The Supreme Court in the case of *Subrata Choudhury @ Santosh Chourdury* (supra) has been pleased to held in Para-21 that in view of dismissal of the first complaint after considering the protest petition and hearing the complainant, the second complaint filed by the second respondent was not maintainable. The Supreme Court has also considered the judgment of *Mahesh Chand* (supra) and thereafter has come to the conclusion that the second complaint is not maintainable.

15. The factual backdrop in the case of *Subrata Choudhury @ Samtosh Chourdury* (supra) is relevant to be noted that the Chief Judicial Magistrate accepted the final report on 06.06.2011 after hearing the complainant's protest. On 20.07.2011, the second respondent filed the second complaint with the same set of allegation against the appellant. In Paras 21, 27, 30 and 32, the Supreme Court held:

"21. The appellants herein contended that the second complaint carries the same set of allegations and in view of the dismissal of the first complaint after considering the protest petition and hearing the complainant, the second complaint filed by the second respondent dated 20.07.2011 is not maintainable. To buttress the said contention, the learned counsel relied on the decisions of this Court in *Shivshankar Singh v. State of Bihar & Anr.*, *H.S. Bains v. State (Union Territory of Chandigarh)*, *Bindeshwari Prasad Singh v. Kali Singh* and *Poonam Chand Jain v. Farzu*.

27. Now, we will have to proceed with the appeal bearing in mind the exposition of law in *Samta Naidu's case* (supra) that if earlier disposal of the complaint was on merits and in a manner known to law, the second complaint on almost identical facts which were raised in the first complaint would not be maintainable. If the core of both the complaints is same, the second complaint ought not to be entertained, it was further held therein. In the light of the factual narration with respect to the disposal of the original complaint dated 11.11.2010, made hereinbefore and in view of the courses open to a Magistrate on receipt of a negative report and applying the exposition of law in *Samta Naidu's case* (supra) with respect to the maintainability of a second complaint we have no hesitation to hold that the maintainability of the second complaint dated 20.07.2011 filed by the second respondent would depend upon the question whether the core of the original complaint dated 11.11.2010 and the second complaint dated 20.07.2011 is the same as the disposal of the complaint dated 11.11.2010 was on merits and in a manner known to law. In this context, it is also to be noted after considering the final report, the protest complaint and admittedly, upon hearing the counsel for the complainant the protest petition was rejected not only by finding that the investigation suffers from no infirmity but also by finding that since it was conducted properly, no order for further investigation is invited and further that the materials are not sufficient to take cognizance. As noted earlier, despite the said nature of the order dated 06.06.2011 the second respondent-complainant has not chosen to challenge the same but, chosen only to file a fresh complaint, viz., the second complaint dated 20.07.2011.

30. We have already referred to the manner the original complaint was disposed of earlier. The submissions made on behalf of the parties, the documents annexed thereto and above all, the order dated 12.07.2012 of the learned CJM, would reveal that the second complaint was filed on the same set of facts contained in the first complaint and the second one was filed after the dismissal of the protest petition and the consequential acceptance of the Final Report in the first complaint. It is not in dispute that subsequent to the rejection of the protest petition and acceptance of the Final Report (Annexure P-5) as per order dated 06.06.2011, the matter was not taken forward further by the respondent/complainant. The second complaint was filed thereafter on 20.07.2011 reiterating, rather, reproducing the complaint dated 11.11.2010 and further adding allegations, virtually made by way of the protest petition dated 05.05.2011 that the investigation pursuant to the original complaint was done perfunctorily. It is to be noted that the said allegation against the investigation was also rejected earlier as per order dated 06.06.2011 holding that the investigation did not suffer from any infirmity and further that it did not deserve further investigation. Now, a comparison of the first complaint dated 11.11.2010 and the second complaint dated 20.07.2011 shows that they contain the same set of allegations against the same accused as has been observed by the learned CJM in the order dated 12.07.2012. The learned CJM, in the order dated 12.07.2012 after referring to various decisions observed and held thus:-

“After the original complaint has been duly investigated by the police and Final Report submitted therein has been accepted by the Court in a Judicial Proceeding; therefore, in my considered view it cannot be re-opened by the means of filing of a second complaint in respect of the same facts and circumstances. In this connection, reliance can be placed on (Sic : in) a Judgment of the Hon'ble Patna High Court reported in 1981 Cri LJ 795 Bhuvaneswar Prasad Singh v. State of Bihar.

The Hon'ble Patna High Court relying upon a decision of the Hon'ble Apex Court reported in AIR 1968 SC 117 Abhinandan Jha v. Dinesh Mishra had held-

Where the Final Report by police holding the case against the accused persons to be untrue; was accepted by the Magistrate earlier, than the complaint petition was filed against the accused, the Magistrate would not be justified in taking cognizance on the basis of the complaint petition in respect of the same facts constituting the offence which were mentioned in the final form where a Judicial order was passed by accepting final form.”

32. In the context of the contentions, it is to be noted that the case at hand stands on a firmer footing than the case involved in Samta Naidu's case (supra). Paragraph 16 of Samta Naidu's case (supra), as extracted above, would reveal that the earlier complaint involved in that case was disposed of not on technical ground but on finding that no prima facie case was made out and in the second complaint the nature of the supporting materials were furnished and this Court observed that it could not be said that those materials furnished and relied upon in the second complaint could not have been procured earlier. Thereafter, finding that both the complaints were identical the finding of the High Court that the second complaint was maintainable was rejected and the subject complaint was dismissed as not being maintainable. In the case at hand, a perusal of protest petition dated 05.05.2011 and the second complaint dated 20.07.2011 would reveal that the second complaint filed after acceptance of final report filed pursuant to the investigation in the FIR registered based on the complaint dated 11.11.2010, that too after considering the narazi petition and hearing the complainant (the second respondent herein) the second complaint dated 20.07.2011

has been filed reproducing the first complaint dated 11.11.2010 and stating that the said complaint was not properly investigated and action should be taken on the second complaint dated 20.07.2011. In fact, the indubitable position is that the core of the original complaint dated 11.11.2010 and the second complaint dated 20.07.2011 is the same."

16. Sri S.K. Singh, learned counsel for opposite party no.2 has invited attention of the Court to Para-24 of the judgment of ***Subrata Choudhury @ Samtosh Chourdury*** (supra) and has submitted that the law laid down in the case of ***Samta Naidu*** (supra) has been considered by the Supreme Court and Para-12 of the said case, which is quoted in the judgment of ***Subrata Choudhury @ Samtosh Chourdury*** (supra) has been pointed out to the extent that it is settled law that second complaint can lie only on fresh facts or even on the previous facts only if a special case is made out. There is no provision in the Code or in any other statute which debars the applicant for preferring a complaint on the same allegation if the first complaint did not result in a conviction or acquittal or even discharge. The Court has also considered the said issue wherein it is observed that in *Pramatha Nath Talukdar vs. Saroj Ranjan Sarkar*, AIR 1962 SC 876, there is no bar to entertain a second complaint on the same facts but it can be entertained only in exceptional circumstances.

17. In the case of ***Mahesh Chand*** (Supra), a fact is again relevant to be mentioned that the appellant in that case filed protest petition on 02.09.1998 against the final report submitted by the Investigating Officer in FIR under Sections 420, 426, 447, 448 IPC. The complaint filed by the appellant was closed and the said order was not not questioned by him. On 8.11.2002, the third complaint was filed by the appellant herein purported to be under Section 200 Cr.P.C. whereupon summons were issued upon the respondent. The Supreme Court in the said case has held that it is settled law that there is no statutory bar in filing second complaint on the same facts where the previous order was passed on an incomplete record or on misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. The same can be looked into in the second complaint. In Paras 15 and 19, the Supreme Court held:

"15. The learned Judge posed the question as to what would be those exceptional circumstances. Noticing the decisions in *Queen Empress v. Dolegobind Dass* [ILR (1901) 28 Cal 211 : 5 CWN 169] , In re, *Koyassan Kutty* [AIR 1918 Mad 494 : 18 Cri LJ 329] , *Kumariah v. Chinna Naicker* [AIR 1946 Mad 167 : 47 Cri LJ 595] and several other decisions, the learned Judge came to the conclusion: (AIR p. 889, paras 22-23)

"It will be noticed that in the test thus laid down the exceptional circumstances are brought under three categories: (1) manifest error, (2) manifest miscarriage of justice, and (3) new facts which the complainant had no knowledge of or could not with reasonable diligence have brought forward in the previous proceedings. Any exceptional circumstances coming within any one or more of the aforesaid three categories would fulfil the test. In *Ram Narain v. Panachand Jain* [AIR 1949 Pat 256 : 50 Cri LJ 524 : ILR 27 Pat 986] it was observed that an exhaustive list of the exceptional circumstances could not be given though some of the categories were mentioned. One new category mentioned was where the previous order of dismissal was passed on an incomplete record or a misunderstanding of the nature of the complaint. This new category would perhaps fall with the category of manifest error or miscarriage of justice.

It appears to me that the test laid down in the earliest of the aforesaid decisions, *Queen Empress v. Dolegobind Dass* [ILR (1901) 28 Cal 211 : 5 CWN 169] , is really wide enough to cover the other categories mentioned in the later decisions. Whenever a Magistrate is satisfied that the previous order of dismissal was due to a manifest error or has resulted in a miscarriage of justice, he can entertain a second complaint on the same allegations even though an earlier complaint was dismissed under Section 203 of the Code of Criminal Procedure.”

Yet again in *Bindeshwari Prasad* case [(1977) 1 SCC 57 : 1977 SCC (Cri) 33 : (1977) 1 SCR 125] this Court followed *Pramatha Nath Talukdar* case [AIR 1962 SC 876 : 1962 Supp (2) SCR 297 : (1962) 1 Cri LJ 770] holding: (SCC p. 59, para 4)

“[I]t is now well settled that a second complaint can lie only on fresh facts or even on the previous facts only if a special case is made out.”

19. Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate under Section 204 CrPC may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in *Pramatha Nath Talukdar* case [AIR 1962 SC 876 : 1962 Supp (2) SCR 297 : (1962) 1 Cri LJ 770] second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. In the facts and circumstances of this case, the matter, therefore, should have been remitted back to the learned Magistrate for the purpose of arriving at a finding as to whether any case for cognizance of the alleged offence had been made out or not."

18. In the case of *Vishnu Kumar Tiwari* (supra), again the Supreme Court has observed that acceptance of final report would not stand in the way of taking cognizance of protest/complaint application. Paras 25 and 39 of the said case reads as under:

25. In *Rakesh v. State of U.P.* [*Rakesh v. State of U.P.*, (2014) 13 SCC 133 : (2014) 5 SCC (Cri) 611] , on the basis of a first information report lodged by the police after investigation, a final report came to be filed. The Magistrate accepted the final report. He, simultaneously, directed that the case be proceeded with as a complaint case. Statements under Sections 200 and 202 of the Code were recorded. The High Court turned down the plea of the accused to whom summons were issued. It was the contention of the accused that having accepted a negative final report, the court could not take action on the basis of the protest petition filed by the complainant. This Court refers to the judgment in *H.S. Bains* [*H.S. Bains v. State (UT of Chandigarh)*, (1980) 4 SCC 631 : 1981 SCC (Cri) 93] . The principles of law laid down in para 12 of *Mahesh Chand* [*Mahesh Chand v. B. Janardhan Reddy*, (2003) 1 SCC 734 : 2003 SCC (Cri) 425] , which we have also referred to earlier, came to be approved. The order of the High Court was approved.

39. In Mahesh Chand [Mahesh Chand v. B. Janardhan Reddy, (2003) 1 SCC 734 : 2003 SCC (Cri) 425] , no doubt the matter was commenced by a first information report and followed up by the complainant in the court under Section 190(1)(a) of the Code. On the first information report, after investigation, a final report was filed. The final report came to be accepted and it was closed. This is despite the fact that there was the protest petition. A third complaint, as it were, came to be filed by the complainant. This Court went on to hold that acceptance of the final report would not stand in the way of taking cognizance on a protest/complaint petition."

19. In *Samta Naidu* (supra), the Supreme Court has declared the law that there is no prohibition in filing or entertaining the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint. In Para 15, the Supreme Court held:

"15. Reliance was, however, placed by Ms Meenakshi Arora, learned Senior Advocate, on para 18 of the decision of this Court in Shivshankar Singh [Shivshankar Singh v. State of Bihar, (2012) 1 SCC 130 : (2012) 1 SCC (Cri) 513] . In that case, a protest petition was filed by the complainant even before a final report was filed by the police. While the said protest petition was pending consideration, the final report was filed, whereafter the second protest petition was filed. Challenge raised by the accused that the second protest petition was not maintainable, was accepted by the High Court [Anand Kumar Singh v. State of Bihar, 2009 SCC OnLine Pat 857 : (2010) 1 PLJR 167] . In the light of these facts the matter came to be considered by this Court as under : (Shivshankar Singh case [Shivshankar Singh v. State of Bihar, (2012) 1 SCC 130 : (2012) 1 SCC (Cri) 513] , SCC pp. 133-34 & 136, paras 7 & 18-19)

"7. Shri Gaurav Agrawal, learned counsel appearing for the appellant has submitted that the High Court failed to appreciate that the so-called first protest petition having been filed prior to the filing of the final report was not maintainable and just has to be ignored. The learned Magistrate rightly did not proceed on the basis of the said protest petition and it remained merely a document in the file. The second petition was the only protest petition which could be entertained as it had been filed subsequent to the filing of the final report.

18. Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit.

19. The protest petition can always be treated as a complaint and proceeded with in terms of Chapter XV CrPC. Therefore, in case there is no bar to entertain a second complaint on the same facts, in exceptional circumstances, the second protest petition can also similarly be entertained only under exceptional circumstances. In case the first protest petition has been filed without furnishing the full facts/particulars necessary to decide the case, and prior to its entertainment by

the court, a fresh protest petition is filed giving full details, we fail to understand as to why it should not be maintainable.”

20. It is relevant to be noted that in ***Subrata Choudhury @ Samtosh Chourdhury*** (supra), the judgments of ***Mahesh Chand*** (supra) and ***Samta Naidu*** (supra) have been considered and thereafter the Court has held that the second complaint is not maintainable. The important fact is also to be flagged that the factual aspect of the present case is identical to the case of ***Subrata Choudhury @ Samtosh Chourdhury*** (supra). Therefore, this Court cannot take a different opinion and the law declared by the Supreme Court in ***Subrata Choudhury @ Samtosh Chourdhury*** (supra) is binding.

21. In view of the aforesaid discussion, this application deserves to be allowed. Accordingly, the application is **allowed** and the entire criminal proceedings of Complaint No.188 of 2017, under Sections 323, 325, 326, 504, 506 I.P.C. (Anil Singh vs. Vikas and others), pending in the court of Civil Judge (Junior Division)/Judicial Magistrate, Lalganj, Pratapgarh as well as impugned orders dated 01.04.2021 and 10.1.2020, are quashed.

22. Before parting, one fact is also important to be noted that the revision preferred by opposite party no.2 has been dismissed by the revisional court against acceptance of final report vide order dated 1.8.2023. No one can be left remedy less. In case opposite party no.2 is aggrieved, he may take recourse to law against the revisional order dated 1.8.2023.

(2026) 1 ILRA 1133
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.01.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE ABDUL SHAHID, J.

Criminal Misc. Writ Petition No. 450 of 2025

Neeleshramchandani & Ors. ...Petitioners
State of U.P. & Ors. ...Respondents

ISSUE FOR CONSIDERATION

Whether the FIR registered under Sections 351(2), 352, and 69 of BNS and Sections 3/4 of the DP Act, deserved to be quashed?

HEADNOTES

Criminal Law – Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 183 – Bharatiya Nyaya Sanhita, 2023 - Sections 69, 351(2), 352 - Dowry Prohibition Act, 1961 – Sections – 3, 4 -_Writ Petition - filed for quashing the impugned FIR – lodged under Sections 351(2), 352, 69 BNS and Sections 3/4 of the Dowry Prohibition Act – allegation of dowry demand and false promise of marriage – during investigation Section 69 BNS is add – statements of informant recorded – petitioners argued relationship was consensual, genuine, and marriage preparations were made, hence no deceit – respondents contended false

promise was made to extract dowry – Court finds that Section 69 BNS punishes deceit, not disappointment, and evidence showed genuine engagement and marriage arrangements, not false inducement – FIR timing suggested retaliation - FIR can be quashed in part if allegations under certain sections are not made out – held, ingredients of Section 69 BNS not made out – hence, FIR quashed to the extent of Section 69 BNS – however, investigation under Sections 351(2), 352 BNS may continue - Interim protection against arrest extended until police report is filed – writ petition partly allowed, accordingly.

(Para – 10, 11, 12, 13, 14)

Writ Petition partly allowed. (E-11)

CASE LAW CITED

Samdhan v. State of Maharashtra (Criminal Appeal No. 5001 of 2025)
 Biswajyoti Chatterjee v. State of West Bengal (SLP (Crl.) No. 4261 of 2024)
 Rajnish Singh @ Soni v. State of U.P. (Criminal Appeal No. 1055 of 2025)
 Kunal Chatterjee v. State of West Bengal
 Pramod Suryabhan Pawar v. State of Maharashtra (2019) 9 SCC 608
 Prashant v. State of NCT of Delhi (AIR 2025 SC 33)
 Manish Yadav v. State of U.P. (Criminal Appeal No. 333 of 2025)
 B.N. John v. State of U.P. (2025 INSC 4)
 Pradeep Kumar Kesarwani v. State of U.P. (2025 Supreme (SC) 1667)
 Ankit Hukumchand Malviya v. State of Maharashtra (2025 SCC OnLine Bom 734)
 Deepak v. State of Madhya Pradesh (2025 SCC OnLine MP 2689)
 Yashwant Nirmalkar v. State of Chhattisgarh (2025 SCC OnLine Chh 3712)
 Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra (2021) 19 SCC 409
 Nafisa v. State of U.P. (2023 SCC OnLine All 17)
 Shakir-UI-Hassan v. UT of J&K (CRM(M) No. 216 of 2025)
 Lovely Salhotra v. State (NCT of Delhi) (2018) 12 SCC 391

LIST OF ACTS

Bharatiya Nagarik Suraksha Sanhita, 2023 - Bharatiya Nyaya Sanhita, 2023 - Dowry Prohibition Act, 1961.

LIST OF KEYWORDS

Writ petition – quashing of FIR - False promise of marriage - Consensual relationship - Deceit & disappointment - Dowry demand - Interim protection – partly allowed - Investigation continues.

CASE ARISING FROM

FIR dated 12.12.2024, Case Crime No. 566 of 2024, P.S. Sector 63, Noida, District Gautam Buddh Nagar.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Rajrshi Gupta.

Counsel for Respondent(s): Shri Amit Sinha, Shri Shivam Shukla, Shri Aniket Gupta and AGA.

(Delivered by Hon'ble Siddhartha Varma, J.

&

Hon'ble Abdul Shahid, J.)

1. Heard Sri Rajrshi Gupta, learned counsel for the petitioners, learned A.G.A. Sri Amit Sinha for the State-respondents and Sri Shivam Shukla & Sri Aniket Gupta, learned counsel appearing for the informant.

2. This writ petition has been filed for quashing of the First Information Report dated 12.12.2024 registered as Case Crime No. 566 of 2024, under Sections 352, 351(2), 69 of Bharatiya

Nyaya Sanhita, 2023 (hereinafter referred to as the “B.N.S.”), Police Station - Sector 63, Noida, District -Gautam Buddh Nagar, and for a direction to the respondent authorities not to arrest the petitioners in pursuance of the impugned first information report.

3. Initially a first information report was lodged on 12.12.2024 which had given rise to Case Crime No. 566 of 2024, under Sections 352, 351(2) of B.N.S. and Section 3/4 of the Dowry Prohibition Act, 1961 (hereinafter referred to as the “D.P. Act”). It was alleged that the petitioner no. 1, Neelesh Ramchandani, was known to the first informant and had entered into a marriage alliance by having an engagement ceremony in the month of June, 2023. The marriage was to take place on the 12.11.2024. Before the marriage could take place, on the 04.11.2024, it had been alleged in the first information report that the father of the petitioner no.1, who was also made an accused and had been arrayed as petitioner no. 2, had demanded Rs. 50 lacs in cash, one Fortuner car and a flat in Allahabad. When this demand, as per the first information report, was not met by the informant’s father then the father of the petitioner no. 1 misbehaved with the father of the first informant and said that he would marry off his son to a family which would fulfil his demands. Preceding the main allegation, a detail was given as to how the first informant came to know the petitioner no. 1. It had been stated in the first information report itself that the respondent no. 4 had, after doing her B.A. LL.B., joined National Law University, Jodhpur for the purpose of doing LL.M. Also the petitioner no. 1 joined the National Law University, Jodhpur for doing the LL.M. Course. Both had joined the National Law University, Jodhpur in the year 2020. Even while doing the LL.B. Course, the two had studied at Lucknow and though they were known to each other, they were not very close. However, since the petitioner no. 1 was known to the respondent no. 4 from before and since he requested for a friendship, they both went along talking. In the first information report itself it was stated that when both of them had passed their LL.M. Course, the respondent no. 4 had also informed the petitioner no. 1 that she was of a backward caste. However, the petitioner no. 1 had continued his earlier commitment that he had liked the respondent no. 4 and that he would talk to his family with regard to marriage with her. He had also convinced her that he would marry her and nobody else. At that point of time, the father of the respondent no. 4 was in a job in the Electricity Department at Noida and there the petitioners had gone to visit him also. When the petitioners had gone to visit the father of the respondent no. 4 then the uncle of the respondent no. 4 namely Sri Harswaroop (mama) was also present. The parents of the respondent no. 4 had agreed to the marriage. However, the marriage was not solemnized immediately but was to take place after two years. It has been stated in the first information report that the petitioner no. 1 was practicing in the High Court and the respondent no. 4 was preparing for the Judicial Services.

4. For quashing of the first information report dated 12.12.2024 registered as Case Crime No. 566 of 2024, the instant writ petition was filed. However, initially the matter was referred to the Mediation & Conciliation Centre, Allahabad by this Court on 15.01.2025 so that conciliation might take place between the parties. While the matter was being looked into by the Mediation Centre, the investigation by the Investigating Officer had continued. On 09.04.2025 when the mediation failed, the matter once again came before this Court. On 28.04.2025, the following order was passed by this Court:

“In Re : Civil Misc. Amendment Application No. 3 of 2025

1. Heard Sri Rajrshi Gupta, learned counsel for the petitioners, Ms. Suchita Mehrotra, learned counsel for informant and learned AGA for the State.

2. Amendment application is allowed, the amendment be carried out forthwith.

3. Learned counsel for the informant, if any, objection may file counter affidavit on or before next date fixed.

In Re : Writ Petition

1. Heard Sri Rajrshi Gupta, learned counsel for the petitioners, Ms. Suchita Mehrotra, learned counsel for informant and learned AGA for the State.

2. The relief sought in this petition is for quashing of the F.I.R. dated 12.12.2024 registered as Case Crime No.566 of 2024, under Sections 352, 351(2), BNS, 2023 and Section 3 and 4 of Dowry Prohibition Act, 1961, Police Station Sector 63, District Gautam Budh Nagar. Further prayer has been made not to arrest the petitioners in the aforesaid case.

3. The Division Bench of this Court vide order dated 15.1.2025, has referred the matter to the Mediation and Reconciliation Center of this Court and as per report, the parties could not resolve the matter amicably. Lastly, we were inclined to accord one more indulge to the parties for settling the matter amicably.

4. Today, Ms. Suchita Mehrotra, learned counsel for the informant states that there is hardly any chance of settling the matter through mediation though previously it was failed.

4. Sri Paritosh Malviya, learned AGA states that the matter was referred to Mediation and Reconciliation Center of this Court vide order dated 15.1.2025. He fairly states that once the matter was referred to Mediation and Reconciliation Centre, definitely the investigation must be at very snail pace. He further submits that some more time may be accorded to him to place on record the current status of the on-going investigation.

5. On his request the matter is adjourned.

6. Sri Rajrshi Gupta, learned counsel for the petitioners while pressing the amendment application submits that vide order dated 15.1.2025, the matter was referred to Mediation and Reconciliation center and the report of Registrar AHCMCC was submitted on 10.4.2025 and while referring the matter to mediation, the Court has accorded interim relief in favour of the petitioners to the effect "till the next date of listing, no coercive action shall be taken against the petitioners in above mentioned case".

7. He submits that Investigating Officer was fully conscious with the said order and in arbitrary manner had given notice under Section 179 of the BNSS to the petitioners on 6.2.2025. He submits that there is hardly any scope of a fair investigation in the instant matter, as the Investigating Officer is definitely prejudiced. However, we direct the D.C.P., concerned to

investigate the matter fairly, impartially and the current status of the investigation be apprised on the next date fixed through an affidavit not below the rank of D.C.P.

8. List this matter in top 26.5.2025 in top ten cases.

9. Interim order, if any, stands extended.”

5. In the meantime the Investigating Officer had started off with the investigation and had during investigation concluded that no case under Section 3/4 of D.P. Act was made out. He had however concluded that the case had to be also investigated under Section 69 of the B.N.S. The petitioners had filed an application for amending the writ petition on 16.04.2025. The amendment application was allowed on 28.04.2025 itself and a copy of the amended writ petition was placed before the Court on 06.08.2025. With regard to bringing on record of the investigation which had led to the petitioners being charged also under Section 69 of B.N.S., an affidavit was filed by the learned A.G.A. on 06.09.2025. In effect after the amendment was allowed, the writ petition now was challenging the first information report dated 12.12.2024 which had given rise to Case Crime No. 566 of 2024 and the investigation was taking place under Sections 69, 352, 351(2) of B.N.S. Learned counsel for the petitioners has while making his submissions chiefly submitted that no case under Section 69 of B.N.S. was made out. While making his submissions, he read out the Section 69 of B.N.S. to the Court.

He submitted that the following ingredients were essential for making out an offence under Section 69 of B.N.S. :-

(i) If a man had sexual intercourse with a woman and

(ii) The sexual intercourse was a result of a certain deceitful means adopted by the man or was a result of such promise to marry the woman without any intention of getting married;

(iii) In Section 69 of B.N.S. itself, “deceitful means” has been explained as (a) an inducement by a man for having sexual intercourse with a woman by making false promise of either employment or promotion or (b) having sexual intercourse after making a false promise, which would also include a false promise of marrying that particular woman in the future by suppressing his identity.

6. Learned counsel submits that if we peruse the Section 69 of the B.N.S., the only inevitable conclusion is that offence would be made out if a man is able to convince a woman into having sexual intercourse by either making a false promise of marriage which had to take place on a future date or if he induces a woman to have sexual intercourse by deceiving her to an extent that she believes that he would give her employment or would help her in getting promoted in her job. Learned counsel for the petitioners states that a false promise to marry would not include a situation where voluntarily the man and the woman have sexual relationship after they sincerely believe that they were in a good and a healthy relationship. He submits that if all was going well and suddenly there is a breakdown in the relationship then the ingredients of Section 69 of B.N.S. would not be there and the offence as is contemplated under Section 69 of B.N.S. would not be

made out. He submits that the section in question punishes deceit and not disappointment. In the instant case, learned counsel for the petitioners states that a bare perusal of the first information report itself shows that after the petitioner no. 1 had got into a relationship with the respondent no. 4 when they joined the LL.M. Course at the National Law University, Jodhpur, they first became friends and thereafter they had all the intentions of getting married. There was absolutely no element of false promise in whatever the petitioner no.1 was doing. Definitely, there was no deceitful means adopted to deceive the respondent no. 4 to believe that the petitioner no. 1 would help her get a job or would get her promoted. Definitely there was no false promise to marry. Learned counsel for the petitioners submits that even a perusal of the first information report shows that the engagement between the petitioner no. 1 and the respondent no. 4 took place in June, 2023 and the marriage was to take place on 12.11.2024. However, suddenly when the marriage, was, at the behest of the petitioners called off on 04.11.2024 the first information report was lodged. He submits that initially the first information report did not disclose any reason for calling off of the marriage. He submits that the first information report was absolutely silent vis-a-vis reasons for calling off the marriage. To establish the fact that the petitioners were sincere about the marriage and that there was no false promise on the part of the petitioner no. 1 with regard to the solemnization of the marriage, learned counsel for the petitioners had taken the Court through the record of the writ petition wherein it had been stated that the invitation cards were printed and issued to the relatives of the petitioners. Also, since the marriage was to take place in Meerut, the petitioners had also arranged a photographer for taking the photographs. The reception was to be held at Prayagraj in Hotel Yatrik, therefore Hotel Yatrik was also booked by giving Rs. 3,00,000/- from the account of the petitioner nos. 2 and 3. Also for the marriage to take place in Meerut Rs. 2,50,000/- were given to Hotel Sapphire Grand on 27.09.2024. Additionally, travel plans and tickets were made available to the petitioners and their relatives to attend the marriage. Needless to mention, learned counsel for the petitioners states, that various dresses etc. were also stitched for the purpose of marriage. Definitely in the first information report there was no mention of the fact that the marriage was called off on account of the various news reports in the newspapers that the father of the respondent no. 4 had got suspended from his job. It has additionally been mentioned that the father of the respondent no. 4 had made various threatening telephone calls to the petitioners and had also come to the house of the petitioners threatening the petitioners. Multiple complaints of the respondent no. 4 and her father to the police had led to various notices being sent by the police to the petitioners. This had led the petitioners to file a writ petition being Criminal Misc. Writ Petition No. 22191 of 2024 (Neelesh Ramchandani and 2 Ors versus State of U.P. and 3 Ors.) with the following prayers:

“It is therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to:

a) Issue an appropriate writ, order, or direction in the nature of certiorari calling for the records and quashing the impugned notices dated 12.11.2024 (Annexure no. 14), 21.11.2024 (Annexure no. 15), and 22.11.2024 (Annexure no. 16) issued by Respondent No. 3 - SHO, Mahila Thana, Sector 39, Noida, Commissionerate Gautam Buddh Nagar, Uttar Pradesh, pursuant to the complaint dated 05.11.2024 filed by Respondent No. 4

(Annexure no. 17).

b) Issue an appropriate writ, order, or direction in the nature of mandamus commanding the Respondents not to take any coercive steps / measures against the Petitioners in connection with the complaint dated 05.11.2024 filed by Respondent No. 4. (Annexure no. 17)

c) Issue an appropriate writ, order, or direction referring the matter to the Mediation Centre of this Hon'ble High Court for an amicable resolution in pursuance of the complaint dated 05.11.2024 filed by the Respondent no. 4 (Annexure no. 17)

Alternatively

d) Issue an appropriate writ, order, or direction commanding the Respondents concerned to allow the petitioners to participate in preliminary enquiry / mediation through Video conferencing at district Gautam Budh Nagar pursuant to the Complaint dated 05.11.2024 filed by the Respondent no 4. (Annexure no. 17)

e) Pass any other orders or directions that this Hon'ble Court may deem just and proper in the interest of justice.”

7. The writ petition was however rejected as being premature and was allowed to be withdrawn by the Court. When a full fledged first information report was lodged on 12.12.2024, the instant writ petition was filed and as has been stated earlier in the judgment that when the case was also being investigated under Section 69 of B.N.S., the writ petition was also amended. Learned counsel for the petitioners has in effect challenged the first information report and has stated that no case under Section 69 of the B.N.S. was made out.

Learned counsel for the petitioners has made the following submissions:

(I) He submits that the allegations made in the present case hinges entirely on the claim of the respondent no. 4 that the petitioner no. 1 established physical relationship with her on a false pretext of marriage. He submitted that there was no false promise made by the petitioner no. 1 which could be said to be a promise only to have sexual intercourse. He submitted that if the first information report is perused it definitely does not speak about any sexual intercourse. However, even if the subsequent statements of the respondent no. 4 which were recorded under Section 183 of B.N.S.S. are seen, they were all to the effect that there was continuous physical relationship between the parties for a prolonged period and that the relationship had continued because of the fact that even the respondent no. 4 had all through liked the petitioner no. 1.

(II) The petitioner no. 1 did not lure the respondent no. 4 solely for physical pleasure and then had vanished. The relationship had continued for a period which commenced in the year 2020. The statements of the respondent no. 4 themselves went to show that both the petitioner no. 1 and the respondent no. 4 had remained close and were emotionally involved and thus if there was any physical intimacy that occurred during the course of continuous relationship and it cannot be retrospectively branded as having commenced on the basis of a false promise.

(III) Simply because the marriage did not take place owing to breakdown of relationship, even if it was from the side of the petitioner no. 1, it could not be said that if there was any physical relationship then it was on the basis of a false promise.

(IV) Learned counsel for the petitioners states that when earlier in the first information report the respondent no. 4 had not mentioned even a word about there being physical relationship and thereafter subsequently she had given the statements before the Magistrate then that would also be taken as a situation where she was falsely trying to implicate the petitioners.

(V) Learned counsel for the petitioners has stated that though the factum of the physical relationship was not admitted to the petitioner, even if it had occurred as per the statement of the respondent no. 4, then the ingredients of Section 69 of B.N.S. were not made out. A bare perusal of the statements of the respondent no. 4 shows, that if there were consensual and voluntarily physical relationships between the parties, the respondent no. 4 was as much in relationship with the petitioner no. 1 as the petitioner no. 1 was with her. Learned counsel for the petitioners has relied upon a judgment of Supreme Court in **Samdhan versus State of Maharashtra and Anr.** passed in **Criminal Appeal No. 5001 of 2025** and submitted that if there were consensual and voluntary relationship and the acts of the petitioner no. 1 and the respondent no. 4 showed that they were in a relationship which was devoid of any coercion, fraud or misrepresentation then definitely no offence under Section 69 of B.N.S. was made out. In this regard learned counsel for the petitioners has also relied upon the following judgments passed in **Biswajyoti Chatterjee versus State of West Bengal & Anr.**, SLP (Crl.) No. 4261 of 2024; **Rajnish Singh @ Soni versus State of U.P. And Anr.** passed in **Criminal Appeal No. 1055 of 2025**; **Kunal Chatterjee versus The State of West Bengal & Ors.**; **Pramod Suryabhan Pawar versus The State of Maharashtra and Ors.**, (2019) 9 SCC 608; **Prashant versus State of NCT of Delhi**, AIR 2025 SC 33; **Manish Yadav versus State of Uttar Pradesh** passed in **Criminal Appeal No. 333 of 2025**; **B.N. John versus State of U.P. & Anr.** 2025 INSC 4 and in **Pradeep Kumar Kesarwani versus The State of Uttar Pradesh & Anr.**, 2025 0 Supreme (SC) 1667 and submitted that when there was a relationship between the parties (between the petitioner no. 1 and the respondent no. 4) then there could not be any element of false promise/deceit and he therefore prayed that the writ petition be allowed and the first information report be quashed.

8. Learned counsel for the petitioners further submitted that if all the judgments are perused then it becomes clear that the judicial expectation is that Section 69 of B.N.S. punishes deceit and not disappointment. The Court has to assess

- (a) Whether the promise of marriage was false from its very inception
- (b) Whether the F.I.R. timing suggests retaliation
- (c) Whether objective evidence “chats, messages, photos” supports the claim of the alleged victim.
- (d) Whether parties are adults and capable of giving consent
- (e) Whether custodial interrogation is truly necessary (in cases of this nature, it rarely is)

Learned counsel for the petitioners further relying upon **Ankit Hukumchand Malviya versus State of Maharashtra** reported in **2025 SCC OnLine Bom 734** submitted that every romantic failure cannot be painted as a deceit. Similarly, relying upon **Deepak versus State of Madhya Pradesh and Ors.**, **2025 SCC OnLine MP 2689** submitted that the High Court warned and stated that criminal law

cannot become a tool for attribution between consenting adults. Similarly, relying upon a judgment of the Chhattisgarh High Court in **Yashwant Nirmalkar versus State of Chhattisgarh 2025 SCC Online 3712** he submitted that the prosecution would have to establish that the promise was false from the very inception, otherwise, the offence would not be there. He therefore submitted that as per the judgments of the above High Courts the boundary between deceit and disappointment had to be preserved and it had to be ensured that criminal law remains a shield against fraud and not a weapon for settling personal dispute.

9. However, Sri Shivam Shukla and Sri Aniket Gupta, learned counsel appearing for the respondent no. 4 and Sri Amit Sinha, learned A.G.A. submitted that the case had to be first investigated into and thereafter only a definite conclusion could be drawn by the Investigating Officer as to whether any case under Section 69 of B.N.S. was made out. They have further submitted that the case was not that of failed relationship but was a case where the petitioner had made false promises of marriage only to take dowry from the family of the respondent no. 4. Learned counsel appearing for the respondent no. 4 relied upon a judgment of Supreme Court in **M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others, (2021) 19 SCC 409** and submitted that no interference be done by the Court. On this issue, learned counsel appearing for the respondent no. 4 also relied upon judgment of this Court in **Nafisa and others versus State of U.P. and others** reported in **2023 SCC OnLine All 17**. He also relied upon judgment of the Jammu & Kashmir And Ladakh High Court at Srinagar in **Shakir-Ul-Hassan @ Ors. Versus UT of J&K And Anr.** passed in **CRM(M) No. 216 of 2025**.

10. Having heard the learned counsel for the parties, this Court is of the view that so far as Section 69 of the B.N.S. is concerned, definitely an offence would be made out only if there was a false promise made by a man to a woman with regard to a marriage and thereafter he had had physical relationship with the woman. The woman would believe the man to the extent that he, in fact, would get married despite the fact that he had no intention of really marrying her. In the instant case, we find from the bare reading of the first information report itself that the petitioner no. 1 and the respondent no. 4 had done their LL.B. Course from the same college. After they had done their LL.B. Course, they had joined National Law University, Jodhpur from where they did their LL.M. Course. It was not just that the respondent no.4 was lured by the petitioner no. 1 to have physical relationship because he was making false promises of a future marriage but we find that the petitioner no. 1 and the respondent no. 4 had begun to like each other to the extent that they had become very intimate and were into a consensual and voluntarily physical relationship. The said physical relationship continued to the extent that in the month of May, 2023 the petitioner no. 1 and the respondent no. 4 had also got engaged. There was not only aforesaid relationship between the petitioner no. 1 and the respondent no. 4, but also the petitioner nos. 2 and 3 had visited the family of the respondent no. 4 and as per the version of the first information report itself the parents of the respondent no. 4 had agreed to the marriage of the petitioner no. 1 and the respondent no. 4 and that they had also given the petitioner no. 1 a silver coin in recognition of the growing relationship. By no stretch of imagination can it be said that there was any luring or misrepresentation done by the petitioner no. 1 to the respondent no. 4 to make her enter into a forced or deceitful physical relationship. We find that there was also a liking by the respondent no. 4 of the petitioner no. 1. We, from the perusal of the record and first information report, find that even the date of the marriage had been fixed and the arrangements had been made for the solemnization of the marriage. However, the relationship into which the petitioner no. 1 and the respondent no. 4 had got into became sour and had irretrievably broken down.

11. We are definitely of the view that Section 69 of B.N.S. punishes deceit and not disappointment. In the instant case, we find that there was an agreement between the parties to marry and there was in fact no unilateral or deceitful promise by the petitioner no. 1 to the respondent no. 4 that he would marry her in near future. The agreement therefore to marry was very much in existence between the parties. There was no false promise from either side. We are also of the view that the timing of the first information report was such which was not congenial to the respondent no. 4, it having been lodged at a time when the petitioner no. 1 thought that marriage was not possible for one reason or the other. We are also of the considered view that the evidence which has been provided in the writ petition definitely was to the extent that there was no false promise of marriage or deceitful means from the side of the petitioner no. 1.

12. Having found that there was no false promise to marry or there was any adopting of deceitful means on the basis of which relations went to the extent as had been mentioned by the respondent no. 4, we are of the considered view that no ingredients which constituted the offence under Section 69 of B.N.S. were made out. We are conscious of the fact that there are two other sections i.e. Section 351(2) and 352 of B.N.S. under which the first information report was also lodged. As per the judgment of Supreme Court in **Lovely Salhotra And Another versus State (NCT of Delhi) And Another** reported in **(2018) 12 SCC 391** the first information report could definitely be quashed in part.

13. We are thus of the considered view that the first information report so far as it contemplates of an investigation under Section 69 of the B.N.S. is to be quashed. The first information report which gave rise to Case Crime No. 566 of 2024, under Sections 352, 351(2), 69 of B.N.S. is quashed to the extent it was lodged under Section 69 of B.N.S. The investigation under Sections 351(2), 352 of B.N.S. shall continue.

14. However, since there was an interim order protecting the petitioners from any coercive action being taken against them during the investigation, we provide that the investigation may now go on under Section 351(2), 352 of B.N.S. However, the petitioners shall not be arrested till such time as the police report is submitted.

15. The writ petition stands partly **allowed**.

(2026) 1 ILRA 1142
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.01.2026

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE KUNAL RAVI SINGH, J.

Writ C No. 15470 of 2025

Veena Singh

...Petitioner

Versus

Union of India & Ors.

...Respondents

Issue(s) for consideration

- (a) Whether there has been a change in the alignment and variation in the area of land proposed to be acquired?
- (b) Whether the issuance of the second notification dated 10.07.2024 u/s 3D of the Act, 1956 is wholly without jurisdiction?
- (c) Whether there was a denial of opportunity u/s 3C?
- (d) Whether the respondents acted in blatant disregard of Section 3G(3) of the Act, 1956, which mandates publication of a public notice in two local newspapers inviting claims from interested persons before determining compensation?
- (e) Whether non-compliance, if any, would vitiate the entire award or whether it would only affect the petitioner's right to claim enhanced compensation?
- (f) What is the scope of judicial review in highway projects?
- (g) Whether individual hardships can be permitted to defeat or delay projects of national importance?

Headnotes

A. Land Acquisition Law – National Highways Act, 1956: Section 3A(1), 3D(1), 3D(2), 3D(4), 3A, 3B, 3C, 3D, 3G; Uttar Pradesh Revenue Code, 2006: Section 80; Land Acquisition Act, 1894: Sections 4, 5A, 6 - Validity of Second Section 3D Notification - The primary contention raised by petitioner is that the issuance of the second notification dated 10.07.2024 u/s 3D of the Act, 1956 is wholly without jurisdiction. According to the petitioner, once a notification u/s 3A is issued followed by a declaration u/s 3D, the respondents cannot issue another Section 3D notification without first issuing a fresh Section 3A notification, **particularly when there has been an alleged change in alignment and variation in the area of land proposed to be acquired.**

(a) The material on record clearly demonstrates that there has been no change in the alignment of the highway. The Detailed Project Report and Land Acquisition Plan were finalized before the commencement of acquisition proceedings, and the alignment has remained consistent throughout the process. The issuance of two Section 3D notifications was necessitated purely by administrative exigencies arising from the obstruction and non-cooperation of certain landowners, including the petitioner, during the survey operations. (Para 6.2.2)

(b) The provisions of the Act, 1956 are materially different from those of the Act, 1894. Section 3D of the Act, 1956 does not contain any prohibition against issuance of successive declarations u/s 3D(1) following a single notification u/s 3A(1), particularly in circumstances where practical difficulties have prevented completion of survey of all affected land in one go. (Para 6.2.8)

(c) Despite due publication and opportunity, no objections were filed by the petitioner within the prescribed period. In the present case, the initial notification u/s 3A(1) dated 06.02.2024 clearly covered the entire stretch of land proposed to be acquired, including the petitioner's land. **The substance of the notification u/s 3A(1) was duly published in two newspapers on 10.02.2024.** All affected landowners, including the petitioner, were granted statutory opportunity to file objections u/s 3C within 11 days. (Para 6.2.10)

(d) The subsequent issuance of two Section 3D notifications on different dates was a practical necessity arising from the conduct of the landowners themselves. The land could not be surveyed due to obstruction. To avoid further delay in the project, the authorities proceeded to issue the first declaration in respect of the land that had been surveyed, and thereafter issued the second declaration after completing the remaining survey. **Both declarations were issued within one year from the date of publication of the Section 3A notification, as mandated by Section 3D(3) of the Act, 1956.** (Para 6.2.11, 6.2.9)

(e) The doctrine of approbate and reprobate prevents a party from taking inconsistent positions to the prejudice of another. There is no legal bar in the Act, 1956 against issuance of successive declarations u/s 3D(1) in such circumstances wherein total land is already notified in the Section 3A(1). The

petitioner cannot be permitted to take advantage of her own wrong. Having obstructed the survey process, she cannot now turn around and claim that the subsequent notification is illegal. (Para 6.2.12)

Since it is not the case of the petitioner that a larger area of land as notified u/s 3A(1) was acquired, therefore the Second 3D(1) notification published within the prescribed time period is justified. (Para 6.2.13)

B. Alleged Denial of Opportunity U/s 3C - The second contention raised by the petitioner is that the petitioner was completely denied her right of objection 3C of the Act, 1956. It is argued that no notice was issued and no hearing was granted before including the petitioner's land in the second Section 3D notification.

(a) Objections filed beyond the prescribed period u/s 3C(1) do not require consideration by the Competent Authority. The right to object u/s 3C is very limited and extends only to the use of land for a purpose other than that specified u/s 3A(1). If no objection is filed within time, the Competent Authority is obliged to submit its report to the Central Government recommending issuance of declaration u/s 3D(1). (6.3.4)

The record clearly establishes that a notification u/s 3A(1) was issued on 06.02.2024, and the substance thereof was published in two widely circulated newspapers, namely "Navbharat Times" and "Times of India," on 10.02.2024. The notification specifically invited objections from persons interested in the land u/s 3C(1) of the Act, 1956 within twenty-one days from the date of publication in the Official Gazette. The petitioner's land, namely Gata No. 27, was clearly mentioned in the Schedule appended to the said notification. (Para 6.3.2)

Despite such publication and opportunity, the petitioner did not file any objection u/s 3C, within the prescribed statutory period of 21 days. Once that period expires, the right to object is lost. (Para 6.3.3, 6.3.7)

(b) Section 3-C (1) of the Act gives a very limited right to object. The objection can only be to the use of the land under acquisition for purposes other than mentioned in Section 3A (1) of the Act and it does not confer right to object to the acquisition. (Para 6.3.5)

The right to object u/s 3C is very limited and extends only to questioning the public purpose, and not to matters such as quantum of land acquired or alignment of the highway, which are technical matters within the domain of experts. (Para 6.3.6)

(c) The petitioner and her family members actively obstructed the survey process. Such conduct clearly demonstrates that they were fully aware of the acquisition proceedings. They cannot now take shelter under the plea of denial of opportunity when they themselves prevented the authorities from completing the statutory formalities. (Para 6.3.8)

C. Non-Compliance with Section 3G(3) - The petitioner has vehemently argued that the respondents acted in blatant disregard of Section 3G(3) of the Act, 1956, which mandates publication of a public notice in two local newspapers inviting claims from interested persons before determining compensation. Since, no such notice was published, and consequently, the award dated 15.02.2025 is void.

(a) Procedural lapses in the determination of compensation do not affect the validity of the acquisition itself once the land has vested in the Central Government u/s 3D(2) of the Act, 1956.

Section 3G(3) of the Act, 1956 provides that the Competent Authority shall publish a notice in two local newspapers, one in vernacular language, requiring persons interested in the land to

appear before it on the date and time specified in the notice to prefer their claims to compensation. The object of Section 3G(3) is to ensure that all interested persons are given an opportunity to submit their claims regarding compensation, including claims for valuation of land, structures, trees, and other assets, as well as claims for rehabilitation and other benefits. (Para 6.4.2, 6.4.3)

Section 3D(4) of the Act, 1956 categorically bars any challenge to the declaration made u/s 3D(1) in any court or by any other authority. Once a declaration is published u/s 3D(1), the land vests absolutely in the Central Government free from all encumbrances by virtue of Section 3D(2). Thereafter, the only dispute that can arise relates to the quantum of compensation, for which an adequate remedy by way of arbitration is provided u/s 3G(5) of the Act, 1956. (Para 6.4.4)

(b) The availability of an efficacious alternative remedy is a complete bar to the entertainment of a writ petition, except in cases of jurisdictional error or mala fides, neither of which has been established in the present case. Even assuming, without accepting, that there was some procedural irregularity in the determination of compensation, the appropriate remedy for the petitioner would be to seek enhancement of compensation by invoking the arbitration mechanism u/s 3G(5), and not to seek quashing of the entire acquisition by filing a writ petition u/Article 226 of the Constitution of India. (Para 6.4.5)

(c) The appropriate forum for adjudication of all issues relating to compensation is the arbitration mechanism provided u/s 3G(5) of the Act, 1956, any detailed examination or observations by this Court on the merits of the award would be inappropriate and may prejudice the rights of the parties in the arbitration proceedings. Court has consciously refrained from examining the award dated 15.02.2025 in any detail or expressing any opinion on the correctness of the classification of land, the methodology of valuation, or the quantum of compensation determined therein. (Para 6.4.6)

D. Scope of Judicial Review in Highway Projects – (a) The scope of judicial review in matters relating to highway development and land acquisition for national highway projects is well settled. Courts have consistently recognised that decisions concerning the planning, alignment, feasibility, and execution of such projects lie primarily within the domain of expert bodies constituted for that purpose. The NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of national highways.

Judicial interference is, therefore, circumscribed and warranted only where the action complained of is demonstrably arbitrary, ex facie contrary to the statutory mandate, or vitiated by mala fides. Courts do not sit in appeal over technical or policy decisions taken after due deliberation by specialised authorities, nor can they substitute their own views on matters requiring technical expertise and assessment of larger public interest. (Para 6.5.2)

(b) In the present case, no mala fides have been established. The allegation that the alignment was deliberately changed to target the petitioner's hotel is wholly unsupported by any credible material. On the contrary, the record shows that the Detailed Project Report and Land Acquisition Plan were prepared after due technical surveys and feasibility studies, and the alignment was finalized in accordance with technical requirements and engineering considerations.

The petitioner purchased the land on 29.05.2017 and applied for conversion of land use from agricultural to commercial u/s 80(1) of the Uttar Pradesh Revenue Code, 2006 on 15.02.2021. Despite the pendency of the conversion application, the petitioner commenced construction of the hotel in 2021 and completed the same in 2023. The construction of the hotel was thus undertaken when the application for change of land use was still pending consideration before the competent authority. Having proceeded with construction in such circumstances, the petitioner cannot now claim that the acquisition proceedings were targeted at her property with any mala fide intention. The petitioner chose to invest and completed the construction at her own commercial risk. This factual position, however, does not preclude the petitioner from claiming appropriate compensation for the land and structures in accordance with law, including the right to contend that the

compensation should be determined keeping in view the actual use and nature of the property at the time of acquisition. (Para 6.5.4)

E. Public Interest Vs. Private Interest – (a) It is well-established that whenever there is a conflict between public interest and private interest, the former must prevail. Infrastructure development is critical for the economic growth and prosperity of the nation.

While the law provides for payment of fair and adequate compensation to persons whose land is acquired for public purposes, individual hardship cannot be permitted to defeat or delay projects of national importance. While individual property rights are important, they cannot override genuine public purposes underlying land acquisition. The constitutional courts, while exercising jurisdiction u/Article 226, must keep the larger public interest in mind and must weigh public interest vis-a-vis private interest while exercising their discretionary powers, especially in matters of land acquisition. (Para 6.6.2, 6.6.4)

(b) The phrase 'public purpose'... must include a purpose in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. Thus, where acquisition subserves a larger public goal, the incidental benefit to private entities cannot invalidate it. The Government's satisfaction regarding public purpose is entitled to due weight and judicial interference is warranted only where the acquisition is shown to be a colourable exercise of power to serve a purely private interest. (Para 6.6.5)

In the present case, the project of widening and four-laning of NH-334D (Aligarh-Palwal Section) is of immense public importance and is intended to serve the larger public interest. (Para 7.3)

Writ petition dismissed. (E-4)

Case Law Cited:

1. Anurag Srivastava and 2 Others Vs. National Highway Authority of India Through Its Chairman and 2 others Writ-C No. 107 of 2019 (Para 4.8)
2. State of Madhya Pradesh and others Vs. Vishnu Prasad Sharma, AIR 1966 SC 1593 (Para 4.8)
3. Church of North India Trust Association Vs. Union of India and 3 others, Writ-C No.56316 of 2016 (Para 5.13)
4. Himanshu Kumar and Another Vs. Union of India and 3 Others, Writ-C No. 38328 of 2017 (Para 5.13)
5. Pramod Kumar Gupta and others Vs. National Highways Authority of India and others, Writ-C No.1279 of 2022 (Para 5.13)
6. Brikesh Kumar Pathak Vs. General Manager (East Uttar Pradesh) National State Highway and 3 Others, Writ-C No. 7391 of 2025 (Para 5.13)
7. Union of India Vs. Kushala Shetty and others, (2011) 12 SCC 69 (Para 5.13)
8. The Project Director, Project Implementation Unit Vs. P.V. Krishnamoorthy and others, Civil Appeal Nos.3976-3977 of 2010 (Para 5.13)
9. Competent Authority Vs. Barangore Jute Factory and others, (2005) 13 SCC 477 (Para 6.3.5)
10. Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, AIR 1997 SC 1236 (Para 6.6.4)
11. Pratibha Nema and others Vs. State of M.P. and others, AIR 2003 SC 3140 (Para 6.6.5)

List of Acts

National Highways Act, 1956; Uttar Pradesh Revenue Code, 2006; Land Acquisition Act, 1894.

List of Keywords

acquisitions, national, highways, successive, declarations, opportunity, notification, alignment, interest, public, private.

Appearances for Parties

For Petitioner(s): Komal Mehrotra, Prashant Mathur, Sr. Advocate

For Respondent(s): Devendra Kumar, Sunil Kumar Yadav, A.S.G.I., C.S.C., Rajesh Kumar Jaiswal, Swetashwa Agarwal

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.)

1. Heard Shri Shashi Nandan, learned Senior Counsel assisted by Shri Komal Mehrotra and Shri Eshaan Chandra, learned counsels for the petitioner, Shri Rajesh Kumar Jaiswal, learned counsel for the respondent No.1 - Union of India, Sri Devesh Vikram, learned Additional Chief Standing Counsel and Ms. Uttara Bahuguna, learned Additional Chief Standing Counsel, both for the State-respondents, and Shri M.C.Chaturvedi, learned Senior Counsel assisted by Sri Devendra Kumar, learned counsel for the respondent Nos. 2 and 3 - National Highway Authority of India.

1.1. With the consent of the parties, this writ petition is being decided at the admission stage.

A. PRAYER:

2. This writ petition has been preferred praying for the following relief:

“i. Issue a writ, order or direction in the nature of Certiorari quashing the Notification No. S.O. 2686(E) dated 10.07.2024(ANNEXURE NO. 1) issued by the Ministry of Road, Transport & Highways/Respondent No.1 under section 3D(2) of the national Highways Act, 1956, in respect of the land of the petitioner i.e. Gata/Plot No. 27 situated in Village - Kurana, District - Aligarh;

ii. Issue a writ, order or direction in the nature of Certiorari quashing the Award dated 15.02.2025 (ANNEXURE NO. 2) passed by the Respondent No.4-Competent Authority/Additional District Magistrate (Administration), District Aligarh, in respect of the land of the petitioner i.e. Gata/Plot No. 27 situated in Village Kurana, District - Aligarh:

iii. Issue a writ, order or direction in the nature of Mandamus directing the Respondents not to demolish and dispossess the petitioner from Gata/Plot No. 27, situated in Village - Kurana, District - Aligarh;

B. FACTS OF THE CASE:-

3. It reflects from the records that on 06.02.2024, the Central Government, in exercise of powers conferred under Section 3A(1) of the National Highways Act, 1956, issued Notification S.O. 558(E), published in the Gazette of India, Extraordinary, Part-II, declaring its intention to acquire land for a public purpose, namely, for building, widening/four-laning/six-laning, maintenance, management and operation of National Highway No. NH-334(D) in the stretch from Km. 0.000 to Km. 58.600, known as the Aligarh Palwal Section, situated in District Aligarh, State of Uttar Pradesh. The notification contained a brief description of the land proposed to be acquired as detailed in the Schedule appended thereto. In the said notification, the plot in question, namely Gata No. 27, finds place at Serial No. 681, and an area measuring 0.8348 hectares of the said plot was proposed to be acquired. It further invited objections from persons interested in the said land

under Section 3C(1) of the Act, 1956 within twenty-one days from the date of publication of the notification in the Official Gazette. Such objections were required to be submitted in writing to the Competent Authority, namely, the Additional District Magistrate (Administration), Aligarh, who was empowered to afford an opportunity of hearing to the objectors, either in person or through a legal practitioner, and thereafter to pass orders allowing or disallowing the objections. The notification also clarified that the orders passed by the Competent Authority under Section 3C(2) of the Act, 1956 would be final and that the land plans and other acquisition details were available for inspection in the office of the Competent Authority.

3.1. Pursuant thereto, the substance of the aforesaid notification dated 06.02.2024 was published, as required under Section 3A(3) of the Act, 1956, in two widely circulated newspapers, namely, "The Times of India" (English) and "Navbharat Times" (Hindi), both dated 10.02.2024. Objections received from interested persons under Section 3C of the Act, 1956 were duly considered by the Competent Authority and, after affording an opportunity of hearing, were disposed of in accordance with law. Thereafter, in compliance with Section 3D(1) of the Act, 1956, the Competent Authority submitted its report to the Central Government. Upon receipt of the said report, the Central Government issued Notification S.O. 1221(E) dated 11.03.2024 under Section 3D(1) of the Act, 1956, declaring that the land specified in the Schedule annexed to the earlier notification was required to be acquired for the aforesaid public purpose. In the said notification, the plot in question, namely Gata No. 27, finds place at Serial No. 582, and an area measuring 0.3460 hectares of the said plot was declared to be acquired. By the same notification, and in exercise of powers under Section 3D(2) of the Act, 1956 it was further declared that upon publication of the notification in the Official Gazette, the land so specified stood vested absolutely in the Central Government, free from all encumbrances.

3.2. Subsequently, the Central Government issued Notification S.O. 2686(E) dated 10.07.2024, reiterating the acquisition process initiated by Notification S.O. 558(E) dated 06.02.2024, including publication of the substance thereof in the aforesaid newspapers, consideration and disposal of objections under Section 3C, and submission of the report by the Competent Authority under Section 3D(1) of the Act, 1956. By the said notification dated 10.07.2024, the Central Government again declared, in exercise of powers under Section 3D(1) of the Act, 1956, that the land specified in the Schedule was required to be acquired for building, widening/four-laning/six-laning, maintenance, management and operation of NH-334(D) from Km. 0.000 to Km. 58.600 (Aligarh Palwal Section) in District Aligarh, Uttar Pradesh, and further declared under Section 3D(2) of the Act, 1956 that upon publication of the notification in the Official Gazette, the said land stood vested absolutely in the Central Government, free from all encumbrances. In the said notification, the plot in question, namely Gata No. 27, finds place at Serial No. 70, and an area measuring 0.3167 hectares of the said plot was declared to be acquired. Thereafter, the respondents proceeded to determine compensation, and an award dated 15.02.2025 was passed, treating the petitioner's land as agricultural land.

3.3. Aggrieved by Notification No. S.O. 2686(E) dated 10.07.2024, issued under Section 3D of the Act, 1956, and the award dated 15.02.2025 passed by the Competent Authority, namely, the Additional District Magistrate (Administration), District Aligarh, relating to Gata/Plot No. 27,

Village Kurana, District Aligarh, part of which belongs to the petitioner, the present writ petition has been filed.

C. SUBMISSIONS ON BEHALF OF PETITIONER:

4. Shri Shashi Nandan, learned Senior Counsel appearing for the petitioner, submitted that the entire acquisition proceedings, insofar as they relate to the petitioner's land, are vitiated by illegality, arbitrariness, and complete non-compliance with the mandatory provisions of the Act, 1956.

4.1. The petitioner, Veena Singh, is the lawful owner of part of Gata/Plot No. 27, situated in Village Kurana, District Aligarh, measuring approximately 0.1191 hectares. She purchased the said land through a registered sale deed dated 29.05.2017. After purchase, the petitioner applied for conversion of land use from agricultural to commercial under Section 80(1) of the Uttar Pradesh Revenue Code, 2006 on 15.02.2021. The said application for land use conversion is still pending before the concerned authorities and has not been decided till date.

4.2. He submitted that In the year 2021, the petitioner raised construction over the aforesaid plot, which was completed in the year 2023. The construction consists of a hotel-cum-restaurant building. The hotel constructed on the land is being run by the petitioner's son, Digvijay Singh, under the name and style of "Hotel Orchid Cherry."

4.3. At the outset, learned Senior Counsel contended that issuance of the second notification dated 10.07.2024 under Section 3D of the Act, 1956 is wholly without jurisdiction. Once a notification under Section 3A is issued declaring the intention to acquire land, and thereafter a declaration under Section 3D is made, the respondents cannot issue another Section 3D notification without first issuing a fresh Section 3A notification. In the present case, the alignment of the highway was changed arbitrarily, several plots were deleted, new plots were added, and areas of various plots were altered. Such substantial changes mandatorily required a fresh notification under Section 3A, followed by an opportunity to file objections under Section 3C. Bypassing this statutory procedure renders the second Section 3D notification illegal.

4.4. Learned Senior Counsel further argued that the petitioner was completely denied her right of objection under Section 3C of the Act, 1956. No notice was issued, and no hearing was granted before including the entire land of the petitioner in the second Section 3D notification. This action is in gross violation of principles of natural justice.

4.5. It was next submitted that even at the stage of determination of compensation, the respondents acted in blatant disregard of Section 3G(3) of the Act, 1956. The said provision mandates publication of a public notice in two local newspapers, one of which must be in vernacular language, inviting claims from all interested persons before determining compensation. In the present case, no such notice was ever published. The petitioner was never informed about the proposed valuation, nor was she given an opportunity to place material regarding the commercial nature of the land and the existing hotel structure.

4.6. Learned Senior Counsel emphasised that the award dated 15.02.2025 is therefore void, as it has been passed without following mandatory statutory requirements. The respondents wrongly treated the petitioner's land as agricultural, despite clear evidence that a hotel-cum-restaurant was constructed and operational on the land. An order dated 23.11.2021 passed by the Collector, Aligarh under the Stamp Act, 1908 had already recognised the non-agricultural nature of the land, which was deliberately ignored.

4.7. It was further argued that the award fails to consider the severe prejudice caused to the petitioner and her family. The hotel is the sole source of livelihood of the petitioner's son, and the entire family depends upon it. The respondents, being instrumentalities of the State under Article 12 of the Constitution, are bound to act fairly, reasonably, and non-arbitrarily. Their actions violate Article 14 of the Constitution of India.

4.8. Learned Senior Counsel placed reliance on the judgment of this Court dated 06.09.2019 passed in (**Anurag Srivastava and 2 Others vs. National Highway Authority of India Through Its Chairman and 2 Others**) and submits that in the said case, it was held that publication of notice under Section 3G(3) is mandatory and cannot be dispensed with. Failure to follow the three-stage statutory scheme under Sections 3A, 3D, and 3G vitiates the acquisition proceedings. He has also placed reliance upon the judgment of Hon'ble Supreme Court in **State of Madhya Pradesh and others vs. Vishnu Prasad Sharma**.

4.9. Lastly, learned Senior Counsel submitted that both the impugned second Section 3D notification dated 10.07.2024 and the award dated 15.02.2025 deserve to be quashed. The respondents must be directed to act strictly in accordance with law, after giving due notice, hearing, and fair compensation to the petitioner.

D. SUBMISSIONS ON BEHALF OF THE RESPONDENTS :-

5. Shri M.C. Chaturvedi, learned Senior Counsel appearing for respondent Nos. 2 and 3, namely the National Highways Authority of India, submitted that the present writ petition is wholly misconceived, devoid of merit, and is liable to be dismissed at the threshold. It was contended that the entire acquisition proceedings have been carried out strictly in accordance with the provisions of the Act, 1956, and there has been no illegality, arbitrariness, or procedural lapse at any stage of the acquisition process.

5.1. Learned Senior Counsel submitted that NHAI is a statutory authority constituted under the National Highways Authority of India Act, 1988, and is entrusted with the responsibility of development, construction, maintenance, management, and operation of National Highways across the country. The projects undertaken by NHAI are of national importance and are conceived in public interest, keeping in view the rapid socio-economic development of the country, increased vehicular traffic, and the need for safe, efficient, and obstruction-free transportation corridors. The present project of widening and four-laning of National Highway No. 334D (Aligarh-Palwal Section) is one such vital infrastructure project intended to ease congestion, reduce travel time, save fuel, and promote economic activity in the region.

5.2. It was further submitted that a Detailed Project Report (DPR) and Land Acquisition Plan (LAP) were prepared after due technical surveys, feasibility studies, and approval by the competent authorities. The alignment of the highway was finalized much prior to the initiation of land acquisition proceedings and has remained unchanged throughout. The allegation of the petitioner that the alignment has been altered to target a particular property is completely false, baseless, and unsupported by any material on record.

5.3. Learned Senior Counsel drew the attention of the Court to the fact that the Central Government, through the Ministry of Road Transport and Highways, issued a notification dated 06.02.2024 under Section 3A(1) of the Act, 1956, expressing its intention to acquire land for the purpose of widening and four-laning of NH-334D. The substance of the said notification was duly published in two widely circulated newspapers, namely "Navbharat Times" and "Times of India," on 10.02.2024. All affected landowners, including the petitioner, were granted the statutory opportunity to file objections under Section 3C of the Act within 21 days. Despite such due publication and opportunity, no objections were filed by the petitioner or other concerned landowners within the prescribed period.

5.4. It was emphasized that after completion of the statutory objection stage, the acquisition process proceeded further. During the course of survey and spot inspection in village Kurana, Tehsil Khair, District Aligarh, certain landowners, including those associated with Hotel Orchid Cherry, did not permit the survey team to carry out measurements and inspection of the affected land and structures. Due to this non-cooperation and resistance, approximately 700 meters of affected land could not be surveyed at that stage. Consequently, while issuing the declaration under Section 3D(1) on 11.03.2024, only such land could be notified which had been properly surveyed, including 0.346 hectare from disputed Gata No. 27.

5.5. Learned Senior Counsel clarified that this was not a case of selective acquisition or change in alignment, but a practical administrative necessity arising solely due to the obstruction created by the concerned landowners. After intervention and assistance of the district administration, the survey of the remaining affected land was completed. Thereafter, a further declaration under Section 3D(1) was issued on 10.07.2024 for the remaining affected land measuring 0.3167 hectare of the disputed Gata No. 27, which was left on the first notification under Section 3D(1). Both notifications formed part of the same acquisition proceedings and related to the same project and alignment.

5.6. Learned Senior Counsel strongly argued that once a declaration under Section 3D(1) is published, the land vests absolutely in the Central Government free from all encumbrances, as provided under Section 3D(2) of the Act, 1956. Moreover, Section 3D(4) clearly bars any challenge to such declaration before any court or authority.

5.7. Learned Senior Counsel further submitted that after completion of all statutory formalities, including issuance of notice under Section 3G(3), consideration of the claims, and assessment of the land and structures, the Competent Authority passed an award dated 15.02.2025 in respect of Gata No. 27 measuring 0.6627 hectare, situated in Village Kurana, District Aligarh. The compensation awarded covers both the land and the structures, notwithstanding the fact that

the land in question continued to be recorded as agricultural land and no declaration had been issued by any competent authority declaring it as non-agricultural under Section 80 of the U.P. Revenue Code, 2006. The compensation for both land and construction has been determined in accordance with the applicable rules and prevailing rates. The NHAI has already deposited the entire compensation amount with the Competent Authority, and more than 60% of the awarded compensation has already been disbursed to the affected landowners.

5.8. It was submitted that if the petitioner is aggrieved by the quantum of compensation, the Act, 1956 itself provides an effective alternative statutory remedy by way of arbitration under Section 3G(5). Without availing this remedy, the petitioner has directly approached this Court under Article 226, which is impermissible. The writ petition, therefore, is barred due to availability of an efficacious alternative remedy.

5.9. Learned Senior Counsel also referred to the proceedings before the National SC/ST Commission, where similar allegations of change of alignment were raised by the husband of the petitioner. NHAI filed a detailed reply denying all allegations. After examining the record and hearing the parties, the Commission dismissed the complaint vide order dated 16.10.2024. This fact clearly demonstrates that the petitioner is repeatedly raising the same unfounded allegations before different forums, with deliberate design to derail the NHAI project.

5.10. It was further contended that NHAI has repeatedly responded to representations made by the petitioner, clearly informing her that there has been no change in alignment and that there is no provision under law to de-notify land once it has vested in the Central Government. The petitioner has been fully informed that the project is being executed strictly as per the approved DPR/LAP and that individual convenience cannot override public interest and technical requirements of a national highway project.

5.11. Learned Senior Counsel emphasized that infrastructure projects of this magnitude involve huge public investment and are bound by strict timelines. Any delay caused by obstruction, protest, or non-cooperation of landowners leads to escalation of costs and affects public interest at large. The law, therefore, provides a streamlined acquisition process under the Act, 1956 distinct from the general land acquisition law, to ensure timely completion of such projects.

5.12. It was also pointed out that the petitioner was duly informed to cooperate in inspection and valuation of structures but failed to do so in time. Despite this, the Competent Authority proceeded in accordance with available records and material to pass the award. The award itself records that all claims and objections received were duly considered.

5.13. In support of his submissions, learned Senior Counsel had placed reliance upon the following judgments:

(i) judgment dated 19.12.2016 passed by a Division Bench in **Church of North India Trust Association vs. Union of India and 3 others**,

(ii) judgment dated 24.08.2017 passed in Himanshu Kumar and Another vs. Union of India and 3 Others⁶,

(iii) judgment dated 28.01.2022 passed in **Pramod Kumar Gupta and others vs. National Highways Authority of India and others**,

(iv) judgment dated 08.04.2025 passed in Brikesh Kumar Pathak vs. General Manager (East Uttar Pradesh) National State Highway and 3 Others,

(v) the judgment of Supreme Court in **Union of India vs. Kushala Shetty and others**,

(vi) the judgment dated 08.12.2020 passed by the Supreme Court in **The Project Director, Project Implementation Unit vs. P.V. Krishnamoorthy and others**.

5.14. Learned Senior Counsel submitted that reliance placed by learned counsel for the petitioner in the case of Vishnu Prasad Sharma (supra) is misplaced as the said judgment was passed in a land acquisition matter relating to Land Acquisition Act, 1894¹¹, however, the instant matter relates to Act, 1956. He further submits that after the said judgment, an amendment was made on 12.04.1967 in Section 6 of the Act, 1894 providing that different declarations may be made from time to time in respect of sub-Section (1) of the Act, 1894, irrespective of whether one report or different reports has or have been made (wherever required) under Section 5A, sub-section (2).

5.15. Learned Senior Counsel concluded by submitting that the allegations of malafide, arbitrariness, and change of alignment are imaginary and unsupported by any evidence. The acquisition proceedings are legal, transparent, and in strict compliance with statutory provisions. The land has vested in the Central Government, compensation has been determined and deposited, and an alternative remedy is available to the petitioner. The writ petition is, therefore, an abuse of the process of law and deserves to be dismissed with costs.

E. DISCUSSION AND FINDINGS:-

6. We have heard the rival submissions of learned counsels for the parties at length and carefully perused the record.

6.1. Legislative Framework

6.1.1. Before delving into the merits of the case, it is essential to understand the legislative framework governing land acquisition for national highway projects. The Act, 1956 was enacted by Parliament to provide for the declaration of certain highways as national highways and for matters connected therewith. Sections 3A to 3I of the Act, 1956 contain a comprehensive scheme for the acquisition of land for the building, maintenance, management or operation of a national highway or part thereof and determination of amount payable as compensation and other related issues.

6.1.2. Sections 3A, 3B, 3C, 3D and 3G of the Act, 1956, which have bearing on this case, read as under:

“3A. *Power to acquire land, etc.*-(1) Where the Central Government is satisfied that for a ***public purpose any land is*** required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, ***declare its intention to acquire such land.***

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

3B. *Power to enter for survey, etc.*-On the issue of a notification under sub-section (1) of section 3A, it shall be lawful for any person, authorised by the Central Government in this behalf, to-

(a) make any inspection, survey, measurement, valuation or enquiry;

(b) take levels;

(c) dig or bore into sub-soil;

(d) set out boundaries and intended lines of work;

(e) mark such levels, boundaries and lines placing marks and cutting trenches; or

(f) do such other acts or things as may be laid down by rules made in this behalf by that Government.

3C. *Hearing of objections.*-(1) Any person interested in the land may, ***within twenty-one days from the date of publication of the notification under*** sub-section (1) of section 3A, ***object to the use of the land*** for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, it any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.-For the purposes of this sub-section, “legal practitioner” has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under sub-section (2) shall be final.

3D. Declaration of acquisition. (1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

3G. Determination of amount payable as compensation.-(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government—

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration-

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.-

(Emphasis supplied)

6.1.3. The scheme of acquisition enshrined in the above reproduced provisions makes it clear that once the Central Government is satisfied that any land is required for the building, maintenance, management or operation of a national highway or part thereof, then, it shall declare its intention to acquire such land by issuing a notification in the official Gazette giving brief description of the land. The substance of the notification is also required to be published in two local newspapers of which one has to be in a vernacular language. Any person interested in the land can file objection within 21 days from the date of publication of the notification in the official Gazette. Such objection is required to be made to the Competent Authority in writing. Thereafter, the Competent Authority is required to give the objector an opportunity of hearing either in person or through a legal practitioner. This exercise is to be followed by an order of the Competent Authority either allowing or rejecting the objections.

6.1.4. Where no objection is made to the Competent Authority in terms of Section 3C(1) or where the objections made by the interested persons have been disallowed, the Competent Authority is required to submit a report to the Central Government, which shall then issue a notification in the official Gazette that the land should be acquired for the purpose or purposes mentioned in Section 3A(1). On publication of declaration under Section 3D(1), the land vests absolutely in the Central Government free from all encumbrances. Sub-section (3) of Section 3D provides that where no declaration under sub-section (1) is published within a period of one year from the date of publication of notification under Section 3A(1), the said notification shall cease to have any effect. By virtue of proviso to Section 3D(3), the period during which any action or proceeding taken in pursuance of notification issued under Section 3A(1) remains stayed by a Court shall be excluded while computing the period of one year specified in Section 3D(3).

6.2. Analysis of the First Contention: Validity of Second Section 3D Notification

6.2.1. The primary contention raised by the learned Senior Counsel for the petitioner is that the issuance of the second notification dated 10.07.2024 under Section 3D of the Act, 1956 is wholly without jurisdiction. According to the petitioner, once a notification under Section 3A is issued followed by a declaration under Section 3D, the respondents cannot issue another Section 3D notification without first issuing a fresh Section 3A notification, particularly when there has been an alleged change in alignment and variation in the area of land proposed to be acquired.

6.2.2. We have carefully considered this submission and find that it is not tenable in law. The material on record clearly demonstrates that there has been no change in the alignment of the highway. The Detailed Project Report and Land Acquisition Plan were finalized before the commencement of acquisition proceedings, and the alignment has remained consistent throughout the process. The issuance of two Section 3D notifications was necessitated purely by administrative exigencies arising from the obstruction and non-cooperation of certain landowners, including the petitioner, during the survey operations.

6.2.3. It is an admitted position that when the survey team attempted to carry out measurements and inspection of the affected land and structures in village Kurana, they were prevented from doing so by the concerned landowners. Due to this resistance, approximately 700 meters of affected land could not be surveyed at the relevant time. Consequently, the first declaration under Section 3D(1) dated 11.03.2024 could only cover the land that had been properly surveyed, which included 0.346 hectare from disputed Gata No. 27.

6.2.4. Subsequently, after intervention by the district administration and completion of the remaining survey, a further declaration under Section 3D(1) was issued on 10.07.2024 covering the remaining affected land measuring 0.3167 hectare of disputed Gata No. 27. Both notifications formed part of the same acquisition proceedings, related to the same project, and pertained to the identical public purpose under Section 3A(1) of the Act, 1956. There is no material on record to suggest any deviation from the original plan or any mala fide intention to target a particular property.

6.2.5. The contention that the alignment was changed or that the petitioner's property was specifically targeted is also conclusively disproved by a simple mathematical comparison of the areas proposed to be acquired and actually acquired. In the initial notification under Section 3A(1) dated 06.02.2024, the total area proposed to be acquired from Gata No. 27 was 0.8348 hectares. Subsequently, by the first declaration under Section 3D(1) dated 11.03.2024, an area of 0.3460 of the disputed Gata No.27 hectares was acquired, and by the second declaration under Section 3D(1) dated 10.07.2024, an area of 0.3167 hectares of the disputed Gata No.27 was acquired. Thus, the total area actually acquired by both notifications is $0.3460 + 0.3167 = 0.6627$ hectares. It is evident that the total area actually acquired (0.6627 hectares) is substantially less than the area originally proposed to be acquired (0.8348 hectares) by approximately 0.1721 hectares. Had there been any change in alignment or any mala fide intention to target the petitioner's property, the area acquired would have either remained the same or increased. The fact that a lesser area has ultimately been acquired from the petitioner's plot clearly demonstrates that there has been no deviation from the

original plan and no targeting of the petitioner's property. On the contrary, it shows that after proper survey and technical assessment, a reduced area was found sufficient for the project requirements. This factual position completely negates the petitioner's allegation of change of alignment or mala fide acquisition.

6.2.6. The reliance placed by the learned Senior Counsel for the petitioner on the judgment of the Hon'ble Supreme Court in **Vishnu Prasad Sharma** (supra), is misplaced for multiple reasons. That judgment was rendered in the context of the Act, 1894, and dealt with the question whether successive declarations under Section 6 could be issued following a single notification under Section 4(1). The Hon'ble Supreme Court held that the scheme of Sections 4, 5A and 6 of the Act, 1894 contemplated only one declaration under Section 6 following one notification under Section 4(1). However, the said judgment has no application on the present case which is governed by an entirely different statutory framework, namely the Act, 1956.

6.2.7. Moreover, even under the Act, 1894, the legal position underwent a significant change after the said judgment. As rightly pointed out by the learned Senior Counsel for the respondents, Section 6 of the Act, 1894 was amended on 12.04.1967 by inserting Sub-section (4), which expressly provided that different declarations may be made from time to time in respect of different parcels of land covered by the same notification under Section 4(1), irrespective of whether one report or different reports have been made under Section 5A(2). This amendment was made precisely to overcome the legal impediment created by the judgment in **Vishnu Prasad Sharma's** case. **Thus, even the ratio of Vishnu Prasad Sharma's case does not hold good in respect of the Act, 1894 after the 1967 amendment.**

6.2.8. The present case is governed by the Act, 1956, which is a special statute enacted specifically for acquisition of land for national highway projects. The provisions of the Act, 1956 are materially different from those of the Act, 1894. Section 3D of the Act, 1956 does not contain any prohibition against issuance of successive declarations under Section 3D(1) following a single notification under Section 3A(1), particularly in circumstances where practical difficulties have prevented completion of survey of all affected land in one go.

6.2.9. The ratio of judgments rendered under the Act, 1894 cannot be mechanically applied to acquisition proceedings under the Act, 1956 without considering the distinct features, objectives, and express statutory provisions of the latter enactment. In the present case, there is no provision in the Act, 1956 which prohibits the issuance of successive declarations under Section 3D(1) following a single notification under Section 3A(1), and in the absence of any such prohibition, and particularly in circumstances of administrative necessity arising from obstruction by landowners themselves, such successive declarations cannot be held to be illegal or without jurisdiction.

6.2.10. In the present case, the initial notification under Section 3A(1) dated 06.02.2024 clearly covered the entire stretch of land proposed to be acquired, including the petitioner's land. The substance of the said notification was duly published in two newspapers on 10.02.2024. All affected landowners, including the petitioner, were granted statutory opportunity to file objections

under Section 3C within 21 days. Despite such due publication and opportunity, no objections were filed by the petitioner within the prescribed period.

6.2.11. The subsequent issuance of two Section 3D notifications on different dates was a practical necessity arising from the conduct of the landowners themselves. The land could not be surveyed due to obstruction. To avoid further delay in the project, the authorities proceeded to issue the first declaration in respect of the land that had been surveyed, and thereafter issued the second declaration after completing the remaining survey. Both declarations were issued within one year from the date of publication of the Section 3A notification, as mandated by Section 3D(3) of the Act, 1956.

6.2.12. We find no legal bar in the Act, 1956 against issuance of successive declarations under Section 3D(1) in such circumstances wherein total land is already notified in the Section 3A(1). The petitioner cannot be permitted to take advantage of her own wrong. Having obstructed the survey process, she cannot now turn around and claim that the subsequent notification is illegal. The doctrine of approbate and reprobate prevents a party from taking inconsistent positions to the prejudice of another.

6.2.13. It would be noteworthy to point out that the notification under section 3A(1) of the Act, 1956 covered an area of 0.8348 hectare out of which only 0.346 hectares was sought to be acquired under the first notification under Section 3D(1) for the reasons explained above. The second notification under Section 3D(1) was for an area of 0.3167 hectare only. Thus, at no point of time an area more than that already notified under Section 3A(1) ever sought to be acquired. In fact under both the notifications under Section 3D(1), a lesser total area than what was notified under Section 3A(1) was acquired. Unless by categorical pleadings it could be demonstrated and established that an area larger than the area notified under Section 3A(1) was acquired, the authorities would be within the law to issue a second notification under Section 3D(1) within the prescribed period of limitation. Since it is not the case of the petitioner that a larger area of land as notified under Section 3A(1) was acquired, therefore the Second 3D(1) notification published within the prescribed time period is justified.

6.3. Analysis of the Second Contention: Alleged Denial of Opportunity Under Section 3C

6.3.1. The second major contention raised by the learned Senior Counsel for the petitioner is that the petitioner was completely denied her right of objection under Section 3C of the Act, 1956. It is argued that no notice was issued and no hearing was granted before including the petitioner's land in the second Section 3D notification.

6.3.2. We are unable to accept this submission. The record clearly establishes that a notification under Section 3A(1) was issued on 06.02.2024, and the substance thereof was published in two widely circulated newspapers, namely "Navbharat Times" and "Times of India," on 10.02.2024. The notification specifically invited objections from persons interested in the land under Section 3C(1) of the Act, 1956 within twenty-one days from the date of publication in the

Official Gazette. The petitioner's land, namely Gata No. 27, was clearly mentioned in the Schedule appended to the said notification.

6.3.3. Despite such publication and opportunity, the petitioner did not file any objection within the statutory period of 21 days. The right to file objections under Section 3C is available only within the prescribed period. Once that period expires, the right to object is lost. This is the clear mandate of Section 3C(1) read with Section 3C(2) of the Act, 1956.

6.3.4. The Hon'ble Supreme Court in **Kushala Shetty and others (supra)**, has categorically held that objections filed beyond the prescribed period under Section 3C(1) do not require consideration by the Competent Authority. The Court observed that the right to object under Section 3C is very limited and extends only to the use of land for a purpose other than that specified under Section 3A(1). If no objection is filed within time, the Competent Authority is obliged to submit its report to the Central Government recommending issuance of declaration under Section 3D(1). The relevant portion of **Kushala Shetty** is reproduced below:-

“ 22. -----...Of course, a grievance of this score was made in the objections dated 16.10.2006 filed by some of the land owners of Padavu Village, but that was clearly an afterthought and, in any case, the same did not require consideration because of non- adherence to the time schedule specified in Section 3C(1) of the 1956 Act.”

(Emphasis supplied)

6.3.5. The Supreme Court in the case of **Competent Authority vs. Barangore Jute Factory and others** also observed that Section 3-C (1) of the Act gives a very limited right to object. The objection can only be to the use of the land under acquisition for purposes other than mentioned in Section 3A (1) of the Act and it does not confer right to object to the acquisition. The relevant portion is reproduced below:-

"We would, however, like to add that unlike Section 5-A of the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land under Section 4 of the said Act, Section 3-C(1) of the National Highways Act gives a very limited right to object. The objection can be only to the use of the land under acquisition for purpose other than those under Section 3-A(1). The Act confers no right to object to acquisition as such. This answers the argument advanced by the learned counsel for NHAI that failure to file objections disentitles the writ petitioners to object to the acquisition. The Act confers no general right to object, therefore, failure to object becomes irrelevant. The learned counsel relied on the judgment of this Court in Delhi Admn. V. Gurdip Singh Urban, (1999) 7 SCC 44. In our view, this judgment has no application in the facts of the present case where the right to object is a very limited right. The case cited is a case under the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land under Section 5-A. Failure to exercise that right could be said to be acquiescence. The National Highways Act confers no such right. Under this Act there is no right to object to acquisition of land except on the question of its user....."

(Emphasis Supplied)

6.3.6. Similarly, in the judgment dated 24.08.2017 passed by this Court in **Himanshu Kumar and Another vs. Union of India and 3 Others** in Writ-C No. 38328 of 2017, it was held that objections filed beyond the statutory period under Section 3C(1) do not require consideration. The Court further held that the right to object under Section 3C is very limited and extends only to questioning the public purpose, and not to matters such as quantum of land acquired or alignment of the highway, which are technical matters within the domain of experts.

6.3.7. In the present case, the petitioner had full knowledge of the proposed acquisition as her land was specifically mentioned in the Schedule to the Section 3A notification published in February 2024. She chose not to file any objection at that stage. Having failed to avail the statutory remedy of objection under Section 3C within the prescribed period, she cannot now be heard to complain that she was denied an opportunity.

6.3.8. Moreover, it is important to note that the petitioner and her family members actively obstructed the survey process. Such conduct clearly demonstrates that they were fully aware of the acquisition proceedings. They cannot now take shelter under the plea of denial of opportunity when they themselves prevented the authorities from completing the statutory formalities.

6.3.9. The judgment relied upon by learned Senior Counsel for the petitioner in Anurag Srivastava (supra), is clearly distinguishable on facts and does not render any assistance to the petitioner. In the said case, this Court recorded a categorical and admitted position that no notice under Section 3G(3) of the Act, 1956 had ever been issued, and that the authorities had sought to justify the award by treating a notification under Section 3D as a notice under Section 3G(3), which was expressly rejected by the Court. It was in that background of admitted statutory non-compliance, evasive pleadings and absence of any corrigendum, that the award was set aside for violation of principles of natural justice. In the present case, however, the record reflects that the procedure prescribed under Section 3G(3) has been followed and the petitioner was not deprived of the statutory opportunity contemplated therein. The challenge raised herein, therefore, does not arise from a case of complete absence of notice or denial of opportunity, but relates to the adequacy or correctness of determination, for which the statute itself provides a separate remedial mechanism. Consequently, the ratio of the judgment in Anurag Srivastava (supra), which turned on its own peculiar facts of total non-compliance, has no application to the facts of the present case.

6.4. Analysis of the Third Contention: Non-Compliance with Section 3G(3)

6.4.1. The learned Senior Counsel appearing for the petitioner has vehemently argued that the respondents acted in blatant disregard of Section 3G(3) of the Act, 1956, which mandates publication of a public notice in two local newspapers inviting claims from interested persons before determining compensation. It is contended that no such notice was published, and consequently, the award dated 15.02.2025 is void.

6.4.2. We have carefully examined the record and find that this contention also lacks merit. Section 3G(3) of the Act, 1956 provides that the Competent Authority shall publish a notice in two local newspapers, one in vernacular language, requiring persons interested in the land to

appear before it on the date and time specified in the notice to prefer their claims to compensation. While it is true that compliance with this provision is mandatory, the question is whether non-compliance, if any, would vitiate the entire award or whether it would only affect the petitioner's right to claim enhanced compensation.

6.4.3. The object of Section 3G(3) is to ensure that all interested persons are given an opportunity to submit their claims regarding compensation, including claims for valuation of land, structures, trees, and other assets, as well as claims for rehabilitation and other benefits. However, it is equally well-settled that procedural lapses in the determination of compensation do not affect the validity of the acquisition itself once the land has vested in the Central Government under Section 3D(2) of the Act, 1956.

6.4.4. Section 3D(4) of the Act, 1956 categorically bars any challenge to the declaration made under Section 3D(1) in any court or by any other authority. Once a declaration is published under Section 3D(1), the land vests absolutely in the Central Government free from all encumbrances by virtue of Section 3D(2). Thereafter, the only dispute that can arise relates to the quantum of compensation, for which an adequate remedy by way of arbitration is provided under Section 3G(5) of the Act, 1956.

6.4.5. Even assuming, without accepting, that there was some procedural irregularity in the determination of compensation, the appropriate remedy for the petitioner would be to seek enhancement of compensation by invoking the arbitration mechanism under Section 3G(5), and not to seek quashing of the entire acquisition by filing a writ petition under Article 226 of the Constitution of India. The availability of an efficacious alternative remedy is a complete bar to the entertainment of a writ petition, except in cases of jurisdictional error or mala fides, neither of which has been established in the present case.

6.4.6. We have consciously refrained from examining the award dated 15.02.2025 in any detail or expressing any opinion on the correctness of the classification of land, the methodology of valuation, or the quantum of compensation determined therein. Since we are of the view that the appropriate forum for adjudication of all issues relating to compensation is the arbitration mechanism provided under Section 3G(5) of the Act, 1956, any detailed examination or observations by this Court on the merits of the award would be inappropriate and may prejudice the rights of the parties in the arbitration proceedings. Suffice it to say that the petitioner's grievances relate primarily to the determination of compensation, and all such grievances can be effectively raised and adjudicated in the arbitration proceedings.

6.5. Scope of Judicial Review in Highway Projects

6.5.1. It is well-settled that projects involving construction of new highways and widening and development of existing highways are entrusted to experts in the field. The NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of national highways. It comprises persons having vast knowledge and expertise in highway development and maintenance. Detailed project reports are prepared keeping in view relevant factors including intensity of heavy vehicular traffic and larger public interest.

6.5.2. The Hon'ble Supreme Court in **Kushala Shetty** (supra) has categorically held that courts are not equipped to decide upon the viability and feasibility of a particular project and whether a particular alignment would subserve the larger public interest. The scope of judicial review in matters relating to highway development and land acquisition for national highway projects is well settled. Courts have consistently recognised that decisions concerning the planning, alignment, feasibility, and execution of such projects lie primarily within the domain of expert bodies constituted for that purpose. Judicial interference is, therefore, circumscribed and warranted only where the action complained of is demonstrably arbitrary, ex facie contrary to the statutory mandate, or vitiated by mala fides. Courts do not sit in appeal over technical or policy decisions taken after due deliberation by specialised authorities, nor can they substitute their own views on matters requiring technical expertise and assessment of larger public interest. In this context, it is apposite to recall the following exposition of law in para-28 of the case of **Kushala Shetty** (supra):

“28. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained.”

6.5.3. Similar views have been expressed by this Court in **Pramod Kumar Gupta and others vs. National Highways Authority of India and others** (Writ-C No. 1279 of 2022, decided on 28.01.2022) and in **Briresh Kumar Pathak vs. General Manager (East Uttar Pradesh)** (Writ-C No. 7391 of 2025, decided on 08.04.2025). In both these cases, this Court declined to interfere with the technical decisions regarding alignment and extent of land required for highway projects, observing that such matters fall within the exclusive domain of technical experts and the scope of judicial review is extremely limited.

6.5.4. In the present case, no mala fides have been established. The allegation that the alignment was deliberately changed to target the petitioner's hotel is wholly unsupported by any credible material. On the contrary, the record shows that the Detailed Project Report and Land Acquisition Plan were prepared after due technical surveys and feasibility studies, and the alignment was finalized in accordance with technical requirements and engineering considerations. The petitioner purchased the land on 29.05.2017 and applied for conversion of land use from

agricultural to commercial under Section 80(1) of the Uttar Pradesh Revenue Code, 2006 on 15.02.2021. Significantly, this application for conversion of land use is still pending and has not been decided till date. Despite the pendency of the conversion application, the petitioner commenced construction of the hotel in 2021 and completed the same in 2023. The construction of the hotel was thus undertaken when the application for change of land use was still pending consideration before the competent authority. Having proceeded with construction in such circumstances, the petitioner cannot now claim that the acquisition proceedings were targeted at her property with any mala fide intention. The petitioner chose to invest and completed the construction at her own commercial risk. This factual position, however, does not preclude the petitioner from claiming appropriate compensation for the land and structures in accordance with law, including the right to contend that the compensation should be determined keeping in view the actual use and nature of the property at the time of acquisition. All such contentions and rights of the petitioner regarding valuation and compensation remain open and unaffected by the present proceedings, and shall be considered on their own merits by the appropriate authority in accordance with the provisions of the Act, 1956.

6.6. Public Interest vs. Private Interest

6.6.1. Infrastructure development is critical for the economic growth and prosperity of the nation. National highways play a vital role in facilitating movement of goods and passengers, promoting trade and commerce, and integrating different regions of the country. Widening and upgradation of national highways have become imperative in view of the exponential growth in vehicular traffic over the past decades.

6.6.2. It is well-established that whenever there is a conflict between public interest and private interest, the former must prevail. While the law provides for payment of fair and adequate compensation to persons whose land is acquired for public purposes, individual hardship cannot be permitted to defeat or delay projects of national importance. The constitutional courts, while exercising jurisdiction under Article 226, must keep the larger public interest in mind and must weigh public interest vis-a-vis private interest while exercising their discretionary powers.

6.6.3. The Supreme Court, in *Barangore Jute Factory & Ors. (supra)*, examined the delicate balance between public interest and private rights in the context of land acquisition for a national highway. While holding that the acquisition notification was legally defective for want of proper statutory compliance and that possession had been taken contrary to law, the Court declined to quash the notification. It noted that the acquisition was for a project of great national importance and that the highway construction had already been completed. Quashing the notification at that stage would have caused serious practical difficulties and led only to a fresh acquisition process, escalating compensation due to rising land prices. The Court emphasized that private property rights cannot be ignored, but where public interest has crystallized into an irreversible public project, the appropriate remedy lies in just and fair compensation rather than undoing what has already been done. In this context, Hon'ble Supreme Court observed in paragraph 14 as under:

“14. Having held that the impugned notification regarding acquisition of land is invalid because it fails to meet the statutory requirements and also having found that taking possession of

the land of the writ petitioners in the present case in pursuance of the said notification was not in accordance with law, the question arises as to what relief can be granted to the petitioners. The High Court rightly observed that the acquisition of land in the present case was for a project of great national importance, i.e. the construction of a national highway. The construction of a national highway on the acquired land has already been completed as informed to us during the course of hearing. No useful purpose will be served by quashing the impugned notification at this stage. We cannot be unmindful of the legal position that the acquiring authority can always issue a fresh notification for acquisition of the land in the event of the impugned notification being quashed. The consequence of this will only be that keeping in view the rising trend in prices of land, the amount of compensation payable to the land owners may be more. Therefore, the ultimate question will be about the quantum of compensation payable to the land owners. Quashing of the notification at this stage will give rise to several difficulties and practical problems. Balancing the rights of the petitioners as against the problems involved in quashing the impugned notification, we are of the view that a better course will be to compensate the land owners, that is, writ petitioners appropriately for what they have been deprived of. Interests of justice persuade us to adopt this course of action.”

(Emphasis supplied)

6.6.4. This principle has been consistently followed by the Hon'ble Supreme Court in several cases. The Supreme Court, in **Ramniklal N. Bhutta and another vs. State of Maharashtra and others**, emphasized that while individual property rights are important, they cannot override genuine public purposes underlying land acquisition. The case arose from acquisition of land for establishing a bus station for the Bombay Electric Supply and Transport Undertaking (BEST). The appellant challenged the acquisition on grounds of alleged mala fides, selective exclusion of adjoining land, and procedural irregularities. The Court noted that the acquisition proceedings had commenced as early as 1979 and were repeatedly delayed due to litigation. It found no material to substantiate allegations of mala fides or absence of public purpose and held that mere adjustments or settlements during acquisition do not negate the underlying public need. The Court underscored that infrastructure projects are vital for economic development and cannot be lightly stalled at the instance of individual landowners, particularly after prolonged delay. Importantly, it held that discretionary jurisdiction under Article 226 must be exercised keeping the larger public interest in mind, especially in matters of land acquisition. In this context, the Court observed:

“The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226. In the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce; they are very often one and the same.”

(Emphasis supplied)

6.6.5. The Supreme Court in **Pratibha Nema and others vs. State of M.P.** and others,¹⁴ examined the delicate balance between private landowners' rights and the larger public interest in the context of land acquisition for establishment of a “Diamond Park.” While the acquisition incidentally benefited private companies engaged in diamond cutting and polishing, the Court held

that such benefit does not, by itself, negate the existence of a public purpose. Emphasis was laid on the broader objectives of industrial development, employment generation, earning of foreign exchange, and planned economic growth of the State. The Hon'ble Supreme Court reiterated that the concept of "public purpose" is elastic and must be understood in a pragmatic manner, keeping in view contemporary socio-economic needs. It was further held that the Government's satisfaction regarding public purpose is entitled to due weight and judicial interference is warranted only where the acquisition is shown to be a colourable exercise of power to serve a purely private interest. The Court observed that "the phrase "public purpose"... must include a purpose in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned." Thus, where acquisition subserves a larger public goal, the incidental benefit to private entities cannot invalidate it.

F. Conclusion

7. After considering the rival submissions and the material on record, we are of the view that the present writ petition is wholly misconceived and devoid of merit. The acquisition proceedings have been carried out in substantial compliance with the provisions of the Act, 1956. The issuance of two Section 3D notifications was necessitated by practical difficulties arising from obstruction by the landowners themselves. There has been no change in alignment and no mala fides have been established.

7.1. The petitioner was granted full opportunity to file objections under Section 3C, which she failed to avail within the statutory period. The land has vested absolutely in the Central Government by virtue of Section 3D(2), and the said vesting cannot be challenged in view of the bar contained in Section 3D(4) of the Act, 1956.

7.2. Insofar as the grievance regarding determination of compensation is concerned, an adequate and efficacious alternative remedy by way of arbitration under Section 3G(5) of the Act, 1956 is available to the petitioner. She is at liberty to pursue that remedy in accordance with law.

7.3. We may also observe that the project of widening and four-laning of NH-334D (Aligarh-Palwal Section) is of immense public importance and is intended to serve the larger public interest. Individual hardship, howsoever genuine, cannot be permitted to defeat or delay such projects of national importance. The constitutional courts must maintain a delicate balance between public interest and private rights, and when there is a conflict between the two, public interest must prevail, subject of course to payment of just and fair compensation to the affected persons.

7.4. We are conscious of the fact that the petitioner and her family have invested substantial resources in constructing the hotel and that the hotel may be her source of livelihood. However, the law provides for payment of adequate compensation for land as well as structures. If the petitioner feels that the compensation awarded is inadequate or that the land has been wrongly classified as agricultural when it should have been treated as commercial, she has an effective remedy under Section 3G(5) of the Act, 1956 to seek arbitration and enhancement of compensation. We clarify that all rights and contentions of the petitioner in this regard are kept open.

F. Final ORDER

8. For the reasons stated above, the writ petition is **dismissed**. However, it is clarified that the petitioner shall be at liberty to seek enhancement of compensation, if so advised, by invoking the arbitration mechanism provided under Section 3G(5) of the Act, 1956, in accordance with law.

8.1. It is further clarified and emphasized that this judgment shall not be construed as an expression of opinion on the merits of the petitioner's claim for compensation or on the correctness of the classification of land, the nature and valuation of structures, or any other aspect of the award dated 15.02.2025. This Court has consciously refrained from examining the award in detail as all such issues fall within the domain of the arbitration proceedings under Section 3G(5) of the Act, 1956. All such issues shall be decided by the appropriate forum on their own merits in accordance with law, uninfluenced by any observations made in this judgment, which relate solely to the validity of the acquisition proceedings and not to the quantum or mode of determination of compensation.

(2026) 1 ILRA 1167
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 29.01.2026

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Application U/S 482. No. 3237 of 2020

Jyoti Kamal & Ors.

...Applicants

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for consideration

Can the High Court embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint?

Headnotes

Code of Criminal Procedure-sec. 482 Cr.P.C.-Mini trial -Complainant is an IPS officer - a news was telecast on News 18 Punjab/Haryana/Himachal Pradesh projecting that he was involved in earning illicit money from criminals- which has lead to loss of reputation -allegation that the applicants have telecast the aforesaid news intentionally and deliberately- while examining an FIR/complaint- the court cannot embark upon an enquiry as to the reliability or genuineness of the allegations - Court is not required to conduct the mini-trial. **Application rejected.** (E-9)

Case Law Cited

1. Neelu Chopra And Another vs. Bharti, reported in (2009) 10 SCC 184;
2. Jawaharlal Darda And others v. Manoharrao Ganpatrao Kapsikar And Another, reported in (1998) 4 SCC 112
3. Aroon Purie v. State (NCT of Delhi) and Others, reported in 2022 SCC OnLine SC 1491
4. Vineet Jain vs. NCT of Delhi & Ors. reported in 2011 SCC OnLine Del 4312
5. Indian Potash Ltd.vs. Media Contents and Communication Services (India) Pvt. Ltd. And Another, reported in 2019 SCC OnLine Del 11991

6. R.Ramasubramanian vs. City Public Prosecutor, reported in 2020 SCC OnLine Mad 27227
7. Vijay and Another vs. Ravindra Ghisulal Gupta, reported in 2022 SCC OnLine Bom 1315
8. Sanjay Dixit vs State of U.P. Thru. Addl. Chief Secy. Home Deptt.Lko. And another -APPLICATION U/s 482 No. 6926 of 2023
9. Amitabh Yash Vs. Manoj Rajan Tripathi & Ors.- Special Leave to Appeal (Crl.) No. 14790 of 2023
10. Subramanian Swamy Vs. Union of India, reported in (2016) 7 SCC 221
11. CBI Vs Aryan Singh, reported in 2023 SCC OnLine SC 379
12. Sant Lal Gupta Vs. Modern Coop. Group Housing Society Ltd., reported in (2010) 13 SCC 336;
13. Neeharika Infrastructure (P) Ltd. v. State of Maharashtra, reported in 2021 SCC OnLine SC 315
14. Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd., reported in (2016) 10 SCC 458
15. Gimpex (P) Ltd. v. Manoj Goel, reported in (2022) 11 SCC 705.

List of Acts

Code of Criminal procedure, 1973

List of Keywords

Mini-trial; defence of the accused.

Appearances of parties

Counsel for Applicant(s) : Nadeem Murtaza, Anjani Kumar Mishra Counsel for Opposite Party(s) : G.A., Ishan Baghel, Mohd. Khalid

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

1. Heard Shri Nadeem Murtaza, learned counsel for the applicants, Sri Rao Narendra Singh, learned AGA-I for the State and Shri Ishan Baghel, learned counsel for opposite party no.2.

2. The present application under Section 482 of Code of Criminal Procedure, 1973 has been filed seeking quashing of impugned summoning order dated 12.12.2018 passed by Additional Chief Judicial Magistrate, Court No. 32, Lucknow (in short 'Magistrate') in Complaint Case No. 1297 along with entire criminal proceedings arising out thereof.

3. It is the case of the applicants that the Applicant Nos. 1 to 3 were working as Executive Editor, Crime Reporter and Assistant News Editor, respectively, in the News18 Channel. It has been submitted that the Applicant No. 1 was not involved in airing the news in the Channel on 20.09.2017. Also, both the channels i.e. News18 Punjab/Haryana/Himachal Pradesh and News18 Uttar Pradesh/Uttarakhand are owned and operated by TV18 Broadcast Limited.

4. It has been stated that the allegations in the complaint dated 28.05.2018 are that the Opposite Party No.2/Complainant is an IPS officer of the UP Police and was then working as IG, STF, Uttar Pradesh and posted in Lucknow and, on 20.09.2017 at about 07:45 pm, a news was telecast on News 18 Punjab/Haryana/Himachal Pradesh projecting that the Opposite Party No.2 was involved in earning illicit money from criminals, which has lead to loss of reputation of Opposite Party No.2. It has been further alleged that the Applicants have telecast the aforesaid news intentionally and deliberately.

5. It has been further stated that the news was reported in various national newspapers that the mastermind of Nabha Jail Break, Gurpreet Singh alias Gopi Ghanshyampurua was arrested by the UP Police and was later set free by a senior police officer of UP Police in lieu of money. This incident was also covered by renowned newspapers like The Tribune and Dainik Jagran on 18.09.2017.

6. It has been further stated that as the matter was reported in various newspapers in the country and several news channels, where-after, the Principal Secretary, Home Department, Uttar Pradesh Government, Lucknow ordered that an inquiry be conducted by Additional Director General of Police (Law and Order), Uttar Pradesh to ascertain the veracity of the incidents reported by the media. The inquiry was concluded on 28.09.2017 and the Opposite Party No.2 was exonerated from all the charges.

7. It has been further stated that the allegations of the Opposite Party No.2 in his complaint, dated 28.05.2018, are totally false as the news telecast by the Channel on 20.09.2017 at 07:45 pm did not contain any news that could defame the Opposite Party No.2.

8. It has been further stated that the Channel has done fair, unbiased and bona fide reporting of the whole incident. Even in their telecast on 20.09.2017 at 07:45 pm, the Channel did not attribute any role to the Opposite Party No.2 in setting Gurpreet Singh alias Gopi Ghanshyampurua free.

9. It has been further stated that after recording the statement under Section 200 CrPC of the Complainant and the statements under Section 202 CrPC of two witnesses namely Anil Kumar Singh and Ramendra Singh Rathore and after going through the entire record, the summons have been issued by the trial Court without application of mind.

10. Shri Nadeem Murtaza, learned counsel for the applicants has stated that the discussion between the two persons has been telecast by the news channel as it is, therefore, no offense is made out against the Applicants because the Applicants have not stated on their behalf.

11. It has been further submitted that the telecast material is different from the telecast of the other news channels, therefore, the Applicants may not be held to be tried.

12. To buttress his submissions, he has placed reliance on the judgments passed by Hon'ble Apex Court in the case of **Neelu Chopra And Another vs. Bharti**, reported in (2009) 10 SCC 184; **Jawaharlal Darda And others v. Manoharrao Ganpatrao Kapsikar And Another**, reported in (1998) 4 SCC 112 and **Aroon Purie v. State (NCT of Delhi) and Others**, reported in 2022 SCC OnLine SC 1491, the judgments of Delhi High Court in **Vineet Jain vs. NCT of Delhi & Ors.** reported in 2011 SCC OnLine Del 4312 and **Indian Potash Ltd.vs. Media Contents and Communication Services (India) Pvt. Ltd. And Another**, reported in 2019 SCC OnLine Del 11991, the judgment of High Court of Madras in **R.Ramasubramanian vs. City Public Prosecutor**, reported in 2020 SCC OnLine Mad 27227, the judgment of High Court of Bombay in **Vijay and Another vs. Ravindra Ghisulal Gupta**, reported in 2022 SCC OnLine Bom 1315 and the judgment of this Court in **Sanjay Dixit vs State of U.P. Thru. Addl. Chief Secy. Home Deptt.Lko. And another: APPLICATION U/s 482 No. 6926 of 2023**.

13. On the other hand, Shri Ishan Baghel, learned counsel for opposite party no.2 has submitted that the Opposite Party No.2 is an officer of Indian Police Services and currently serving as an Additional Director General (ADG) of Special Task Force (STF) and Law & Order in the State of Uttar Pradesh and during the 25 years of service, he has been awarded several awards including three Gallantry Medals, Police medal for meritorious services etc.,.

14. It has been further submitted that the News18 Punjab is a news channel and its news are telecast on various satellite TVs in India. They telecast their news in Hindi as well in English Language. It also telecasts in Uttar Pradesh where the Opposite Party No.2 permanently resides. The Applicant No. 1 namely Jyoti Kamal was the then Editor News 18 Punjab; Applicant No. 2 namely Shantosh Sharma was the then Reporter of News 18 Punjab; Applicant No. 3 namely Gaurav Shukla was the then Anchor of News 18 Punjab. They are all responsible and manage the telecasting of particular news on their channel and the complaint has been filed for the subject matter which they have telecast.

15. It has been further submitted that on dated 20.09.17, on the news at 07:45 PM a news was telecast relating to the complainant, projecting him that the complainant was involved in earning illicit money from criminals. In the said news the following words were spoken and by Applicant No. 3 - "STF के IG अमिताभ यश पैसा लेकर पंजाब के दहशतगर्दों को छोड़ देता है"

16. It has been further submitted that a high-level inquiry committee was constituted on 28.09.2017 and the report was submitted by the committee and the complainant has been exonerated from all the charges after detailed inquiry.

17. It has been further submitted that after publication of the said news from the applicants channel, there is no denial of the publication of news by the Applicants. Aspersions made by the news channel is an opinion and amounts to imputation. The benefit of exceptions of Section 499 of IPC cannot be liked by this Court at the stage of Section 482 CrPC.

18. It has been further submitted that the same subject matter and news was telecast by different channels i.e. Bharat Samachar, e-24, etc. The accused in the telecast news by e-24 were summoned and they filed **Application U/s 482 No. 1109 of 2020** and the application was allowed on 11.09.2023 and against the said judgment dated 11.09.2023, the Opposite Party No.2 filed **Special Leave to Appeal (Crl.) No. 14790 of 2023 (Amitabh Yash Vs. Manoj Rajan Tripathi & Ors.)** before the Hon'ble Supreme Court, which was allowed on 05.03.2024. The order dated 05.03.2024 is quoted below: -

"1. Leave granted

2. Despite notice served, none appears for respondent Nos.1 to 5.

3. Learned counsel appearing for the appellant submitted that the High Court while passing the impugned order was not informed of the earlier order passed by the Coordinate Bench in Case Application No.2315/2019 dated 04.07.2022 by which a similar petition preferred by another news channel agency was dismissed. The learned counsel further submitted that the High Court has committed an error on fact in holding that the Inquiry Report was not placed before the Learned Magistrate. For the aforesaid purpose, the learned counsel has drawn our attention to the

order passed by the Learned Magistrate. Thirdly, it is submitted that, in a case of this nature, the discretionary relief by invoking Section 482 of the Code of Criminal Procedure, 1973 ought not to have been invoked.

4. We have perused the earlier order passed by the Coordinate Bench of the High Court. The said case also emanates from the publication made by a different news channel, as in the present case. Secondly, the Inquiry Report was taken note of by the Learned Magistrate and, therefore, there was a factual error committed by the High Court in the impugned order.

5. In view of the aforesaid facts, we have no hesitation in setting aside the impugned order. Accordingly, the appeal stands allowed and the impugned order is set aside.

6. Pending application(s), if any, shall stand disposed of.”

19. It has been further submitted that the same news was telecast in Bharat Samachar and the accused-reporter Abhishek Mishra was summoned in Case No. 1305 of 2018 by the Magistrate. He challenged the summoning order dated 12.12.2018 passed therein by way of **Application U/s 482 No. 2315 of 2019** and the application was dismissed by this Court on 04.07.2022 and the Hon^{ble} Supreme Court has also taken note of the fact in the order dated 05.03.2024, quoted above.

20. It has been further submitted that the co-ordinate Bench has taken similar view by dismissing the application of the other news channels by whom the same news was telecast. This Court cannot weigh the evidences and do mini-trial and the application filed by the applicants is liable to be rejected.

21. He has placed reliance on the judgment of Hon^{ble} Supreme Court passed in **Subramanian Swamy Vs. Union of India**, reported in (2016) 7 SCC 221; **CBI Vs Aryan Singh**, reported in 2023 SCC OnLine SC 379; **Sant Lal Gupta Vs. Modern Coop. Group Housing Society Ltd.**, reported in (2010) 13 SCC 336; **Neeharika Infrastructure (P) Ltd. v. State of Maharashtra**, reported in 2021 SCC OnLine SC 315, **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.**, reported in (2016) 10 SCC 458 and **Gimpex (P) Ltd. v. Manoj Goel**, reported in (2022) 11 SCC 705.

22. Heard Shri Nadeem Murtaza, learned counsel for the applicants, Sri Rao Narendra Singh, learned AGA-I for the State and Shri Ishan Baghel, learned counsel for opposite party no.2.

23. After going through the record, I find that the issue of the publication of the present case has invited the attention of Hon^{ble} Supreme Court in **Special Leave to Appeal (Crl.) No. 14790 of 2023**. The Hon^{ble} Supreme Court in the order dated 05.03.2024, quoted above, has passed the dictum that the case of opposite party no.1 also emanates from the publication made by a different news channel, as in the that case. Hon^{ble} Supreme Court has observed that Inquiry Report by which Complainant/Opposite Party No.2 was exonerated was taken note of by the Magistrate and, the Magistrate had considered the relevant document and passed the summoning order based on records. Hon^{ble} Supreme Court did not find any error in the summoning order.

24. It is relevant to be mentioned here that the same news was telecast in the news channel News 18 Punjab and it is serious allegation of Opposite Party No.2 that his image is lowered down in the eyes of the other. His statement under Section 200 CrPC and the statements of witnesses

under Section 202 CrPC have been considered by the Magistrate and thereafter, the summons have been issued.

25. After going through the aforesaid factual aspect, this Court cannot weigh the evidences. Certainly, the trial is required. This Court, under Section 482 CrPC, cannot record the finding whether the applicants are innocent or not. In the case of **Aryan Singh (Supra)**, Hon'ble Supreme Court has categorically held that the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused.

26. The Court is not required to conduct the mini-trial, at this stage of discharge/quashing of the criminal proceedings. Similarly, in the case of **Sampelly Satyanarayana Rao (Supra)**, Hon'ble Apex Court has observed that while dealing with a quashing petition, the court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at that stage. The court, considering the prayer for quashing does not adjudicate upon a disputed question of fact. Similarly, in the case of **Neeharika Infrastructure (P) Ltd. (Supra)**, law is propounded by Hon'ble Supreme Court that while examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

27. After aforesaid factual and legal discussion and in view of observations made by Hon'ble Apex Court in **Special Leave to Appeal (Crl.) No. 14790 of 2023**, this Court is of the opinion that the case requires trial and this Court, in exercise of powers under Section 482 CrPC, cannot interfere in the case.

28. The application is accordingly rejected.

29. No order as to costs.

(2026) 1 ILRA 1172
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.01.2026

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Habeas Corpus Writ Petition No. 35 of 2026

Umang Rastogi & Anr.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Whether arrest of an accused has been made without following the procedure established by law, and the police officials have acted in high handed manner and when it was pointed out to the learned Magistrate, he

has also not applied his judicial mind to the requirements of law before affecting arrest of petitioner no. 1 and rejected the prayer of petitioner.

Head Notes

The Constitution of India, 1950-Article 22(1) & 226; The Code of Criminal Procedure-1973-Sections 50 & 50A; The Bharatiya Nyaya Sanhita, 2023-Sections 47 & 48- The arrest memo does not contain any column regarding grounds of arrest of the petitioner- Clear non-compliance of the mandate under Section 50 of the Code which has been introduced to give effect to Article 22(1) of the Constitution of India, 1950- The arrest of the petitioner was absolutely illegal and against the requirements of the arrest memo prepared by respondents themselves. The purpose of preparing the arrest memo was frustrated by the SubInspector of Police.

Held- The violation of the aforesaid legal provisions by any police officer, while affecting arrest an accused, by not disclosing the grounds of arrest as per clause 13 of the memo of arrest, would amount to the misconduct of dereliction of duty by police official concerned and he shall be liable for being proceeded departmentally, after being placed under suspension, so that he may not perpetrate this illegality any more- The impugned remand order and order dated 27.12.2025 passed by Civil Judge (Senior Division), F.T.C. / Gautam Buddhanagar in Case Crime No. 750 of 2025 under Section 317(2) and 317(4), P.S.- Birsakh, District- G.B. Nagar, are hereby quashed- Habeas Corpus petition allowed. **(Para 14, 16 & 19)** (E-15)

Case Law Cited

Gautam Navlakha vs. National Investigation Agency (2022) 13 Supreme Court Cases 542; Priya Indoria vs. State of Karnataka and others (2024) 4 SCC 749; Mihir Rajesh Shah vs. State of Maharashtra and another (2025) SCC Online SC 2356; Anwar Dhebar vs. State of U.P. and 2 others in Criminal Misc. Writ Petition No. 12507 of 2024; Ajit Khan More vs. State of Maharashtra, through Inspector of Police of Wadgaon Nimbalkar Police Station, 2025 SCC Online Bom 2899; Km. Rachna and another and State of U.P. and 4 others, in Habeas Corpus Writ Petition No. 362 of 2020 ;Kanu Sanyal vs. District Magistrate, Darjeeling and others (1974) 4 SCC 141

List of Acts

The Constitution of India, 1950; The Code of Criminal Procedure-1973; The Bharatiya Nyaya Sanhita, 2023

List of Keywords

Arrest absolutely illegal; Against the requirements of the arrest memo prepared; Non-compliance of the mandate under Section 50 CrPC; Sections 47& 48 BNS;

Case Arising From

Remand order dated 27.12.2025 passed by Civil Judge (S.D.) F.T.C./ A.C.J.M., Gautam Buddhanagar in in Case Crime No. 750 of 2025 under Section 317(2) and 317(4), P.S.- Birsakh, District- G.B. Nagar

Appearances for Parties

Counsel for Petitioners(s) : Raghav Dev Garg

Counsel for Respondent(s) : G.A

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

1. Counter affidavit filed on behalf of State is taken on record.

2. Heard Sri Anand Kumar, Sri Aditya Giri, Sri Raghav Dev Garg, learned counsel for the petitioners; Sri Kartikey Saran, learned Additional Advocate General assisted by Ms. Manju Thakur, learned A.G.A.-Ist for the State.

3. The above noted habeas corpus writ petition has been filed praying for following reliefs: -

"(i) Issue a writ order or direction in the nature of Habeas Corpus directing the respondents herein to produce and release the corpus / petitioner no. 1 from their illegal custody, while declaring the arrest, detention and remand of the petitioner no. 1 as illegal, null and void for not following the directions of the Hon'ble Supreme Court in Mihir Rajesh vs. State of Maharashtra and Another;

(ii) Issue a writ, order or direction in the nature of certiorari quashing the remand order dated 27.12.2025 passed by Civil Judge (S.D.) F.T.C./ A.C.J.M., Gautam Buddhanagar.

(iii) Issue a writ, order or direction in the nature of mandamus to initiate departmental enquiry upon the actions of errant police officials of respondent no. 1.

(iv) Issue any other writ, order or direction, which this Hon'ble Court deems fit and proper in the facts and circumstances of the present case.

(v) To award the cost of the petition."

4. The brief facts of the case are that on 28.11.2025 at about 05:40 p.m, the petitioner's father, a permanent resident of Haldwani, Uttarakhand, was unlawfully abducted by Station House Officer, Police Station- Bistrakh, District- Gautam Buddhanagar, from business premises of the petitioners at Laxmi Nagar, Delhi. The petitioner's father was kept in illegal custody at Police Station- Bistrakh, Gautam Buddh Nagar, U.P., for 5 days. During his illegal detention, evidence was fabricated and F.I.R. No. 940 of 2025 was registered under Section 317(2) B.N.S against the father of petitioners on 03.12.2025 and he was belatedly produced before learned Magistrate. The petitioner's father filed a writ petition before the Delhi High Court and out of vengeance, the police arrested petitioner no. 1 without providing him any ground of arrest on 26.12.2025 from Haldwani, Uttarakhand. The petitioner no. 1 was taken before remand Magistrate at District Court, Surajpur at Gautam Buddhanagar on 27.12.2025 and no copy of arresting memo was provided to him. His counsel moved an application for seeking his release on the aforesaid ground on the same day which was rejected by the learned Magistrate on 27.12.2025. Hence, the petitioner has approached this court challenging the order of illegal remand dated 27.12.2025 passed and illegal arrest memo.

5. Learned counsel for the petitioner has submitted that it is clear from the above facts of the case that the police officials have acted in high handed manner and when it was pointed out to the learned Magistrate, he has also not applied his judicial mind to the requirements of law before affecting arrest of petitioner no. 1 and rejected the prayer of petitioner no. 1.

6. On the basis of counter affidavit filed by State the maintainability of the habeas corpus petition has been questioned by learned Additional Advocate General on the ground that it is not illegal arrest but arrest in accordance with law and the procedure of law has been followed in making the arrest of petitioner no. 1. Petitioner no. 1 is in judicial custody and therefore, his custody cannot be said to be illegal. It has been submitted that as per Annexure C.A.-5, which is the arrest memo of the petitioner no. 1, full compliance of the requirements of a valid memo of arrest

has been made while affecting the arrest of the petitioner no. 1. It has been argued that the habeas corpus petition is devoid of merits and deserves to be dismissed. The petitioner no. 1 has criminal history of six cases as per DCRB report and therefore, he does not deserves any latitude from this court.

7. After considering the pleadings of the parties and the rival submissions, we find that the crux of the dispute between the parties is that the petitioner no. 1 was arrested without disclosure of grounds of arrest in the arrest memo brought on record as Annexure C.A.-5 with the counter affidavit and it was also not supplied to the petitioner no. 1, though his signature was taken thereon. It is being reproduced hereinbelow :-

गिरफ्तारी मेमो

प्र. सू. रि. संख्या 750/2025 दिनांक 26.12.2025 धारा 317(2), 317(4) B.N.S.S

(थाना- बिसरख, जनपद- गौतम बुद्ध नगर)

(भारतीय नागरिक सुरक्षा संहिता, 2023 की धारा 36 के अनुसार)

(माननीय सर्वोच्च न्यायालय के निर्देशनुसार)

1.	गिरफ्तार व्यक्ति का नाम, उपनाम तथा उम्र	उमंग डॉक्टर विनय रस्तोगी
2.	गिरफ्तार व्यक्ति के माता / पिता / पति का नाम	विनय रस्तोगी
3.	गिरफ्तार व्यक्ति का मो. नं. / आधार सं.	
4.	गिरफ्तार व्यक्ति का वर्तमान पता	मकान नं. 11B गली नं.2, थाना लक्ष्मी नगर दिल्ली
5.	गिरफ्तार व्यक्ति का स्थायी पता	उपरोक्त
6.	प्र . सू . रि. संख्या धारांतर्गत थाना-	
7.	गिरफ्तारी का स्थान	शान्ति ज्वेलर्स लाल डाठ रोड , थाना - मुखानी, नैनीताल
8.	गिरफ्तारी की तारीख और समय	26/12/2025 16:40
9.	गिरफ्तारी एवं रखे जाने के स्थान के बारे में जिसे भी सूचित किया है उसका नाम, पता, ईमेल आईडी और फ़ोन नंबर / सूचना का माध्यम (धारा 48(1) BNSS)	विनय रस्तोगी 8279806914
10.	नोडल पुलिस अधिकारी को सूचना देने का विवरण (धारा 48(1) BNSS)	ACP दीक्षा सिंह - 8595902546
11.	गिरफ्तारी करने वाले अधिकारियों का नाम, पद और PNO संख्या	SI 942650602

12.	गिरफ्तारी का कारण	वांछित बरामदगी
A.	पुलिस अधिकारी की उपस्थिति में संज्ञेय अपराध कारित करने के कारण (धारा 35(1) BNSS)	
B. (i)	ऐसे व्यक्ति को कोई अग्रेतर अपराध करने से निवारित करने के लिए	✓
(ii)	अपराध के उचित अन्वेषण के लिए	
(iii)	ऐसे व्यक्ति को अपराध के किसी साक्ष्य को मिटाने या ऐसे साक्ष्य में किसी भी प्रकार का छेड़छाड़ निवारित करने के लिए	✓
(iv)	ऐसे व्यक्ति को मामले के तथ्यों से परिचित किसी व्यक्ति को उत्प्रेरित करने, धमकी देने से निवारण करने के लिए ताकि उसे न्यायालय या पुलिस अधिकारी के समक्ष ऐसे तथ्य को प्रकट करने से रोका न जा सके ।	
(v)	व्यक्ति जब ऐसा व्यक्ति गिरफ्तार नहीं किया जाता है तब उसकी उपस्थिति न्यायालय में जब कभी अपेक्षित हो सुनिश्चित नहीं की जा सकती है ।	
13.	गिरफ्तारी के आधार	विवरण अंकित करें
i.	गिरफ्तार किये गए व्यक्ति के बयान एवं साक्ष्यों के साथ साथ वादी मुकदमा दिए गए साक्ष्यों के आलोक में कैसे गिरफ्तारी आवश्यक है ।	श्रीमान जी, अभियुक्त उमंग रस्तोगी s/o विनय रस्तोगी भिवाजी उपरोक्त को मुकदमा उपरोक्त के जुर्म व धारा से अवगत कराकर नियमों का पालन करते हुए गिरफ्तार किया गया है, अभियुक्त की गिरफ्तारी की सूचना उसके पिता विनय रस्तोगी को दूरभाष के जरिये दी गयी है तथा अभियुक्त को उसके विधि विशेषज्ञ वकील से मिलने का मौका देकर जमानती एवं जमानत के अधिकारों से अवगत कराया
ii.	वह समस्त सामग्री जिससे गिरफ्तार व्यक्ति की अपराध में संलिप्तता स्पष्ट है ।	
iii.	वह समस्त सामग्री / बरामदगी जिसके आधार पर उक्त अपराध में गिरफ्तार किये गए व्यक्ति की गिरफ्तारी की आवश्यकता है ।	
iv.	विवेचनाधिकारी द्वारा गिरफ्तार किये गए व्यक्ति के सम्बन्ध में गिरफ्तारी के समय तक एकत्र की गयी समस्त सामग्री जिससे गिरफ्तार करने की आवश्यकता हुई ।	

v.	अन्य ऐसी सामग्री दस्तावेज साक्ष्य व इलेक्ट्रॉनिक साक्ष्य आदि जो की गिरफ्तार किये गए व्यक्ति से सम्बंधित है, का विवरण ।	
vi.	गिरफ्तार किये गए व्यक्ति के सम्बन्ध में बी. एन. एस. की किन किन धाराओं में सामग्री / साक्ष्य है , जो की गिरफ्तारी के लिए आवश्यक है , का विवरण ।	
14.	संज्ञेय व जमानती मामलों में गिरफ्तारी पर जमानत के अधिकार से अवगत कराया गया या नहीं (धारा 47(2) BNSS)	
15.	शरीर पर कोई चोट अथवा अभिघात आदि की निशान	
A.	गिरफ्तारी के दौरान	
B.	या अन्यथा	
16.	यदि गिरफ्तार व्यक्ति को उसके विधिक अधिकारों / उसका / उसकी पसंद के अधिवक्ता से मिलने के बारे में बताया गया ? (धारा 38 BNSS)	हाँ

8. Learned counsel for the petitioners submits that it is clear from the above arrest memo that it is not in accordance with the requirements of clause 13 of the arrest memo hence the arrest and detention of petitioner no. 1 is illegal and therefore the habeas corpus writ petition filed by petitioner no. 2 for seeking release of petitioner no. 1 from illegal custody is maintainable. He has relied upon the judgment of Supreme Court in the case of **Gautam Navlakha vs. National Investigation Agency (2022) 13 Supreme Court Cases 542** in support of his contention. He has also made reliance on the judgments of the Apex Court in the cases of **Priya Indoria vs. State of Karnataka and others (2024) 4 SCC 749** and **Mihir Rajesh Shah vs. State of Maharashtra and another (2025) SCC Online SC 2356**. Reliance on the judgment of this court in the case of **Anwar Dhebar vs. State of U.P. and 2 others in Criminal Misc. Writ Petition No. 12507 of 2024** and judgment of the Bombay High Court in the case of **Ajit Khan More vs. State of Maharashtra, through Inspector of Police of Wadgaon Nimbalkar Police Station, 2025 SCC Online Bom 2899**, has also been made.

9. Learned Additional Advocate General has relied upon the judgment of this court in the cases of **Km. Rachna and another and State of U.P. and 4 others, in Habeas Corpus Writ Petition No. 362 of 2020** and **Kanu Sanyal vs. District Magistrate, Darjeeling and others (1974) 4 SCC 141**.

10. After going through the authorities cited at Bar, we find that this court can entertain a habeas corpus writ petition, if it is demonstrated before the court that the arrest of an accused has been made without following the procedure established by law. The Apex Court in the case of Mihir Rajesh Shah (Supra) has clearly held in paragraph 46 that to achieve the objective of Article 22(1) of the Constitution of India, the grounds of arrest must be informed to every person arrested. In paragraph 49 it was held that the ground of arrest should be furnished to the arrestee in writing. Breach of any such requirements will render the arrest of arrestee illegal.

11. We further find that earlier there was no definite proforma of memorandum of arrest in the state of Uttar Pradesh and the investigating officer used to make his own memo of arrest and arrest of accused was made on its basis. Finding total anarchy in this regard, this court passed number of orders and thereafter the Director General of Police of State of U.P., got a proforma of arrest memo prepared and the same was directed to be circulated to all the Police Commissioners of State / all the Senior Superintendents of Police / Superintendents of Police of the State of U.P. Further all the Additional Inspector Generals of Police in the State, Zonal Additional Inspector Generals of Police and all the Police, Deputy Inspector Generals of Police of State of U.P were informed about the new arrest memo by the Director General of Police of the State by his circular dated 25.07.2025 reproduced hereinbelow :-

" विषय :- मा* उच्च न्यायालय, इलाहाबाद द्वारा क्रिमिनल मिसलेनियस रिट पेटिशन संख्या - 934 / 2025 मंजीत सिंह उर्फ इन्दर उर्फ मंजीत सिंह चन्ना बनाम उत्तर प्रदेश राज्य में दिए गए निर्देश के अनुपालन में "गिरफ्तारी मेमो" तथा "व्यक्तिगत तलाशी मेमो " नए प्रारूप में तैयार किये जाने के सम्बन्ध में निर्देश ।

प्रिय महोदय / महोदया,

क्रिमिनल मिसलेनियस रिट पेटिशन संख्या - 934/ 2025 मंजीत सिंह बनाम उत्तर प्रदेश राज्य व अन्य में माननीय उच्च न्यायालय इलाहाबाद द्वारा पारित आदेश दिनांकित 09.04.2025 (छायाप्रति संलग्न) में माननीय उच्च न्यायालय द्वारा मु .अ. सं. 77/2024 उपरोक्त के अभियुक्त मंजीत सिंह उर्फ इन्दर उर्फ मंजीत सिंह चन्ना की गिरफ्तारी के दौरान दंड प्रक्रिया संहिता की धारा 50 तथा 50A / B.N.S.S., 2023 की धारा 47 तथा 48 का अनुपालन न किये जाने पर अप्रसन्नता व्यक्त की गयी तथा गिरफ्तारी के दौरान हुयी इस प्रक्रियात्मक त्रुटि को आधार बनाते हुए अभियुक्त को रिमांड पर दिए जाने के आदेश और गिरफ्तारी को खारिज करते हुए निम्नवत आदेश पारित किया गया है -

14. In the instant matter, admittedly, no such effort had been made by the learned Magistrate to ensure adequate legal aid to the accused petitioner and appropriate opportunity of hearing at the time judicial remand. Even the arrest memo does not contain any column regarding grounds of arrest of the petitioner. This very issue is primarily the bone of contention between the parties in the instant matter. Accordingly, this, being a clear non-compliance of the mandate under Section 50 of the Code which has been introduced to give effect to Article 22(1) of the Constitution of India,

1950, we are inclined to set aside the impugned order in view of law laid down by the Apex Court in Prabir Purkayastha (supra), Pankaj Bansal (supra) and Ashish Kakkar (supra).

15. In such view of the matter, the impugned order dated 26.12.2024 is hereby set aside. The arrest of the petitioner is also quashed.

16. The petitioner shall be set at liberty, unless required in connection with any other case.

17. In light of the above, the writ petition is allowed.

18. Let the order be communicated to Director General of Police, Uttar Pradesh through Registrar General of this Court and accordingly, a circular be issued to all the Commissioners of Police / SSPs/ Sps for necessary compliance of Section 50 and 50A (now Section 47 and 48 B.N.S.S) in the light of the observations made above.

2- दंड प्रक्रिया संहिता की धारा 50 तथा 50A/B.N.S.S., 2023 की धारा 47 तथा 48 में यह व्यवस्था है की गिरफ्तारी के समय अभियुक्त को उसकी गिरफ्तारी का कारण, उसके जमानत प्राप्त करने के अधिकार तथा गिरफ्तार किये गए व्यक्ति से निकट सम्बन्धी को सूचना देने की आज्ञापक व्यवस्था निम्नवत की गयी है -

47. Person arrested to be informed of grounds of arrest and of right to bail.

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

48. Obligation of person making arrest to inform about arrest, etc., to relative or friend.

(1) Every police officer or other person making any arrest under this Sanhita shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information and also to the designated police officer in the district.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as the State Government may, by rules, provide.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.

3- सीसीटीएनएस सॉफ्टवेयर के अंतर्गत IIF-III फॉर्म संख्या - 6 गिरफ्तारी / न्यायालय समर्पण ज्ञापन (Arrest /Court Surrender Memo) का जेनरेट करने का विकल्प उपलब्ध है किन्तु यह प्रपत्र अभियुक्त की गिरफ्तारी के उपरांत समस्त सूचनाएं अंकित करने के बाद सीसीटीएनएस द्वारा generate किया जाता है। वर्तमान में अभियुक्त की गिरफ्तारी के समय मौके पर विवेचकों द्वारा अलग अलग प्रारूपों में गिरफ्तारी मेमो तैयार किये जाते हैं, जिसमे गिरफ्तारी के समय अनिवार्य रूप से पालन किये जाने वाले प्राविधानों के सम्बन्ध में की गयी कार्यवाही का विवरण अंकित करने हेतु कोई बिंदु निर्धारित नहीं है। वर्तमान प्रकरण में अभियुक्त की गिरफ्तारी के दौरान जो गिरफ्तारी मेमो तैयार किया गया उसमे अभियुक्त को उसकी गिरफ्तारी का कारण बताये जाने का कोई बिंदु निर्धारित नहीं था, जिसे प्रक्रियात्मक त्रुटि मानते हुए माननीय उच्च न्यायालय द्वारा अभियुक्त की गिरफ्तारी को अवैध पाया गया और उसे निरस्त कर दिया गया।

4- माननीय उच्च न्यायालय द्वारा पारित आदेश के क्रम में अभियुक्त की गिरफ्तारी के समय तैयार किये जाने वाले गिरफ्तारी मेमो में अंकित किये जाने वाली सूचनाओं के सम्बन्ध में अध्ययन कर रिपोर्ट प्रस्तुत करने हेतु अधोहस्ताक्षरी द्वारा एक समिति का गठन किया गया। समिति द्वारा गिरफ्तारी मेमो में अंकित की जाने वाली सूचनाओं के सम्बन्ध में विधिक स्थिति तथा माननीय सर्वोच्च न्यायालय द्वारा क्रिमिनल अपील संख्या - 3051-3052/2023 पंकज बंसल बनाम भारत संघ व अन्य, डायरी नंबर □ 42896/2023 प्रबीर पुस्तकालय बनाम एन. सी . टी दिल्ली , क्रिमिनल अपील संख्या - 621/2025 विहान कुमार बनाम हरियाणा राज्य तथा क्रिमिनल अपील संख्या - 1518/2025 आशीष कक्कड़ बनाम यू.टी. ऑफ़ चंडीगढ़ में विभिन्न तिथियों पर पारित निर्णयों का अध्ययन किया गया तथा इन निर्णयों के आलोक में सी.बी.आई तथा प्रवर्तन निदेशालय द्वारा संशोधित किये गए गिरफ्तारी मेमो का अध्ययन किया गया। समिति द्वारा अपनी रिपोर्ट के साथ अभियुक्त की गिरफ्तारी के समय तैयार किये जाने वाले गिरफ्तारी मेमो तथा व्यक्तिगत तलाशी मेमो का आलेख तैयार कर उपलब्ध कराया गया है।

5- किसी भी व्यक्ति को गिरफ्तार करने से व्यक्तिगत स्वतंत्रता का संवैधानिक अधिकार प्रभावित होता है संवैधानिक व्यवस्था के अनुसार किसी भी व्यक्ति के संवैधानिक अधिकारों का हनन कानून द्वारा स्थापित प्रक्रिया पूरी किए बिना नहीं किया जा सकता ऐसी दशा में गिरफ्तारी के संबंध में दंड प्रक्रिया संहिता की धारा 50 तथा 50A/ BNSS, 2023 की धारा 47 तथा 48 का अनुपालन अनिवार्य है।

6- BNSS, 2023 की धारा- 37 के क्रम में अधिसूचित नियमावली 2024 के नियम 6 के अंतर्गत उपनिरीक्षक या उससे उच्च पद के अधिकारी को जिला कंट्रोल रूम व थानों पर गिरफ्तार

व्यक्तियों के नाम व पते की सूचना रखने का दायित्व दिया गया है, जिसके अनुपालन में प्रत्येक थाने तथा प्रत्येक जनपद / कमिश्नरेट में इस हेतु सक्षम स्तर के अधिकारी की नियुक्ति किया जाना सुनिश्चित किया जाए। नामित अधिकारी गिरफ्तार व्यक्तियों के नाम व पते की सूचना रखने के लिए ज़िम्मेदार होंगे तथा संकलित सूचना जिला कण्ट्रोल रूम पर प्रदर्शित की जायेगी। गिरफ्तारी मेमो तैयार करते समय गिरफ्तारी की सूचना नामित अधिकारी को दिए जाने के सम्बन्ध में एक सूचना कॉलम बनाया गया है, जिसे अभियुक्त की गिरफ्तारी के समय अनिवार्य रूप में भरा जाना आवश्यक है।

7- अभियुक्तों की गिरफ्तारी के समय तैयार किए जाने वाले गिरफ्तारी मेमो तथा व्यक्तिगत तलाशी मेमो का प्रारूप परिपत्र के साथ संलग्न कर इस निर्देश के साथ प्रेषित किया जाता है कि किसी भी व्यक्ति को गिरफ्तार करते समय परिपत्र के साथ संलग्न प्रारूप में गिरफ्तारी मेमो तथा व्यक्तिगत तलाशी मेमो तैयार किया जाए तथा गिरफ्तारी नियमों में अंकित सभी प्रावधानों का अक्षरशः अनुपालन करते हुए गिरफ्तारी नियमों तथा व्यक्तिगत तलाशी नियमों में भरी जाने वाली सभी सूचनाओं को यथास्थान एवं त्रुटि रहित रूप से अंकित किया जाए। यदि अभियुक्त की गिरफ्तारी के समय कोई आपत्तिजनक यह अवैध सामग्री बरामद होती है जिसके लिए विस्तृत फर्द बरामदगी तैयार किए जाने की आवश्यकता हो तो ऐसी दशा में व्यक्तिगत तलाशी मेमो तैयार किया जाना अनिवार्य नहीं होगा बल्कि अभियुक्त के पास से बरामद सभी वस्तुओं का उल्लेख फर्द बरामदगी में ही किया जाएगा।

अतः आप सभी को निर्देशित किया जाता है की इस परिपत्र के माध्यम से दिए गए निर्देशों से समस्त विवेचकों तथा पर्यवेक्षण अधिकारियों को अवगत कराते हुए "गिरफ्तारी मेमो" तथा "व्यक्तिगत तलाशी मेमो" का प्रारूप सर्वसंबन्धित को उपलब्ध करा दे तथा इन निर्देशों का कड़ाई से अनुपालन कराना सुनिश्चित कराएं।

गिरफ्तारी मेमो

प्र . सू . रि. संख्या दिनांक धारा

(थाना-, जनपद-)

(भारतीय नागरिक सुरक्षा संहिता, 2023 की धारा 36 के अनुसार)

(माननीय सर्वोच्च न्यायालय के निर्देशानुसार)

1.	गिरफ्तार व्यक्ति का नाम, उपनाम तथा उम्र	
2.	गिरफ्तार व्यक्ति के माता / पिता / पति का नाम	
3.	गिरफ्तार व्यक्ति का मो. नं. / आधार सं.	

4.	गिरफ्तार व्यक्ति का वर्तमान पता	
5.	गिरफ्तार व्यक्ति का स्थायी पता	
6.	प्र . सू . रि. संख्या धारांतर्गत थाना-	
7.	गिरफ्तारी का स्थान	
8.	गिरफ्तारी की तारीख और समय	
9.	गिरफ्तारी एवं रखे जाने के स्थान के बारे में जिसे भी सूचित किया है उसका नाम, पता, ईमेल आईडी और फ़ोन नंबर / सूचना का माध्यम (धारा 48(1) BNSS)	
10.	नोडल पुलिस अधिकारी को सूचना देने का विवरण (धारा 48(1) BNSS)	
11.	गिरफ्तारी करने वाले अधिकारियों का नाम, पद और PNO संख्या	
12.	गिरफ्तारी का कारण	
A.	पुलिस अधिकारी की उपस्थिति में संज्ञेय अपराध कारित करने के कारण (धारा 35(1) BNSS)	
B. (i)	ऐसे व्यक्ति को कोई अग्रतर अपराध करने से निवारित करने के लिए	
(ii)	अपराध के उचित अन्वेषण के लिए	
(iii)	ऐसे व्यक्ति को अपराध के किसी साक्ष्य को मिटाने या ऐसे साक्ष्य में किसी भी प्रकार का छेड़छाड़ निवारित करने के लिए	
(iv)	ऐसे व्यक्ति को मामले के तथ्यों से परिचित किसी व्यक्ति को उत्प्रेरित करने, धमकी देने से निवारण करने के लिए ताकि उसे न्यायालय या पुलिस अधिकारी के समक्ष ऐसे तथ्य को प्रकट करने से रोका न जा सके ।	
(v)	व्यक्ति जब ऐसा व्यक्ति गिरफ्तार नहीं किया जाता है तब उसकी उपस्थिति न्यायालय में जब कभी अपेक्षित हो सुनिश्चित नहीं की जा सकती है ।	

13.	गिरफ्तारी के आधार	विवरण अंकित करें
i.	गिरफ्तार किये गए व्यक्ति के बयान एवं साक्ष्यों के साथ साथ वादी मुकदमा दिए गए साक्ष्यों के आलोक में कैसे गिरफ्तारी आवश्यक है ।	
ii.	वह समस्त सामग्री जिससे गिरफ्तार व्यक्ति की अपराध में संलिप्तता स्पष्ट है ।	
iii.	वह समस्त सामग्री / बरामदगी जिसके आधार पर उक्त अपराध में गिरफ्तार किये गए व्यक्ति की गिरफ्तारी की आवश्यकता है ।	
iv.	विवेचनाधिकारी द्वारा गिरफ्तार किये गए व्यक्ति के सम्बन्ध में गिरफ्तारी के समय तक एकत्र की गयी समस्त सामग्री जिससे गिरफ्तार करने की आवश्यकता हुई ।	
v.	अन्य ऐसी सामग्री दस्तावेज साक्ष्य व इलेक्ट्रॉनिक साक्ष्य आदि जो की गिरफ्तार किये गए व्यक्ति से सम्बंधित है, का विवरण ।	
vi.	गिरफ्तार किये गए व्यक्ति के सम्बन्ध में बी. एन. एस. की किन किन धाराओं में सामग्री / साक्ष्य है , जो की गिरफ्तारी के लिए आवश्यक है , का विवरण ।	
14.	संज्ञेय व जमानती मामलों में गिरफ्तारी पर जमानत के अधिकार से अवगत कराया गया या नहीं (धारा 47(2) BNSS)	
15.	शरीर पर कोई चोट अथवा अभिघात आदि की निशान	
A.	गिरफ्तारी के दौरान	
B.	या अन्यथा	

16.	यदि गिरफ्तार व्यक्ति को उसके विधिक अधिकारों / उसका / उसकी पसंद के अधिवक्ता से मिलने के बारे में बताया गया ? (धारा 38 BNSS)	

Arrest Memo

(Case F.I.R. _____ Dated _____ U/S _____)

(Police Station _____ District _____)

(As per Section 36 of Bhartiya Nagrik Suraksha Sanhita, 2023)

(As per direction of Hon'ble Supreme Court of India)

1.	Name with Alias and Age of Arrestee.	
2.	Name of Mother / Father / Husband of Arrestee	
3.	Mobile No. / Adhar No. of Arrestee	
4.	Present Address of the Arrestee	
5.	Permanent Address of the Arrestee	
6.	F.I.R No. _____ Sec. of Law _____ Police Station _____	
7.	Place of Arrest	
8.	Date and Time of Arrest	
9.	Name, address, email ID and phone number / mode of intimation of person to whom information has been given about arrest and place of detention (Section 48(1) B.N.S.S)	
10.	Details of information given to the Nodal Police Officer (Section 48(1) B.N.S.S)	
11.	Name, Rank & PNO No. of the officers making arrest.	
12.	Reasons for Arrest	
A.	For committing a cognizable offence in the presence of a police officer (Section 35(1)(a) B.N.S.S)	
B(i)	To prevent such person from committing any further offence	
(ii)	For the proper investigation of offence	
(iii)	To prevent such person from eliminating any witness of the offence or from tampering such witness in any manner.	
(iv)	To prevent such person from inducing, threatening or promising any person acquainted with the fact of the case so as to prevent him from disclosing such fact before the court or police officer.	
(v)	Because when such a person is not arrested then his presence in the court whenever required cannot be	

	ensured.	
	Ground of Arrest	
(i)	How is arrest necessary in the light of the statement of the arrested person and evidence as well as statement given by informant.	
(ii)	All the material from which the involvement of arrested person in the crime is clear.	
(iii)	All the material on the basis of which the arrest of the person charged with the said offence is required.	
(iv)	All material collected by the investigating officer till the time of arrest in respect of the person arrested which necessitated the arrest.	
(v)	Details of the other material collected as documentary evidence, electronic evidence, etc., relating to the person arrested.	
(vi)	Details of Sections of B.N.S.S and other Laws where evidence / material is available against the person arrested which is required for arrest.	
14.	In cognizable and bailable offences, was he informed about the right to bail ? (Section 47(2) B.N.S.S.	
15.	Whether any visible signs of trauma / injury present on the body of the arrestee? (Section 38 B.N.S.S)	
A.	During Arrest	
B.	Other	
16	Whether the arrested person has been informed about his / her legal rights / opportunity to meet a lawyer of his / her choice? (Section 38 B.N.S.S)	

The accused was thoroughly informed about the reasons and grounds of arrest and his legal rights in the language understandable to him and the directions of the Hon'ble Supreme Court and the provisions of the B.N.S.S were followed during the arrest.

Signature of the Arresting Officer

Name and Rank _____

P.S. _____

Dated _____

Received a Copy

Signature / Thumb Impression of Arrestee	Signature / Thumb Impression of Relative / Friend / Nominated Person

Name & Signature of Witnesses

S.I. No.	Name, Mobile No. and Complete Address of Witness	Signature
Witness 1		
Witness 2		

”

12. After comparing the memo of arrest of this case quoted hereinabove Annexure CA-V (in vernacular), with the new memo of arrest forming part of the circular dated 25.07.2025 of the Director General of Police, U.P., also quoted hereinabove, we find that both the memo of arrest are the same but the requirements of giving the details of the grounds of arrest, as required under clause 13(1) to (vi) of the memo, have not been complied by the Sub-Inspector of Police of respondent no. 3 in Annexure C.A.-V. Therefore, we are constrained to observe that despite clearly indicating the requirements of the ground of arrest, by the Director General of Police of the State, his own Subordinate Officer of Police is not complying the same and therefore the purpose of new arrest memo having been made and circulated to all the police officers of the State has been frustrated.

13. A bare perusal of the memo of arrest shows that the grounds of arrest mentioned in paragraph 13 have been sub-divided in six sub-clauses. In the present case, requirement of not a single clause has been fulfilled by the investigating officer of the police. He has only stated that the accused has been acquainted of the offence committed by him and the sections wherein he has been implicated, after following the procedure of arrest and information of his arrest has been given to his father, Vinay Rastogi, on telephone. He has also been informed that he can meet his counsel and he has been acquainted of his rights to obtain bail.

14. We find that the requirements of clause 13 and its sub-clauses in the memo of arrest have not been complied. None of the sub-clause of Section 13 provides that an accused should only be informed about the offence committed by him and section of his implication, but the clause aforesaid requires that accused is required to be informed about all the material from which his involvement in the crime is clear and bring material on record on the basis of which the arrest of the person charged with the said offence is required. No details of the material collected by the investigating officer, till the time of arrest of petitioner no. 1, which necessitated his arrest was disclosed. Details of other material collected, documentary or electronic, relating to person arrested was also not disclosed. Even the details of sections of B.N.S.S and other laws, their supporting material and evidence collected against the arrested accused were not disclosed in the arrest memo. Therefore, it is clear that the arrest of the petitioner no. 1 was absolutely illegal and against the requirements of the arrest memo prepared by respondents themselves. The purpose of preparing the arrest memo was frustrated by the Sub-Inspector of Police of respondent no. 3.

15. It is high time that the police officials, who are not complying the requirements of the arrest memo and violating the constitutional mandate provided under Article 22(1) of the constitution of India and further violating Section 50 and 50A Cr.P.C / 47, 48 and B.N.S.S should be sternly dealt with. The violation of the constitutional mandate, provision of Cr.P.C/ B.N.S.S and

the direction of the Director General of Police of the State of U.P dated 25.07.2025 clearly amounts to dereliction of duty on the part of the police personnel investigating this case. The empty compliance of law and justification of the same before the court, as in this case by the respondents, deserves to be discouraged.

16. It is hereby directed that the violation of the aforesaid legal provisions by any police officer, while affecting arrest an accused, by not disclosing the grounds of arrest as per clause 13 of the memo of arrest, would amount to the **misconduct of dereliction of duty by police official concerned and he shall be liable for being proceeded departmentally, after being placed under suspension**, so that he may not perpetrate this illegality any more

17. Let this order be communicated to the Director General of Police, U.P., within period of one week by the Registrar (Compliance) of this court for necessary compliance.

18. The impugned remand order and order dated 27.12.2025 passed by Civil Judge (Senior Division), F.T.C. / Gautam Buddanagar in Case Crime No. 750 of 2025 under Section 317(2) and 317(4), P.S.- Bisraakh, District- G.B. Nagar, are hereby quashed.

19. The petitioner no. 1 is directed to be set free forthwith.

20. It shall be open for the respondents to proceed against the petitioner no. 1 strictly in accordance with law.

21. The habeas corpus writ petition is *allowed*.

22. This order shall be complied by the concerned Magistrate, if a copy of this order certified by the counsel for the petitioner no. 1, downloaded from the official website of this Court is produced before him, till certified copy of this order is issued.

(2026) 1 ILRA 1187
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 21.01.2026

BEFORE

THE HON'BLE PRASHANT KUMAR, J.

RERA Appeal Defective No. 125 of 2026

Lko. Development Authority

...Appellant

Versus

Sushma Shukla

...Respondent

Issue for Consideration

- (A) Whether a private contract/settlement can override the provisions of the statute? and/or,
(B) Whether agreement, which has been signed on the dotted line can be held to be valid?

Head Notes

The Real Estate (Regulation and Development) Act, 2016-Section 18,58 & 88; The Indian Contract Act, 1872-Section 23- Complainant sought for delivery of possession with all amenities as per the registration book of the appellant and for payment of interest for a delay of five years in handing over possession, and for non-levy of GST at the time of execution of the sale deed- Any agreement whose object is to defeat the provisions of any law is unlawful and void ab initio- The appellant cannot get the advantage of the settlement entered into between the parties which are contrary to the statute. Any such settlement cannot override the rights and obligations created by statutes. Here the statute clearly lays down that if there is a delay in handing over the possession, the promoter will have to pay compensation- A contract/settlement term is not binding if purchasers were forced to accept a builder-drafted agreement just to take a possession of the property on time. In this case, the consumer, after using his life-long savings to buy a flat or a house, or after taking out a loan, would have no other option but to sign on the dotted line to take possession of the flat.

Held- The private settlement or an agreement cannot circumvent or supersede the obligations imposed on the parties by the provisions of the statute and also hold that an agreement or settlement arrived at any level of duress or is against the provisions of statute, such agreement would be void. Appeal dismissed. (E-15)

(Para 38, 40 & 46)

Case Law Cited

Krishna Bahadur v. Purna Theatre, reported in 2004 SCC OnLine SC 956; Newtech Promoters and Developers Private Ltd. v. State of U.P. reported in (2021) 18 SCC 1; Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan, reported in (2019) 5 SCC 725; Union of India v. Col. L.S.N. Murthy reported in (2012) 1 SCC 718; IREO Grace Realtech (P) Ltd. v. Abhishek Khanna, reported in (2021) 3 SCC 241;

List of Acts

The Real Estate (Regulation and Development) Act, 2016; The Indian Contract Act, 1872

List of Keywords

Private agreement; contrary to law; Void ab initio; Delay in handing over possession; Promoter will have to pay compensation; Section 23 Contract Act

Case Arising From

RERA appeal under section 58 of the Real Estate (Regulation and Development) Act, 2016 has been filed by the appellant against judgement and order dated 01.04.2025 passed by the learned Tribunal in Appeal No. 100 of 2019 (Smt. Sushma Shukla v. Lucknow Development Authority).

Appearances for Parties

Counsel for Appellant(s) : Abhishek Khare

Counsel for Respondent(s)

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

1. The instant RERA appeal under section 58 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as Act, 2016) has been filed by the appellant against judgement and order dated 01.04.2025 passed by the learned Tribunal in Appeal No. 100 of 2019 (Smt. Sushma Shukla v. Lucknow Development Authority).

Factual Matrix:

2. The appellant launched a project in the name of Srishti Apartments situated at Jankipuram Vistar, Lucknow (hereinafter referred to as project in question). The respondent applied for the allotment of a unit in the project in question and was allotted flat bearing no. 1101-G Block on the eleventh floor vide allotment letter dated 15.11.2011, which was later changed to flat no.6-G Block at the request of the respondent.

3. The total estimated cost was Rs.22,30,000/- and the respondent had opted for self finance for which he was supposed to pay 7 installments from 31.12.2011 till 31.03.2013. For this the appellant also issued No Objection Certificate in favour of the respondents on their request for taking Home Loan subject to certain terms and conditions.

4. The flat was proposed to be handed over in 24 months as per clause 2.4 of the booklet i.e., on or before 15.11.2013. As there was a delay in handing over possession, the respondent filed a complaint before the U.P. RERA on 18.09.2018 under Section 31 of the Act, 2016 against the appellant. The complainant sought for delivery of possession with all amenities as per the registration book of the appellant and for payment of interest for a delay of five years in handing over possession, and for non-levy of GST at the time of execution of the sale deed.

5. On 05.12.2018 the parties entered into some private settlement/agreement and, only thereafter the sale deed of the unit came to be executed on 18.12.2018.

6. After hearing the complaint the learned Regulatory Authority has rejected the delay interest and compensation for lack of amenities on the ground that the parties entered into a settlement with the respondents vide its order dated 07.05.2019. The relevant extract of the order is as follows :

“विश्लेषण से स्पष्ट है कि दोनों पक्षों के मध्य विचाराधीन भू-सम्पदा इकाई के अधिग्रहण सम्बन्धी कार्यवाही पूर्ण की जा चुकी है तथा दिनांक- 18.12.2018 को इस भू-सम्पदा इकाई का निबन्धीकरण भी कराया जा चुका है। सूच्य है कि यह परियोजना रेरा में पंजीकृत विवरण के अन्तर्गत दिनांक 31.12.2018 को पूर्ण की जानी थी, अतः निर्धारित अवधि में ही अधिग्रहण दिया जा चुका है तथा निबन्धीकरण की कार्यवाही पूर्ण की जा चुकी है। यह भी स्पष्ट है कि परिवादिनी द्वारा एक शपथ - पत्र (पत्रावली क्रमांक- 36) दिया गया है जिसमें उसे प्रतिवादी से किसी प्रकार की कोई शिकायत नहीं होने तथा परियोजना से पूर्ण रूप से सन्तुष्ट होने का तथ्य भी अंकित किया है।

परिवादिनी ने अनुतोष में मुख्यतः वस्तु एवं सेवा कर को नहीं लगाये जाने तथा विलम्ब के कारण आवासीय ऋण पर दिये गये ब्याज को प्रतिवादी द्वारा भुगतान किये जाने की मांग की है परन्तु परिवादिनी द्वारा दिये गये शपथ -पत्र एवं दोनों ही पक्षों के मध्य हुए सम्पत्ति विषयक निबन्धीकरण की कार्यवाही से स्पष्ट है कि अब किसी प्रकार का आर्थिक लेन -देन के प्रश्न को उठाना न्यायोचित नहीं होगा। जहां तक परिवादिनी द्वारा परियोजना में अन्य सुविधायें जैसे स्वीमिंग पूल, क्लब आदि को पूर्ण कराये जाने के अनुतोष का प्रश्न है, परिवादिनी को यह अधिकार

होगा कि यदि यह सुविधायें पूर्ण नहीं की गई हैं तो पुनः उ०प्र० भू-सम्पदा विनियामक अधिनियम के अन्तर्गत वह परिवाद संस्थित कर सकता है।

अतः परिवादिनी के परिवाद में कोई बल नहीं है। परिवादिनी यदि इन सुविधाओं के निर्माण से पूर्णतः सन्तुष्ट नहीं रहता है तो उ०प्र० रेरा अधिनियम 2016 की धारा-14 की उपधारा - 3 के अन्तर्गत अधिग्रहण प्राप्ति के 5 वर्ष तक परिवाद संस्थित कर सकता है जिसके लिए वह स्वतन्त्र है। अतः परिवादिनी के परिवाद में परियोजना समय से पूर्ण होने, इकाई के निबन्धीकरण एवं अधिग्रहण की कार्यवाही पूर्ण होने के आधार पर बलहीन पाते हुए निरस्त किया जाता है। अन्य सुविधाओं के सम्बन्ध में परिवादिनी अधिनियम की धारा 14 की उप धारा -3 के अन्तर्गत भविष्य में कार्यवाही करने के लिए स्वतन्त्र रहेगा।“

7. Thereafter, on 04.06.2019 the physical Possession of the unit was handed over to the complainant.

8. Aggrieved by the order dated 07.05.2019 passed by the learned Regulatory Authority, the complainant preferred an appeal under Section 44 of the Act, 2016 before the U.P. Real Estate Appellate Tribunal, Lucknow (hereinafter referred to as □Tribunal□).

9. After hearing the parties and considering the facts and circumstances of the case, learned Tribunal, passed the impugned judgement and order dated 01.04.2025 in Appeal No.100 of 2019. The relevant extract of the impugned judgement is as follows:

“20. Having due regard to the facts and circumstances of the case, the appeal is allowed by passing following orders:-

(i) The impugned order dated 07.05.2019 passed by the learned Regulatory Authority in Complaint No.9201819142, is set aside and quashed.

(ii) The appellant allottee shall be entitled to interest at MCLR +1% with effect from 16.11.2013 till the date of physical possession of the unit, i.e., 04.06.2019, and on the amount so computed allottee shall be entitled to interest at MCLR+1% till the date of payment; the amount to be paid within forty five days from uploading of the order on the portal;

(iii) The Regulatory Authority to proceed against the respondent under Chapter VIII for violating and not complying the mandatory obligation imposed upon the promoter under the Act, 2016.

(iv) The Registrar to transmit this order to the learned Regulatory Authority at Lucknow, for compliance.

(v) The cost of litigation is assessed at Rs.20,000/- to be paid to the appellant by the respondent promoter.

10. The aforesaid judgement and order dated 01.04.2025 passed by the learned Tribunal in Appeal No. 100 of 2019 (Smt. Sushma Shukla v. Lucknow Development Authority) has been assailed by the appellant by means of the instant appeal with the following main prayer :-

“A. Set aside the judgement dated 01.04.2025 passed by the Learned Real Estate Appellate Tribunal in Appeal No. 100 of 2019 in re: Smt. Sushma Shukla v. Lucknow Development Authority and all the other consequential orders.

10. The following substantial questions of law are to be considered and determined in this instant appeal by this court :

(A) Whether a private contract/settlement can override the provisions of the statute? and/or,

(B) Whether agreement, which has been signed on the dotted line can be held to be valid?

Submissions of the learned counsel for the appellant :

11. Learned counsel for the appellant submits that the parties had entered into a settlement, if a settlement has been arrived at, there is no question for the learned Tribunal to have granted interest on compensation at MCLR+1% w.e.f. November 16, 2013 till the date of possession taken on June 4, 2019.

12. She further submitted that while granting such relief the learned Tribunal completely ignored the settlement between the party and passed the impugned judgement and order.

13. She further submitted that the provision of Section 88 of the Act, 2016 clearly states that Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force. The provisions of the Act, 2016 would not supersede the settlement, which had been arrived at between the parties.

14. She further submitted that the appellant is not liable to pay interest to the allottee. Learned Tribunal should not have directed to initiate proceeding under Chapter VIII of the Act, 2016 merely because the appellant did not adjust delayed interest under Section 18. This was not adjusted because there was no demand made by the respondents.

15. To buttress her arguments, she placed reliance on the judgement passed by the Hon'ble Supreme Court in the matter of ***Krishna Bahadur v. Purna Theatre, reported in 2004 SCC OnLine SC 956*** and submits that the right can be waived by the party for whose benefit certain requirements or conditions had been provided by the statute subject to the conditions that no public interest is involved therein.

Analysis

16. Heard Ms. Aahuti Agarwal, Advocate holding brief of Shri Abhishek Khare, learned counsel for the appellant on admission and perused the record.

17. The learned Tribunal in para 5 of the impugned judgement and order has clarified that the facts inter se parties are not in dispute.

18. Learned Tribunal after hearing the matter considered the following questions to be adjudicated upon :-

A) Whether the appellant allottee is entitled to interest on her deposit till handing over possession of the unit in terms of proviso to section 18 (1) of the Act, 2016 and/or,

B) Whether the settlement entered into between the parties, would waive the statutory obligations cast upon the promoter to pay interest to the allottee in the event of delay till handing over possession of the unit in terms of proviso to Section 18 (1) of the Act, 2016.

19. Learned Tribunal has elaborately decided the above questions and passed the impugned judgement and order dated 01.04.2025 which has been assailed by the appellant in the instant appeal.

20. Before proceeding with the instant appeal, this Court deems it appropriate to examine with the objective of the RERA Act of 2016. The RERA Act of 2016 is introduced with the objective to ensure the accountability towards consumers, reducing fraud, imposing responsibilities and liabilities and to bring transparency in the real estate sector. The object and purpose of the statute have been clearly delineated by the Hon'ble Supreme Court ***Newtech Promoters and Developers Private Ltd. v. State of U.P. reported in (2021) 18 SCC 1***, wherein it was observed as under:

"9. It was introduced with an object to ensure greater accountability towards consumers, to significantly reduce frauds and delays and also the current high transaction costs, and to balance the interests of consumers and promoters by imposing certain responsibilities on both, and to bring transparency of the contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism. It also proposes to induct professionalism and standardisation in the sector, thus paving the way for accelerated growth and investments in the long run.

11. The Bill provides for establishment of the Authority for regulation and promotion of real estate sector, to ensure sale of plot, apartment or building or sale of real estate project in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and provide the adjudicating mechanism for speedy dispute redressal mechanism by establishing the Regulatory Authority and the adjudicating officer and in hierarchy, the Appellate Tribunal for early and prompt disposal of the complaint being instituted primarily by the homebuyers for whom this Act has been enacted by Parliament in 2016."

(emphasis added)

21. Before proceeding with the instant appeal, this Court also deems it appropriate to delve into the provisions of Section 18 of the RERA Act, 2016, which read as follows:

18. Return of amount and compensation.

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

22. After perusal of the provisions of Section 18 of the Act, 2016, it is clear that the promoter has to give a specific date for completion of the project and this date would be binding on the promoter to be taken as the date of completion of the project.

23. It is also clear from the above provision that if an allottee does not intend to withdraw from the project, he shall be paid by the promoter interest for every month of delay till the handing over of the possession at such rate as may be prescribed.

24. In this case, evidently there was a delay in completion of the project. Sale deed was executed and the possession was handed over but the certificate of completion was only received on September 25, 2019. The proviso governs those allottees, who have continued in the delayed project.

25. The legislative mandate insofar such allottees is that they are entitled to interest on their deposit till the handing over of possession of the unit. A mandatory statutory obligation is cast upon the promoter to pay the interest to such allottees. The expression employed by the legislature is 'shall be paid by the promoter'. Unlike the main provision, under the proviso allottee is not required to make a demand for the interest. In the event promoter fails to comply the mandatory obligation to pay the interest, the promoter exposes itself for penal consequences under Chapter VIII of the RERA Act, 2016.

26. As for as the settlement is concerned, the respondent is said to have entered into a settlement thereby waiving of her right to receive the money towards interest and bare perusal of the settlement shows that a cyclostyled document on which the allottee has to put the signature on the dotted line. The settlement provides that there has been no delay in completion of the project/handing over possession of the unit by the promoter. It further provides that the allottee has not suffered any financial/mental loss/harassment and that in future the allottee undertakes not to

institute any complaint/petition before any forum/court against the promoter. It also provides that the allottee shall withdraw all pending cases instituted against the promoter.

27. This is also evident that the respondent has filed a complaint before the U.P. RERA and has prayed for delivery of possession with all amenities as per the registration book of the appellant and for payment of interest for a delay of five years in handing over possession, and for non-levy of GST at the time of execution of the sale deed.

28. Later the parties entered into a settlement agreement and the U.P. RERA rejected the complaint on the very same ground.

29. On perusal of the settlement, it appears that it is one-sided settlement, wherein the details of the allottee and her signatures are on a dotted line seeking waiver of all the obligation of the promoter even though project was delayed. Evidently, a person who has put his life time savings for his dream house/flat, has no strength to fight with the builder, and also has no choice but to sign on the dotted lines on an agreement drafted by the builder, wherein he creates a situation of ☐take it or leave it☐, the flat owner will have no other alternative but to sign on the dotted lines. It will not be wrong to say that such settlement normally are executed under duress.

30. Even if the settlement is taken as binding document, this would be contrary to the proviso to Section 18 (1) of the Act, 2016. The allottee is entitled to interest till handing over possession. The promoter has to make an offer of possession of the unit to the allottee after receiving completion certificate of the project. The accounts are required to be settled by the promoter of the unit on the date of offer/possession. It is a statutory obligation mandated by law that the promoter shall pay the interest, meaning thereby the promoter is bound to compute and disclose the quantum of money towards interest admissible and due to the allottee on his deposit at the time of offer of possession. In the event promoter fails to comply the statutory obligation, the promoter exposes itself for penal consequences.

31. Though it is open for the parties to feel negotiate the terms of the settlement and if there is a settlement, it is just a private agreement between the parties.

32. Now the question is whether a private settlement between the parties can have overriding effect on the statutory provisions of law?

33. Learned Tribunal has rightly held that the statutes that are enacted to govern the society and are designed to protect their interest, ensure fairness, justice and establish the minimum standard of behavior. The settlement cannot override the rights and obligations created by statutes in favour of a party. The proviso to Section 18 (1) of the Act, 2016 casts upon the promoter a statutory obligation to pay interest for the delayed project creates a statutory right in favour of allottee to receive the amount towards interest. Any agreement/settlement circumventing the statutory provision (proviso to Section 18 (1) of the Act, 2016), cannot contradict or circumvent the statutory requirements and the mandatory legal obligations that govern to protect the interest of the allottee. The compromise/settlement or the contract must align with the statutory provisions and the

terms of the contract cannot be interpreted in a manner that would contradict the statutory requirement of Act, 2016.

34. In view thereof, the promoter cannot shirk/resile from the responsibility/liabilities under the RERA Act, 2016 as the contractual terms cannot override the mandatory statutory obligations/rights created by the Act in favour of the allottee. The promoter in the given facts, cannot take shelter behind the one sided settlement imposed upon the allottee to waive its obligations mandated and imposed upon the allottee under the proviso to Section 18 (1) of the Act, 2016. The settlement of such a nature cannot be made a condition precedent by the promoter to handover possession of the unit to the allottee. The settlement is *void ab initio*.

35. In the case of ***Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan, reported in (2019) 5 SCC 725***, Hon'ble Supreme Court after hearing the parties and perusing the records has held as under:

"6.1. In the present case, admittedly the appellant builder obtained the occupancy certificate almost 2 years after the date stipulated in the apartment buyer's agreement. As a consequence, there was a failure to hand over possession of the flat to the respondent flat purchaser within a reasonable period. The occupancy certificate was obtained after a delay of more than 2 years on 28-8-2018 during the pendency of the proceedings before the National Commission. In LDA v. M.K. Gupta [LDA v. M.K. Gupta, (1994) 1 SCC 243], this Court held that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for a consideration, it is a "service" as defined by Section 2(1)(o) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service. In Fortune Infrastructure v. Trevor D'Lima [Fortune Infrastructure v. Trevor D'Lima, (2018) 5 SCC 442, this Court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation.

6.2. The respondent flat purchaser has made out a clear case of deficiency of service on the part of the appellant builder. The respondent flat purchaser was justified in terminating the apartment buyer's agreement by filing the consumer complaint, and cannot be compelled to accept the possession whenever it is offered by the builder. The respondent purchaser was legally entitled to seek refund of the money deposited by him along with appropriate compensation.

(emphasis added)

36. Hon'ble Supreme Court in the matter of ***Newtech Promoters & Developers (P) Ltd (supra)*** has categorically held that the right of an allottee under the provisions of Section 18(1)(a) and Section 19(4) of the RERA Act to seek refund and interest on delay in handing over possession is absolute and unqualified, and is not dependent on any contingencies or stipulations contained in the agreement between the parties. The Court observed that the legislature has consciously provided this right irrespective of unforeseen events or stay orders, and that the promoter remains bound by the statute to honour these rights. The relevant para of the judgement are as follows :-

"21. If we take a conjoint reading of sub-sections (1), (2) and (3) of Section 18 of the Act, the different contingencies spelt out therein, (a) the allottee can either seek refund of the amount by

withdrawing from the project; (b) such refund could be made together with interest as may be prescribed; (c) in addition, can also claim compensation payable under Sections 18(2) and 18(3) of the Act; (d) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed.

22. Correspondingly, Section 19 of the Act spells out "Rights and duties of allottees". Section 19(3) makes the allottee entitled to claim possession of the apartment, plot or building, as the case may be. Section 19(4) provides that if the promoter fails to comply or being unable to give possession of the apartment, plot or building in terms of the agreement, it makes the allottees entitled to claim the refund of amount paid along with interest and compensation in the manner prescribed under the Act.

23. Section 19(4) is almost a mirror provision to Section 18(1) of the Act. Both these provisions recognise right of an allottee two distinct remedies viz. refund of the amount together with interest or interest for delayed handing over of possession and compensation.

24. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the court/tribunal, which is in either way not attributable to the allottee/homebuyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

(emphasis added)

37. Regarding the validity of the settlement or an agreement between the party which defeats the object of the provisions of RERA Act, 2016, this Court also deems it appropriate to delve into the provisions of Section 23 of the Indian Contract Act, 1872, which is as follows :-

23. What considerations and objects are lawful, and what not.-

The consideration or object of an agreement is lawful, unless

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent ; or

involves or implies, injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful.

Every agreement of which the object or consideration is unlawful is void.

38. The above provision of Section 23 of the Indian Contract Act, 1872 expressly states that where the object of any agreement is of such nature that if permitted or allowed it would defeat the provisions of law is void. Where the object of an agreement is intended to circumvent the operation

of a statutory provision, such an agreement is opposed to law and public policy. Thus, any agreement whose object is to defeat the provisions of any law is unlawful and *void ab initio*.

39. The agreement/settlement between the parties is void in case when it is permitted it would defeat the provisions of law. The Hon'ble Supreme Court in the matter of ***Union of India v. Col. L.S.N. Murthy reported in (2012) 1 SCC 718*** has held that an agreement is void if carrying it out requires breaking the law otherwise, courts should enforce it and not invalidate it unnecessarily. The relevant extract of the judgement is as follows:-

19. We are, therefore, of the opinion that unless the effect of an agreement results in performance of an unlawful act, an agreement which is otherwise legal cannot be held to be void and if the effect of an agreement did not result in performance of an unlawful act, as a matter of public policy, the court should refuse to declare the contract void with a view to save the bargain entered into by the parties and the solemn promises made thereunder.

(emphasis added)

40. In view of the aforesaid facts and circumstances, the appellant cannot get the advantage of the settlement entered into between the parties which are contrary to the statute. Any such settlement cannot override the rights and obligations created by statutes. Here the statute clearly lays down that if there is a delay in handing over the possession, the promoter will have to pay compensation.

41. A contract/settlement term is not binding if purchasers were forced to accept a builder-drafted agreement just to take a possession of the property on time. In this case, the consumer, after using his life-long savings to buy a flat or a house, or after taking out a loan, would have no other option but to sign on the dotted line to take possession of the flat.

42. Hon'ble Supreme Court in the matter of ***IREO Grace Realtech (P) Ltd. v. Abhishek Khanna, reported in (2021) 3 SCC 241***, has held as under :-

28. The aforesaid clauses reflect the wholly one-sided terms of the apartment buyer's Agreement, which are entirely loaded in favour of the developer, and against the allottee at every step. The terms of the apartment buyer's Agreement are oppressive and wholly one-sided, and would constitute an unfair trade practice under the Consumer Protection Act, 1986.

(emphasis added)

43. Hence it can be said that in case the clause of the agreement reflects that the agreement is one-sided agreement and particulars of the parties are written on dotted lines. This reflects that under compulsion parties have to made signature on the agreement, it cannot be binding.

44. In this case the settlement/agreement shows that it was cyclostyled agreement wherein the parties have to enter the name and execute the settlement on a dotted lines. Undoubtedly the person, who was investing a huge amount of money, signs any document to get possession of the flat as early as possible. Such one-sided agreement, which has been executed under compulsion, cannot be said to be a valid document.

45. One-sided, unfair clauses in a contract or a agreement amount to an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act, 1986. Hon'ble Supreme Court in the matter of *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan (supra)* has held as under :-

"6.8. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the agreement dated 8-5-2012 are ex facie one-sided, unfair and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2(1)(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the builder."

(emphasis added)

Conclusion

46. In view of the above discussions and considering the judgements referred above, this Court has no hesitation in holding that the private settlement or an agreement cannot circumvent or supersede the obligations imposed on the parties by the provisions of the statute and also hold that an agreement or settlement arrived at any level of duress or is against the provisions of statute, such agreement would be void.

47. In response to the question of law proposed above, it is found that no private contract/settlement can have overriding effect on the rights and obligations created by statutory provisions of law.

48. Considering the aforesaid facts and circumstances, this Court does not find any illegality or irregularity in the impugned order passed by the learned Tribunal.

49. Hence, the impugned judgement and order dated 01.04.2025 passed by learned Tribunal is hereby *upheld* and *affirmed*.

50. Accordingly, the instant appeal sans merit and is *dismissed* at the admission stage.

(2026) 1 ILRA 1198
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.01.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Transfer Application (Civil) No. 6 of 2026

Smt. Anjana Rana

...Appellant

Versus

Navin Singh

...Respondent

Issue for Consideration

The applicant has sought transfer on divorce proceedings on the ground that the applicant has instituted proceedings under Sections 12, 17, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 on 24.01.2025 before the Court of Judicial Magistrate, Firozabad, as well as proceedings under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking maintenance before the Principal Judge, Family Court, Firozabad on 17.04.2025, which are stated to be pending.

Head Notes

The Code of Civil Procedure, 1908-Section 24; The Hindu Marriage Act, 1955-Section 13- The concept of "balance of convenience" is a relevant consideration; however, it cannot be confined to the convenience of one party alone and must encompass the convenience of both parties, witnesses, the suitability of the forum having regard to the nature of evidence, and the doctrine of forum conveniens- The jurisdiction to transfer a case must be exercised with extreme care, caution, and circumspection. Mere inconvenience or relative hardship, though relevant, may not by itself constitute a decisive ground for transfer. The burden squarely lies upon the applicant to establish sufficient, cogent, and compelling grounds demonstrating that refusal of transfer would result in denial of justice.

Held- The applicant has also not placed any material on record to show any other extraordinary circumstance which may necessitate the transfer of the divorce petition. In absence of such material, the Court is of the considered view that no exceptional or compelling ground has been made out for exercise of discretionary power of transfer under Section 24 of the Code of Civil Procedure- Application dismissed. **(Para 9, 10 & 21)** (E-15)

Case Law Cited

Smt. Sudha Sharma vs. Ram Naresh Jaiswal AIR 1990 MP 320; Satyasri Fertilisers vs. E.I.D. Parry (India) Ltd AIR 2003 AP 312; P. Sadayandi Nadar vs. Venugopala Chetty AIR 1960 Ker 91; Fatema vs. Jafri Syed Husain @ Syed Parvez Jafferri AIR 2009 SC 1773; Anjali Ashok Sadhwani vs. Ashok Kishinchand Sadhwani AIR 2009 SC 1374; Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and Others (2008) 3 SCC 659; Subramaniam Swamy vs. Ramakrishna Hegde (1990) 1 SCC 4; Maneka Sanjay Gandhi and Another Vs. Rani Jethmalani 1979 (4) SCC 167

List of Acts

The Code of Civil Procedure, 1908; The Hindu Marriage Act, 1955

List of Keywords

Doctrine of forum conveniens ; Mere inconvenience or relative hardship; may not by itself constitute a decisive ground for transfer; Burden to establish sufficient, cogent, and compelling ground

Case Arising From

Case No. 1226 of 2023 (Navin vs. Anjana), instituted under Section 13 of the Hindu Marriage Act, 1955. The Applicant seeks transfer of the said proceedings from the Court of the Principal Judge, Family Court, Agra, to the Court of competent Family Court at Firozabad

Appearances for Parties

Counsel for Applicant(s) : Raghuraj Singh, Vijay Pal

Counsel for Opposite Party(s) :

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Raghuraj Singh, learned counsel for the applicant.

2. The present transfer application has been filed by the applicant, under Section 24 of the Code of Civil Procedure, 1908, seeking transfer of Case No. 1226 of 2023 (Navin vs. Anjana), instituted under Section 13 of the Hindu Marriage Act, 1955, pending before the Court of Principal Judge, Family Court, Agra, to the competent Family Court at Firozabad.

3. From a perusal of the affidavit filed in support of the application, it transpires that divorce suit bearing Case No.1226 of 2023, under Section 13 of the Hindu Marriage Act, 1955 was instituted by the opposite party on 16.05.2023 before the court of Family Judge, Agra.

4. The principal ground urged in support of the transfer application is that the applicant has instituted proceedings under Sections 12, 17, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 on 24.01.2025 before the Court of Judicial Magistrate, Firozabad, as well as proceedings under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking maintenance before the Principal Judge, Family Court, Firozabad on 17.04.2025, which are stated to be pending.

5. Learned counsel for the applicant has, however, not disputed that the aforesaid proceedings under the Protection of Women from Domestic Violence Act, 2005 and under the Bharatiya Nagarik Suraksha Sanhita, 2023 were instituted much subsequent to the institution of the divorce petition pending before the Family Court, Agra.

6. It is well settled that while considering an application for transfer of matrimonial proceedings, the Court is required to examine whether a genuine hardship, grave inconvenience, or exceptional circumstance has been established warranting transfer in the interest of justice. Mere inconvenience or preference of one party, without substantiating circumstances, does not ipso facto justify transfer of proceedings.

7. The power of transfer vested in this Court under Section 24 of the Code of Civil Procedure is discretionary in nature and enables the Court, either on the application of a party or suo motu, to transfer or withdraw any suit, appeal, or other proceeding pending before a subordinate court. However, such power is not to be exercised mechanically or as a matter of routine, but only upon due and careful consideration of the facts and circumstances of each case.

8. It is a settled principle of law that the plaintiff, being *dominus litis*, has the right to choose the forum for institution of proceedings, and such choice ought ordinarily to be respected. Interference with the forum selected by the plaintiff is an exception and not the rule. While considering a prayer for transfer, the Court is required to balance this right against the competing obligation to ensure a fair trial and proper dispensation of justice.

9. The concept of “*balance of convenience*” is a relevant consideration; however, it cannot be confined to the convenience of one party alone and must encompass the convenience of both parties, witnesses, the suitability of the forum having regard to the nature of evidence, and the *doctrine of forum conveniens*.

10. The jurisdiction to transfer a case must be exercised with extreme care, caution, and circumspection. Mere inconvenience or relative hardship, though relevant, may not by itself constitute a decisive ground for transfer. The burden squarely lies upon the applicant to establish sufficient, cogent, and compelling grounds demonstrating that refusal of transfer would result in denial of justice.

11. The criteria for transfer of a case were examined by the Supreme Court in the context of a petition seeking transfer of a criminal case, in **Maneka Sanjay Gandhi and Another Vs. Rani Jethmalani**. The cardinal principle in this regard was laid down by observing that: *“Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary case to case.”*

12. It was emphasized that transfer cannot be ordered on the basis of mere inconvenience or subjective apprehension, unless the same has a direct bearing on the fairness of the trial.

13. In **Subramaniam Swamy vs. Ramakrishna Hegde**, while dealing with the power of transfer under Section 25 CPC, the Supreme Court reiterated the doctrine of dominus litis and held that though convenience is a relevant consideration, the paramount test remains whether continuance of proceedings in the chosen forum would result in denial of justice. The Court categorically observed: *“The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice.”*

14. It was further clarified that transfer is justified only when it becomes **imperative to meet the ends of justice**, even if such transfer causes some inconvenience to the plaintiff.

15. The factors to be taken into account for transfer of a case were again considered in **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and Others**, and it was observed that keeping in mind the various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by courts. Some of the instances which are germane in considering the question of transfer of suit, appeal or other proceeding were enumerated as follows: (i) balance of convenience or inconvenience to the plaintiff or the defendant or witnesses; (ii) convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; (iii) issues raised by the parties; (iv) reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; (v) important questions of law involved or a considerable section of public interested in the litigation; (vi) interest of justice demanding for transfer of case, etc. are some of the instances which are germane. It was, however, cautioned that these instances are merely illustrative and not exhaustive.

16. In the context of cases relating to matrimonial matters, convenience of the wife may be a relevant factor, as held in **Anjali Ashok Sadhwani vs. Ashok Kishinchand Sadhwani and Fatema vs. Jafri Syed Husain @ Syed Parvez Jafferri**. However, even in such cases, there would be requirement to demonstrate existence of real hardship, such as inability to travel long distance, absence of escort, or circumstances rendering participation in proceedings practically impossible.

17. It has been consistently held that mere expense or difficulty does not *ipso facto* justify transfer unless such difficulty is of such magnitude as to result in injustice. The Courts have laid emphasis that the plaintiff has the choice of forum and that very strong reasons must be shown to deprive the plaintiff of this choice (**P. Sadayandi Nadar vs. Venugopala Chetty; Satyasri Fertilisers vs. E.I.D. Parry (India) Ltd.**). It has repeatedly been emphasized that the Court must ascertain whether reasonable grounds are made out and not act on bald or vague allegations (**Smt. Sudha Sharma vs. Ram Naresh Jaiswal**).

18. In the present case, apart from a general assertion of difficulty in attending the proceeding at Agra, no specific material has been brought on record to demonstrate that the applicant is unable to prosecute or defend the proceedings before the Family Court, Agra

19. It is also not in dispute that Firozabad is an adjoining district of Agra and the distance between the two places is not such which, by itself, can be said to cause insurmountable hardship or prejudice.

20. Learned counsel for the applicant has not disputed the factual position that the proceedings under Sections 12, 17, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005, instituted on 24.01.2025, as well as the proceedings under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023, instituted on 17.04.2025, at Family Court, Firozabad, were initiated subsequent to the institution of the divorce suit which were already pending prior in point of time. In such circumstances, the subsequent institution of proceedings at Firozabad cannot be taken as a valid or legally sustainable ground for seeking transfer of the earlier instituted matrimonial proceedings, as the forum chosen first in point of time cannot be displaced merely on account of later proceedings initiated by the applicant.

21. The applicant has also not placed any material on record to show any other extraordinary circumstance which may necessitate the transfer of the divorce petition. In absence of such material, the Court is of the considered view that no exceptional or compelling ground has been made out for exercise of discretionary power of transfer under Section 24 of the Code of Civil Procedure.

22. The present transfer application lacks merit.

23. It is, accordingly, **rejected**.

(2026) 1 ILRA 1203
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.01.2026

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.
THE HON'BLE AMITABH KUMAR RAI, J.

Writ C No. 14386 of 2019

M/s Sharad Enterprises

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

- (a) Whether the security money which had been deposited at the time of grant of lease under Rules, 1963 could be forfeited when a lease was determined for the non-payment of royalty, rent or other dues?
- (b) Whether once the petitioner knowingly and voluntarily entered into a contract with the respondent-State by executing a registered lease deed incorporating the condition of forfeiture and agreed to it, can he resile from it or challenge condition of forfeiture of security in the lease deed?
- (c) Whether the petitioner can invoke the writ jurisdiction u/Article 226 of the Constitution of India to wriggle out of a condition stipulated in the contract?
- (d) Whether the matter can be remanded on the ground of violation of principles of natural justice?

Headnotes

A. Mines and Minerals Law – U.P. Minor Minerals (Concession) Rules, 1963: Rule 58(1), 58(2), 41-H(1), Rule 27 and Schedule-IV; The Mines and Minerals (Development and Regulation) Act, 1957: Section 15(3) - A decision passes *sub-silentio*, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind."(Para 54)

In two judgements *Ajay Raj Dwivedi (infra)* and *Smt. Kalpana Karwariya (infra)*, the Court after considering Rule 58 and Clause 19(3) of the GO dated 14.08.2017 which provides for consequences of non-payment of any amount which includes the royalty held that since these provisions do not provide for forfeiture of security in the event of failure of payment of any amount due from the lessee including royalty, therefore, the State Government cannot forfeit the security and can recover the amount as arrears of land revenue with prescribed interest u/Rule 58(2) of the Rules, 1963. (Para 52)

While deciding the two cases i.e. *Ajay Raj Dwivedi (infra)* and *Smt. Kalpana Karwariya (infra)*, **one vital aspect of the matter was not brought to the notice of the Court** that if the MMDR Act or the Rules, 1963 or the GO dated 14.08.2017 do not prohibit the forfeiture of security in part or full in the event of non-payment of installment amount of the royalty as per the terms and conditions in the lease deed on the due date whether the incorporation of condition of forfeiture of security (in part or whole) in the lease deed in the event of violation of any terms and conditions of the lease deed is bad in law for the reason that the State has no power under MMDR Act or the Rules, 1963 or the GO dated 14.08.2017 to forfeit the security. (Para 56)

B. Whether once the petitioner knowingly and voluntarily entered into a contract with the respondent-State by executing a registered lease deed incorporating the said condition and agreed to it, can he resile from it or challenge condition of forfeiture of security in the lease deed. (Para 57)

The petitioner does not dispute the execution of the lease deed nor it is the case of the petitioner in the writ petition that the petitioner did not voluntarily accept the general condition no.1 of Part-3 of the lease deed providing for forfeiture of the security. (Para 58)

The petitioner has averred that while cancelling the mining lease, the security amount of the petitioner could not be forfeited which has no relation with the condition of advertisement or the mining plan. (Para 62)

The petitioner was well aware of the condition no.22 of the E-Tender notice-cum-E-Auction proceeding in the advertisement that Clause-22, puts an obligation on the bidder to inspect the leased area and the petitioner should get himself satisfied about the availability of estimated quantity of mineral on the site and also about the approach road. The petitioner had inspected the area thrice before execution of the mining lease and after having been satisfied, voluntarily entered into the contract and executed the lease deed. (Para 59, 60)

The petitioner was also well aware of the fact that after participating in the E-Tender-cum-E Auction proceeding, the petitioner would not be permitted to raise any grievance with regard to non-availability of mineral or any defect in the approach road. **So, this condition of E-Tender is binding upon the petitioner.** (Para 63)

Since, the condition no.22 of the advertisement is binding upon the petitioner, therefore, it is not open to the petitioner to take a plea that after the rainy season when he visited the site for commencing the mining operation after 01.10.2018, he found the mining area was submerged with water to deny his liability to pay third installment. (Para 64)

C. Whether the petitioner can invoke the writ jurisdiction u/Article 226 of the Constitution of India to wriggle out of a condition stipulated in the contract? (Para 67)

“Having entered into agreements voluntarily, containing the conditions aforesaid and having done the business under the licences obtained by them, cannot be allowed to either wriggle out of the agreements nor can they be allowed to challenge the validity of the Rules which constitute the terms of the contract. The High Court should not have exercised its extraordinary discretionary jurisdiction u/Article 226 of the Constitution in aid of such licencees.” (Para 75)

The lease deed stipulates for forfeiture of security amount in part or full which is the term and condition of the lease deed, and **till the petitioner demonstrates that such a condition is unconscionable or pricks the conscious of the Court or against the public policy, the petitioner having agreed to the said condition knowingly and voluntarily cannot wriggle out of the said condition** contending that non-payment of installment on a particular date stipulated in the lease deed does not amount to violation of the lease deed nor he can contend that the respondent-State has no jurisdiction to forfeit the security inasmuch as Rule 58 of the Rules, 1963 or Clause-19 (3) of the GO dated 14.08.2017 do not confer power upon the State Government to forfeit the security. (Para 78)

D. Courts cannot substitute their own view of the presumed understanding of commercial terms by the parties, if the terms are explicitly expressed. The explicit words of the contract are always the final word with regard to the intention of the parties. Therefore, denying or restraining the respondent-State from forfeiting the security which is permitted under the lease deed in case of violation of any condition of lease or violation of any Rules of 1963 would amount to rewriting a contract which power Court does not possess while interpreting a contract. (Para 79)

If for any reason, petitioner is of the view that the authority should have forfeited the security of lessor amount than the entire security, the petitioner has a remedy to claim damage on the aforesaid ground under Civil Law, and this Court cannot interfere nor substitute the terms and conditions

of the contract by assessing the amount of security which the respondent-State could forfeit under the agreement. (Para 98)

E. Recovery of royalty as arrears of land revenue is the consequence of nonpayment of installment on the due date which is evident from clause (3) of Part-II of the lease deed while forfeiture of security is the consequence of violation of any condition of the lease deed as per clause (1) of Part-III of the lease deed which has been accepted by the petitioner voluntarily. Therefore, in the event of any breach of the condition of the lease deed, the respondents are well within their rights to forfeit the security. Therefore, the contention of the petitioner that if the installment of royalty is not paid on the due date, the same can be recovered as arrears of land revenue is misconceived. (Para 80)

F. Authority or jurisdiction to forfeit the security - Neither Rule 58 of Rules, 1963 nor Clause 19(3) of the GO dated 14.08.2017 nor Rule 59 of the Rules, 1963 or any provision either in the MMDR Act or Rules, 1963 prohibits the incorporation of a condition in the lease deed that in the event of violation of any terms and conditions of the lease deed, the security in part or full can be forfeited. Rule 59 of Rules, 1963 deals with consequences of contravention of certain conditions on existence of which the penalty provided in the said provision for violating the condition of the lease deed u/Rule 59 can be imposed and can also be recovered from the security of lessee. (Para 81)

Since the lease deed executed between the petitioner and the respondents is to be executed in Form MM-6 as per Rule 29(1) of Rules, 1963, which contains a clause of forfeiture of security in clause (1) of Part-III of the 'Model Form of Auction Lease for Mining', therefore, the nature of lease deed is a statutory lease deed, and the condition incorporated w.r.t. the forfeiture of security in the lease deed also has its root in Rule 29 (1) of the Rules, 1963, therefore, the argument of learned counsel for the petitioner that the respondent State has no authority or jurisdiction to forfeit the security as neither Rule 58 nor Clause-19(3) of the GO dated 14.08.2017 confers any power upon the respondent State to forfeit the security is misconceived. (Para 83)

G. (a) Section 15(3) of the MMDR Act cannot be interpreted in a manner so as to confer benefit upon the lessees for not paying installments where mineral has not been removed or consumed by him. (Para 93)

Normal principle of statutory interpretation is that when the words used in the statute are clear and unambiguous, the same should be given their normal meaning without adding or rejecting any word. However, there is an exception to this general rule. The literal interpretation of statute is not sacramental rule. **In case, the Court finds that the provision is vague and ambiguous or the normal meaning may lead to confusion, absurdity or the repugnancy with other provisions, the Court may by using the interpretative tools, set right the situation by adding or omitting or substituting words in the statute.** This flexible approach allows Courts to consider legislative intent to prevent absurd outcome and give effect to public good. (Para 85, 86, 88)

If the interpretation of Section 15(3) put forth by the petitioner that the petitioner is liable to pay royalty for the quantity of mineral consumed by the petitioner is accepted, (since the petitioner has not excavated the mineral after 01.10.2018) that would lead to absurdity since it could never be the intention of the legislature, further such interpretation would render the other provision of Rules, 1963 and the terms and condition of the lease deed which is in Form MM6 as per Rule 29 of Rules, 1963 redundant. (Para 84, 92)

(b) As per Black's Law Dictionary (5th Edition), the meaning of word 'only' is solely, merely, exclusive or necessary in a particular situation, in contrast to all the other things that are not true, appropriate or necessary. (Para 89, 90)

If the legislature had intended that lessee is liable to pay royalty or lease rent or dead rent whichever is higher only for the quantity removed or consumed by the lessee, the legislature would have incorporated the word 'only' before the words 'in respect of minor mineral removed or consumed'. (Para 91)

H. Petitioner's submission in respect to the fact that the respondent can forfeit the security only if the conditions enumerated in Rule 29 of the Rules, 1963 are present, also lacks merit for the reason that it contemplates the forfeiture of security if the lease deed is not executed within one month by the lessee because of default on the part of the lessee from the issuance of lease deed or LOI, or as the case may be. However, **Rule 29 of the Rules, 1963 does not prohibit the respondent-State to forfeit the security nor prohibits the induction of forfeiture clause in the lease deed in case of violation of terms and conditions of lease deed.** Lease deed is prepared in Form MM-6 named as 'Model Form of Auction Lease for Mining' u/Rule 29 of Rules, 1963 which contains forfeiture clause in para-1 of Part-III. (Para 94)

I. Violation of principles of natural justice – Before forfeiting the security, a notice and opportunity of hearing ought to be given to the lessee for the reason that the forfeiture of security prejudices the rights of lessee and entails civil consequences.

With regards to the petitioner's contention w.r.t. violation of principle of natural justice by the respondent State in forfeiting the security, it may be noted that **the rule as well as lease deed prescribes for providing opportunity of hearing before cancellation of lease deed and not before forfeiting the security.** (Para 95)

The petitioner has raised all the contentions challenging the action of the respondent-State in forfeiting the security of the petitioner, and this Court has given ample opportunity of hearing to the petitioner and has deliberated and dealt with all contentions which he could have advanced before the authority challenging the legality of action of respondent in forfeiting the security. Therefore, **no useful purpose would be served in remanding the matter to the authority on the ground of violation of principles of natural justice as such an exercise would be an empty formality and a wasteful exercise. Therefore, matter is not remitted to the authority.** (Para 97)

J. The law is settled that benefit of Article 14 of the Constitution of India cannot be extended to perpetuate an illegality. If some wrong benefit has been conferred or some benefit which is contrary to the scheme has been granted, it would not bestow a right upon the others to claim it as a right of equality by reference to Article 14 of the Constitution of India. (Para 102)

Petitioner urges that the action of the respondent in not adjusting the security amount in the third installment is arbitrary and is violative of Article 14 of the Constitution of India inasmuch as in other districts, the District Magistrate has cancelled the lease deeds while passing orders u/Rule 58 of Rules, 1963 and has adjusted the security amount deposited by the lessee in the dues of the lease amount/royalty, therefore, forfeiture of security cannot be sustained. (Para 99)

The security amount may have been adjusted by the District Magistrates of some of the Districts as stated by the petitioner, but that would not give a right to the petitioner to get the security amount adjusted in the third installment inasmuch as neither Rules, 1963 nor clause (1) of Part-III of the mining lease permits the security amount to be adjusted against any installment or any amount due from the petitioner. (Para 101)

K. Rule 50 of 1963 - Refund of security - It states that after determination of a mining lease, the amount of security deposit lying in deposit with the State Government not required to be applied for any of the purposes mentioned in the Rules shall be refunded to the lessee ordinarily within a period of six months from the date of determination of lease. **The said rule talks of refund of security only if the security deposit lying in deposit with the State Government after the lease deed is determined is not to**

be used for any of the purposes mentioned in the Rules shall be refunded to the lessee within a period prescribed in the said Rule. (Para 103)

In the present case, the security amount has been forfeited by the respondent authority on the violation of terms and conditions of the lease deed as held above, therefore, Rule 50 of the Rules, 1963 is not attracted in the instant case nor Rule 50 would become redundant since it will have its application in all those cases where the lease deed has been determined and no amount is due from the lessee under the Rules to the respondent State, in such an event, respondent-State is under obligation to refund the security lying in deposit with the respondent-State. (Para 104)

Petitioner has not raised any contention challenging the recovery of third installment. The petitioner has emphasised for adjustment of security money towards third installment. (Para 105)

Writ petition dismissed. (E-4)

Case Law Cited

1. Ajay Raj Dwivedi Vs. State of U.P. and Others, Writ-C No.13569 of 2019 (Para 48)
2. Smt. Kalpana Karwariya Vs. State of U.P. and Others, Writ-C No.28355 of 2021 (Para 48)
3. State of U.P. and Another Vs. Synthetics and Chemicals Ltd. & Another, 1991 (4) SCC 139 (Para 54)
4. A-One Granites Vs. State of U.P. and Others, 2001 (3) SCC 537 (Para 55)
5. M/s. Gauri Shankar Singh Vs. State of U.P. & Others, Writ-C No.12041 of 2020 (Para 65)
6. State of Orissa & Others Vs. Narain Prasad & Others, AIR 1997 SC 1493 (Para 68)
7. Venkataraman Krishnamurthy and Another Vs. Lodha Crown Buildmart Private Limited, 2024 (4) SCC 230 (Para 76)
8. Independent Sugar Corporation Ltd. Vs. Girish Sriram Juneja & Others, (2025) 5 SCC 209 (Para 86)
9. Palm Groves Cooperative Housing Society Ltd. Vs. Magar Girme & Gaikwad Associates etc., 2025 SCC OnLine SC 1790 (Para 87)
10. Afcons Infrastructure Ltd. Vs. Cherian Varkey Construction Company Private Ltd. (Para 87)
11. Raj Pratap Yadav Vs. State of U.P. and Others, Writ-C No.28087 of 2023 (Para 93)
12. Tinku Vs. State of Haryana and Others, 2024 SCC OnLine SC 3292 (Para 102)

List of Acts

U.P. Minor Minerals (Concession) Rules, 1963; The Mines and Minerals (Development and Regulation) Act, 1957

List of Keywords

forfeiture, security, minerals, concession, environmental, impact, mines, illegal, jurisdiction.

Appearances for Parties

For Petitioner(s): Adarsh Bhushan, Shri Ashok Khare (Senior Advocate)

For Respondent(s): C.S.C.

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

1. Heard learned counsel for the petitioner and Sri Rajeshwar Tripathi, learned Chief Standing Counsel-II for the State-respondents.

2. The petitioner by means of the present writ petition has prayed mainly for the following relief:-

“i. Issue a writ, order or direction in the nature of certiorari, quashing the impugned order dated 29.12.2018, only to the extent of forfeiture of the security amount of Rs. 8,51,68,215/- passed by Respondent no.3 and quashing the impugned recovery Certificate dated 14.01.2019 issued by the District Magistrate, Jalaun and impugned recovery Citation dated 23.01.2019 issued by the Tehsildar, Jhansi and to further to quash impugned Revisional order dated 12.03.2019 passed by Respondent no.2.

ii. Issue a writ, order or direction in the nature of mandamus directing the respondents to adjust the security deposit of Rs. 8,51,68,215/- towards unpaid quarterly lease amount/installments.

iii. Issue a writ order or direction in the nature of mandamus of directing the respondents to refund the amount of Rs.2,00,00000/- (Rs. Two Crore) forcefully taken from the petitioner in pursuance of the impugned recovery certificate and citation, along with the 18% interest.”

3. The facts, in brief, are that as per the Government Policy-2017, a Government Order for settlement of leases under Chapter-IV by E-Tender/E-Auction dated 14.08.2017 was issued. The mining leases were to be granted as per the procedure prescribed under the Government Order dated 14.08.2017. The District Magistrate, Jalaun published an E-Tender notice dated 16.11.2017 for settlement of mining leases of sand and morang under U.P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as the ‘Rules, 1963’) in District Jalaun for several mining blocks.

4. The petitioner pursuant to the aforesaid E-Tender notice submitted an online application on MSTC Portal for grant of mining lease in Village-Himanpura, Tehsil-Kaalpi, Khand No.2, measuring 20.242 hectares for a quantity of 03,03,630 cubic meters. The reserve price for the area applied by the petitioner was Rs.150/- per cubic meter. The petitioner gave bid of Rs.1122/- cubic meter as against the reserve price of Rs.150/- per cubic meter. The petitioner’s bid was found to be the highest bid. Consequently, the same was accepted by the respondents.

5. The respondent no.3-District Magistrate, Jalaun issued a Letter of Intent (hereinafter referred to as ‘LOI’) in favour of the petitioner for grant of mining lease in respect to the aforesaid area. The LOI was issued to the petitioner for a quantity of 03,03,630 cubic meters in an area of 20.242 hectares and the annual lease amount which the petitioner was to pay was Rs.34,06,72,860/-

6. The petitioner after receiving the LOI deposited the requisite amount, namely, security money and first installment of the annual lease amount and applied for the mining plan. After obtaining the mining plan, the petitioner applied for Environment Clearance Certificate which was granted to the petitioner by the State Environmental Impact Assessment Authority (hereinafter referred to as ‘SEIAA’). Thereafter, the lease deed dated 04.04.2018 was executed in favour of the petitioner for a period of five years commencing from 04.04.2018 to 03.04.2023.

7. The further case of the petitioner was that as per the policy of the State Government, the mining operation was prohibited from 01.07.2018 to 30.09.2018 during monsoon season. After the monsoon season, respondent no.3 issued a notice on 01.10.2018 under Rule 58 (2) of the Rules, 1963 stating therein that if third quarterly installment of the lease amount which was due upon the

petitioner on 01.10.2018 was not paid within time, the same would be recovered along with interest.

8. The petitioner further stated that after the monsoon season, when he tried to restart the mining operation, he found that the entire lease area was submerged into the river and no mining was possible. Since there is prohibition in Rule 41-H (1) of Rules, 1963 of mining in the water level, therefore, under such compelling circumstances, the petitioner submitted a representation dated 23.10.2018 for cancellation/surrender of mining lease. The petitioner further stated that when the respondent no.3 did not pay any heed to the representation of the petitioner, he submitted representation dated 05.12.2018 to the Director, Geology and Mining, and another representation dated 10.12.2018 to the State Government praying therein to inspect the mining lease area and revise the annual quantity of mineral.

9. The petitioner submitted another representation on 29.12.2018 to the respondent no.3 for making a spot inspection and assessing the quantity of mineral, but respondent no.3 did not pay any heed to the said representation.

10. The respondent no.3 vide order dated 29.12.2018 cancelled the mining lease of the petitioner under Rule 58 of the Rules, 1963 and forfeited the security deposit of Rs.8,51,68,215/- on the ground of non-deposit of third quarterly installment of the lease amount treating the same as breach of lease condition.

11. The petitioner, thereafter, preferred Revision No.08 (R)/V.S.M. of 2019 against the order dated 29.12.2018 which was dismissed by the Revisional Authority vide order dated 12.03.2019.

12. The forfeiture of security amount has been assailed by the petitioner with other prayers which have been extracted above on various grounds which shall be noted at the appropriate stage.

13. The respondent-State has filed counter affidavit contending *inter alia* that there was specific condition in the advertisement dated 16.11.2017 that before participating in E-Tender-cum-E-Auction proceeding, the bidder himself may inspect the mining area about the availability of the estimated quantity of mineral and approach road to the mining area. No representation about the non-availability of mineral would be entertained after participating in E-Tender-cum-E-Auction proceeding. According to the respondent, the petitioner as per terms and conditions of the advertisement after fully satisfying himself about the availability of the estimated quantity of mineral and approach road, participated in E-Tender-cum-E-Auction proceeding and submitted the bid of Rs.1122/- per cubic meter. Since, the petitioner was the highest bidder, therefore, his bid was accepted and LOI dated 27.01.2018 was issued to him.

14. The further case of the respondent is that the petitioner got prepared the draft mining plan through expert as per Rule 34 of the Rules, 1963 and submitted the same for approval before the Director, Geology and Mining, U.P. It is stated by the respondent that while preparing the draft mining plan, the petitioner and his expert to whom the petitioner entrusted the work of preparation of draft mining plan again inspected the area. It is further stated that in the draft mining plan, the entire details with regard to the availability of mineral in mining area and method of mining and

closure of mining was mentioned by the petitioner himself. Accordingly, the mining plan submitted by the petitioner was approved on 09.12.2018. The petitioner, thereafter, got prepared the draft proposal for presentation of the same before the SEIAA to get the Environment Clearance Certificate from the SEIAA which was issued to the petitioner on 31.03.2018.

15. As per the case of the respondent, the petitioner got inspected the area thrice before executing mining lease; before participating in E-Tender-cum-E-Auction proceeding as per the condition mentioned in the advertisement; secondly, while preparing the draft mining plan; thirdly, while preparing the draft proposal for Environment Clearance Certificate. It is stated that after completing the entire procedure, the mining lease was got registered on 04.04.2018 for a period of five years from 04.04.2018 to 03.04.2023.

16. The further case of the respondent is that the lease deed contained the terms and conditions and the consequences for violation of the terms and conditions. The petitioner with open eyes accepted the terms and conditions of the mining lease and executed a registered contract/mining lease voluntarily.

17. According to the respondent, Part-2 of the mining lease related to Schedule of payment of royalty/installment which has been as per the provisions of Rule 27 and Schedule-IV of Rules, 1963. Part-3 of the mining lease is related to the general condition and additional condition. The general condition no.1 specifically provides that on violation of any Rule of Rules, 1963 or covenant and condition of mining lease, the mining lease may be determined and the security deposit may be forfeited wholly or in part. The specific case of the respondent is that there is no specific condition in the mining lease for adjustment of the amount of security if the decision for determination of lease is taken as per Part-3 of Clause-1 of mining lease.

18. The respondent states that since the petitioner had violated the terms and conditions of the mining lease as well as provisions of Rules, 1963 and did not deposit the royalty as per the agreed schedule for payment, the petitioner's security amount was liable to be forfeited under the terms and conditions of the mining lease.

19. It is also the case of the respondent that the petitioner violated the provision of Rules, 1963 since he excavated the mineral and had done mining without depositing the royalty and other amount like DMF (District Mineral Foundation Trust Fund), TCS etc. The petitioner was also involved in illegal mining for which action had been taken.

20. The respondent also stated that it is stipulated in the lease deed that the consequence of non-deposit of installment is forfeiture of security deposit. The respondent denied the fact that security deposit is liable to be adjusted towards unpaid installment.

21. It is also stated that due to determination of mining lease in mid term because of the fault of lessee and in not closing the mining as per the mining closure plan, the State has to suffer huge loss since fresh grant takes considerable time, therefore, specific provision has been made in mining lease for forfeiture of security deposit, and petitioner has agreed upon the said terms and conditions. The respondent in reply to the averments made by the petitioner that in several districts,

the District Magistrates have adjusted the security amount towards installment has stated that it was done by the District Magistrate of the concerned district on their own discretion, but the said benefit cannot be extended to the petitioner in view of stipulation contained in the mining lease.

22. The petitioner filed rejoinder affidavit denying the averments contained in the counter affidavit. The petitioner again reiterated that the respondent has no power to forfeit the security.

23. Challenging the order of forfeiture of security, learned counsel for the petitioner has contended that respondent no.3 is not conferred with the power of forfeiture of security under The Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'MMDR Act') or Rules, 1963, therefore, the forfeiture of security by the respondent no.3 is illegal and beyond jurisdiction.

24. He further submits that the respondent no.3 has erroneously treated the non-deposit of royalty/lease amount as violation of terms and conditions of the lease deed by the petitioner inasmuch as consequence of non-deposit of lease amount/royalty in time has been provided under Rule 58 of Rules, 1963, condition no.3 of Part-2 of the lease deed dated 04.04.2018 and Clause 19(3) of the Government Order dated 14.08.2017 which provides realization of the said amount as arrears of land revenue along with interest prescribed.

25. In other words, learned counsel for the petitioner submits that since Rule 58 of the Rules, 1963, condition no.3 of Part-2 of the lease deed dated 04.04.2018 and clause 19(3) of the Government Order dated 14.08.2017 do not provide for forfeiture of security in case of non-deposit of lease amount/royalty in time, therefore, respondent no.3 does not have any jurisdiction to forfeit the security treating the non-deposit of installment of royalty in time as a violation of terms and conditions of the lease deed, and respondent no.3 can recover the said amount only as arrears of land revenue along with interest.

26. It is further contended that payment of installment is provided under Part-2 of the lease deed which stipulates that royalty of removed sand/morang shall be payable as per provision contained in First Scheduled of the Rules, 1963. Therefore, non-deposit of third quarterly installment does not constitute violation of any rule or condition of the lease deed.

27. It is further contended that non-payment of third installment would have been a violation of terms and conditions of lease deed if the petitioner had removed the mineral after 01.10.2018 from the site allotted under the lease deed, therefore, non-payment of third installment is not a violation of any condition as payment of installment is linked with the removal of mineral as provided under Clause-1 of Part-2 and Section 15(3) of the MMDR Act. According to the learned counsel for the petitioner, clause-1 of Part-2 of the lease deed finds it statutory backing under Section 15(3) of MMDR Act and thus, the action of the respondent in forfeiting the security is illegal and arbitrary.

28. It is further contended that the respondent no.3 has not given any show cause notice to the petitioner before forfeiting the security or cancelling the mining lease as provided under the aforesaid condition of the lease deed nor any opportunity of hearing was afforded to the petitioner,

therefore, respondent no.3 has wrongly placed reliance upon the aforesaid clause of lease deed for forfeiting the security. It is contended that the action had been taken by the respondent no.3 under Rule 58(1) of the Rules, 1963 for non-deposit of quarterly installment of the lease, consequence of which has been provided in Rule 58(2) of the Rules, 1963.

29. He further contends that Rule 29 of Rules, 1963 contemplates forfeiture of security deposit if the conditions enumerated under Rule 29 are present. To elaborate the said argument, he submits that if lessee does not get the lease deed registered within three months, then in such an event, the lease deed shall be treated null and void and the security money deposited by the lessee shall be forfeited, but in the present case no contingency as contemplated under Rule 29 of the Rules, 1963 for forfeiting the security is present.

30. It is further submitted that if for the sake of argument, it is accepted that security may be forfeited, such action would render Rule 50 of Rules, 1963 redundant which provides for refund of security deposit on determination of lease deed.

31. It is also contended that the reading of Clause-1 of Part-3 of the lease deed gives a discretion to the authority to forfeit the security deposit in part or full and as a matter of principle whenever a discretion is to be exercised that must be supported by reason, and since in the instant case, the forfeiture of entire security is not supported by any reason, therefore, forfeiture of security is bad.

32. Per contra, learned Chief Standing Counsel-II would contend that perusal of Rule 58 of Rules, 1963 discloses that the aforesaid provision is inclusive in nature enumerating certain consequences of non-payment of royalty. He submits that in Rule 58(1) of Rules, 1963, the legislature has mentioned that *"this right shall be in addition to and without prejudice to the right of the State Government to realise such dues"* reveals the intention of the legislature that the aforesaid provision is in addition to the other consequences of non-payment of royalty. Accordingly, it is contended that forfeiture of security money in case of failure to deposit of royalty on due date is in conformity with the terms and conditions of lease deed, and the same shall be valid, more so, when petitioner knowing well about the said condition in the lease deed voluntarily without any objection executed the mining lease deed and got it registered.

33. He further submits that Clause-1 of Part-3 of the lease deed is explicit and stipulates that in case of violation of condition of lease deed, security money can be forfeited. He submits that lease deed is executed in the form MM-6 in Schedule 3 of Rules, 1963 as per Rule 29 of Rules, 1963, and this condition of lease deed has been specifically enumerated in form MM-6, therefore, forfeiture of security money on account of violation of terms and conditions of lease deed has a statutory force under Rules, 1963. Accordingly, he submits that it is wrong to contend that respondent no.3 does not have any power to forfeit the security.

34. He submits that the mode and date of payment of installment is enumerated under the lease deed which binds the petitioner to pay the installment on the date stipulated in the lease deed, and if any violation in payment of installment on the date fixed in the lease deed is breached, that would amount to violation of terms and conditions of lease deed. Therefore, respondent no.3 has rightly

invoked clause of forfeiture of security money under the lease deed treating it to be violation of terms and conditions of lease deed.

35. He further submits that though Rule 58(1) of Rules, 1963 or Clause 19(3) of the Government Order dated 14.08.2017 does not specifically provides for forfeiture of security, but neither MMDR Act nor Rules, 1963 nor the Government Order dated 14.08.2017 prohibits the State from forfeiting the security in the event of breach of terms and conditions of lease, and once, petitioner voluntarily knowing the said stipulation in the lease deed accepted the terms and conditions of the lease deed, the petitioner is bound by the terms and conditions of the lease deed and cannot turn around and challenge the forfeiture of security at this stage. Accordingly, it is submitted that respondent no.3 has rightly forfeited the security money of the petitioner.

36. He further submits that contention of learned counsel for the petitioner that in view of Section 15(3) of the MMDR Act, royalty can be charged only in respect of mineral removed is misconceived in as much as language employed in sub-section (3) of Section 15 of MMDR Act does not suggest any such intention of the legislature that royalty can be charged only in respect of mineral removed. He further submits that had it been the intention of the legislature, the word only would have been incorporated before the word in respect of minor mineral removed or consumed in Section 15(3) of the MMDR Act, whereas no such word has been incorporated in Section 15(3) before the word in respect of minor mineral removed or consumed.

37. He further submits that once petitioner has entered into a contractual obligation by executing a registered lease deed wherein installment of royalty and its due date has been incorporated in the lease deed, the petitioner subsequently after entering into the contract through lease deed cannot deviate from the terms and conditions of the lease deed as the obligation incurred under the lease deed is binding upon the parties. It is further contended that purpose of making penal provision of forfeiture of security money is to ensure that leaseholder does not run away from the contractual obligations as per his own whims. Thus, he submits that provision of forfeiture under lease deed has been incorporated with an object that in case lessee violates the terms and conditions of lease deed which lead to termination of lease deed, in that case, loss of revenue likely to be caused due to non-operation of mining can be compensated because after termination of the lease deed, sufficient time is required for executing new lease deed in respect of area declared vacant because of termination of lease deed.

38. We have considered the rival submissions advanced by the learned counsel for the parties and perused the record.

39. The undisputed facts, as emanate from the record, are that in pursuance to an advertisement published by respondent no.3 inviting application for grant of lease for sand and morang, the petitioner submitted application for carrying mining operation for the area measuring 20.242 hectares for quantity of 03,03,630 cubic meters.

40. After complying with all the requirements, a registered lease deed dated 04.04.2018 was executed between the petitioner and respondent-State for excavating sand and morang. As the petitioner could not deposit the third quarterly installment on time, therefore, lease of the petitioner

was terminated by order dated 29.12.2018 and security of the petitioner was forfeited, and recovery for third installment was issued against the petitioner which was challenged by the petitioner in Revision No.08 (R)/V.S.M. of 2019 which was also dismissed.

41. Since, the controversy in the instant case revolves around terms and conditions of lease deed dated 04.04.2018 executed between petitioner and respondent-State, therefore, it would be apt to reproduce relevant condition of lease deed dated 04.04.2018:-

"उत्तर प्रदेश उपखनिज (परिहार) नियमावली-1963 जिसे आगे "उक्त नियमावली कहा गया है के अनुसार किये गये ई-निविदा सह ई-नीलामी में 303630 घनमीटर (प्रतिवर्ष) बालू/मोरम के लिये पट्टेदार द्वारा रु० 1122.00 प्रति घनमीटर की दर से प्रथम वर्ष हेतु रु० 34,06,72,860-00 तथा अनुवर्ती वर्षों में गत वर्ष की देय धनराशि पर 10 प्रतिशत वृद्धि करके देय होगा। राज्य सरकार द्वारा खनन पट्टे के लिये 5 वर्ष के निमित्त एतद्धीन लिखित अनुसूची के भाग-1 में वर्णित भूमि ग्राम-हिमनपुरा के गाटा संख्या-240 खण्ड संख्या-2 रकबा-20.242 है० के लिये स्वीकार कर लिया गया है और उन्होंने प्रतिभूति स्वरूप राज्य सरकार के पास रु० 8,51,68,215-00 की धनराशि जमा कर दी है।

यह इस बात का साक्ष्य है कि इस उपस्थापन पत्र और निम्नलिखित अनुसूची द्वारा रक्षित और उसमें दिये गये और पट्टेदार की ओर से भुगतान किये जाने वाले पालन तथा सम्पादन किये जाने वाले, स्वामित्वों, प्रसंविदाओं तथा अनुबन्धों के प्रतिफल में राज्य सरकार एतद्वारा पट्टेदार को निम्नलिखित प्रदान और पट्टांतरित करता है। बेतवा नदी में उपलब्ध बालू/मोरम, जिन्हें आगे अभिदिष्ट अनुसूची में "उक्तः" "खनिज" कहा गया है की समस्त खान, तल्प (Beds), संदर सीम्स (Viens seams) जो अनुसूची के भाग-1 में अभिदिष्ट भूमि में या उसके नीचे स्थित हो, के साथ, जिसके सम्बन्ध में उन प्रतिबन्धों तथा शर्तों के अधीन रहते हुए प्रयोग या उपयोग किया जायेगा, जो ऐसी स्वतन्त्रताओं, अधिकारों तथा विशेषाधिकारों का प्रयोग तथा उपयोग करने के बारे में हो सिवाय इसके और इसमें से आरक्षित उक्त नियमावली में उल्लिखित स्वतन्त्रताओं, अधिकार तथा विशेषाधिकार राज्य सरकार में पट्टान्तरित हो जायेंगे।

दिनांक 04/04/18 से दिनांक 03/04/23 तक 05 वर्ष की आगामी अवधि के लिए पट्टेदार को एतद्वारा दिये गये और पट्टान्तरित ऐसे भू-गृहादि धारण करना, जिनसे खनिज निकलने लगे और राज्य सरकार को उक्त अनुसूची के भाग-2 में उल्लिखित स्वामित्वों का भुगतान उसमें निर्दिष्ट भिन्न-भिन्न समयों पर होने लगे किन्तु प्रतिबन्ध यह है कि ऐसा उक्त भाग के उपबन्धों के अधीन हो और पट्टेदार एतद्वारा राज्य सरकार के साथ प्रसंविदा करता है और राज्य सरकार एतद्वारा पट्टेदार के साथ प्रसंविदा करती है, जैसा कि उक्त नियमावली में अभिव्यक्ति है और एतद्वारा इसके साथ दिये गये पक्षों के बीच परस्पर सहमत हुआ है और जैसा कि उक्त अनुसूची के भाग 3 में अभिव्यक्ति है।

ऊपर अभिदिष्ट अनुसूची

भाग-1

इस पट्टे का क्षेत्र

पट्टे का स्थान और क्षेत्र-वह समस्त भू-खण्ड जो जनपद-जालौन तहसील-कालपी, और थाना कदौरा के अन्तर्गत स्थान ग्राम-हिमनपुरा के गाटा संख्या-240 खण्ड संख्या-2 रकबा-20.242 हे० जो इसके साथ संलग्न नक्शे में चिन्हित है और उसे लाल रंग से रंजित (Coloured) किया गया है और जिसकी सीमायें तथा अक्षांश व देशान्तर निम्नलिखित हैं:-

खण्ड संख्या-2	उत्तर- गाटा सं० 79, 84, 85, 93 दक्षिण- गाटा सं० 256, 257, 258, 259, 260, 261, 262, 263, 264 बाद बेतवानदी सीमा जनपद हमीरपुर पूर्व- सीमा खण्ड सं०-01 पश्चिम- सीमा खण्ड सं०-03 (A) N-250 51.51.33" E-790 47" 49.56" (B) N-250 51" 58.31" E-790 48" 8.54" (C) N-250 52" 10.14" E-790 48" 0.93" (D) N-250 52" 6.77" E-790 47" 50.48"

और जिसे एतद्वारा "उक्त भूखण्ड" कहा गया है।

भाग-2

इस पट्टे द्वारा संरक्षित स्वामित्व

1. स्वामित्व की धनराशि: पट्टेदार इस पट्टे की अवधि में राज्य सरकार को पट्टे पर दिये गये क्षेत्र में उसके द्वारा हटाये गये सभी बालू/मोरम के सम्बन्ध में नियमावली के चतुर्थ अनुसूची में दी गयी व्यवस्था के अनुसार निम्नानुसार स्वामित्व का भुगतान करेगा।

देय धनराशियों के जमा करने की अनुसूची

क्र० सं०	पट्टा वर्ष	गद	देय धनराशि (रु० में)	देय तिथि
1.	प्रथम वर्ष	प्रथम किश्त (25%)	8,51,68,215.00	अग्रिम जमा
2.		द्वितीय किश्त (25%)	8,51,68,215.00	01.07.2018
3.		तृतीय किश्त (25%)	8,51,68,215.00	01.10.2018
4.		चतुर्थ किश्त (25%)	8,51,68,215.00	01.01.2019
5.	प्रतिभूति छोड़कर प्रथम वर्ष में देय धनराशियों का योग		34,06,72,860.00	
6.	द्वितीय वर्ष	प्रथम किश्त (25%)	9,38,85,037.00	01.04.2019
7.		द्वितीय किश्त (25%)	9,38,85,037.00	01.07.2019
8.		तृतीय किश्त (25%)	9,38,85,036.00	01.10.2019

9.		चतुर्थ किश्त (25%)	9,38,85,036.00	01.01.2020
10.	द्वितीय वर्ष में देय धनराशियों का योग		37,47,40,146.00	
11.	तृतीय वर्ष	प्रथम किश्त (25%)	10,30,53,540.00	01.04.2020
12.		द्वितीय किश्त (25%)	10,30,53,540.00	01.07.2020
13.		तृतीय किश्त (25%)	10,30,53,540.00	01.10.2020
14.		चतुर्थ किश्त (25%)	10,30,53,541.00	01.01.2021
15.	तृतीय वर्ष में देय धनराशियों का योग		41,22,14,161.00	
16.	चतुर्थ वर्ष	प्रथम किश्त (25%)	11,33,58,894.00	01.04.2021
17.		द्वितीय किश्त (25%)	11,33,58,894.00	01.07.2021
18.		तृतीय किश्त (25%)	11,33,58,894.00	01.10.2021
19.		चतुर्थ किश्त (25%)	11,33,58,895.00	01.01.2022
20.	चतुर्थ वर्ष में देय धनराशियों का योग		45,34,35,577.00	
21.	पंचम वर्ष	प्रथम किश्त (25%)	12,46,94,784.00	01.04.2022
22.		द्वितीय किश्त (25%)	12,46,94,784.00	01.07.2022
23.		तृतीय किश्त (25%)	12,46,94,784.00	01.10.2022
24.		चतुर्थ किश्त (25%)	12,46,94,783.00	01.01.2023
25.	पंचम वर्ष में देय धनराशियों का योग		49,87,79,135.00	
26.	प्रतिभूति छोड़कर पाँच वर्षों में देय धनराशियों का योग		2,07,98,41,879.00	

2. स्वामित्व कटौती आदि से मुक्त होगा: इस भाग में उल्लिखित स्वामित्व की किश्तों का भुगतान बिना किसी कटौतियों के राज्य सरकार को निर्धारित लेखा शीर्षक "0853 अलौह खनन एवं धातु कर्म उद्योग" पर सरकारी कोषागार में जमा करके किया जायेगा तथा चालान की एक प्रति जिलाधिकारी को भेजी जायेगी।

3. स्वामित्व का समय पर भुगतान न किया जाये तो कार्यवाही की प्रक्रिया: यदि इस उपस्थापना पत्र (Presents) की शर्तों और प्रतिबन्धों के अधीन राज्य सरकार को देय स्वामित्व की किसी किश्त का भुगतान पट्टेदार द्वारा नियत समय के भीतर न किया जाये तो उसे ऐसे अधिकारी के जिसे राज्य सरकार सामान्य या विशिष्ट आज्ञा द्वारा निर्दिष्ट करे प्रमाण पत्र पर उसी रीति से वसूल की जा सकती है जैसे मालगुजारी का बकाया।

भाग 3

सामान्य उपबन्ध

1. नियमों, प्रसंविदाओं और शर्तों को भंग करने पर पट्टा समाप्त किया जा सकता है: यदि पट्टेदार उत्तर प्रदेश उप खनिज (परिहार) नियमावली 1963 के किसी नियम या इस पट्टे की किसी प्रसंविदा तथा किसी शर्त को भंग करें तो राज्य सरकार पट्टा समाप्त कर सकती है और प्रतिभूति जमा को पूर्णतः या अंशतः जब्त कर सकती है किन्तु प्रतिबन्ध यह है कि पट्टा समाप्त किये जाने के पूर्व पट्टेदार को उन्हें भंग करने का स्पष्टीकरण देने के लिए यथोचित अवसर दिया जायेगा।

42. Para 8 of the additional condition of lease deed is also relevant in the present case, therefore, the same is also being reproduced below:-

“8. यदि पट्टेदार द्वारा नियमों व खनन पट्टा, पर्यावरण स्वच्छता प्रमाण-पत्र खनन योजना, लेटर आफ इंटेंट आदि की शर्तों का उल्लंघन किया जाता है तो पट्टेदार को अपना मामला बताने की युक्ति युक्त अवसर प्रदान करने के पश्चात् जिलाधिकारी अथवा राज्य सरकार द्वारा पट्टा समाप्त किया जा सकता है।”

43. Learned counsel for the petitioner in order to support his argument that there is no provision under the MMDR Act or Rules, 1963 or Government Order dated 14.08.2017 which confers power upon the respondent no.3 to forfeit the security if the installment of royalty has not been paid in time has relied upon the Clause-1 of Part-3 of the general condition mentioned in the lease deed dated 04.04.2018 which has already been extracted above. He has also placed Rule 58 of Rules, 1963 and paragraph 19(3) of the Government Order dated 14.08.2017.

44. For convenience Rule 58 of Rules, 1963 is reproduced herein below:-

“58. Consequences of non-payment of royalty, rent or other dues.-(1) The State Government or any officer authorised by it in this behalf may determine the mining lease after serving a notice on the lessee to pay within thirty days of the receipt of the notice any amount due or dead rent under the lease including the royalty due to the State Government if it was not paid within fifteen days next after the date of fixed for such payment. This right shall be in addition to and without prejudice to the right of the State Government to realise such dues from the lessee as arrears of land revenue.

(2) Without prejudice to the provisions of these rules, simple interest at the rate of 18 percent per annum may be charged on any rent, royalty, demarcation fee and any other dues under these rules, due to the State Government after the expiry of the period of the notice under sub-rule (1).

45. Para 19(3) of the Government Order dated 14.08.2017 is also being reproduced herein below:-

“19-सफल बोलीदाता/निविदादाता द्वारा धनराशि जमा करने की रीति -

(3) प्रथम वर्ष के लिए शेष 75 प्रतिशत पट्टा धनराशि एवं आगामी वर्षों के लिए पट्टा धनराशि नियमावली में निर्धारित चतुर्थ अनुसूची के अनुसार राज्य सरकार द्वारा समय समय पर निर्धारित प्रक्रिया के

अनुसार पट्टाधारक द्वारा जमा की जायेगी। उक्त अनुसूची में नियत तिथि के अनुसार देय धनराशि जमा न करने की दशा में नियम-59 के अनुसार देय धनराशि ब्याज सहित वसूल की जायेगी।"

(Note:- It appears that 'Rule 59' has been incorrectly typed in para 19(3) of the Government Order dated 14.08.2017 instead of 'Rule 58' since Rule 59 does not deal with the matter related to non-payment of lease amount or royalty.)

46. According to Rule 58 (1) of Rules, 1963, if the lessee does not pay the royalty in time, the State Government or any officer authorised by it in this behalf may determine mining or auction lease after serving a notice on the lessee to pay within thirty days of the receipt of the notice, any amount due or dead rent under the lease including royalty due to the State Government if it was not paid within fifteen days next after the date fixed for such payment.

47. The Rule 58(1) of Rules, 1963 further provides that this right shall be in addition to and without prejudice to the right of the State Government to realise such dues from the lessee as arrears of land revenue. Reading of Rule 58 (1) of the Rules, 1963 clarifies that the power conferred upon the State Government or any officer authorised by it in this behalf under Rule 58 to terminate the lease is an additional and independent right conferred upon the State Government or any authority authorised by it in this behalf without influencing or impacting the right of the State to recover the amount of royalty as arrears of land revenue.

48. Learned counsel for the petitioner in support of his aforesaid argument that neither Rule 58 of Rules, 1963 nor Clause 19(3) of the Government Order dated 14.08.2017 gives power to the State Government to forfeit the security has relied upon the judgement of this Court in the case of *Ajay Raj Dwivedi Vs. State of U.P. and Others* passed in Writ-C No.13569 of 2019 and *Smt. Kalpana Karwariya Vs. State of U.P. and Others* passed in Writ-C No.28355 of 2021.

49. In the case of *Ajay Raj Dwivedi (supra)*, the petitioner assailed the order by which recovery was issued against the petitioner and lease deed was cancelled. The petitioner's firm was blacklisted and the security amount deposited by the petitioner was forfeited.

50. This Court held that recovery sought against the petitioner and cancellation of lease deed was bad for violation of principles of natural justice. This Court further held that blacklisting of the petitioner's firm was also bad as nothing has been stated in the show cause notice regarding blacklisting of the petitioner's firm nor anything has been stated regarding forfeiting the security money deposited by the petitioner. This Court further by placing reliance upon the Rule 58 of Rules, 1963 and Clause 19(3) of the Government Order dated 14.08.2017 concluded that since the aforesaid provision does not provide for forfeiture of security in case of non-deposit of the installment, therefore, security amount deposited by the lessee/petitioner could not be forfeited. Relevant extract of the judgement in case of *Ajay Raj Dwivedi (supra)* is reproduced herein below:-

"In our view, as per Rule 58 of the Rules, 1963 and Clause 19(3) of the Government Order dated 14.08.2017 which clearly says that if the lessee will not pay the royalty or dead rent then after giving the notice the lease shall be determined and the said amount shall be realized as

arrears of land revenue along with interest prescribed under sub-rule (2), as such while passing the order under Rule 58 of the Rules 1963 for cancellation of lease deed, security amount deposited by the lessee/petitioner could not be forfeited. In this regard, Rule 58 of the Rules, 1963 is being quoted below:-

58. Consequences of non payment of royalty, rent or other dues:

.....

Similarly as per the Government Order dated 14.08.2017 the consequence of non deposit of the lease amount/royalty in time by the lessee has been clearly provided in Clause 19(3) of which clearly says that if the lease amount will be not deposited by the lessee within time then same shall be recovered along with the interest as provided under the Rule 58 of the Rules 1963 and the forfeiture of the security money has not been permitted in the said Government Order on the ground of non deposition the lease amount.

It is further observed that in the impugned order, the District Magistrate, Chitrakoot has treated the non deposit of the royalty/lease amount in time as violation of the condition of the lease deed and rule by the petitioner which is absolutely baseless as consequences of the non deposition of the lease amount/royalty in time has been provided under Rule 58 of the Rules 1963 and Clause 19(3) of the Government Order dated 14.08.2017 which does not permit the forfeiture of the security money deposited by the lessee/petitioner and only provided the realization of the said amount as arrears of the land revenue along with the interest prescribed. Security amount deposited by the petitioner was liable to be adjusted towards the dues/liability fixed upon the petitioner after the cancellation of the lease deed vide order dated 21.06.2019.”

51. In the other judgement of this Court is **Smt. Kalpana Karwariya (supra)**, the question which arose for consideration before the Court was whether the security money which had been deposited at the time of grant of lease under Rules,1963 could be forfeited when a lease was determined for the non-payment of royalty, rent or other dues. This Court after referring to Rule 58 of Rules, 1963, Clause 19(3) of the Government Order dated 14.08.2017, Rule 59 of the Rules, 1963 held the forfeiture of security is bad in law. Paragraph nos.13 to 15 of the said judgement are being reproduced herein below:-

“13. Having heard Sri Mukesh Prasad, learned Senior Advocate assisted by Sri Suraj Singh, learned counsel for the petitioner and the learned Additional Chief Standing Counsel, we are of the view that when the petitioner had not paid the fourth installment of the first year then that amount alongwith the TDS amount payable and the amount payable towards the District Mineral Foundation Trust Fund could be recovered only as arrears of land revenue. A composite reading of Rules 58, 59 and 60 of the 1963 Rules, definitely makes it clear that if a particular royalty or any other due under the lease was not paid then in addition to the determination of lease, the amount which was payable by the petitioner to the Government could be recovered only as arrears of land revenue. However, if there was any penalty for non-compliance of any of the many rules or if there was violation of any lease condition except those relating to payment of royalty, rent or other dues, the State Government could determine the lease and could also impose a penalty under Rules 59 and 60 of forfeiting the security. Definitely, the provisions of Rule 58 stand apart from the provisions of Rules 59 and 60 of the 1963 Rules.

14. Rule 58 is only with regard to the consequences of non-payment of royalty, rent or other dues. Rule 59 is with regard to the contravention of certain conditions wherein penalty could

be imposed and that penalty, if not paid, could be deducted by the District Magistrate from the security money deposited by the lessee. Rule 60 was with regard to the breach or contravention by a lessee of any of the Rules of 1963 Rules or conditions and covenant contained therein except those relating to payment of royalty, rent or other sums due.

15. Under such circumstances, this Court is definitely of the view that the confiscation/forfeiture of royalty by the three impugned orders namely the order dated 25.03.2019 of the Additional District Magistrate (F&R); the order dated 16.07.2021 of the Appellate Court and the order dated 20.09.2021 of the Revisional Court cannot be sustained in the eyes of law. The amount which was due from the petitioner could have been recovered only as arrears of land revenue. However, since the petitioner had given an offer that the money which was due from the petitioner i.e. the fourth installment of the first year and other statutory dues be recovered from the security amount, it is being provided that these amounts can be recovered from the security money of Rs. 1,74,00,000/- which was deposited by the petitioner before the execution of the lease. The rest of the amount of the security be released to the petitioner forthwith."

*52. So far as the two judgements **Ajay Raj Dwivedi (supra)** and **Smt. Kalpana Karwariya (supra)** are concerned, the Court after considering Rule 58 and Clause 19(3) of the Government Order dated 14.08.2017 which provide for consequences of non-payment of any amount which includes the royalty held that since these provisions do not provide for forfeiture of security in the event of failure of payment of any amount due from the lessee including royalty, therefore, the State Government cannot forfeit the security and can recover the amount as arrears of land revenue with prescribed interest under Rule 58(2) of the Rules, 1963.*

*53. However, in our opinion, the judgement of this Court in the cases of **Ajay Raj Dwivedi (supra)** and **Smt. Kalpana Karwariya (supra)** for the reasons delineated below are not binding precedent, and therefore, the said two judgements do not come in aid to the petitioner.*

*54. At this stage, it is pertinent to note that the Apex Court in paragraph nos. 40 to 42 in the case of **State of U.P. and Another Vs. Synthetics and Chemicals Ltd. & Another 1991 (4) SCC 139** has held as under:-*

"40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd. (1944) 2 All ER 293). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey AIR 1962 SC 83, this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silenzio. "A decision passes sub-silenzio, in the technical sense that has come to be attached to that phrase, when the particular point of law

involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p.153). In *Lancaster Motor Company (London) Ltd. v. Bremith Ltd.* (1941) 2 All ER 11, the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in *Municipal Corporation of Delhi v. Gurnam Kaur* (1989) 1 SCC 101. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In *B. Shama Rao v. Union Territory of Pondicherry's* AIR 1967 SC 1480, it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

42. Effort was made to support the conclusion, indirectly, by urging that the State having raised same objections by way of review petition and the same having been rejected it amounted impliedly as providing reason for conclusion. Law declared is not that can be culled out but that which is stated as law to be accepted and applied. A conclusion without a reference to relevant provision of law is weaker than even casual observation. In the order of Brother Thommen, the extracts from the judgment of the Constitution Bench quoted in extenso demonstrate that the question of validity of levy of sales and purchase tax was neither in issue nor was it raised nor is there any discussion in the judgment except of course the stray argument advanced by the learned Attorney General to the following effect: (SCC p. 139, para 43)

"But alcohol not fit for human consumption are not luxuries and as such the State legislatures, according to Attorney General, will have no power to levy tax on such alcohol."

Sales tax or purchase tax under Entry 54 is levied on sale or purchase of goods. It does not contemplate any distinction between luxury and necessity. Luxuries are separately taxable under Entry 62. But that has nothing to do with Entry 54. What prompted this submission is not clear. Neither there was any occasion nor there is any constitutional inhibition or statutory restriction under the legislative entry nor does the taxing statute make any distinction between luxuries and necessities for levying tax. In any case the bench did not examine it nor did it base its conclusions on it. In absence of any discussion or any argument the order was founded on a mistake of fact and, therefore, it could not be held to be law declared. The bench further was not apprised of earlier Constitution Bench decisions in *Hoechst Chemicals v. State of Bihar* and *Ganga Sugar Mill v. State of U.P.* which specifically dealt with the legislative competence of levying sales tax in respect of any industry which had been declared to be of public importance. Therefore, the conclusion of law by the Constitution Bench that no sales or purchase tax could be levied on industrial alcohol with utmost respect fell in both the exceptions, namely rule of sub-silentio and being in per incuriam, to the binding authority of the precedents."

55. The Apex Court in the case of ***A-One Granites Vs. State of U.P. and Others 2001 (3) SCC 537*** has explained when the judgement is not binding precedent. Paragraph nos.11 & 12 of the said judgement is reproduced herein-below:-

“11. This question was considered by the Court of Appeal in Lancaster Motor Co. (London) Ltd. vs. Bremith Ltd., (1941) 1 KB 675, and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents sub-silentio and without arguments are of no moment. Following the said decision, this Court in the case of Municipal Corpn. of Delhi v. Gurnam Kaur (1989) 1 SCC 101 observed thus: (SCC p. 111, para 12)

“12. In Gerard v. Worth of Paris Ltd. (1936) 2 All ER 905 (CA), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided 'without argument, without reference to the crucial words of the rule, and without any citation of authority', it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed.”

12. In State of U.P. v. Synthetics and Chemicals Ltd. reiterating the same view, this Court laid down that such a decision cannot be deemed to be a law declared to have binding effect as is contemplated by Article 141 of the Constitution of India and observed thus: (SCC p.163, para 41)

“A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141.”

56. We may respectfully observe that while deciding the two cases i.e. ***Ajay Raj Dwivedi (supra)*** and ***Smt. Kalpana Karwariya (supra)***, one vital aspect of the matter was not brought to the notice of the Court that if the MMDR Act or the Rules, 1963 or the Government Order dated 14.08.2017 do not prohibit the forfeiture of security in part or full in the event of non-payment of installment amount of the royalty as per the terms and conditions in the lease deed on the due date whether the incorporation of condition of forfeiture of security in part or whole in the lease deed in the event of violation of any terms and conditions of the lease deed is bad in law for the reason that the State has no power under MMDR Act or the Rules, 1963 or the Government Order dated 14.08.2017 to forfeit the security.

57. The further issue which also arise in the instant case is whether once the petitioner knowingly and voluntarily entered into a contract with the respondent-State by executing a registered lease deed incorporating the said condition and agreed to it, can he resile from it or challenge condition of forfeiture of security in the lease deed.

58. The petitioner does not dispute the execution of the lease deed nor it is the case of the petitioner in the writ petition that the petitioner did not voluntarily accept the general condition no.1 of Part-3 of the lease deed providing for forfeiture of the security.

59. The specific case of the respondent in the counter affidavit is that the petitioner visited the site personally and after having been satisfied that the quantity which the petitioner was to excavate under the lease agreement was available on the site voluntarily entered into a contract and executed the lease deed. In this respect, paragraph nos.5 to 12 of the counter affidavit are being reproduced herein-below:-

"5. That in advertisement dated 16.11.2017, there was specific condition that before participating in e-tender-cum-e-auction proceeding, the bidder himself inspect the mining area about availability of the estimated quantity of mineral and approach road to the mining area. After participating in e-tender-cum-e-auction proceeding, no representation about availability of mineral will be entertained. The relevant condition is being quoted herein below:

" 22 - शर्तें-

(1) ई निविदा सह ई नीलामी में भाग लेने के पूर्व क्षेत्र में आंकलित उपखनिज की मात्रा एवं खनन स्थल के लिए पहुँच मार्ग आदि के सम्बन्ध में मौके का निरीक्षण कर बिडर स्वयं आश्वस्त हो ले। ई निविदा सह ई नीलामी में भाग लेने के पश्चात इस सम्बन्ध में किसी भी प्रकार का दावा स्वीकार नहीं किया जायेगा।"

6. That the petitioner as per the terms and condition of the advertisement, after fully satisfying about the availability of estimated quantity of mineral and approach road, participated in e-tender-cum-e-auction proceeding and submitted the bid of Rs.1122/- per cubic meters.

7. That since the petitioner's bid was highest, therefore, the same was accepted and a Letter of Intent (L.O.I.) Dated 27.01.2018 (Annexure No. 7 to the writ petition) issued to him.

8. That the petitioner has prepared the draft mining plan through expert as per Rule 34 of U.P. Minor Mineral (Concession) Rules, 1963 (hereinafter referred as "Rules, 1963") and submitted the same for approval before the Director, Geology and Mining U.P.

9. That while preparing the draft mining plan, the petitioner and his expert to whom the petitioner has entrusted the work of preparation of draft mining plan, have again inspected the area since in draft mining plan the entire details with regard to availability of mineral in mining area and method of mining and closure of mining have been mentioned by the petitioner himself.

10. That the mining plan submitted by the petitioner was approved on 09.12.2018.

11. That the petitioner also got prepared the draft proposal for presentation of the same before the State Environment Impact Assessment Committee (SEIAC) to get the Environment Clearance Certificate from State Environment Impact Assessment Authority (SEIAA) as per notification dated 14.09.2006 and 15.01.2016 issued by the Ministry of Environment Forest and Climate Change (MoEFCC) Union of India. The Environment Clearance Certificate issued to the petitioner on 31.03.2018.

12. That thus from perusal of aforesaid facts and circumstances it is evident that the petitioner got inspected the area thrice before execution of mining lease. Firstly, before participating in e-tender-cum-e-auction proceeding as per specific condition mentioned in advertisement. Secondly, while preparing the draft mining plan and third time while preparing the

draft proposal for Environment Clearance Certificate. The petitioner deliberately not filed the Mining Plan and Environment Clearance Certificate with writ petition."

60. Clause-22 of the E-tender notice, which has been reproduced in para-5 of the counter affidavit extracted above, puts an obligation on the bidder to inspect the leased area and also satisfy himself about the availability of estimated quantity of mineral and approach road. The petitioner after having been satisfied about the availability of estimated quantity of mines voluntarily entered into the contract and executed the lease deed.

61. The petitioner has replied paras 5& 6 of the counter affidavit in para-4 of the rejoinder affidavit wherein he did not rebut the specific averments made in paras-5 & 6 of the counter affidavit. The petitioner has further replied paras 7 to 11 of the counter affidavit in para-5 of the rejoinder affidavit. He does not dispute the averments contained in paras 7 to 11 of the counter affidavit and states that the averments made in those paras are matter of record. Paragraph no.12 of the counter affidavit has been replied by the petitioner, but the specific averments contained in paragraph no.12 of the counter affidavit has not been denied by the petitioner in paragraph no.6 of the rejoinder affidavit.

62. The petitioner has averred in para-6 of the rejoinder affidavit that while cancelling the mining lease, the security amount of the petitioner could not be forfeited which has no relation with the condition of advertisement or the mining plan.

63. From the aforesaid facts, it is clear that the petitioner was well aware of the condition no.22 of the E-Tender notice-cum-E-Auction proceeding in the advertisement that the petitioner should get himself satisfied about the availability of quantity of mineral on the site and also should get satisfied about the approach road. The petitioner was also well aware of the fact that after participating in the E-Tender-cum-E-Auction proceeding, the petitioner would not be permitted to raise any grievance with regard to non-availability of mineral or any defect in the approach road. So, this condition of E-Tender is binding upon the petitioner. The detailed facts stated by the respondent in the counter affidavit in paras extracted above stating that the petitioner had inspected the area thrice before execution of the mining lease and having entered into a contract with open eyes knowing fully well that after execution of the contract, he cannot raise any grievance with regard to non-availability of quantity of mineral have not been denied by the petitioner categorically in the rejoinder affidavit.

64. Since, the condition no.22 of the advertisement is binding upon the petitioner, therefore, it is not open to the petitioner to take a plea that after the rainy season when he visited the site for commencing the mining operation after 01.10.2018, he found the mining area was submerged with water to deny his liability to pay third installment.

65. The petitioner has also relied upon the judgement of this Court in the case of ***M/s. Gauri Shankar Singh Vs. State of U.P. & Others*** passed in Writ-C No.12041 of 2020. Paragraph nos.10 to 12 of the said judgement are being reproduced herein below:-

“10. Having heard the learned Senior Counsel Sri Mukesh Prasad assisted by Sri Amit Upadhyay, Advocate and the learned Standing Counsel Sri Anubhav Chandra, we are of the view that the orders impugned cannot be sustained in the eyes of law; the petitioner was granted a lease on 03.04.2018 for a period commencing from 03.04.2018 and ending on 02.03.2023. The petitioner had commenced work on 03.04.2018 and had stopped the work on 30.06.2018 because of the monsoon season. When he commenced work on 01.10.2018, he discovered that there was hardly any sand available in the mining area in question because of the inundation of the river and, therefore, he reported his grievance on 24.10.2018 to the District Magistrate, who in his turn had ordered an inspection of the area on 03.12.2018. Definitely when a report was asked for on 03.12.2018 by the District Magistrate then he ought to have waited for the report and he should not have hurriedly issued the notice on 16.01.2019 and, thereafter, should not have canceled the lease on 01.02.2019. Also we filed that the report in fact was submitted on 25.02.2019 but the District Magistrate had already, without waiting for it, hurriedly passed the order on 1.2.2019.

11. Still further we find that under Rule 58 of the U.P. Minor Mineral (Concession) Rule, 1963 after the issuing of notice on 16.1.2019, the District Magistrate ought to have waited for a period of 30 days and, thereafter, should have canceled the lease. Having not done so, we find that the District Magistrate, Gorakhpur definitely acted in hot haste. He did not wait for the report as he had asked for by his own order dated 03.12.2018 and also did not wait for the statutory period of 30 days after the issuing of the notice. Also we find that the Appellate Court and the Revisional Court which ought to have considered the report dated 25.2.2019 did not consider the same and dismissed the appeal and the revision wrongly. We do find that as per the judgement and order dated 11.01.2021 passed in writ petition being Writ-C No.17258 of 2020 (Vipul Tyagi vs. State of U.P. And 6 Others) royalty was chargeable only for the period for which minerals were removed by the petitioner.

12. Under such circumstances, the order of the District Magistrate, Gorakhpur dated 01.02.2019, the order of the Appellate Court dated 15.11.2019 and the order of the Revisional Court dated 03.03.2020 are quashed. The consequential recovery certificate dated 20.03.2020 is also quashed and is set aside.”

66. The judgement of this Court in the case of **M/s. Gauri Shankar Singh (supra)** is distinguishable on facts, therefore, this judgement is of no help to the petitioner. In the said case, after the petitioner (Gauri Shankar) reported the matter to the District Magistrate regarding non-availability of sand in mining area, the District Magistrate ordered the inspection of the area on 03.12.2018, and he without waiting for the report cancelled the lease deed before expiry of 30 days statutory period provided in Rule 58 (1) of the Rules, 1963. In the instant case, the petitioner has not challenged the legality of the termination of lease deed. The issue of legality of forfeiture of security was also not before the Court in the case of **M/s. Gauri Shankar Singh (supra)**, whereas in the present case, the petitioner has challenged the legality of forfeiture of security amount, therefore, for this reason also, the judgement of this Court in the case of **M/s. Gauri Shankar Singh (supra)** does not come to the aid of the petitioner.

67. To appreciate the issue whether the petitioner can invoke the writ jurisdiction under Article 226 of the Constitution of India to wriggle out of a condition stipulated in the contract, few judgements of the Apex Court referred below postulating the law in this respect needs to be considered by this Court.

68. The Apex Court in the case of *State of Orissa & Others Vs Narain Prasad & Others*, AIR 1997 SC 1493 was called upon to consider a question as to whether the writ jurisdiction under Article 226 of the Constitution of India can be invoked by a party to a contract to wriggle out of a condition stipulated in the contract that the said undertaking in the contract is not enforceable in law. In paragraph no.2 of the judgement the Apex Court framed the question which is being reproduced herein-below:

“2. Having voluntarily entered into contracts with the Government of Orissa, undertaking to lift a particular quantity of liquor every month and also to remit the monthly excise duty in two equal installments on the fifth and fifteenth of the month, the respondents-licencees committed default on both counts and when the amount of excise duty is sought to be recovered from them, they have turned round and are contending that the said undertaking in the contract is not enforceable in law. They invoked the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution for the purpose. The High Court has upheld their contention. Hence, these appeals by the State of Orissa.”

69. In the said case, Rule 6-A of the Orissa Excise Exclusive Privilege Rules, 1970 provided that the licensee shall have to undertake to lift M.G.Q. (Minimum Guarantee Quantity) of liquor every month. Obligation of the licensee to lift the M.G.Q. of liquor and to remit the excise duty payable for the month under Clause (3) of the Rules are two distinct obligations. While the obligation to lift the M.G.Q. was to be discharged before the end of the month, the obligation to remit the excise duty for the month is to be discharged in two equal installments; the first installment by the fifth and the second installment by fifteenth of the month. The consequences of not remitting the excise duty in the manner specified are set out in clause (3) & (4) which make the said obligation mandatory and emphatic.

70. The Rule also makes it clear that if in a given month, the full M.G.Q. is not lifted, the Collector can permit the deficit to be lifted in the subsequent month but this has nothing to do with the obligation to remit the excise duty for the month on the date specified. Every person whose bid or tender has been accepted is required to execute an agreement/contract in the prescribed form.

71. Under this agreement, the contractor/licensee agrees to abide by the rules and conditions relating to retail vend of country spirit (liquor) as stipulated in the license as also the general conditions of licence. The said condition shall be treated as part of agreement. Clause (2) of the agreement obliges the contractor to draw a particular quantity of liquor every month from the specified warehouse. Under clause (3), the contractor undertakes to pay duty at the prescribed rate at the warehouse prior to lifting the stock. This condition provides that excise duty shall be remitted prior to lifting; it does not say it shall be remitted at the time of lifting. Under clause (7) of the contract, the contractor/licencee agrees to abide by all the provisions of the Act and the Rules and instructions as may be issued from time to time.

72. The respondent defaulted in payment of equal installment of excise duty and when the said amount of excise duty was sought to be recovered from them, they turned around and contended that the said undertaking in the contract is not enforceable in law on the pretext that the demand for payment of excise duty on unlifted quantity of arrack amounts to levy of duty and such levy is not

warranted by the Act. It was contended that Rule 6A (3) is ultra vires the rule making power of the Government.

73. It was contended that if there is a sale of liquor, duty can be collected on the liquor sold, but that seeking to collect duty even in the absence of sale amounts to levy of duty contrary to the provisions of the Act.

74. The State of Orissa disputed the aforesaid contention and contended that the respondent having entered into an agreement for sale of country liquor and having been granted an exclusive privilege on certain terms and condition cannot now after entering into a contract wriggle out from contract obligation and contend that the amount demanded for short fall of MGQ is valid.

75. The Apex Court allowed the Special Leave to Appeal preferred by the State of Orissa and held in paragraph-35 of the said judgement as under:

“35. Lastly, we may also invoke the holding in Har Shankar (AIR 1975 SC 1121) and Jageram (AIR 1980 SC 2018) that the writ petitioners, having entered into agreements voluntarily, containing the conditions aforesaid and having done the business under the licences obtained by them, cannot be allowed to either wriggle out of the agreements nor can they be allowed to challenge the validity of the Rules which constitute the terms of the contract. The High Court should not have exercised its extraordinary discretionary jurisdiction under Article 226 of the Constitution in aid of such licencees.”

76. In the case of **Venkataraman Krishnamurty and Another Vs. Lodha Crown Buildmart Private Limited, 2024 (4) SCC 230**, the Apex Court has laid down the principles based on which, the terms and conditions of the contract should be interpreted. Paragraph nos.21 and 22 of the said judgement are being reproduced herein below:-

“21. In this regard, we may refer to the Constitution Bench decision in General Assurance Society Ltd. v. Chandumull Jain, wherein it was observed that, in interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves. Thereafter, in Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corporation Ltd., this Court reiterated that a contract, being a creature of an agreement between two or more parties, is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however reasonable, if the parties have not made it themselves.

22. More recently, in Shree Ambica Medical Stores v. Surat People's Coop. Bank Ltd., it was observed that, through its interpretative process, the court cannot rewrite or create a new contract between the parties and has to simply apply the terms and conditions of the agreement as agreed between the parties. Again, in GMR Warora Energy Ltd. v. CERC, it was observed that courts cannot substitute their own view of the presumed understanding of commercial terms by the parties, if the terms are explicitly expressed. It was held that the explicit terms of a contract are always the final word with regard to the intention of the parties.”

77. Para-1 of part-II of the lease deed contains a table in which the date of installment towards royalty to be paid by the petitioner is mentioned. The lease deed has been executed in Form MM-6 as per Rule 29 of Rules, 1963. The incorporation of table with regard to schedule of deposit fixing a particular date for payment of installment for royalty is part of the lease deed, to which the petitioner voluntarily with open eyes agreed to while executing the lease deed. Thus, under the lease deed, the liability to pay installment of royalty upon the petitioner is the date mentioned in the said table which the petitioner voluntarily agreed, and therefore, the schedule of deposit detailed in clause-1 of part-II of the lease deed is the terms and conditions of the agreement by which the petitioner is bound, and any violation of non-payment of installment for royalty on the date fixed will amount to breach of the terms and conditions of the lease deed, therefore, the petitioner cannot say that the schedule for deposit mentioned in the lease deed is not the part of the terms and conditions of the lease deed, hence, non-payment of any installment on a fixed date cannot be treated as violation of any condition of the lease deed.

78. The lease deed stipulates for forfeiture of security amount in part or full which is the term and condition of the lease deed, and till the petitioner demonstrates that such a condition is unconscionable or pricks the conscience of the Court or against the public policy, the petitioner having agreed to the said condition knowingly and voluntarily cannot wriggle out of the said condition contending that non-payment of installment on a particular date stipulated in the lease deed does not amount to violation of the lease deed nor he can contend that the respondent-State has no jurisdiction to forfeit the security inasmuch as Rule 58 of the Rules, 1963 or Clause-19 (3) of the Government Order dated 14.08.2017 do not confer power upon the State Government to forfeit the security.

79. The law is settled that Courts cannot substitute their own view of the presumed understanding of commercial terms by the parties, if the terms are explicitly expressed. The explicit words of the contract are always the final word with regard to the intention of the parties. Therefore, denying or restraining the respondent-State from forfeiting the security which is permitted under the lease deed in case of violation of any condition of lease or violation of any Rules of 1963 would amount to rewriting a contract which power Court does not possess while interpreting a contract.

80. The contention of the learned counsel for the petitioner that if the installment of royalty is not paid on the due date, the same can be recovered as arrears of land revenue is misconceived for the reason that recovery of royalty as arrears of land revenue is the consequence of non-payment of installment on the due date which is evident from clause (3) of Part-II of the lease deed while forfeiture of security is the consequence of violation of any condition of the lease deed as per clause (1) of Part-III of the lease deed which has been accepted by the petitioner voluntarily. Therefore, in the event of any breach of the condition of the lease deed, the respondents are well within their rights to forfeit the security.

81. So far as Rule 59 of Rules, 1963 is concerned, the same deals with consequences of contravention of certain conditions on existence of which the penalty provided in the said provision for violating the condition of the lease deed under Rule 59 can be imposed and can also be recovered from the security of lessee. Neither Rule 58 of Rules, 1963 nor Clause 19(3) of the

Government Order dated 14.08.2017 nor Rule 59 of the Rules, 1963 or any provision either in the MMDR Act or Rules, 1963 prohibits the incorporation of a condition in the lease deed that in the event of violation of any terms and conditions of the lease deed, the security in part or full can be forfeited.

82. The stipulation of condition of forfeiture of security in the lease deed find its genesis in Form MM-6 'Model Form of Auction Lease for Mining' in which lease deed is to be executed as per Rule 29 (1) of the Rules, 1963. Rule 29 of Rules, 1963 and Form MM-6 'Model Form of Auction Lease for Mining' are reproduced herein-below:-

"29. Execution of lease deed- (1) *The successful bidder/tenderer after receiving Letter of Intent of concerned e-tender/ e-auction/ e-tender cum e-auction shall produce; approved Mining Plan and Clean Environment Certificate prescribed as per rule, and a lease deed concerning the same will be executed in form MM-6 or in bid similar format. The registration of the said executed lease deed will be registered within three months period. The period of lease will be counted from the date of execution of the concerned lease deed. If due to fault on the part of lease holder, registration of the said executed lease deed is not registered within three months, then the said lease deed will be treated as null and void and the amount of security will be seized by the District Magistrate.*

(2) [Omitted].

(3) *A copy of the lease deed together with the map of the area shall be sent by the District Officer or the Committee, as the case may be, to the Director, Geology and Mining, Uttar Pradesh, within fifteen days from the date of execution thereof."*

FORM MM-6

Model Form of Auction Lease for Mining

[See Rule 29]

This indenture made this....day of.....20..... between the Governor of the Uttar Pradesh (hereinafter referred to as "the State Government" which expression shall where the context so admits be deemed to include the successors and assigns) of the one part.

When the lessee is an individual

.....

When the lessees are more than one individual

.....

When the lessee is a register firm

.....

When the lessee is registered company

.....

And the lessee/lessees hereby covenants/covenant with the State Government and the State Government hereby covenants with lessee/lessees as is expressed in the said Rules.

And it is hereby mutually agreed between the parties hereto as in Part III of the said Schedule is expressed.

(THE SCHEDULE ABOVE REFERRED TO)

PART I

The Area of this Lease

Location and area of the lease

.....

PART II**Royalties reserved by this lease****Amount and mode of payment of royalty**

(1) The lessee/lessees shall during the subsistence of this lease pay to the State Government royalty mentioned below in respect of all..... removed by him/them from the area lease:

<i>No. of instalment</i>	<i>Amount</i>	<i>Date on which instalment to be paid</i>
<i>1</i>	<i>2</i>	<i>3</i>

Royalty to be free from deduction, etc.

(2) The instalments of the royalty mentioned in this part shall be paid free from any deductions to the State Government at.....by deposit in Government Treasury, a copy of the challan being supplied to the District Officer.

Cause of action if royalties are not paid in time

(3) Should any instalment of royalty due to the State Government under the terms and conditions of these presents be not paid by the lessee/lessees within the prescribed time the same may be recovered on a certificate of such officer as may be specified by the State Government by a general or special order, in the same manner as arrears of land revenue.

PART III**General Provisions****Lease may be determined on breach of rules, covenants and conditions**

(1) If the lessee/lessees commits a breach of any of the Minor Minerals (Concession) Rules, 1963, or any of the covenants and conditions of this lease, the State Government may determine the lease and forfeit the whole or part of the security deposit, provided that the lessee/lessees shall be given due opportunity to explain the breach before the lease is determined.

Lessee to remove his properties on the expiry of lease

.....

Forfeiture of property left more than three months, after determination of lease

.....

Notices

.....

Stamp duty

.....”

83. Since the lease deed executed between the petitioner and the respondents is to be executed in Form MM-6 as per Rule 29(1) of Rules, 1963, which contains a clause of forfeiture of security in clause (1) of Part-III of the 'Model Form of Auction Lease for Mining', therefore, the nature of lease deed is a statutory lease deed, and the condition incorporated with regard to the forfeiture of security in the lease deed also has its root in Rule 29 (1) of the Rules, 1963, therefore, the argument of learned counsel for the petitioner that the respondent State has no authority or jurisdiction to forfeit the security as neither Rule 58 nor Clause-19(3) of the Government Order dated 14.08.2017 confers any power upon the respondent State to forfeit the security is misconceived.

84. So far as the argument of learned counsel for the petitioner that since the petitioner has not excavated the mineral after 01.10.2018, therefore, it is not a violation of lease deed and is protected by Section 15 (3) of the MMDR Act, which according to the petitioner provides that the petitioner is liable to pay royalty only for that much quantity of mineral which has been excavated by him. It would be useful to have a glance at Section 15(3) of MMDR Act, 1957 which is reproduced below:-

"15. Power of State Government to make rules in respect of minor minerals.—

(3). The holder of a mining lease or any other mineral concessions granted under any rule made under sub-section (1) shall pay [royalty or dead rent, whichever is more] in respect of minor mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals:

Provided that the State Government shall not enhance the rate of [royalty or dead rent] in respect of any minor mineral for more than once during any period of [three years]."

85. Normal principle of statutory interpretation is that when the words used in the statute are clear and unambiguous, the same should be given their normal meaning without adding or rejecting any word. However, there is an exception to this general rule. In case, the Court finds that the provision is vague and ambiguous or the normal meaning may lead to confusion, absurdity or the repugnancy with other provisions, the Court may by using the interpretative tools, set right the situation by adding or omitting or substituting words in the statute.

86. The Apex Court in the case of ***Independent Sugar Corporation Ltd. Vs. Girish Sriram Juneja & Others (2025) 5 SCC 209*** has held in paragraph nos.199 to 201 as under:-

"199. T. L. Venkatarama Aiyar, J. in Tirath Singh vs. Bachittar Singh (1955) 2 SCC 23 stated that: (SCC OnLine SC, para 5)

".....'Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.'"

The literal and purposive rules of interpretation, as well as their scope, obligation, and limitations, are prefaced for further discussion. The right consideration of issues on hand is achieved by not referring to the precedents on literal or purposive interpretation. It is axiomatic

that the precedents on interpretation are specific to the statute, language and case. The Court, in a given case before it, goes by the first principles of the respective tools of interpretation.

200. The literal interpretation is not an inviolable rule. The decisions referred to supra, while underlying the principle involved in literal interpretation, had laid down that the literal interpretation, if it leads to hardship, inconsistency, defeats the working of the statute, and acts counterproductive to the purpose and object sought to be achieved by the statute. A statute must be construed in such a manner as to make it workable.

201. Literal interpretation is not the only tool to begin with while constructing a statute. The often-cited judgements on literal interpretation set out when purposive interpretation is considered and preferred over literal interpretation. In the instant appeal, both interpretations have been commended for consideration."

87. In the case of ***Palm Groves Cooperative Housing Society Ltd. Vs. Magar Girme & Gaikwad Associates etc.*** 2025 SCC OnLine SC 1790, the Apex Court in paragraph no.19.2 noted paragraph no.21 of the judgement of ***Afcons Infrastructure Ltd. Vs. Cherian Varkey Construction Company Private Ltd.*** to explain as to how tools of interpretation of the statute be applied for purposive construction of statute. Paragraph no 19.2 of the judgement is reproduced below:-

"19.2 The law on the issue was further summed up by this Court in Afcons Infrastructure Limited v. Cherian Varkey Construction Company Private Limited. It was a case pertaining to interpretation of Section 89 of the CPC. Relevant para 21 thereof is extracted below:

"21. There is however an exception to this general rule. Where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words or grammatical construction thereof would lead to confusion, absurdity, repugnancy with other provisions, the courts may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right the situation, by adding or omitting or substituting the words in the statute. When faced with an apparently defective provision in a statute, courts prefer to assume that the draftsman had committed a mistake rather than concluding that the legislature has deliberately introduced an absurd or irrational statutory provision. Departure from the literal rule of plain and straight reading can however be only in exceptional cases, where the anomalies make the literal compliance with a provision impossible, or absurd or so impractical as to defeat the very object of the provision. We may also mention purposive interpretation to avoid absurdity and irrationality is more readily and easily employed in relation to procedural provisions than with reference to substantive provisions.

21.1. Maxwell on Interpretation of Statutes (12th Ed., p. 228), under the caption "modification of the language to meet the Intention" in the chapter dealing with "Exceptional Construction" states the position succinctly:

"Where the language of a statute, in Its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and

intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

This Court in Tirath Singh v. Bachittar Singh, [(1955) 2 SCC 23: AIR 1955 SC 830] approved and adopted the said approach.

21.2. In Shamrao V. Parulekar v. District Magistrate, Thana, [(1952) 2 SCC 1: AIR 1952 SC 324: 1952 Cri LJ 1503] this Court reiterated the principle from Maxwell: (AIR p. 327, para 12)

"12... if one construction will lead to an absurdity while another will give effect to what common sense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided."

21.3.

21.4.

21.5.

21.6. Justice G.P. Singh extracts four conditions that should be present to justify departure from the plain words of the statute, in his treatise Principles of Statutory Interpretation (12th Edn., 2010, Lexis Nexis, p. 144) from the decision of the House of Lords in Stock v. Frank Jones (Tipton) Ltd., [[1978] 1 WLR 231: [1978] 1 All ER 948 (HL)]: (WLR p. 237 FG)

"... a court would only be justified in departing from the plain words of the statute when it is satisfied that: (1) there is clear and gross balance of anomaly; (2) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly, could not have been prepared to accept it in the interest of a supervening legislative objective; (3) the anomaly can be obviated without detriment to such legislative objective; (4) the language of the statute is susceptible of the modification required to obviate the anomaly."

88. The literal interpretation of statute is not sacramental rule. The decision referred supra emphasised the principle of literal interpretation but if such interpretation leads to hardship, inconsistency, defeats the working of the statute, and acts counterproductive to the purpose and object sought to be achieved by statute, it must be given purposive construction by focusing on the intention of the legislature in framing the law. This flexible approach allows Courts to consider legislative intent to prevent absurd outcome and give effect to public good.

89. As per **Black's Law Dictionary (5th Edition)**, the meaning of word 'only' is *solely, merely, exclusive or necessary in a particular situation, in contrast to all the other things that are not true, appropriate or necessary.*

90. As per **The New International Webster's Comprehensive Dictionary**, the meaning of word 'only' is *solely; merely; exclusively: limiting a statement to a single defined person, thing or number.*

91. In view of the meaning given in various dictionaries to the word 'only', we are of the view that the argument of learned Chief Standing Counsel-II has substance that if the legislature had intended that lessee is liable to pay royalty or lease rent or dead rent whichever is higher only for

the quantity removed or consumed by the lessee, the legislature would have incorporated the word 'only' before the words 'in respect of minor mineral removed or consumed'.

92. If the interpretation of Section 15(3) put forth by the learned counsel for the petitioner that the petitioner is liable to pay royalty for the quantity of mineral consumed by the petitioner is accepted, that would lead to absurdity since it could never be the intention of the legislature, further such interpretation would render the other provision of Rules, 1963 and the terms and condition of the lease deed which is in Form MM6 as per Rule 29 of Rules, 1963 redundant.

93. The Division Bench of this Court in paragraph no.38 of the judgement in the case ***Raj Pratap Yadav Vs. State of U.P. and Others passed in Writ-C No.28087 of 2023*** has held that Section 15(3) of the MMDR Act cannot be interpreted in a manner so as to confer benefit upon the lessees for not paying installments where mineral has not been removed or consumed by him. Paragraph no.38 of the said judgement is reproduced herein below:

“38. In the backdrop of the aforesaid discussion, in a case of auction lease that is covered by Chapter IV of the Rules, 2021, to say that while considering an application of surrender of mining lease, ‘royalty’ would be payable only to the extent of the mineral removed or consumed, would not be appropriate. Doubtless, where there occurs violation of the terms and conditions of the mining lease which is not promptly attended to by the lessee, the authorities are required to take steps without delay for termination of the lease in the interest of all concerned. But where the mining lease deed executed in Form MM-6 or in similar format under the Rules made under the provisions of Section 15 (1) and (1-A) of the Act, 1957 provides for the quantity of minor mineral to be excavated annually in cubic meters, and the highest bid offered by the lessee, and the total amount of instalments payable in the first year and subsequent years, which also form the consideration for the contract, then the instalments would be payable under the terms of the lease. Therefore, the provisions of Section 15 (3) of the Act, 1957 cannot be read or interpreted in a manner to confer a benefit on the lessee for not paying the installments where no mineral has been removed or consumed by him. Thus, to this extent, the judgment of this court in Vipul Tyagi when read in the light of the judgment of the Supreme Court in D.K. Trivedi, the provisions of the Act 1957, and of the Rules of the State Government framed under the powers delegated by the Act 1957, would not operate as a binding precedent.

94. The other submission of learned counsel for the petitioner in respect to the fact that the respondent can forfeit the security only if the conditions enumerated in Rule 29 of the Rules, 1963 are present, the said submission also lacks merit for the reason that it contemplates the forfeiture of security if the lease deed is not executed within one month by the lessee because of default on the part of the lessee from the issuance of lease deed or LOI, or as the case may be. However, Rule 29 of the Rules, 1963 does not prohibit the respondent-State to forfeit the security nor prohibits the induction of forfeiture clause in the lease deed in case of violation of terms and conditions of lease deed. Lease deed is prepared in Form MM-6 named as □Model Form of Auction Lease for Mining□ under Rule 29 of Rules, 1963 which contains forfeiture clause in para-1 of Part-III which has been extracted above.

95. So far as the contention of learned counsel for the petitioner with regard to violation of principle of natural justice by the respondent State in forfeiting the security is concerned, we may note that the rule as well as lease deed prescribes for providing opportunity of hearing before cancellation of lease deed and not before forfeiting the security. However, we are of the view that even before forfeiting the security, a notice and opportunity of hearing ought to be given to the lessee for the reason that the forfeiture of security prejudices the rights of lessee and entails civil consequences.

96. In the instant case, though the authority should have given a notice and opportunity of hearing to the petitioner before forfeiting the security to rebut the allegation against the lessee regarding violation of any condition of the lease deed for invoking forfeiture clause. However, we do not propose to remand the matter for violation of principles of natural justice for the reasons delineated herein-below.

97. The petitioner has raised all the contentions challenging the action of the respondent-State in forfeiting the security of the petitioner, and this Court has given ample opportunity of hearing to the petitioner to advance all contentions which he could have advanced before the authority challenging the legality of action of respondent in forfeiting the security. This Court has deliberated and dealt with all the contentions advanced by the petitioner challenging the action of the respondent-State in forfeiting the security of the petitioner, therefore, no useful purpose would be served in remanding the matter to the authority on the ground of violation of principles of natural justice as such an exercise would be an empty formality and a wasteful exercise. Therefore, in such view of the fact, we are not inclined to remit the matter to the authority on the ground of violation of principles of natural justice.

98. So far as the contention of learned counsel for the petitioner that since the lease deed stipulates the forfeiture of security in part or full and as the discretion has been vested upon the authority to forfeit the security in part or full, therefore, such discretion should be supported by reason is concerned, we may add that clause (1) of Part-III of the lease deed is a part of contract and the petitioner is bound by such condition of lease deed. If for any reason, petitioner is of the view that the authority should have forfeited the security of lessor amount than the entire security, the petitioner has a remedy to claim damage on the aforesaid ground under Civil Law, and this Court cannot interfere nor substitute the terms and conditions of the contract by assessing the amount of security which the respondent-State could forfeit under the agreement.

99. It has also been urged by the learned counsel for the petitioner that the action of the respondent in not adjusting the security amount in the third installment is arbitrary and is violative of Article 14 of the Constitution of India inasmuch as in other districts, the District Magistrate has cancelled the lease deeds while passing orders under Rule 58 of Rules, 1963 and has adjusted the security amount deposited by the lessee in the dues of the lease amount/royalty, therefore, forfeiture of security cannot be sustained. In this respect, necessary averments has been made by the petitioner in paragraph no.32 of the writ petition which is reproduced herein-below:-

“32. That here it is also pertinent to mention here that in different District in the Uttar Pradesh on the ground of the non deposition of the quarterly installment of the annual lease

amount by the lessee of the mining lease District Magistrate has cancelled the lease deeds while passing the orders under Rule 58 and while cancelling the lease deed under rule 58 District Magistrates have adjusted the security amount deposited by the lessee in the dues of the lease amount/royalty but in the case of the petitioner on the same ground while passing the order dated 29-12-2018 by cancelling the mining lease of the petitioner the District Magistrate has illegally forfeited the security amount deposited by the petitioner and not adjusted the same against the dues of the petitioner which is clear violation of the Article 14 & 16 of the Constitution of India. That for this regard in similar nature the order dated 04-06-2018 passed by the District Magistrate, Allahabad and three orders dated 29-12-2018 passed by the District Magistrate, Mahoba by which while passing the order under rule 58 for cancelling the mining lease of the lessee on the ground of non deposition of the installments of the quarterly lease amount by the lessee the security deposited by the lessee have been adjusted against the dues of the lessee, are being attached herewith as Annexure No.-13 and 14 to this petition.”

100. The respondent-State has replied the paragraph no.32 of the writ petition in paragraph no.43 of the counter affidavit, which is also reproduced herein-below:-

“43. That in reply to the contents of paragraph no.32 of the writ petition, it is submitted that the part-3 of mining lease (Page. 77 -78 of writ petition) relates to general condition and additional condition. General condition no.(1) specifically provide that on violation of any rule of U.P. Minor Mineral (Concession) Rules, 1963 or covenant and condition of mining lease, the mining lease may be determined and the security deposit may be forfeited wholly or partly.

That there is specific condition for forfeiture of security deposit and no provision for adjustment of the entire amount of security, if the decision for determination of lease has been taken as per part-3 clause-1 of mining lease.

That the decision taken by District Magistrate of the Districts in which the entire security deposit has been adjusted was their own discretion and the benefit of the same cannot be extended to the petitioner as per the terms and condition of mining lease.”

101. The security amount may have been adjusted by the District Magistrates of some of the Districts as stated by the petitioner in paragraph no.32 of the writ petition, but that would not give a right to the petitioner to get the security amount adjusted in the third installment inasmuch as neither Rules,1963 nor clause (1) of Part-III of the mining lease permits the security amount to be adjusted against any installment or any amount due from the petitioner.

102. The law is settled that benefit of Article 14 of the Constitution of India cannot be extended to perpetuate an illegality. In this respect, it would be apt to reproduce paragraph nos.9 to 11 of the judgement of the Apex Court in the case of ***Tinku Vs. State of Haryana and Others, 2024 SCC OnLine SC 3292:-***

“9. That apart, the claim as has been stated above, cannot be accepted being not supported with any statutory backing. This is required for making any claim including a claim for compassionate appointment, which is an exception to the general rule of appointment requiring a proper advertisement and selection process to be followed as per rules which is an accepted norm. If some wrong benefit has been conferred or some benefit which is contrary to the scheme has been

granted, it would not bestow a right upon the others to claim it as a right of equality by reference to Article 14 of the Constitution of India.

10. There are catena of judgments of this Court that clearly lay down the principles which govern such claims. Some of which are Shanti Sports Club v. Union of India, Chandigarh Administration v. Jagjit Singh, R Muthukumar v. TANGEDCO, Basawaraj v. Special Land Acquisition Officer.

11. The very idea of equality enshrined in Article 14 is a concept clothed in positivity based on law. It can be invoked to enforce a claim having sanctity of law. No direction can, therefore, be issued mandating the State to perpetuate any illegality or irregularity committed in favour of a person, an individual, or even a group of individuals which is contrary to the policy or instructions applicable. Similarly, passing of an illegal order wrongfully conferring some right or claim on someone does not entitle a similar claim to be put forth before a court nor would court be bound to accept such plea. The court will not compel the authority to repeat that Illegality over again. If such claims are entertained and directions issued, that would not only be against the tenets of the Justice but would negate its ethos resulting in the law being a causality culminating in anarchy and lawlessness. The Court cannot ignore the law, nor can it overlook the same to confer a right or a claim that does not have legal sanction. Equity cannot be extended, and that too negative to confer a benefit or advantage without legal basis or justification.”

103. So far as Rule 50 of 1963 with regard to refund of security is concerned, it states that after determination of a mining lease, the amount of security deposit lying in deposit with the State Government not required to be applied for any of the purposes mentioned in the Rules shall be refunded to the lessee ordinarily within a period of six months from the date of determination of lease. The said rule talks of refund of security only if the security deposit lying in deposit with the State Government after the lease deed is determined is not to be used for any of the purposes mentioned in the Rules shall be refunded to the lessee within a period prescribed in the said Rule.

104. In the present case, the security amount has been forfeited by the respondent authority on the violation of terms and conditions of the lease deed as held above, therefore, Rule 50 of the Rules, 1963 is not attracted in the instant case nor Rule 50 would become redundant since it will have its application in all those cases where the lease deed has been determined and no amount is due from the lessee under the Rules to the respondent State, in such an event, respondent-State is under obligation to refund the security lying in deposit with the respondent-State.

105. Before parting with the judgement, we may add that petitioner has not raised any contention challenging the recovery of third installment. The petitioner has emphasised for adjustment of security money towards third installment which is also evident from prayer (ii) of the writ petition extracted in paragraph no.2 of the judgement.

106. For the reasons given above, we are of the view that the writ petition lacks merit and deserves to be **dismissed**. Accordingly, the writ petition is dismissed with no order as to costs.

(2026) 1 ILRA 1238
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 05.01.2026

BEFORE

THE HON'BLE DR. GAUTAM CHOWDHARY, J.

Criminal Misc. Anticipatory Bail Application U/S 482 BNSS No. 10241 of 2025

Monika

...Applicant

Versus

State of U.P.

...Respondent

ISSUE FOR CONSIDERATION

Whether anticipatory bail can be granted to the applicant despite issuance of non-bailable warrants and proclamation under Sections 82/83 Cr.P.C., considering her circumstances (pregnancy, limited role, no antecedents) ?

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 - Sections 82, 83, 156(3) - Indian Penal Code, 1860 - Sections 316, 420, 504, 120-B - Medical Council Act, 1956 - Sections 15(2), 15(3) - Second Anticipatory Bail application, filed by the co-accused – who was working as midwife nurse in the hospital of the main accused - seeking anticipatory bail – FIR lodged after delay of 1.5 years - earlier she was granted interim Anticipatory Bail - but after filing complaint, same was rejected by the trial court and later on by High Court – offences under sections 316, 420, 504, 120-B IPC and Medical Council Act – charge sheet submitted – cognizance taken – NBW and proclamation issued – applicant pleaded that she was in family way, gave birth during issuance of process, had sought exemption from appearance, role limited to nurse under co-accused - Court finds that - issuance of proclamation under Section 82 Cr.P.C. is not an absolute bar, - applicant has no antecedents, custodial interrogation not required – court relied on judgment in the case of *Asha Dubey* and *Siddharam Satlingappa Mhetre* – held that, this is a fit case for anticipatory bail – hence, application allowed – anticipatory bail granted till conclusion of trial subject to conditions – directions issued to applicant to cooperate, attend proceedings, not tamper with evidence as well as with liberty of cancellation if conditions violated.

(Para – 9, 10, 11, 12)

Application allowed. (E-11)

CASE LAW CITED

Asha Dubey v. State of Madhya Pradesh, Criminal Appeal No. 4564 of 2024 (SC).
Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694.

LIST OF ACTS

Code of Criminal Procedure - Indian Penal Code, 1860 - Medical Council Act, 1956.

LIST OF KEYWORDS

Anticipatory Bail, Non-Bailable Warrant, Proclamation, Section 82 Cr.P.C., Pregnancy, Nurse, FIR Delay, Cognizance, Natural Justice, Apex Court Dictum.

CASE ARISING FROM

Case Crime No. 472 of 2023, Police Station Kiratpur, District Bijnor, Uttar Pradesh.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Gaurav Kakkar, Sr. Advocate assisted by Shri Raghvendra Prakash.

Counsel for Respondent(s): Shri Mayank Sinha, A.G.A.

(Delivered by Hon'ble Dr. Gautam Chowdhary, J.)

1. Heard Shri Gaurav Kakkar, learned Senior Advocate, assisted by Shri Raghvendra Prakash, learned counsel for the applicant, Shri Chandan Singh, learned A.G.A. for the State as well as Shri Babloo Pant, learned counsel for the applicant and perused the record.

2. The present application has been moved seeking anticipatory bail in Case Crime no. 472 of 2023, under Sections 316, 420, 504, 120-B I.P.C. and Section 15(2), 15(3) of Medical Council Act, 1956, Police Station Kiratpur, District Bijnor, with the prayer that in the event of arrest, applicant may be released on anticipatory bail.

3. At the very outset learned counsel for the informant submits that non bailable warrant as well as proclamation under Sections 82 & 83 Cr.P.C. have been issued against the applicant earlier, therefore, there is no occasion to entertain the present anticipatory bail application and the same deserves to be dismissed.

4. Learned counsel for the applicant submits that applicant is the midwife nurse in the hospital of the co-accused having no concern with the alleged incident. After filing of complaint the applicant was granted interim anticipatory bail by the concerned trial court. When the anticipatory bail application of the applicant was rejected by the trial court then she approached this Court by filing Criminal Misc. Anticipatory Bail Application No. 9657 of 2024 wherein a coordinate Bench of this Court vide order dated 17.10.2024 granted interim protection till the next date of listing, however, this anticipatory bail application has been rejected by this Court vide order dated 25.09.2025. Now the applicant has filed this second anticipatory bail application after the charge sheet has already been submitted. Learned counsel for the applicant further submits that there is no whisper against the applicant in previous four applications moved under Section 156(3) Cr.P.C. by the informant. The F.I.R. itself is delayed by more than one and half years. The main allegation is against the co-accused and the applicant has been implicated in the case only as she was giving service of nurse in the said hospital under the supervision of the co-accused at the alleged date of occurrence.

5. Learned counsel for the applicant further submits that as far as objection raised on behalf of informant that the non bailable warrant as well as proclamation under Section 82/83 Cr.P.C. have already been issued earlier against the applicant is concerned, it is very humbly submitted that though the charge sheet was filed on 09.11.2024 whereupon cognizance was taken on 19.05.2025 and non bailable warrant was issued against her on 10.10.2025 but at that time the applicant was in family way and she gave birth of a male child on 06.10.2025 also. Thus, when the processes were issued she was in family way. After cognizance the applicant also moved several applications on each and every date for exemption of her personal appearance as she was in family way and was unable to appear before the trial court but the learned trial court without considering such application has issued non bailable warrant against the applicant, which is against the natural

justice and is also against the dictum followed by Hon'ble Apex Court in the case of **Asha Dubey Vs. The State of Madhya Pradesh (Criminal Appeal No. 4564 of 2024, decided on 12.11.2024)**. In support of his submission the learned counsel placed reliance upon paras-6 to 9 of the said judgment which read as under:

"6. The relationship between the appellant and the deceased is not in dispute. Admittedly, the son of the appellant has been arrested and he is still in custody. It is incorrect to state that pursuant to the interim protection granted, the appellant was not cooperating in the investigation and in fact despite communication sent by the appellant to investigating authority, the investigating authority has not called her for joining the investigation.

7. Considering the facts and circumstances of the case, we are of the view that the custodial interrogation of the appellant is not required.

8. Coming to the consideration of anticipatory bail, in the event of the declaration under Section 82 of the Cr.P.C., it is not as if in all cases that there will be a total embargo on considering the application for the grant of anticipatory bail.

9. When the liberty of the appellant is pitted against, this Court will have to see the circumstances of the case, nature of the offence and the background based on which such a proclamation was issued. Suffice it is to state that it is a fit case for grant of anticipatory bail, on the condition that the appellant shall cooperate with the further investigation. However, liberty is also given to the respondents to seek cancellation of bail that has been granted, in the event of a violation of the conditions which are to be imposed by the Trial Court or if there are any perceived threats against the witnesses."

6. Learned counsel for the applicant thus submits that considering the fact that at the time when certain processes were issued against the applicant she was in family way and she was unable to appear before the court concerned, though she had moved applications for exemption of her personal appearance through counsel but the same have not been considered by the trial court. Thus, it has been argued that in the event of declaration under Section 82 Cr.P.C. it is not as if in all cases that there will be a total embargo on considering the applicant for grant of anticipatory bail. It has lastly been submitted that applicant has no criminal antecedents. It has also been submitted that applicant undertakes to cooperate during trial and she would appear as and when required by the Court. It has been stated that in case, applicant is granted anticipatory bail, he shall not misuse the liberty of bail and will cooperate with the trial and would obey all the conditions of bail.

7. Learned A.G.A. for the State as well as learned counsel for the informant, however, have opposed the application for anticipatory bail.

8. It may be stated that in case of **Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694**, it has been held by Hon'ble Supreme Court that while deciding anticipatory bail, Court must consider nature and gravity of accusation, antecedent of accused, possibility of accused to flee from justice and that Court must evaluate entire available material against the accused carefully and that the exact role of the accused has also to be taken into consideration.

9. In the instant case, considering the settled principle of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant and all

attending facts and circumstances of the case and considering the above proposition of law laid down by Hon'ble Apex Court in the case of **Asha Dubey (supra)** that it is not as if in all cases that there will be a total embargo on considering the application for grant of anticipatory bail as here in the present case at the time when certain processes were issued against the applicant she was in family way and was unable to appear before the court concerned, this Court finds it a fit case for grant of anticipatory bail.

10. Accordingly, the present anticipatory bail application is **allowed**.

11. In the event of arrest of the applicant- **Monika**, involved in the aforesaid case crime shall be released on anticipatory bail **till conclusion** of trial on her furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions :-

(i) The applicant shall attend the court proceedings as and when required and shall not sought any unnecessary adjournment.

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

(iii) The applicant shall cooperate during trial and would not misuse the liberty of bail.

12. In default of any of the conditions, the court concerned shall be at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant.

(2026) 1 ILRA 1241
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 05.01.2026

BEFORE

THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Criminal Misc. Bail Application No. 40989 of 2025

Shadab

...Applicant

Versus

State of U.P.

...Opposite Party

ISSUE FOR CONSIDERATION

Whether the applicant is entitled for bail considering the fact regarding alleged recovery of 40 motorcycles without mandatory videography under Section 105 BNSS and parity with co-accused who has already granted bail.

HEADNOTES

Criminal Law – Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 – Section 105, Section 185 – U.P. Bharatiya Nagarik Suraksha Rules, 2024 – Rule 18

Bail Application - seeking bail in a criminal proceedings – lodged under Sections 305(2), 317(2) BNS – FIR - recovery of 40 motorcycles shown - but no videography conducted as mandated under Section 105 BNSS and Rule 18 of U.P. Bharatiya Nagarik Suraksha Rules, 2024 – charge sheet - trial initiated – co-accused already granted bail – applicant pleaded parity, false implication, and absence of custodial interrogation – Court finds that , police failed to comply with mandatory videography provisions, creating doubt over recovery – observations made on negligence/arbitrariness of police and direction issued to DGP to frame SOP and ensure disciplinary action for non-compliance – held, applicant entitled to bail subject to conditions – consequently, bail granted, release order through BOMS system – directions issued to Registrar for communication to DGP for strict compliance - Application disposed of. (Para – 5, 6, 11, 12, 16, 17, 18, 19, 20)
Application Allowed. (E-11)

CASE LAW CITED

Kapil Wadhawan vs Central Bureau of Investigation, SLP No.16953 of 2025, decided on 11.12.2025,

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

LIST OF ACTS

Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 – U.P. Bharatiya Nagarik Suraksha Rules, 2024.

LIST OF KEYWORDS

Bail, Parity, Videography, Search and Seizure, E-Sakshya Portal, Custodial Interrogation, SOP, Disciplinary Proceedings, Overcrowded Jails, Fair Trial.

CASE ARISING FROM

Case Crime No.185 of 2024, Police Station Mansoorpur, District Muzaffarnagar, U.P. - Offences under Sections 305(2), 317(2) BNS.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Asheesh Kumar Tiwari

Counsel for Respondent(s): - Shri Rakesh Kumar Mishra, A.G.A.

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

1. Heard Sri Asheesh Kumar Tiwari, learned counsel for the applicant, Sri Rakesh Kumar Mishra, learned A.G.A. for the State and perused the record.

2. The instant bail application has been filed with a prayer to release the applicant on bail in Case Crime No.185 of 2024, under Sections-305(2), 317(2) BNS, Police Station-Mansoorpur, District-Muzaffar Nagar, during the pendency of the trial.

3. Contention of learned counsel for the applicant is that applicant was not named in the FIR. Subsequently, on the basis of information, the applicant along with four other co-accused persons were arrested and from their joint possession, 40 motor cycles were also shown to be recovered, though, there was no private witness or videography of the aforesaid recovery. Though, the videography of recovery is compulsory as per Section 105 BNSS. This creates doubt over the entire prosecution story. It is further submitted that co-accused Shoeb and Owais, have already been released on bail by a coordinate Bench of this Court in Criminal Misc. Bail Application Nos. 30403

of 2025 and 22485 of 2025 vide orders dated 04.09.2025 and 22.07.2025, as applicant is also on similar footing. Therefore, the applicant is also entitled to be released on bail on the ground of parity. It is further submitted that the applicant has explained the criminal history of six cases which were planted against the applicant subsequent to the recovery of the present case. It is further submitted that charge sheet has been filed in the present case, therefore, there is no requirement of custodial interrogation. The applicant is a law abiding citizen and he is languishing in jail since 16.04.2025. In case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

4. Per contra, learned A.G.A. has vehemently opposed the prayer for bail but could not dispute the aforesaid facts.

5. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties and taking into account overcrowded jails and heavy pendency of criminal cases before the trial courts and keeping in view the nature of offence, evidence, complicity of the accused as well as considering the mandate of the judgement of the Apex Court in the case of **Kapil Wadhawan vs Central Bureau of Investigation in SLP No.16953 of 2025 decided on 11.12.2025** and without expressing any opinion on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

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

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

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

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

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

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

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

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

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

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

12. From the perusal of the record of this case, it is clear that police has not conducted any videography of the recovery of motor cycles from the applicant or preparation of list of seized motor cycles, though, same is mandatory as per Section 105 of BNSS and uploading the videography on the portal of E-Sakshya is also necessary but the police has not complied the aforesaid provision of BNSS. This fact shows not only the negligence but arbitrariness on the part of police which creates doubt over the prosecution story regarding the recovery of seized articles.

13. Section 105 BNSS prescribes the process of videography regarding search of a place or taking possession of any property or articles including the preparation of list of all things seized to prevent the plantation of false recovery by certain police officials and also create legal material for the fair trial. Section 105 BNSS is being quoted as under:

"105. Recording of search and seizure through audio-video electronic means.-The process of conducting search of a place or taking possession of any property, article or thing under this Chapter or under Section 185, including preparation of the list of all things seized in the course of such search and seizure and signing of such list by witnesses, shall be recorded through any audio-video electronic means preferably mobile phone and the police officer shall without delay forward such recording to the District Magistrate, Sub-divisional Magistrate or Judicial Magistrate of the first class."

14. Rule 18 of Uttar Pradesh Bharatiya Nagarik Suraksha Rules, 2024 further provides the procedure of audio video recording of search of any place or taking possession of any property. Rule 18 also provides that audio video recording or searching any person place or taking possession of any property or article or material including preparation of list of articles seized as well as signature of witnesses on such list shall be done mandatorily through E-Sakshya app or other audio video electronic means which includes mobile phone.

15. Rule 18(5) of Uttar Pradesh Bharatiya Nagarik Suraksha Rules, 2024 further provides issuance of SOP by D.G.P. for live recording of audio, video of the search or recovery of any article of E-Sakshya portal and uploading and downloading the same. Rule 18 of the Uttar Pradesh Bharatiya Nagarik Suraksha Rules, 2024 is being quoted as under:

"18. Recording of Search and seizure by audio-video electronic means. -(1) The process of searching any person or place and taking possession of any property, article or material, including preparation of a list of all articles seized during the search and seizure and signature of witnesses on such list, shall mandatorily be done through E-Sakshya App specified by the Government of India or any other audio-video electronic means specified by the State Government, for which mobile phone or other audio-video electronic device of the police station or police officer on duty shall be used. The video-recording so made shall form part of the case diary."

As far as possible, the latitude-longitude and time of recording shall also be recorded along with the video.

(2) The police officer shall, without delay, but not later than 48 hours, send a copy of the list of articles seized along with signatures of witnesses and video-recording of the search and seizure process to the Magistrate.

(3) An Inter-operable Criminal Justice System (ICJS) Nodal Officer for each district of the State shall be nominated by the Home Department, Government of Uttar Pradesh and authorized users for accessing the 'e-Sakshya Mobile Application' on the ICJS platform shall be created by Uttar Pradesh Technical Services, Headquarters, Police Station wise.

(4) The authorized users of the Police Station as above shall be able to download the e-Sakshya Mobile Application from the m-Seva Mobile App store and install the e-Sakshya Mobile App on the mobile phone allotted to them.

(5) The standard operating procedure for going live on the e-Sakshya Portal and uploading and downloading of evidence collected on it shall be determined by the director general of police, uttar pradesh in coordination with NCRB."

16. From perusal of Rules 18(1) and 18(2) of the Uttar Pradesh Bharatiya Nagarik Suraksha Rules, 2024, it is clear that video recording of the search or seizure process should be made part of case diary and same shall be sent to Magistrate within 48 hours.

17. The Director General of Police, U.P., Lucknow has also issued DGP Circular dated 21.07.2025 wherein it is clearly mentioned that audio-video recording of conducting search or taking possession of any property is mandatory on the part of the police at the place of search or where the recovery is made but detailed SOP as required by Rule 18(5) of the Uttar Pradesh Bharatiya Nagarik Suraksha Rules, 2024 has not been issued by the Director General of Police in coordination with NCRB. The relevant extract of DGP Circular dated 21.07.2025 is being quoted as under:

S.N.	Particulars	Relevant Legal Provision	Legal Mandate	Place of recording or capturing
2.	Recording of search and seizure	Section 105: Recording of search and seizure through audio-video electronic means. The process of conducting search of a place or taking possession of any property, article or thing under this Chapter or under section 185, including preparation of the list of all things seized in the course of such search and seizure and signing of such list by witnesses, shall be recorded through any audio video electronic means preferably mobile phone and the police officer shall without delay forward such recording to the District magistrate, Sub-divisional Magistrate or Judicial Magistrate of the first class. Section 185(2)- Search by Police Officer. A police officer proceeding under sub-section(1), shall, if practicable, conduct the search in person:	Mandatory	Place of search from where recovery is to be made

		Provided that the search conducted under this section shall be recorded through audio-video electronic means preferably by mobile phone.		

18. This court came across number of cases where independent witness could not be found regarding recovery of any article and even then audio video recording through E-Sakshya portal or other audio, video electronic means was not conducted by the police which gives benefit to the criminals during bail as well as trial.

19. Therefore, this Court directs the Director General of Police, U.P., Lucknow to issue detailed SOP as required by Rules 18(5) of the Uttar Pradesh Bharatiya Nagarik Suraksha Rules, 2024 for mandatorily conducting audio video recording of search, seizure or possession of property or other incriminating material including the preparation of list of articles or property seized as well as signature of witnesses on E-Sakshya portal and uploading the same or through other audio, video electronic means including mobile phone of police officers on duty and direction may also be issued that failing to comply mandatory requirement of Section 105 of BNSS read with Rule 18 of the the Uttar Pradesh Bharatiya Nagarik Suraksha Rules, 2024 may attract disciplinary proceeding against the concerned police officer so that on the one hand it would save innocent persons from false implication by showing false recovery of property or articles and on the other hand to prepare foolproof evidence against the criminals for hearing the bail application as well as during trial.

20. **Registrar (Compliance)** is directed to send a copy of this order to the Director General of Police, U.P., Lucknow for necessary compliance.

(2026) 1 ILRA 1246
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 30.01.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Civil Misc. Review Application No. 102 of 2023

Kailash Nath & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Opposite Parties

Issue for Consideration

Whether while passing the judgment under review the relief clauses (f) & (h), though noted in para-2 of the impugned judgment have escaped the consideration of this Hon'ble Court which has resulted in miscarriage of justice to the Petitioner

Head Notes

The Code of Civil Procedure, 1908- Section 114 & Order 47 Rule 1; The Uttar Pradesh Absorption of Surplus Employees of Upton India Ltd. in Government Service Rules 2011- Rule 3 (1)- Power

of review exists to ensure that justice is not defeated on account of inadvertent omission or non-consideration of a material issue- Rule 3(1) of the 2011 Rules gives overriding effect to the absorption scheme to the extent of inconsistency with existing service rules and authorises issuance of a Government Order prescribing the manner and conditions of absorption- The Government Order dated 20.12.2011, issued in exercise of powers under Rule 3(1), provides that surplus employees of Uptron India Ltd. are to be absorbed by treating them as employees working in the concerned Government department itself-The concept of absorption, postulates that upon absorption, the employee becomes part and parcel of the absorbing department, subject to the conditions prescribed by the governing rules- The petitioners have also raised a grievance of differential treatment vis-à-vis similarly situated Uptron employees absorbed earlier and granted protection of last pay drawn. No cogent justification has been placed on record by the respondents to demonstrate a rational basis for such distinction under the same policy framework.

Held-Review application allowed- Respondents shall re-fix the pay of the petitioners by taking into account the regular service rendered by them in U.P. Uptron India Ltd. and the service rendered by way of adjustment in the U.P. Civil Secretariat prior to absorption, strictly in accordance with the Government Order dated 20.12.2011 and the 2011 Rules- Consequential service benefits arising out of such re-fixation shall be extended to the petitioners within a period of three months -Pensionary benefits, if any, shall be governed by the applicable statutory rules and binding judicial precedents. **(Para 19, 22, 23, 25, 28 & 31)** (E-15)

Case Law Cited

Kantaru Rajeevaru Vs. Indian Young Lawyers Association and others [2020 (9) SCC 121];S. Nagraj and other Vs. State of Karnataka and another [1993 Supp (4) SCC 595];K.H. Nazar Vs. Mathew K. Jacob and others [2020 (14) SCC 126];Urmila Dixit Vs. Sunil Sharan Dixit and others [2025 SCC OnLine SC 2];State of Himachal Pradesh Vs. Nirmal Kaur and others [2022 LiveLaw (SC) 866];New Delhi Municipal Council Vs. Minosha India Ltd. [(2022) 8 SCC 384];Government of India and other Vs. ISRO Drivers Association [(2020) 8 SCC 657];V. Prakash alias G.N.V. Prakash Vs. P.S. Govindaswamy Naidu and sons' Charities and others [(2022) 9 SCC 36];Geetha V.M. and others Vs. Rethnasenan K. and others [(2025) 1 SCR];K. Madhavan and another Vs. Union of India and others [1987 (4) SCC 566];State of Haryana Vs. Deepak Sood and others [SLP (C) No.14099 of 2006];Randhir Singh Vs. Union of India and others [(1981) 1 SCC 618];State of Punjab and others Vs. Jajit Singh and others [(2017) 1 SCC 148];Somesh Thapliyal and another etc Vs. Vice Chancellor, H.N.B. Garhwal University and another [(2021) 10 SCC 116];S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279.;Anukul Prakash vs State Of U.P. Through Prin. Secy. Pichchada Varg Kalyan Lko WRIT -A No. - 2001647 of 2015 judgment dated 18.05.2023;Pooran Singh Manral Vs. State of U.P. [2016 SCC OnLine All 4225].;S.C. Chandra and others Vs. State of Jharkhand and others [(2007) 8 SCC 279]

List of Acts

The Code of Civil Procedure, 1908; The Uttar Pradesh Absorption of Surplus Employees of Uptron India Ltd. in Government Service Rules 2011

List of Keywords

Rule 3 (1); The Uttar Pradesh Absorption of Surplus Employees of Uptron India Ltd. in Government Service Rules 2011; Government Order dated 20.12.2011; Surplus employees of Uptron India Ltd; Absorbed; by treating them as employees working in the concerned Government department

Case Arising From

Review application has been filed against the order dated 03.08.2023 passed in Writ - A No. 962 of 2010 - "Ram Kishan and Ors. vs State of UP"

Appearances for Parties

Counsel for Applicant(s) Lalta Prasad Misra,
Counsel for Opposite Party(s) : Lalta Prasad Misra,

(Delivered by Hon'ble Irshad Ali, J.

1. Heard Dr. L.P. Misra, learned counsel for the applicants alongwith Sri Tarun Mishra, Advocate and Sri Pankaj Khare, learned counsel for the respondents.

2. This review application has been filed against the order dated 03.08.2023 passed in Writ - A No. 962 of 2010 - "Ram Kishan and Ors. vs State of UP".

3. The grounds taken by the petitioners are as follows :

(i) while passing the judgment under review the relief clauses (f) & (h), though noted in para-2 of the impugned judgment have escaped the consideration of this Hon'ble Court which has resulted in miscarriage of justice to the Petitioners.

(ii) the petitioners were absorbed as class IV employees in the establishment of U.P. Civil Secretariat vide order dated 04.04.2012 (Annexure 47 to the writ petition brought on record through amendment) in consequence of the "U.P. Absorption of Surplus Employees of Uptron India Ltd. in Government Service Rules 2011" enforced w.e.f. 20.12.2011 and the consequential Government order dated 20.12.2011 notified vide notification dated 20.12.2011 issued in exercise of empowerment flowing from these Rules specifying the procedure and conditions of absorption but the judgement under review has proceeded on the assumption as if the writ petitioners were yet to be absorbed.

(iii) the government order issued vide gazette notification dated 20.12.2011 in exercise of the powers under "U.P. Absorption of Surplus Employees of Uptron India Ltd. in Government Service Rules 2011" hereinafter referred to 2011, Rules specifically provided that the employees of the erstwhile Uptron India Ltd. were to be absorbed in the service of the Government department concerned by treating them as the employees having been working in the concerned Government department where they were to be absorbed-"उस विभाग में कार्यरत मानते हुए समायोजित करने के लिए सम्बन्धित विभाग नियमावली को अपने यहां अंगीकृत (adopt) कर ले।"

Accordingly, the Absorption of the Petitioners ought to have been made by treating them as if they have been working in the department of U.P. Civil Secretariat. That is to say, all the service rendered by the Petitioners in the erstwhile service of Uptron, which undisputedly was regular service and the service rendered by them as a major of adjustment in U.P. Civil Secretariat against the duly sanctioned post up to the date of their absorption ought to have been added towards their period of service while fixing and re-fixing their salary as a result of absorption in the U.P. Civil Secretariat together with all other service benefits.

(iv) the "U.P. Absorption of Surplus Employees of Uptron India Ltd. in Government Service Rules 2011" vide Rule 3(1) have been given an overriding effect over the operative service rules prevalent at the point of time of enforcement of these Rules and this Rule 3(1) further envisages that the relevant service rules shall be deemed to be superseded to the extent of the provisions contemplated in the notified Government order under Rule 3(1). Thus it is the case of the

Petitioners that once it is provided in the Government Order dated 20.12.2011 issued in furtherance of 2011, Rules that for the purpose of Absorption the Petitioners sought to be absorbed shall be treated as if they have been working in the establishment of U.P. Civil Secretariat itself and, therefore, all the services rendered by them in the establishment of the erstwhile U.P. Uptron India Ltd. and U.P. Civil Secretariat before absorption should be treated as service rendered in the establishment of U.P. Civil Secretariat for all service benefits.

(v) the petitioners have been subjected to discrimination vis a vis the other retrenched employees of Uptron absorbed much before 01.04.2005 in various departments/ Government owned corporations etc. by protecting their last pay drawn in Uptron.

4. Factual matrix of the case is that the petitioners were initially appointed as class IV employees on regular basis w.e.f. the date of their joining ranging from the period 18.12.1978 to 16.10.1999 on different dates. When UP Uptron India Ltd. was declared a sick unit, the state government vide policy decision directed to adjust the surplus employees of UP Uptron India Ltd. and post them as Class IV employees in the UP Civil Secretariat against the regular sanctioned posts. It was provided that the employees of sick unit shall be paid salary by the sick unit on such salary amount being made available to the sick unit by the concerned department.

5. The demand of petitioners for absorption was initially rejected vide order dated 11.05.2010. However, during the pendency of writ petition, the petitioners were absorbed vide order dated 20.12.2011.

6. Thereafter, Writ - A No. 962 of 2010 preferred by petitioners was disposed of vide impugned order dated 03.08.2023 which is as follows:

"In the aforesaid writ petition, this Court issued direction to the State-respondents to treat the petitioners to be absorbed employees of the Basic Education Department on a suitable post in terms of the notified order dated 20.12.2011 and to pay them their salary of their respective posts w.e.f. the respective dates. It was further ordered that both the petitioners shall be allowed to join on suitable posts forthwith in the Department and they shall be allowed to continue in service till they attain the age of superannuation i.e. at the age of 60 years and be also paid salary"

7. Thereafter, petitioners filed the present review application against the impugned order dated 03.08.2023 on the ground that while passing the judgement under review the relief clauses (f) & (h), though noted in para-2 of the impugned judgment have escaped the consideration of this Court which has resulted in miscarriage of justice to the petitioners.

8. In support of his submission, he placed reliance upon the following judgments :-

(i) **Kantaru Rajeevaru Vs. Indian Young Lawyers Association and others [2020 (9) SCC 121]**. Relevant paragraph 27 is being quoted below :-

"27. No matter is beyond the jurisdiction of a superior court of record unless it is expressly shown to be so, under the provisions of the Constitution. In the absence of any express

provision in the Constitution, this Court being a superior court of record has jurisdiction in every matter and if there is any doubt, the Court has power to determine its jurisdiction [Delhi Judicial Service Assn. v. State of Gujarat, (1991) 4 SCC 406] . It is useful to reproduce from Halsbury's Laws of England, 4th Edn., Vol. 10, Para 713, relied upon in the aforementioned judgments, which states as follows:

“713. ... *Prima facie*, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court. ”

Undoubtedly there is no bar on the exercise of jurisdiction for referring questions of law in a pending review petition. Therefore, the reference cannot be said to be vitiated for lack of jurisdiction. This Court has acted well within its power in making the reference."

(ii) **S. Nagraj and other Vs. State of Karnataka and another [1993 Supp (4) SCC 595]**. Relevant paragraphs 18 and 19 are being quoted below :-

"18. *Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue.*

19. *Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai [AIR 1941 FC 1, 2 : 1940 FCR 78 : (1941) 1 MLJ Supp 45] the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council*

in Rajunder Narain Rae v. Bijai Govind Singh [(1836) 1 Moo PC 117 : 2 MIA 181 : 1 Sar 175] that an order made by the Court was final and could not be altered:

"... nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies."

Basis for exercise of the power was stated in the same decision as under:

"It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard."

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

(iii) **K.H. Nazar Vs. Mathew K. Jacob and others [2020 (14) SCC 126]**. Relevant paragraphs 11 to 14 are being quoted below :-

"11. Provisions of a beneficial legislation have to be construed with a purpose-oriented approach. [Kerala Fishermen's Welfare Fund Board v. Fancy Food, (1995) 4 SCC 341] The Act should receive a liberal construction to promote its objects. [Bombay Anand Bhavan Restaurant v. ESI Corpn., (2009) 9 SCC 61 : (2009) 2 SCC (L&S) 573 and Union of India v. Prabhakaran Vijaya Kumar, (2008) 9 SCC 527 : (2008) 3 SCC (Cri) 813] Also, literal construction of the provisions of a beneficial legislation has to be avoided. It is the court's duty to discern the intention of the legislature in making the law. Once such an intention is ascertained, the statute should receive a purposeful or functional interpretation [Bharat Singh v. New Delhi Tuberculosis Centre, (1986) 2 SCC 614 : 1986 SCC (L&S) 335].

12. In the words of O. Chinnappa Reddy, J. [*Workmen v. American Express International Banking Corp.*, (1985) 4 SCC 71 : 1985 SCC (L&S) 940] , the principles of statutory construction of beneficial legislation are as follows: (*Workmen case* [*Workmen v. American Express International Banking Corp.*, (1985) 4 SCC 71 : 1985 SCC (L&S) 940] , SCC p. 76, para 4)

"4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as 'social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the "colour", the "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds* [*Prenn v. Simmonds*, (1971) 1 WLR 1381 : (1971) 3 All ER 237 (HL)]). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court* [*Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] , we had occasion to say: (*Surendra Kumar Verma case* [*Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] , SCC p. 447, para 6)

'6. Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions. '"

13. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted. [*Indian Performing Rights Society Ltd. v. Sanjay Dalia*, (2015) 10 SCC 161 : (2016) 1 SCC (Civ) 55] It is settled law that exemption clauses in beneficial or social welfare legislations should be given strict construction [*Shivram A. Shiroor v. Radhabai Shantram Kowshik*, (1984) 1 SCC 588] . It was observed in *Shivram A. Shiroor v. Radhabai Shantram Kowshik* [*Shivram A. Shiroor v. Radhabai Shantram Kowshik*, (1984) 1 SCC 588] that the exclusionary provisions in a beneficial legislation should be construed strictly so as to give a wide amplitude to the principal object of the legislation and to prevent its evasion on deceptive grounds. Similarly, in *Minister Administering the Crown Lands Act v. NSW Aboriginal Land Council* [*Minister Administering the Crown Lands Act v. NSW Aboriginal Land Council*, 2008 HCA 48 : (2008) 237 CLR 285] , Kirby, J. held that the principle of providing purposive construction to beneficial legislations mandates that exceptions in such legislations should be construed narrowly.

14. There is no dispute that the Act is a beneficial legislation. The extent of land that can be held is fixed and any land in excess has to be surrendered to the Government, which is distributed in favour of the landless people in the State. The interpretation of the provisions of the Act should be in a manner which promote the said object."

(iv) **Urmila Dixit Vs. Sunil Sharan Dixit and others** [2025 SCC OnLine SC 2]. Relevant paragraphs 8 to 14 are being quoted below :-

"8. To answer the issue at hand, it is imperative for this Court to discuss the rules of interpretation to be applied when interpreting a beneficial legislation akin to the Act at hand. While dealing with certain provisions of the Motor Vehicles Act, this Court in *Brahampal v. National Insurance Co.* [*Brahampal v. National Insurance Co.*, (2021) 6 SCC 512 : (2021) 3 SCC (Civ) 693 : (2021) 3 SCC (Cri) 67] , observed that a beneficial legislation must receive a liberal construction in consonance with the objectives that the Act concerned seeks to serve.

9. This Court in *K.H. Nazar v. Mathew K. Jacob* [*K.H. Nazar v. Mathew K. Jacob*, (2020) 14 SCC 126] reiterated the above expositions and stated that : (SCC pp. 135-36, paras 11 & 13)

11. Provisions of a beneficial legislation have to be construed with a purpose-oriented approach. [*Kerala Fishermen's Welfare Fund Board v. Fancy Food*, (1995) 4 SCC 341] The Act should receive a liberal construction to promote its objects. [*Bombay Anand Bhavan Restaurant v. ESI Corpn.*, (2009) 9 SCC 61 : (2009) 2 SCC (L&S) 573 and *Union of India v. Prabhakaran Vijaya Kumar*, (2008) 9 SCC 527 : (2008) 3 SCC (Cri) 813] Also, literal construction of the provisions of a beneficial legislation has to be avoided. It is the Court's duty to discern the intention of the legislature in making the law. Once such an intention is ascertained, the statute should receive a purposeful or functional interpretation. [*Bharat Singh v. New Delhi Tuberculosis Centre*, (1986) 2 SCC 614 : 1986 SCC (L&S) 335]

13. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified, and then a construction that suppresses the problem and advances the remedy should be adopted. [*Indian Performing Rights Society Ltd. v. Sanjay Dalia*, (2015) 10 SCC 161 : (2016) 1 SCC (Civ) 55] It is settled law that exemption clauses in beneficial or social welfare legislations should be given strict construction. [*Shivram A. Shiroor v. Radhabai Shantram Kowshik*, (1984) 1 SCC 588] It was observed in *Shivram A. Shiroor v. Radhabai Shantram Kowshik* [*Shivram A. Shiroor v. Radhabai Shantram Kowshik*, (1984) 1 SCC 588] that the exclusionary provisions in a beneficial legislation should be construed strictly so as to give a wide amplitude to the principal object of the legislation and to prevent its evasion on deceptive grounds. Similarly, in *Minister Administering the Crown Lands Act v. NSW Aboriginal Land Council* [*Minister Administering the Crown Lands Act v. NSW Aboriginal Land Council*, 2008 HCA 48 : (2008) 237 CLR 285] , Kirby, J. held that the principle of providing purposive construction to beneficial legislations mandates that exceptions in such legislations should be construed narrowly."

(emphasis supplied)

10. More recently, in *Kozyflex Mattresses (P) Ltd. v. SBI General Insurance Co. Ltd.* [*Kozyflex Mattresses (P) Ltd. v. SBI General Insurance Co. Ltd.*, (2024) 7 SCC 140 : (2024) 3 SCC (Civ) 809] , this Court held the definition of a consumer under the Consumer Protection Act, 1986 to include a company or corporate person in view of the beneficial purpose of the Act.

11. While considering the provisions of the Medical Termination of Pregnancy Act, this Court in *X2 v. State (NCT of Delhi)* [*X2 v. State (NCT of Delhi)*, (2023) 9 SCC 433] , reiterated that interpretation of the provisions of a beneficial legislation must be in line with a purposive construction, keeping in mind the legislative purpose. Furthermore, it was stated that beneficial legislation must be interpreted in favour of the beneficiaries when it is possible to take two views.

12. It is in the above background that we must proceed to examine the Act. The Statement of Objects and Reasons of the Act indicates the purpose behind the enactment, as relied upon by this Court in *S. Vanitha v. Commr.* [*S. Vanitha v. Commr.*, (2021) 15 SCC 730], is:

"Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents."

13. The Preamble of the Act states that it is intended towards more effective provisions for maintenance and welfare of parents and senior citizens, guaranteed and recognised under the Constitution.

14. Therefore, it is apparent, that the Act is a beneficial piece of legislation, aimed at securing the rights of senior citizens, in view of the challenges faced by them. It is in this backdrop that the Act must be interpreted and a construction that advances the remedies of the Act must be adopted."

(v) **State of Himachal Pradesh Vs. Nirmal Kaur and others [2022 LiveLaw (SC) 866].**
Relevant paragraphs 79 and 80 are being quoted below :-

"79. Recently, a three-Judges Bench of this Court in the case of Hira Singh v. Union of India¹⁶, while answering a reference with regard to the correctness of the view taken by this Court in the case of E. Micheal Raj v. Narcotics Control Bureau¹⁷, to the effect that, when any narcotic drug or psychotropic substance is found mixed with one or more neutral substance for the purpose of imposition of punishment, it is the content of narcotic drug or psychotropic substance which would be taken into consideration, the Court held thus:

"10.1. In Directorate of Enforcement v. Deepak Mahajan [Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440 : 1994 SCC (Cri) 785], it is observed by this Court that every law is designed to further ends of justice but not to frustrate on the mere technicalities. It is further observed that though the intention of the Court is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. It is the duty of the Court to mould or creatively interpret the legislation by liberally interpreting the statute. In the said decision this Court has also quoted (at SCC pp. 453-54, para 25) the following passage in Maxwell on Interpretation of Statutes, 10th Edn. p. 229:

"25. ... Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by

the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. "

Thereafter, it is further observed that to winch up the legislative intent, it is permissible for courts to take into account the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane. It is further observed that in given circumstances, it is permissible for courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile. "

[emphasis supplied]

80. It could thus be seen that it is more than a settled principle of law that, while interpreting the provisions of the statute, the court has to prefer an interpretation which advances the purpose of the statute."

(vi) **New Delhi Municipal Council Vs. Minosha India Ltd. [(2022) 8 SCC 384]**. Relevant paragraph 26 is being quoted under :-

"26. The principles of interpretation of statutes have been invoked in the varying contexts and are to be applied on the basis of the facts of the case, the nature of the law and a host of principles. Undoubtedly, the golden rule of interpretation is the interpretation which thrives on the ordinary meaning of the words as they are used. This principle of literal interpretation of statutes has over a period of time indeed yielded to an interpretation which is purposive or which seeks to accommodate the object of the law giver. Suffice it to say that if the words of a statute are not ambiguous, the scope of interpretation dwindles. It is not for the Court to rewrite a statute. There may be occasions where the Court may even go to the extent of leaving out a word or not giving effect to certain part in order to give full meaning to the law by way of gleaning and giving effect to the intention of the legislature. The principle that literal meaning must be accepted is undoubtedly subject to the principle that it will make way when such interpretation will lead to an absurdity or grave injustice which a law giver could not have contemplated."

(vii) **Government of India and other Vs. ISRO Drivers Association [(2020) 8 SCC 657]**. Relevant paragraph 31 is being quoted below :-

*"31. The Latin maxim *noscitur a sociis* states this contextual principle, whereby a word or phrase is not to be construed as if it stood alone but in the light of its surroundings -Bennion on Statutory Interpretation, Fifth Edn. Attorney General v. Prince Ernest Augustus of Hanover [Attorney General v. Prince Ernest Augustus of Hanover, 1957 AC 436 : (1957) 2 WLR 1 (HL)] , Viscount Simonds has opined that "a word or phrase in an enactment must always be construed in the light of the surrounding text...words and particularly general words, cannot be read in isolation, their colour and their content are derived from their context."*

(viii) **V. Prakash alias G.N.V. Prakash Vs. P.S. Govindaswamy Naidu and sons' Charities and others [(2022) 9 SCC 36]**. Relevant paragraphs 75 and 76 are being quoted below :-

"75. While not approving the approach of the High Court in this matter, particularly in relation to the construction of the terms of SoA, we may observe a little further. The words and expressions in the deeds or statutes are preferably provided their contextual and contemporary meaning. In this process of construction, the words and expressions are not viewed as fossil remains; rather they retain the organic character and do take their meaning from all the surroundings. For that matter, a particular word like "resides" could carry multiple different connotations with reference to the time or period of its interpretation; and connotations may be different than those understood about 100 years back. When a particular word or expression in any document is to be operated and applied, all the relevant characteristics available in praesenti have to be kept in view for a meaningful and purposeful construction. Of course, that meaning should not do violence to the real intent and purpose.

76. In order to buttress its reasoning, the High Court has even gone to the extent of suggesting a proposition in para 26 of the impugned judgment [P.S. Govindaswamy Naidu & Sons Charities v. V. Prakash, 2021 SCC OnLine Mad 14032] which, to say the least, does not stand to logic. The High Court has observed that if the construction of sentence or words was to be made with reference to the present-day scenario, sometime later some Judge might think that restricting the trusteeship to male member was against gender justice and it should be read to include female too. With respect, we are unable to endorse this approach. The hypothesis as suggested by the High Court is of the process of altering the term of a document. The question at hand is of assigning a logical, contextual and contemporary meaning to a particular expression. It is one thing to alter the term of a document and cannot be equated with the process of assigning a purposeful meaning to a particular expression. In the true rules of construction, the words are always assigned the meaning which stand in tandem with their context, while assuring that the assigned meaning serves the purpose."

(ix) **Geetha V.M. and others Vs. Rethnasenan K. and others [(2025) 1 SCR]**. Relevant paragraph 48 is being quoted below :-

"48. In the fact situation of the present case, the judgment of Full Bench of the Punjab and Haryana High Court in the case of 'Kartar Singh v. State of Punjab, 1989 SCC OnLine P&H 482', is relevant. The Full Bench in a similar situation while dealing with the issue of seniority of Patwaris working in the State's Consolidation Department who were absorbed into the Revenue Department held that the employees of Consolidation Department after absorption into the Revenue Department, will have the benefit of length of service in the Consolidation Department, on the new post. While concurring the view, in the separate note, Justice M.M. Punchhi, expressed his view that absorption is akin to amalgamation, in the sense that, an employee becomes part and parcel of the department absorbing him and partakes the same colour and character of the existing employees of the department, classified as promotees, direct appointees or transferees. In the facts discussed in detail above, definition of absorption which was based on option and the definition of request discussed above, we concur with the view taken by the Punjab and Haryana High Court by the said Full Bench."

(x) **K. Madhavan and another Vs. Union of India and others [1987 (4) SCC 566]**. Relevant paragraph 21 is being quoted below :-

"21. We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See R.S. Makashi v. I.M. Menon; Wing Commander J. Kumar v. Union of India"

(xi) **State of Haryana Vs. Deepak Sood and others [SLP (C) No.14099 of 2006]**. Relevant paragraphs 9 and 13 are being quoted below :-

"They will have to get zero seniority in the new Department but their past service has been counted for fixation of pay as well as pensionary benefits. The scheme of ACP Grade came subsequently. On that basis the respondents made a grievance that they were being denied -6- the benefit of ACP and the services rendered by them in the Municipal Committee has not been counted for the purposes of calculating 10/20 years of service in the Department. It is a misfortune that the respondents have been declared surplus in the Municipal Committee, Panipat but the Government has been benevolent to them and absorbed them in the State Government but denied them the benefit of past service for the purpose of seniority. However, at the same time they have counted their past service for the purpose of pay and pensionary benefits. Once the Government considered them eligible for fixation of pay and pensionary benefit and counted their past service then there is no reason why ACP grade should be denied to them. Having lost, at one hand their seniority in the new department, it would be unfair to deny them the benefit of ACP grade. When the Government counts their past service for grant of the benefit of pay fixation and pension, there is no reason why their past service should not be given the benefit of ACP Grade.

(xii) **Randhir Singh Vs. Union of India and others [(1981) 1 SCC 618]**. Relevant paragraphs 7 to 9 are being quoted as under :-

"7. Our attention was drawn to Binoy Kumar Mukerjee v. Union of India [ILR (1973) 1 Del 427] and Makhan Singh v. Union of India [ILR (1975) 1 Del 227] , where reference was made to the observations of this Court in Kishori Mohanlal Bakshi v. Union of India [AIR 1962 SC 1139 : (1962) 44 ITR 532] describing the principle of "equal pay for equal work" as an abstract doctrine which had nothing to do with Article 14. We shall presently point out how the principle, "equal pay for equal work", is not an abstract doctrine but one of substance. Kishori Mohanlal Bakshi v. Union of India [AIR 1962 SC 1139 : (1962) 44 ITR 532] is not itself of any real assistance to us since what was decided there was that there could be different scales of pay for different grades of

a service. It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of "equal pay for equal work" would be an abstract doctrine not attracting Article 14 if sought to be applied to them.

8. It is true that the principle of "equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Article 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a directive principle of State Policy. "Equal pay for equal work for both men and women" means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the take-over of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The Preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word "socialist" must mean something. Even if it does not mean "to each according to his need", it must at least mean "equal pay for equal work". "The principle of "equal pay for equal work" is expressly recognized by all socialist systems of law, e.g., Section 59 of the Hungarian Labour Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic, para 2 of Section 33 of the Rumanian Code. Indeed this principle has been incorporated in several western Labour Codes too. Under provisions in Section 31 (g. No. 2d) of Book I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and Clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance" (vide International Labour Law by Istvan Szaszy, p. 265). The Preamble to the Constitution of the International Labour Organisation recognises the principle of "equal remuneration for work of equal value" as constituting one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled". Construing Articles 14 and 16 in the light of the Preamble and Article 39 (d), we are of the view

that the principle "equal pay for equal work" is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.

9. There cannot be the slightest doubt that the drivers in the Delhi Police Force perform the same functions and duties as other drivers in service of the Delhi Administration and the Central Government. If anything, by reason of their investiture with the "powers, functions and privileges of a police officer", their duties and responsibilities are more arduous. In answer to the allegation in the petition that the driver-constables of the Delhi Police Force perform no less arduous duties than drivers in other departments, it was admitted by the respondents in their counter that the duties of the driver-constables of the Delhi Police Force were onerous. What then is the reason for giving them a lower scale of pay than others? There is none. The only answer of the respondents is that the drivers of the Delhi Police Force and the other drivers belong to different departments and that the principle of "equal pay for equal work" is not a principle which the courts may recognise and act upon. We have shown that the answer is unsound. The clarification is irrational. We, therefore, allow the writ petition and direct the respondents to fix the scale of pay of the petitioner and the driver-constables of the Delhi Police Force at least on a par with that of the drivers of the Railway Protection Force. The scale of pay shall be effective from January 1, 1973, the date from which the recommendations of the Pay Commission were given effect."

(xiii) State of Punjab and others Vs. Jajit Singh and others [(2017) 1 SCC 148]. Relevant paragraphs 57 and 58 are being quoted as under :-

"57. There is no room for any doubt that the principle of "equal pay for equal work" has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India under Article 141 of the Constitution of India. The parameters of the principle have been summarised by us in para 42 hereinabove. The principle of "equal pay for equal work" has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarised by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.

58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."

(xiv) **Somesh Thapliyal and another etc Vs. Vice Chancellor, H.N.B. Garhwal University and another [(2021) 10 SCC 116]**. Relevant paragraphs are being quoted below :-

"42. The submissions of the learned counsel for the respondents that the appellants have accepted the terms and conditions contained in the letter of appointment deserves rejection for the reason that it is not open for a person appointed in public employment to ordinarily choose the terms and conditions of which he is required to serve. It goes without saying that employer is always in a dominating position and it is open to the employer to dictate the terms of employment. The employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions of employment. This Court can take judicial notice of the fact that if an employee takes initiation in questioning the terms and conditions of employment, that would cost his/her job itself.

43. The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved."

9. Counsel for the respondents submits that the review application seeking review of the judgment dated 03.08.2023 is misconceived and not maintainable, as the petitioners have neither explained nor demonstrated any error apparent on the face of the record. The Supreme Court judgement relied upon by the petitioners in the case of **Kantaru Rajeevaru** (Supra) is inapplicable, as no error apparent has been shown; accepting such arguments would lead to endless litigation.

10. It is further submitted that the petitioners did not challenge the U.P. Absorption Rules, 2011, and having already availed benefits under those Rules, they are estopped from questioning the date of absorption or seeking retrospective effect, which is impermissible in law.

11. It is also submitted that provision of the Act "उस विभाग में कार्यरत मानते हुए समायोजित करने के लिए सम्बन्धित विभाग नियमावली को अपने यहां अंगीकृत (adopt) कर ले।" only require adoption of the Absorption Rules, 2011 by the concerned department, with limited relaxation regarding age, educational qualification, and procedure; it did not mandate retrospective appointment or absorption from the initial contractual engagement. Moreover, Rule 3(1) of the Absorption Rules has been misconstrued by the petitioners. It merely relaxes the selection procedure and does not provide for appointment or absorption from the date of initial engagement in 1999/2000.

12. Learned counsel for the respondents further submitted that it is pertinent to note that none of the Rules ever provide to add the services rendered by the employees in the Uptron India Ltd. in the services rendered in the State Government for the purpose of pensionary benefits etc. The allegation of discrimination is incorrect, as the petitioners have been continuously paid salary along with dearness allowance, revised from time to time, and they have suffered no financial loss.

13. Counsel for the respondents also submits that the order dated 22.12.1998 clearly shows that surplus Uptron employees were engaged by the State Government only on a contractual basis

under specified terms and conditions. Initially, salaries were paid through the Uptron Cell under a tripartite arrangement, and later directly by the State Government due to administrative reasons, without altering the contractual nature of engagement. The services in Uptron India Ltd. were non-pensionable, and the petitioners had already availed Contributory Provident Fund benefits.

14. The issue of counting past non-pensionable service for pension has already been answered in the negative by the Full Bench judgment dated 18.05.2023 WRIT - A No. - 2001647 of 2015 **Anukul Prakash vs State Of U.P. Through Prin. Secy. Pichchada Varg Kalyan Lko. and other** binding precedents.

15. According to the counsel for the respondent non-grant of certain reliefs in the main judgment does not constitute a ground for review, as unaddressed prayers are deemed to have been declined.

16. Moreover, counsel for the respondent submits that the petitioners are confused between absorption and regularization. There exist no regularization rules applicable to them, and having accepted absorption under the 2011 Rules, their claim for retrospective regularization is barred by law and contrary to Supreme Court judgment in the case of **S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279**.

17. In support of the submission advanced, learned counsel for the respondent has placed reliance upon the following judgments :-

(i) **Anukul Prakash vs State Of U.P. Through Prin. Secy. Pichchada Varg Kalyan Lko.** Relevant paragraphs are being quoted as under :-

"In view of the above discussion, we answer the questions rephrased/reframed by us as under:

(i) The Division Bench judgments in the cases of Shankatha Prasad Mishra (surpa); Hridayesh Dayal Srivastava (surpa); Mirtuyanajay Prasad Singh (surpa); Keshav Ram Pandey (supra) and State of U.P. and others versus Amar Pal Singh do not lay down the law correctly on the question of counting of past services rendered by retrenched employees of ATL who have been subsequently absorbed in Government service, for the purposes of qualifying service for calculation of retiral dues payable by the State Government. They are not good law.

(ii) Retrenched employees of ATL such as the petitioner who got absorbed in the Government service subsequently as per the Rules known as Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991 are not entitled to Page No. 31 count their previous services rendered by them under the erstwhile employer i.e., Auto Tractors Limited for computation of qualifying service for purposes of retirement benefits under the U.P. Retirement Benefits Rules 1961 and other ancillary rules and Government Orders in this regard as also the Government Order dated 11.1.1993 and in fact the Government Order dated 10.07.1998 as modified on 28.12.2001 is not applicable to such employees.

(iii) The Division Bench judgment in the case of Ram Shanker Gupta (supra) is in conflict with the earlier decisions by Coordinate Benches in the cases of Shankatha Prasad Mishra (surpa);

Hridayesh Dayal Srivastava (surpa); Mirtuyanjay Prasad Singh (surpa); Keshav Ram Pandey (supra) and State of U.P. and others versus Amar Pal Singh. It is the decision in Ram Shanker Gupta (supra) which lays down the law correctly and for the reasons already discussed, the other decisions do not lay down the law correctly on the subject with regard to question no. (ii)."

(ii) **Pooran Singh Manral Vs. State of U.P. [2016 SCC OnLine All 4225]**. Relevant paragraphs are being quoted below :-

"36. We, therefore, find that the issue, "whether under Government order permitting absorption pursuant to Absorption Rules, 1991 there was any promise to count earlier service rendered in the company where from employee was retrenched, so as to count as "qualifying service" for the purpose of pension under the Rules applicable to Government Servant, " was neither raised nor argued, nor decided in any other above authorities and there is no authenticated pronouncement on this aspect. In Hridayesh Dayal Srivastava (supra) the question of pay protection only was involved which was one of the promise in Government Order and that was decided, but in a subsequent judgment, this judgment has been followed as if it has already been said that service rendered in the company would also qualify for pensionary benefits, though in Hridayesh Dayal Srivastava (supra) no such issue was raised argued or decided.

37. It is not disputed by Counsel for the parties that for the purpose of "qualifying service" for retiral benefits, Rules, 1961 read with Civil Service Regulations (hereinafter referred to as 'CSR') shall apply. Rule 3 (8) of 1961 defines "qualifying service" as under:

"Qualifying service" means service which qualifies for pension in accordance with the provisions of Article 368 of the Civil Service Regulations:

Provided that continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post except-

*"(i) periods of temporary or officiating service in a non- pensionable establishment;
(ii) periods of service in a work-charged establishment, and
(iii) periods of service in a post, paid from contingencies, shall also count as qualifying service.*

38. Articles 368 and 370 of CSR reads as under:

"368. Service does not qualify unless the officer holds a substantive office on a permanent establishment.

370. Continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruptions by confirmation in the same or any other post shall qualify except-

*(i) periods of temporary or officiating service in non -pensionable establishment.
(ii) periods of service in work-charged establishment; and
(iii) periods of service in a post paid from contingencies,*

39. Further Article 361 of CSR excludes service as not to qualify for pensionary benefits unless it satisfy certain conditions. It reads as under:

"361. The service of an officer does not qualify for pension unless it conforms to the following three conditions

First -The service must be under Government.

Second -The employment must be substantive and permanent.

Third -The service must paid by Government.

40. *The aforesaid Rules, 1961 and CSR make it very clear that service rendered in a non-Government establishment would not qualify for pension. When confronted, learned Counsel for petitioners could not place any provision of law under which he may be entitled to count his service rendered in UPSBCL as "qualifying service" for the purpose of pension or other retiral benefits in Government service."*

(iii) **S.C. Chandra and others Vs. State of Jharkhand and others [(2007) 8 SCC 279]**. Relevant paragraphs are being quoted below :-

"35. In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay).

36. It is well settled by the Supreme Court that only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply vide Govt. of W.B. v. Tarun K. Roy [(2004) 1 SCC 347 : 2004 SCC (L&S) 225] .

37. Similarly, in State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. [(2002) 6 SCC 72 : 2002 SCC (L&S) 822] the principle of equal pay for equal work was considered in great detail. In paras 9 and 10 of the said judgment the Supreme Court observed that equation of posts and salary is a complex matter which should be left to an expert body. The courts must realise that the job is both a difficult and time consuming task which even experts having the assistance of staff with requisite expertise have found it difficult to undertake. Fixation of pay and determination of parity is a complex matter which is for the executive to discharge. Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences vide Union of India v. Pradip Kumar Dey [(2000) 8 SCC 580 : 2001 SCC (L&S) 56] ."

18. I have considered the submission advanced by learned counsel for the parties as well as the judgments relied upon by them.

19. The scope of review jurisdiction is well settled. Review is not an appeal in disguise; however, as held by the Hon'ble Supreme Court in **S. Nagaraj** and reiterated in **Kantaru Rajeevaru**, the power of review exists to ensure that justice is not defeated on account of inadvertent omission or non-consideration of a material issue.

20. In the present case, this Court finds that the relief clauses (f) and (h) raised substantive issues concerning the implementation of the absorption scheme under the 2011 Rules, particularly with respect to fixation of pay and consequential service benefits flowing from absorption.

21. The U.P. Absorption of Surplus Employees of Uptron India Ltd. in Government Service Rules, 2011 were framed as a rehabilitative measure for surplus employees of a Government-owned undertaking.

22. Rule 3(1) of the 2011 Rules gives overriding effect to the absorption scheme to the extent of inconsistency with existing service rules and authorises issuance of a Government Order prescribing the manner and conditions of absorption.

23. The Government Order dated 20.12.2011, issued in exercise of powers under Rule 3(1), provides that surplus employees of Uptron India Ltd. are to be absorbed by treating them as employees working in the concerned Government department itself, as reflected in the expression: "उस विभाग में कार्यरत मानते हुए समायोजित करने के लिए..."

24. The aforesaid expression cannot be construed in a narrow or restrictive manner. Applying the principles governing interpretation of beneficial legislation, as laid down in **K.H. Nazar, Urmila Dixit and Geetha V.M.**, absorption has to be understood in a manner that meaningfully integrates the absorbed employees into the establishment of the absorbing department.

25. The concept of absorption, as explained by the Hon'ble Supreme Court, postulates that upon absorption, the employee becomes part and parcel of the absorbing department, subject to the conditions prescribed by the governing rules.

26. Consequently, for the purpose of fixation and re-fixation of pay and grant of consequential service benefits, the regular service rendered by the petitioners prior to absorption, including service rendered by way of adjustment against sanctioned posts, requires due consideration in terms of the Government Order dated 20.12.2011 and the 2011 Rules, save and except where expressly excluded by statutory provisions.

27. The judgments relied upon by the respondents do not advance their case and are clearly distinguishable on facts, statutory framework, and relief sought, for the following reasons:

(i) **Anukul Prakash (Supra)** is misplaced. The Full Bench therein was concerned exclusively with the issue of counting past service rendered in a public sector undertaking for the purpose of pensionary benefits under the U.P. Retirement Benefits Rules, 1961. In the present case, the petitioners do not claim automatic pensionary benefits flowing from past service in Uptron. The reliefs under clauses (f) and (h) pertain primarily to pay fixation, pay protection, and other consequential service benefits arising out of absorption, which is expressly saved even by Anukul Prakash (Supra), as the Full Bench itself recognized the distinction between pensionary qualification and pay-related service benefits.

(ii) **Pooran Singh Manral (Supra)**. This judgment again relates to qualifying service for pension, governed by the Civil Service Regulations and the 1961 Rules. The petitioners/applicants herein are not seeking to convert non-pensionable service into pensionable service by judicial fiat. The claim is limited to re-fixation of pay and extension of service benefits flowing from absorption, as mandated by the Government Order dated 20.12.2011, which was not under consideration in *Pooran Singh Manral*. Therefore, the said decision is factually and legally distinguishable.

(iii) **S.C. Chandra (Supra)**. The reliance on *S.C. Chandra* is wholly misconceived. That case dealt with regularisation and pay parity claims by irregular appointees, invoking the principle of

"equal pay for equal work." Thus, the same is not applicable to the facts and circumstances of the present case.

28. The petitioners have also raised a grievance of differential treatment vis-a-vis similarly situated Uptron employees absorbed earlier and granted protection of last pay drawn. No cogent justification has been placed on record by the respondents to demonstrate a rational basis for such distinction under the same policy framework.

29. In absence of any intelligible differentia, such differential treatment is inconsistent with the mandate of Articles 14 and 16 of the Constitution of India.

30. In view of the grounds urged in the review application, the statutory scheme governing absorption under the 2011 Rules, the Government Order dated 20.12.2011, and the legal principles laid down by the Hon'ble Supreme Court in the judgments relied upon by the review-applicants, this Court is of the considered view that the reliefs sought in clauses (f) and (h) warrant appropriate directions.

31. The **review application is allowed**. The judgment and order dated 03.08.2023 passed in Writ - A No. 962 of 2010 shall stand modified to the following extent:

(i) The respondents shall re-fix the pay of the petitioners by taking into account the regular service rendered by them in U.P. Uptron India Ltd. and the service rendered by way of adjustment in the U.P. Civil Secretariat prior to absorption, strictly in accordance with the Government Order dated 20.12.2011 and the 2011 Rules.

(ii) Consequential service benefits arising out of such re-fixation shall be extended to the petitioners within a period of three months from the date of production of a certified copy of this order.

(iii) It is clarified that pensionary benefits, if any, shall be governed by the applicable statutory rules and binding judicial precedents.

32. There shall be no order as to costs.

(2026) 1 ILRA 1265
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 20.01.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Civil Misc. Review Application Defective No. 288 of 2023

Gaon Sabha Sonbarsa, Pargana Tehsil, Gonda ...Petitioner(s)
Versus
Shyam Sundar Chaudhary
...Opposite Party

Issue for Consideration

Whether the application seeking condonation of delay of about 12 years in filing the application for review of the order dated 15.12.2011 passed by this Court allowing Second Appeal No. 769 of 1983, deserves to be allowed

Head Notes

The Code of Civil Procedure, 1908-Section 114, Order XLVII Rule 1; The Limitation Act, 1963-Section 5- The judgment dated 15.12.2011, which is sought to be reviewed, only records and accepts the submission of the learned Counsel for the appellant and it does not even make a mention of any submission advanced on behalf of the opposite parties. Although the High Court had allowed the Second Appeal on 15.12.2011, the decree holder-appellant himself remained lethargic for about nine years and has filed an application for execution of the decree only in the year 2020. The judgment-debtor - Gaon Sabha claims that notice of the execution application has been served upon it recently. Although the execution application was not barred by the period of limitation, but the delay of nine years in filing the application for execution and thereafter not taking steps promptly to ensure service of notice of the execution application on the judgment debtor – Gaon Sabha, is a relevant circumstance showing that when the decree holder himself has been lethargic and has not acted with reasonable promptitude, condonation of delay in filing the review application will not cause any prejudice to the respondent – decree holder- Properties in dispute are not personal properties of the Gram Pradhan and the same include a pond, a temple and a bhita (a mound or a small hillock), which are public properties.

Held- Applicant makes out a case for condonation of delay in filing the review application. Accordingly, the application is allowed and the delay in filing of the review application is condoned. **(Para 11 & 13)** (E-15)

Case Law Cited

Hinch Lal Tiwari v. Kamala Devi: (2001) 6 SCC 496; Shivamma v. Karnataka Housing Board: 2025 SCC OnLine SC 1969; State of Manipur v. Koting Lamkang: (2019) 10 SCC 408; Antiyur Town Panchayat v. G. Arumugam: (2015) 3 SCC 569; State of Nagaland v. Lipok Ao: (2005) 3 SCC 752

List of Acts

The Code of Civil Procedure, 1908; The Limitation Act-1963

List of Keywords

Delay of 12 years; review application; decree holder himself has been lethargic; has not acted with reasonable promptitude; application for execution filed only in the year 2020; properties in dispute are not personal properties of the Gram Pradhan; but public properties.

Case Arising From

Review of the order dated 15.12.2011 passed by this Court allowing Second Appeal No. 769 of 1983.

Appearances for Parties

Counsel for Applicant(s) : Pankaj Gupta

Counsel for Opposite Party(s) : Tarun Kumar Pandey, Dharmendra Kumar Gupta

(Delivered by Hon'ble Subhash Vidyarthi, J.)

Order on IA-03 of 2023:

1. Heard Sri Pankaj Gupta, the learned counsel for the review applicant-Gaon Sabha, Sri Tarun Kumar Pandey, the learned counsel for the appellant/opposite party - Om Prakash Chaudhary and perused the records.

2. Although the office has reported that the notices stand served on the opposite parties, only the appellant/opposite party has put in appearance and filed objections against the application for condonation of delay.

3. The present application has been filed seeking condonation of delay of about 12 years in filing the application for review of the order dated 15.12.2011 passed by this Court allowing Second Appeal No. 769 of 1983.

4. In the affidavit filed in support of the application it has been stated that Gram Sabha was the opposite party no.1 in Second Appeal No.769 of 1983, which has been allowed by means of a judgment dated 15.12.2011. The land in question belongs to Gaon Sabha, it is recorded as talab, bhita and abadi land, which are public utility lands. An old temple also exists on a part of the land in question. The suit was barred by the provisions of Section 331 of U.P. Zamindari Abolition and Land Reforms Act. The appeal has been allowed without referring to any submission made by the learned counsel for the Gaon Sabha.

5. The legal heirs of the applicant filed Execution Application no. 6 of 2020 for execution of the order dated 15.12.2011. Upon receipt of its notice the review application has been filed.

6. In the objection filed by the appellant against the application for condonation of delay in filing the review application, it has inter alia been stated that a copy of the order dated 15.12.2011 was served upon the Gaon Sabha on 07.09.2012. Therefore, the order was in the knowledge of Gaon Sabha. Gaon Sabha had filed SLP (Civil) No.16059 of 2012 challenging the order dated 15.12.2011 and the SLP was dismissed by means of an order dated 21.09.2012. The order has been recorded in revenue records on 16.04.2013.

7. In **State of Nagaland v. Lipok Ao**: (2005) 3 SCC 752, the Hon'ble Supreme Court held that: -

"14. In G. Ramegowda v. Spl. Land Acquisition Officer [(1988) 2 SCC 142] it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected, but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts, omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of Section 5, it might, perhaps, be somewhat unrealistic to

exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process. The delay of over one year was accordingly condoned.

15. It is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay - intentional or otherwise ? is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal, needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants."

8. The aforesaid judgment was follows in **Antiyur Town Panchayat v. G. Arumugam:** (2015) 3 SCC 569, in which the Hon'ble Supreme Court further held that *"If the court is convinced that there had been an attempt on the part of the government officials or public servants to defeat justice by causing delay, the court, in view of the larger public interest, should take a lenient view in such situations, condone the delay, howsoever huge may be the delay, and have the matter decided on merits."*

9. In *State of Manipur v. Koting Lamkang:* (2019) 10 SCC 408, the Hon'ble Supreme Court held that: -

"7. ... it was necessary for the Court to also be conscious of the bureaucratic delay and the slow pace in reaching a government decision and the routine way of deciding whether the State should prefer an appeal against a judgment adverse to it. Even while observing that the law

of limitation would harshly affect the party, the Court felt that the delay in the appeal filed by the State, should not be condoned.

*8. Regard should be had in similar such circumstances to the impersonal nature of the Government's functioning where individual officers may fail to act responsibly. This in turn, would result in injustice to the institutional interest of the State. **If the appeal filed by the State are lost for individual default, those who are at fault, will not usually be individually affected.**"*

10. However, in **Shivamma v. Karnataka Housing Board**: 2025 SCC OnLine SC 1969, the Hon'ble Supreme Court has held that: -

"261. ...Before we proceed to close this judgment, we deem it appropriate to make it abundantly clear that administrative lethargy and laxity can never stand as a sufficient ground for condonation of delay, and we want to convey an emphatic message to all the High Courts that delays shall not be condoned on frivolous and superficial grounds, until a proper case of sufficient cause is made out, wherein the State-machinery is able to establish that it acted with bona fides and remained vigilant all throughout. Procedure is a handmaid to justice, as is famously said. But courts, and more particularly the constitutional courts, ought not to obviate the procedure for a litigating State agency, who also equally suffer the bars of limitation from pursuing litigations due to its own lackadaisical attitude.

262. The High Courts ought not give a legitimizing effect to such callous attitude of State authorities or its instrumentalities, and should remain extra cautious, if the party seeking condonation of delay is a State-authority. They should not become surrogates for State laxity and lethargy. The constitutional courts ought to be cognizant of the apathy and pangs of a private litigant. Litigants cannot be placed in situations of perpetual litigations, wherein the fruits of their decrees or favourable orders are frustrated at later stages. We are at pains to reiterate this everlasting trend, and put all the High Courts to notice, not to reopen matters with inordinate delay, until sufficient cause exists, as by doing so the courts only add insult to the injury, more particularly in appeals under Section 100 of the CPC, wherein its jurisdiction is already limited to questions of law.

263. Limitation periods are prescribed to maintain a sweeping scope for the lis to attain for finality. More than the importance of judicial time, what worries us is the plight of a litigant with limited means, who is to contest against an enormous State, and its elaborate and never-exhausting paraphernalia. Such litigations deserve to be disposed of at the very threshold, because, say if a party litigating against the State, for whatever reason, is unable to contest the condonation of delay in appeal, unlike the present case, it reopens the lis for another round of litigation, and leaves such litigant listless yet again. As courts of conscience, it is our obligation that we assure that a litigant is not sent from pillar to post to seek justice.

264. No litigant should be permitted to be so lethargic and apathetic, much less be permitted by the courts to misuse the process of law."

11. I proceed to examine the facts of the case to ascertain whether the same make out a case for condonation of delay in filing the review application. It is stated in the affidavit filed in support of the application for condonation of delay that the land in dispute is a public utility land recorded as talab, bhita and aabadi, and an old temple exists on a part of the land. The judgment dated 15.12.2011, which is sought to be reviewed, only records and accepts

the submission of the learned Counsel for the appellant and it does not even make a mention of any submission advanced on behalf of the opposite parties. Although the High Court had allowed the Second Appeal on 15.12.2011, the decree holder-appellant himself remained lethargic for about nine years and has filed an application for execution of the decree only in the year 2020. The judgment-debtor - Gaon Sabha claims that notice of the execution application has been served upon it recently. Although the execution application was not barred by the period of limitation, but the delay of nine years in filing the application for execution and thereafter not taking steps promptly to ensure service of notice of the execution application on the judgment debtor - Gaon Sabha, is a relevant circumstance showing that when the decree holder himself has been lethargic and has not acted with reasonable promptitude, condonation of delay in filing the review application will not cause any prejudice to the respondent ? decree holder. This fact is also very relevant that the properties in dispute are not personal properties of the Gram Pradhan and the same include a pond, a temple and a bhita (a mound or a small hillock), which are public properties.

12. In **Hinch Lal Tiwari v. Kamala Devi**: (2001) 6 SCC 496, the Hon'ble Supreme Court held that: -

"13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites."

13. Keeping in view the entire facts and circumstances of the case, I am of the view that the aforesaid facts make out a case for condonation of delay in filing the review application. Accordingly, the application is allowed and the delay in filing of the review application is condoned.

Order on memo of review application:

14. Issue notice of the review application to the opposite parties.

15. The learned counsel for the review applicant shall take requisite steps in this regard within one week.

16. List the review application immediately after service of notice along with service report and the record of Second Appeal No.769 of 1983 and the Matter U/A 227 No.7284 of 2025.

(2026) 1 ILRA 1271
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 12.01.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Criminal Misc. Writ Petition No. 12344 of 2025

Miss Shabnam

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether a writ of mandamus can be issued to compel police authorities to register an FIR under Section 154 Cr.P.C./Section 175 BNSS without availing statutory remedies under Sections 154(3), 156(3), 190, and 200 Cr.P.C. ?

Whether departmental action can be directed against police officers for non-compliance with the Supreme Court's dictum in *Lalita Kumari v. State of U.P.*?

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 - Section – 36, 154, 154(3), 156(3), 190, 200, - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section – 30, 175(3), - Constitution of India - Article 226 - Writ Petition - seeking mandamus for registration of an FIR and departmental action against the concern police officers for non-compliance with *Lalita Kumari v. State of U.P.* – Applications moved under section 154 CrPC and 36 CrPC / section 30 of BNSS are pending - petitioner relied on the Supreme Court's dictum - while the State cited *Waseem Haider v. State of U.P.*, emphasizing availability of statutory remedies under Sections 154(3), 156(3), 190, and 200 Cr.P.C. (corresponding Section 175(3) BNSS) - The Court observed that since a statutory mechanism exists for lodging FIRs and pursuing remedies stage-by-stage, the petitioner must follow the same - held - statutory remedies under Cr.P.C./BNSS must be followed and the departmental action may be taken by competent authorities if police fail to register FIR despite cognizable offence information - hence, the petition is disposed of at the admission stage, granting liberty to the petitioner to pursue remedies strictly in accordance with law. (Para – 6, 7, 8)
Writ Petition Disposed of. (E-11)

CASE LAW CITED

Lalita Kumari v. Government of Uttar Pradesh & Others, (2014) 2 SCC 1,
Waseem Haider v. State of U.P. & Others, (2021) 2 ADJ 86; 2020 SCC OnLine ALL 1866,
Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Others, (1998) 8 SCC 1.

LIST OF ACTS

Code of Criminal Procedure, 1973 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Constitution of India.

LIST OF KEYWORDS

Writ Petition – Mandamus - FIR Registration - Section 154 Cr.P.C. / Section 175 BNSS - Section 156(3) Cr.P.C. / Section 175(3) BNSS - Alternative Remedy - Departmental Proceedings - Lalita Kumari Dictum - main grievance - in accordance with law – dictum – petition disposed of.

CASE ARISING FROM

Pending Application dated 18.10.2025 filed by the petitioner under section 154 CrPC as well as Application dated 27.11.2025 filed under section 36 CrPC (section 30 of BNSS).

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Sajjad Husain.

Counsel for Respondent(s): Ms. Meera Tripathi, AGA.

(Delivered by Hon'ble Rajesh Singh Chauhan, J.
& Hon'ble Pramod Kumar Srivastava, J.)

1. Heard, Shri Sajjad Husain, learned counsel for the petitioner and Ms. Meera Tripathi, learned AGA for the State.

2. By means of this petition, the petitioner has prayed the following reliefs:-

*"I. Issue any appropriate writ or direction in the nature of mandamus, commanding and directing the opposite party No. 1 & 2, to take lawful action against opposite party Nos. 3 & 4 for not communicating any action/refusal taken on the petitioner's statutory application dt. 18.10.2025 moved under Section 154 Cr.P.C. as per the law settled by the Hon'ble Supreme Court in **Lalita Kumari vs. Government of Uttar Pradesh & Others (2014) 2 SCC 1**, in the interest of Justice.*

*II. Issue any appropriate writ, order or direction in the nature of Mandamus, commanding the opposite party no. 1 & 2 to decide the representation of the petitioner dt. 27.11.2025 within stipulated time and period as this Hon'ble Court may deem fit and proper in the interest of justice. Copy of the application dated 27.11.2025 moved under section 36 CRPC (Section 30 BNSS) before the Opposite Party Nos. 1 & 2, is annexed as **Annexure No. 1** to this writ petition.*

*III. Issue a writ, order or direction in the nature of Mandamus, commanding and directing to the opposite party No. 2 to take appropriate steps as to initiate departmental proceedings for non-compliance of judgment and order as law settled by the Hon'ble Apex Court **Lalita Kumari Vs. Government of Uttar Pradesh and others 2014 (2) SCC 1**, against the opposite party No. 3 for securing the ends of justice."*

3. Reliance has been placed on the judgment of the Hon'ble Apex Court in **re: Lalita Kumari vs. Government of Uttar Pradesh and others, (2014) 2 SCC 1**, referring paragraphs 120.1 to 120.8. Further reliance is placed on the order dated 17.11.2025 passed by the coordinate bench of this Court disposing of a petition in light of the dictum of the Hon'ble Apex Court in **re: Lalita Kumari (Supra)**. Therefore, learned counsel for the petitioner has requested that this writ petition may be disposed of in light of the dictum of the Hon'ble Apex Court in **Lalita Kumari (Supra)**, in the same manner as the petition decided by the coordinate bench vide order dated 17.11.2025 (Annexure No. 10).

4. Per contra, Ms. Meera Tripathi, learned AGA, has placed reliance on the dictum of the judgment of this Court in **re: Waseem Haider vs. State of U.P. and others, (2021) 2 ADJ 86: 2020 SCC OnLine ALL 1866**. She stated that the Division Bench of this Court, in the case of **Waseem Haider**, after considering the law laid down by the Supreme Court in **Lalita Kumari**

(Supra), expressed the opinion that the informant has a statutory remedy under Section 156(3) Cr.P.C. or under Section 200 Cr.P.C. Paragraph 45 of the said judgment is quoted hereinbelow:

"45. Before parting, the conclusion arrived at based on the above discussion and analysis is delineated below for ready reference and convenience:-

*(1) A writ of mandamus to compel the police to perform its statutory duty under Section 154 Cr.P.C. can be denied to the informant/victim for non-availing of alternative remedies under Sections 154(3), 156(3), 190, and 200 Cr.P.C., unless the four exceptions enumerated in the decision of the Apex Court in **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 1**, come to the rescue of the informant/victim.*

*(2) The verdict of the Apex Court in **Lalita Kumari vs. Government of U.P. & Ors., (2014) 2 SCC 1**, does not pertain to the issue of entitlement to a writ of mandamus for compelling the police to perform statutory duties under Section 154 Cr.P.C. without availing alternative remedies under Sections 154(3), 156(3), 190, and 200 Cr.P.C.*

(3) The informant/victim, after furnishing first information regarding a cognizable offence, does not become functus officio for seeking a writ of mandamus to compel the police authorities to perform their statutory duty under Section 154 Cr.P.C. in case the FIR is not lodged.

(4) The proposed accused, against whom the first information of commission of a cognizable offence is made, is not a necessary party to be impleaded in a petition under Article 226 of the Constitution of India seeking issuance of a writ of mandamus to compel the police to perform their statutory duty under Section 154 Cr.P.C."

5. The learned AGA further submitted that if, upon the application of the aggrieved person for the lodging of an FIR, the FIR is not registered by the Police Officer, and if, upon subsequent application to the Superintendent of Police or Senior Superintendent of Police, no appropriate order is passed, the aggrieved person may then approach the Court of the Magistrate seeking a direction to lodge the FIR, as categorically provided in the statute. Ms. Tripathi has drawn the attention of this Court toward Section 175(3) of the BNSS, which reads as follows:

"Section 175(3)- Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned."

6. Notably, Section 175(3) is the corresponding section to Section 156(3) Cr.P.C. Therefore, Ms. Tripathi, learned AGA, has stated that as the mechanism has already been provided in the statute, the same should be abided by in letter and spirit. She has further submitted that in the decision in re: Waseem Haider, directions has been issued following the dictum of the Hon'ble Apex Court in re: Lalita Kumari (Supra).

7. Insofar as the appropriate action against the arrayed Police Officer is concerned, it is always open to the competent authority to take appropriate action if it is found that, despite information being given regarding a cognizable offence, the FIR was not lodged.

8. Having heard the learned counsel for the parties and perused the material available on record, we are of the considered opinion that if a mechanism has been provided in the statute for lodging an FIR, and that mechanism is indicated stage-by-stage, the same must be complied with in its letter and spirit. Since this Court, in re: Waseem Haider (Supra), passed an order following the dictum of the Hon'ble Apex Court in re: Lalita Kumari (Supra) upon which reliance has been placed by the learned counsel for the petitioner and since the main grievance of the petitioner in his representation dated 27.11.2025 is that an FIR should be lodged on his application, the same should be lodged strictly in accordance with law. Therefore, without entering into the merits of the issue, we hereby dispose of this petition finally at the admission stage, giving liberty to the petitioner to take appropriate steps strictly in accordance with law. The grievance of the petitioner may be redressed in light of the decision of this Court in re: Waseem Haider (Supra), wherein the dictum of the Hon'ble Apex Court in re: Lalita Kumari (Supra) has been followed.

9. In view of above, this writ petition is **disposed of** finally.

(2026) 1 ILRA 1274
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.01.2026

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE LAKSHMI KANT SHUKLA, J.

Criminal Misc. Writ Petition No. 18905 of 2025

Sanjay Wahi

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether a Division Bench exercising writ jurisdiction under Article 226 of the Constitution of India can quash a **cognizance/summoning order** passed by a Magistrate after filing of charge-sheet?

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 - Section 482 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 528 - Indian Penal Code, 1860 – Sections 420, 406, 467, 468, 471, 120-B, 504, 507 - Constitution of India - Article 226, 227 - Allahabad High Court Rules, 1952 – Chapter V Rule 2, Chapter XXII Rule 1 - Writ Petition U/article 226 - filed for quashing the FIR, later amended to challenge charge-sheet and cognizance order - FIR – offence under Sections 420, 406, 467, 468, 471, 120-B, 504, 507 IPC - investigation - charge-sheet - trial initiated - petitioner pleaded that the dispute was purely civil in nature arising from partnership agreements and profit-sharing, and criminal proceedings were misuse of law - respondents argued that once cognizance is taken, writ jurisdiction under Article 226 cannot be invoked, and remedy lies under Section 528 BNSS before Single Judge as per High Court Rules - Court finds that, present court has jurisdiction only under Article 226 and not under Section 528 BNSS, and roster allocation cannot be bypassed - writ jurisdiction is limited post -cognizance - held, roster allocation by Chief Justice must be respected – hence, the writ petition is not maintainable, accordingly, petition is

dismissed – however, with liberty granted to the petitioner to move an appropriate application or petition before the competent court to quash the cognizance order. (Para – 18, 20, 21, 22, 23, 24)
Writ Petition Dismissed. (E-11)

CASE LAW CITED

Sharif Ahmed v. State of U.P. (2024) 14 SCC 122
Vesa Holdings (P) Ltd. v. State of Kerala (2015) 8 SCC 293
Pradnya Pranjal Kulkarni v. State of Maharashtra (2025 SCC OnLine SC 1948)
Neeta Singh v. State of U.P. (2024 SCC OnLine SC 5761)
Yousef v. State of Maharashtra (Criminal Application No. 3134 of 2019, Bombay HC)

LIST OF ACTS

Constitution of India - Bharatiya Nagarik Suraksha Sanhita, 2023 - Indian Penal Code, 1860 – Code of Criminal Procedure, 1973 - Allahabad High Court Rules, 1952.

LIST OF KEYWORDS

Writ Petition - Quashing of FIR - Charge-sheet - Cognizance Order – Jurisdiction under Article 226 and 227 - Section 528 of BNSS - Abuse of Process – Maintainability - Roster System - post cognizance - appropriately incorporated – jurisdiction, assigned to the judge - Constitutional Convention and Rules of this Court - appropriate application or petition - appropriate Court – dismissed as not maintainable.

CASE ARISING FROM

Case Crime No. 311 of 2024, Police Station Beta 2, Greater Noida, U.P. - Criminal Case No. 8223 of 2025 (State vs. Sanjay Wahi).

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Gopal Swaroop Chaturvedi, Sr. Advocate; Ms. Saumya Chaturvedi; Mr. Dinesh Kumar Goswami, Sr. Advocate; Mr. Devaang Salva; Mr. Anuj Shukla; Mr. Yash Giri.
Counsel for Respondent(s): Shri Mr. V.P. Srivastava, Sr. Advocate; Mr. Mohit Singh; Mr. Rajan Mishra and GA.

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

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

“(i) Issue an appropriate writ, order or direction quashing the impugned F.I.R. dated 03.08.2024 bearing Case Crime No. 311 of 2024, under Sections 420, 406, 467, 468, 471, 120-B, 504, 507 I.P.C., Police Station Beta 2, District Greater Noida (Commissionerate Gautam Budh Nagar), U.P.

(ii) Issue an appropriate writ, order or direction commanding the respondents not to take any coercive measures against the petitioner in pursuance to the impugned F.I.R. dated 03.08.2024 bearing Case Crime No. 311 of 2024, under Sections 420, 406, 467, 468, 471, 120-B, 504, 507 I.P.C., Police Station Beta 2, District Greater Noida (Commissionerate Gautam Budh Nagar), U.P.

(iii) Issue an appropriate writ, order or direction in the nature of Certiorari quashing the impugned charge-sheet dated 17.07.2025 as well as the impugned cognizance/summoning order dated 26.08.2025 passed by the Court of A.C.J.M.-Ist, G.B. Nagar in Criminal Case No. 8223 of 2025 (State vs. Sanjay Wahi) as well as entire proceedings arising out of Case Crime No. 311 of 2024, U/s 420, 406, 467, 468, 471, 120-B, 504, 507 I.P.C., Police Station Beta 2, Greater Noida (Commissionerate Gautam Budh Nagar) U.P. and all subsequent proceedings thereof, during the pendency of the present writ petition. Otherwise, the petitioner shall suffer irreparable loss and injury.”

Brief Facts

2. As per the prosecution case, the petitioner and the complainant-respondent no. 2 were doing business together. Between the period 2018-19, the petitioner decided to purchase a piece of land for development and after getting the development of the said land, he wanted to sell subsequently. The wife of the respondent no. 2, namely, Deepika Gupta was interested to invest in the said piece of land. For this endeavour, the wife of the respondent no. 2 entered into a Partnership Agreement with the petitioner. In the year 2019, for the purchase of the said land, an agreement to sell was executed between the petitioner and accused nos. 3, 4 and 5. Thereafter, the Partnership Agreement was also extended by the wife to the complainant-respondent no. 2. In the year 2020, a Partnership Agreement was also entered into by the petitioner with one Sunit Kohli (Accused No. 3). On 16.03.2024, the complainant called the petitioner and asked him to meet at his house at D-18, Sector 47 Noida at 06:30 PM. The petitioner went to the house of the complainant at around 07:15 PM. The complainant, his wife Deepika Gupta along with other family members started misbehaving with the petitioner. The petitioner was also threatened, assaulted and forcefully restrained by the complainant and his family members in his house for several hours. They have also called the petitioner's wife and sons and threatened them of dire consequences.

3. It is alleged that the complainant and his wife Deepika Gupta made the petitioner forcefully signed on two cheques i.e. Cheque No. '000349' amounting to Rs. 3,50,00,000/- and Cheque No. '000352' amounting to Rs. 14,00,00,000/-

4. On the next day of this incident, the petitioner made a police complaint against the complainant-respondent no. 2 and his wife regarding the incident of assault, wrongful restrain, forceful signing and possession of cheques worth Rs. 17,50,00,000/-. On 20.06.2024, the complainant-respondent no. 2 had preferred an application under Section 156(3) Cr.P.C. against the petitioner and others. On 10.07.2024, the court of Additional Chief Judicial Magistrate-II, Gautam Budh Nagar had allowed the application under Section 156(3) Cr.P.C. of the complainant-respondent no. 2 and had directed to lodge an F.I.R. against the petitioner and others. On 03.08.2024, an F.I.R. bearing Case Crime No. 311 of 2024 for the offence under Sections 420, 406, 467, 468, 471, 120-B, 504 and 507 I.P.C., Police Station Beta 2, District Greater Noida (Commissionerate Gautam Budh Nagar) has been lodged against the petitioner and four others. Against the said F.I.R., the petitioner preferred an Anticipatory Bail Application before the Court of learned Additional Sessions Judge, Gautam Budh Nagar. The said anticipatory bail of the petitioner was rejected by the court concerned vide order dated 28.08.2024. Thereafter, the petitioner preferred an Anticipatory Bail Application no. 9551 of 2024 before the High Court at Allahabad, wherein, the Court was pleased to refer the matter to the Mediation and Conciliation Centre to settle the dispute vide order dated 26.09.2024. However, vide order dated 07.07.2025, the anticipatory bail application of the petitioner was granted till submission of the charge-sheet. The instant writ petition has been filed seeking quashing of the impugned F.I.R. dated 03.08.2024 registered at Police Station Beta 2, District Gautam Budh Nagar, U.P. After culmination of investigation, charge-sheet dated 17.07.2025, against the petitioner, has been filed before the competent court and the competent court has taken cognizance vide order dated 26.08.2025 against the petitioner. Thereafter, the applicant has filed an application for an amendment in the writ

petition. The same was allowed vide order dated 04.09.2025 by the Co-ordinate Bench of this Court.

Submissions of learned counsel for the petitioner

5. Mr. Gopal Swaroop Chaturvedi, learned Senior Advocate assisted by Ms. Saumya Chaturvedi, learned Advocate; Mr. Dinesh Kumar Goswami, learned Senior Advocate assisted by Mr. Devaang Salva, Mr. Anuj Shukla and Mr. Yash Giri, learned counsel appearing on behalf of the petitioner submits that as per the complainant, his only grievance was related to sharing of alleged profit made by the petitioner from the aforesaid project which unequivocally makes it a civil dispute, wherein rights and liabilities of contracting parties should have been decided. It is also submitted that other grievances of the complainant was that the petitioner should not have entered into any partnership deed with one Sunit Kohli, when it had an exclusive partnership with the wife of the complainant. Learned Senior Advocate next submits that there is no explicit law which prohibits one party to enter into a multiple partnership agreements. If, all these allegations are taken to be true, there is only a breach of contract, which shall be adjudicated upon by either arbitration or through a civil suit.

6. Mr. G.S. Chaturvedi, learned Senior Advocate vehemently submitted that the complainant must not be allowed to invoke the criminal justice system to settle civil dispute/liabilities, therefore, the impugned First Information Report dated 03.08.2024 is nothing but a gross misuse of process of law. The malicious prosecution has been instituted against the petitioner due to serious disputes of civil in nature between the parties only to settle personal score. It is also apprised to the Court that the partnership deed between the petitioner and the wife of the complainant has an explicit arbitration clause which ought to be used in case of any dispute regarding the sharing of profits.

7. Learned Senior Advocate, in support of his arguments, has relied upon the judgment in the case of **Sharif Ahmed and Others vs. State of U.P. and Others, (2024) 14 SCC 122** and submitted that Hon'ble the Supreme Court has held that "effort to settle civil disputes and claims which do not involve any criminal offence, by way of applying pressure through criminal prosecution, should be deprecated and discouraged". He has also placed reliance upon the judgment in the case of **Vesa Holdings (P) Ltd. vs. State of Kerala, (2015) 8 SCC 293** and especially relied upon paragraph nos. 12 and 13 of the said judgment which reads as under :-

"12. the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a

ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court.....

8. It is lastly submitted that the dispute between the petitioner and the wife of the complainant arises purely from a business transaction governed by a valid partnership which falls under civil law and does not attract any criminal offence. It is further submitted that plain reading of the F.I.R. does not disclose the commission of any offences under Sections 420, 406, 467, 468, 471, 120-B, 504, 507 I.P.C., therefore, the instant F.I.R. and the proceedings arise therefrom deserve to be quashed.

Submissions of learned counsel for the Respondents

9. Mr. V.P. Srivastava, learned Senior Advocate assisted by Mr. Mohit Singh and Mr. Rajan Mishra, learned counsel for the respondents vehemently opposed the writ petition and submitted that this Court is sitting in the roster under Article 226 of the Constitution of India, therefore, this Court has no jurisdiction to adjudicate the cognizance order dated 26.08.2025 of the concerned Court. It is next submitted that the cognizance order passed by the concerned Magistrate may be challenged before the appropriate jurisdiction under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'). It is vehemently submitted that the power of judicial review under Article 226 of the Constitution of India is not opened in criminal cases once cognizance has been taken by the court concerned. It is further submitted that the filing of the charge-sheet and taking cognizance thereupon mark a change in legal status of the case which limits the writ jurisdiction.

10. Learned Senior Advocate has placed reliance upon the judgment of **Pradnya Pranjal Kulkarni vs. State of Maharashtra and Another, 2025 SCC OnLine SC 1948**, wherein the Supreme Court has clarified on the interplay between constitutional writ powers and statutory remedies under BNSS. It draws a clear distinction between situations where investigation is still ongoing, permitting in writ intervention, and cases where the charge-sheet has culminated in cognizance, which must instead be addressed under Section 528 of the BNSS.

11. It is next submitted that as per the provisions contained in Chapter V Rule 2 of the Allahabad High Court Rules, 1952, the Applications under Section 528 BNSS (482 Cr.P.C.) are to be placed before a Single Judge Bench whereas the Criminal Writ Petitions, filed for quashing of the F.I.R., are to be placed before a Division Bench, therefore, taking into consideration of the High Court Rules as stated above, this Court has no jurisdiction to quash the cognizance order as challenged by the petitioner in the instant writ petition. He has also placed reliance upon the provisions contained in Chapter XXII Rule 1 of Allahabad High Court Rules. The instant writ petition is devoid of merit, and deserves to be rejected.

Analysis and Conclusion

12. Heard learned Senior Advocates appearing on behalf of respective parties, perused the contents made in the writ petition and other pleadings in the said writ petition.

13. In the instant case, it is an admitted fact that after completion of the investigation, charge-sheet has been filed on 17.07.2025 before the concerned Court and after taking into consideration the materials along with the impugned charge-sheet, the Court concerned found prima-facie case for taking a cognizance and accordingly taken cognizance thereupon vide order dated 26.08.2025 against the petitioner.

14. Primarily, the instant writ petition was filed for quashing of the F.I.R. but subsequently during the pendency of the said writ petition, the investigation has been concluded, charge-sheet has been filed and cognizance thereupon has also been taken, therefore, the petitioner has moved an application for amendment of the writ petition and the same was allowed vide order dated 04.09.2025 of the co-ordinate Bench of this Court. Accordingly, the instant writ petition was amended. In the amended writ petition, the impugned charge-sheet dated 17.07.2025 along with cognizance order dated 26.08.2025 have also been challenged. After taking into consideration the submissions raised by the learned counsel for the petitioner as well as respondents, the moot question to be decided is that *"whether this Court can quash a summoning or cognizance order of the Magistrate concerned in the jurisdiction under Article 226 of the Constitution of India?"*

15. Bombay High Court in the case of **Yousef and 8 others vs. The State of Maharashtra and 2 others (Criminal Application No. 3134 of 2019)** held as under:-

*"In a plethora of judgments, the Hon'ble Supreme Court has laid down detailed guidelines to be followed while exercising jurisdiction under Article 226/227 of the Constitution of India or Section 482 Cr.P.C. The Hon'ble Supreme Court in **Radhey Shyam and another v. Chhabhi Nath and others (2015) 5 SCC 423** has held that judicial orders are not ordinary amenable of writ jurisdiction under Article 226 of the Constitution and has clarified that supervising jurisdiction under Article 227 of the Constitution as well as the inherent jurisdiction under Section 482 Cr.P.C. is the appropriate forum in such cases. Even in the case of **M/s Pepsi Foods Limited and another v. Special Judicial Magistrate and others (1998) 5 SCC 749** the Hon'ble Supreme Court has reiterated that the High Courts may exercise its power under Article 226 of the Constitution of India or under Section 482 Cr.P.C. to quash criminal proceedings where abuse of process is evident. In the case of **State of Haryana and others v. Bhajan Lal and others 1992 Supp (1) SCC 335** illustrative categories were laid down for quashing of criminal proceedings under Article 226 of the Constitution of India and Section 482 Cr.P.C. to prevent abuse of process of law. Continuing these lines of guidelines, the Supreme Court once again held in the case of **Neeta Singh and others v. State of U.P. and others 2024 SCC OnLine SC 5761**, that once a competent Court has taken cognizance, a petition under Article 226 of the Constitution simplicitor to quash an FIR may not survive. However, latest dictum in **Pradnya Pranjal Kulkarni v. State of Maharashtra and another 2025 SCC OnLine SC 1948**, the Supreme Court clarified that where the petition invokes the twin jurisdiction, one under Article 226 of the Constitution and the other under Section 482 Cr.P.C. which now corresponds to Section 528 B.N.S.S., the High Court retains its jurisdiction post cognizance to quash not only the FIR/charge-sheet but also the*

order taking cognizance, provided the pleadings are appropriately incorporated in the petition, and, most importantly, if the roster so permits."

16. For ready reference, Chapter V Rule 2 of the Allahabad High Court Rules, 1952 reads as under:

"2. Jurisdiction of a single Judge :- Except as provided by these Rules or other law, the following cases shall be heard and disposed of by a Judge sitting alone, namely—

(i) *a motion for the admission of a memorandum of appeal or cross objection or application or for ex parte interim order on an application;*

1[(ii) (a) *a civil 2[***] Second Appeal from a decree, including an appeal arising out of a case instituted in a revenue court, in which the value of appeal for the purpose of jurisdiction does not exceed 3[one lakh] rupees;*

4[(aa) *A Civil First Appeal instituted before 5[or after] the commencement of the [U.P. Civil Laws Amendment Act of 1991 (U.P. Act No. 17 of 1991)] from a decree including an appeal arising out of a case instituted in a revenue court in which the value of appeal for the purpose of jurisdiction does not exceed [five lakh] rupees;*

(b) *an appeal under Section 28 of the Hindu Marriage Act, 1955;*

(c) *any other civil appeal in which the value of the appeal does not exceed 6[two lakh] rupees :*

7[*Provided that where an ad valorem court-fee has been paid such value shall be deemed to be the amount on which such court-fee has been paid;*]

(iii) *a civil revision;*

(iv) *an application for the withdrawal of an appeal or application, or for a consent decree or order, which is uncontested or which is made in a case which can be heard under these Rules by a Judge sitting alone;*

(v) *any other application which is not—*

(a) *an application 8[***] under Section 5 of the Limitation Act, 1963 in a case which cannot be heard by a Judge sitting alone;*

(b) *9[***]*

(c) *an application 53[other than an application for interim order] to which Chapter XXII, Part IV applies;*

(d) *an application 10[other than an application for interim order] which by these Rules or other law is required to be heard by a Bench of two or more Judges;*

(e) *an application 53[other than an application for interim order] under Chapter IX, Rule 10; or*

(f) *11[***]*

(vi) *a suit or a proceeding in the nature of a suit coming before the Court in the exercise of its ordinary or extraordinary original civil testamentary or matrimonial jurisdiction including a proceeding under the Indian Trusts Acts, 1882 55[the Companies Act, 1956] or the Indian Patents and Designs Act, 1911;*

(vii) *a criminal appeal, application or reference except-*

(a) *an appeal or reference in a case in which a sentence of death or imprisonment for life has been passed 12[from the stage of admission including consideration of bail onwards];*

13(b) "an appeal under section 378 of the code of Criminal procedure, 1973 from an order of acquittal 14[in respect of an offence for which the maximum punishment is either life imprisonment or death".

(c) 15(***)

(d) a case in which notice has been issued under 58[Section 401 of the Code of Criminal Procedure, 1973] to an accused person to appear and show cause why his sentence should not be enhanced;

(e) [***]

(f) an application to which Chapter XXI, Part IV applies;

(viii) a case coming before the Court in the exercise of its ordinary or extraordinary original criminal jurisdiction;

(ix) an appeal or revision from an order passed 16[under Sections 340, 341 or 343 of the Code of Criminal Procedure, 1973] :

Provided that:-

(a) the Chief Justice may direct that any case or class of cases which may be heard by a Judge sitting alone shall be heard by a Bench of two or more Judges [or that any case or class of cases which may be heard by a Bench of two or more Judges, by a Judge sitting alone;]

(b) a Judge may, if he thinks fit, refer a case which may be heard by a Judge sitting alone or any question of law arising therein for decision to a larger Bench; and

(c) a Judge before whom any proceeding under the Indian Trusts Act, 1882, [the Companies Act, 1956] or the Patents and Designs Act, 1911, is pending may with the sanction of the Chief Justice, obtain the assistance of one or more other Judges for the hearing and determination of such proceeding or of any question or questions arising therein."

17. Chapter XXII Rule 1 of the Allahabad High Court Rules, 1952 reads as under:

Direction, Order or Writ under Article 226 (and Article 227) of the Constitution other than a writ in the nature of Habeas Corpus

"1. Application. - (1) *An application for a direction or order or writ under Article 226 [and Article 227] of the Constitution other than a writ in the nature of habeas corpus shall be made to the Division Bench appointed to receive applications or, on any day on which no such Bench is sitting, to the Judge appointed to receive applications in civil matters. In the latter event the Judge shall direct that the application be laid before a Division Bench for orders....."*

18. As per the aforesaid Rules, the application under Section 528 BNSS (482 Cr.P.C.) by which the Court has inherent power to quash the cognizance order or any judicial order passed by the concerned Court are to be placed before a Single Judge Bench but the Criminal Writ Petitions for quashing of the F.I.R. are to be placed before the Division Bench. The Division Bench ordinarily amenable of the writ jurisdiction under Article 226 of the Constitution of India.

19. In the case of **Neeta Singh and Others vs. State of U.P. and Others, 2024 SCC OnLine SC 5761**, the Supreme Court in paragraph nos. 3, 4, 13, 14 and 15 has held as under:-

“3. We have no doubt in our mind about the contours of jurisdiction of a high court when a challenge is presented asserting that the impugned FIR ought to be quashed on the settled parameters. However, sight cannot be lost of the settled legal position that it is entirely within the discretion of a high court whether to interfere or not when other remedies are available. If during the pendency of a writ petition under Article 226 of the Constitution before a high court where an FIR is challenged the investigation is completed and charge-sheet filed, in pursuance whereof the competent criminal court takes cognizance of the offence, the court would be disabled in proceeding with the writ petition owing to a judicial order having intervened. We can profitably refer to the decision of the bench of three Judges of this Court made on a reference in *Radhey Shyam v. Chhabi Nath*. While disapproving the view expressed in *Surya Dev Rai v. Ram Chander Rai*, it was held that judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution and that jurisdiction under Article 227 is distinct from jurisdiction under Article 226¹⁹. We may also note from such decision that upon considering decisions of high authority, a principle of law was laid down that challenge to judicial orders could lie by way of an appeal or a revision or under Article 227 of the Constitution and not by way of a writ under Articles 226 and 32.

4. The underlying reason why judicial orders are not amenable to challenge in a writ petition under Article 226 of the Constitution seems to be that such orders cannot be legitimately claimed to have been passed by the presiding officer of a court in breach or violation of a fundamental right, any right conferred by the Constitution or a statutorily conferred right, which could be corrected by issuance of a writ of certiorari in exercise of high prerogative writ jurisdiction of the high courts. After all, should any right of a person be infringed as a consequence of a judicial order, the laws provide for the fora where such order is amenable to challenge and it is such fora, which ought to be approached for redress of one's grievance. This position flows from Constitution Bench decisions of this Court in *Naresh Shridhar Mirajkar v. State of Maharashtra* and *Rupa Ashok Hurra v. Ashok Hurra*, as well as the decision of a bench of three Judges in *Sadhana Lodh v. National Insurance Co. Ltd.*

13. In *Pepsi Foods (supra)*, the relevant high court was approached with a petition under Articles 226 and 227. Interference was declined by the high court on the ground that the petitioners could not have invoked the jurisdiction under Article 226. However, this Court was of the view that the petition, filed in the high court under Articles 226 and 227, could well be treated solely under Article 227 of the Constitution and decided. The observation that nomenclature is not relevant was made on the logic that if the high court otherwise does possess jurisdiction to decide, nomenclature would not debar the court from exercising its jurisdiction unless there is a special procedure prescribed which procedure is mandatory.

(emphasis supplied)

14. Bearing the aforesaid dictum in mind, it would be useful at this stage to refer to the decision of a Division Bench of the High Court at Calcutta in *Sohan Lal Baid v. State of West Bengal*²³. Speaking through Hon'ble P.D. Desai, C.J., the Division Bench held that adjudication of a matter by a learned Judge without allocation made of such matter to such Judge by the Chief Justice would be void. The aforesaid view was approved by this Court in *State of Rajasthan v. Prakash Chand*²⁴. Upon survey of a number of precedents, it was held by this Court as follows:

“59. From the preceding discussion the following broad CONCLUSIONS emerge. This, of course, is not to be treated as a summary of our judgment and the conclusions should be read with the text of the judgment:

(1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.

(2) That the Chief Justice is the master of the roster. He alone has the prerogative to constitute benches of the court and allocate cases to the benches so constituted.

(3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.

(4) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the bench themselves and one or both the Judges constituting such bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.

*(5) ****

(6) That the puisne Judges cannot ‘pick and choose’ any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.

(7) That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice.

**** ”*

15. In view of the decision in Prakash Chand (supra), we hold that nomenclature of a petition read with the substance thereof does matter. Much depends on what the subject matter of the petition is and who is entrusted to hear and decide it. A Judge of a high court having been assigned petitions under Article 226 for hearing and decision by its Chief Justice cannot, if he (the Judge) finds that the petition filed under Article 226 should have ideally been filed under Article 227, treat the petition as one under Article 227 and proceed to hear and decide it, unless the Chief Justice has also assigned to such Judge petitions under Article 227 of the Constitution for hearing and decision. If not so assigned, the learned Judge may, in his discretion, direct the petition to be treated as one under Article 227 for being placed before the learned Judge having assignment. This is mandatory and, therefore, one finds the caution sounded by this Court in the opening sentence of paragraph 26 of Pepsi Foods (supra) to be of extreme significance. ”

20. In the case of **Pradnya Pranjal Kulkarni (Supra)**, the Supreme Court has clarified that where the petition invokes twin jurisdiction, one under Article 226 of the Constitution and other under Section 528 BNSS (482 of Cr.P.C.), the High Court retains its jurisdiction post cognizance to quash not only the FIR/Charge-sheet but also the order taking cognizance, provided the pleadings are appropriately incorporated in the petition, and, most importantly, if the roster so permits.

21. As per the discussions in foregoing paragraphs, it is also settled that A judge of a High Court having been assigned petitions under Article 226 for hearing and decision by its Chief Justice, if he finds that petition filed under Article 226 of the Constitution should have ideally been filed under Article 227/528 BNSS, treat that petition as one under Article 227/528 BNSS and

proceed to hear and decide it, unless the Chief Justice has also assigned to the Judge, to hear and decide the petitions under Article 227/528 BNSS. If not so assigned, the learned Judge may, in his discretion, direct the petition to be treated as one under Article 227/528 BNSS for being placed before the learned Judge having assignment.

22. This Court is having only jurisdiction under Article 226 of the Constitution of India. The roster is prepared by the Chief Justice of the High Court and it is not open to be overstepped by the any Court. The roster system is based on Constitutional Convention and Rules of this Court / Supreme Court.

23. It is an admitted fact that this Court is not having twin jurisdiction one under Article 226 of the Constitution and other under Article 227/528 BNSS, therefore, this Court has only jurisdiction under Article 226 of the Constitution of India as assigned by the Chief Justice.

24. Taking into consideration the aforesaid principle of law, clarification of Hon'ble the Supreme Court and the facts and materials available on record, we are of the opinion that the instant writ petition is not maintainable.

25. Accordingly, the instant writ petition is *dismissed as not maintainable*.

26. The petitioner is at liberty to move an appropriate application or petition before the appropriate Courts to quash the cognizance order.

(2026) 1 ILRA 1284
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.01.2026

BEFORE

THE HON'BLE HARVIR SINGH, J.

Criminal Revision No. 4884 of 2024 & other connected cases

M/S Marion Biotech Pvt Ltd & Ors. ...Revisionists
Union of India & Anr. ...Opposite Parties

ISSUE FOR CONSIDERATION

Whether the cognizance and summoning order passed by the Chief Judicial Magistrate, in Complaint Case, against directors and officials of company was valid, or vitiated by procedural irregularities and lack of judicial application of mind?

HEADNOTES

Criminal Law - Criminal Procedure Code, 1973 - Sections - 397 - Indian Penal Code, 1860 - Section 320, - Drugs and Cosmetics Act, 1940, - Sections - 16, 17-A, 17-B, 17-D, 17-E, 18-A, 18-B, 18(a)(i), 22, 24, 26-A, 27(a), 27(b)(i), 27(b)(ii), 27(c), 27(d), 28, 28-A, 28-B, 32, 34, 78 - Criminal Revision - filed by directors and officials of the company - against cognizance and summoning order -

Complaint Case – lodged by the Drugs Inspector – alleging various violations of the Drugs and Cosmetics Act including manufactures & sale of drugs - FIR registered - offences relating to manufacture and sale of drugs “not of standard quality,” alleged adulteration with Ethylene Glycol/Diethylene Glycol – investigation revealed use of industrial-grade propylene glycol without licence, failure to produce Certificate of Analysis, - and WHO alert linking the drugs to child deaths abroad – chargesheet - trial initiated – applicants pleaded that complaint lacked sanction, sampling was irregular, test report defective, and directors not specifically liable – Court finds that Drugs Inspector acted within statutory mandate, analytical report sufficient for prima facie case, directors fall within Section 34 liability, and objections are mere technicalities – Enforcement of public health laws cannot be thwarted by technical objection - and Directors’ are wholly and fully responsible for conduct of the business of the company and the day to day working – the revisionist will have ample opportunity to redress themselves at the time of framing of the charge and the stage of charge is yet to come - held that, technical objections cannot override statutory purpose - hence, summoning order valid and in accordance with law – accordingly, all revisions are dismissed being devoid of merit. (Para – 23, 24, 25, 26, 27, 28)

Revision Dismissed. (E-11)

CASE LAW CITED

GHCL Employees Stock Option Trust v. India Infoline Ltd. (2013) 4 SCC 505
Pepsi Foods Ltd. v. Special Judicial Magistrate (1998) 5 SCC 749
Lalankumar Singh v. State of Maharashtra (2022 SCC OnLine SC 1383)
Medicamen Biotech Ltd. v. Rubina Bose (2008) 7 SCC 196
Mohd. Shabir v. State of Maharashtra (1979) 1 SCC 568
Drugs Inspector v. Chimanlal & Co. AIR 1965 SC 1958
Other Allahabad HC precedents (1950s).
Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460
State of Orissa v. Debendra Nath Padhi (2005)
CBI v. Aryan Singh (2023 SCC OnLine SC 379)
Abhishek v. State of M.P. (2023 SCC OnLine SC 1083)
Gulam Mustafa v. State of Karnataka (2023 SCC OnLine SC 603)
Sanofi India Ltd. v. Union of India (2021, Delhi HC)
State of Maharashtra v. Ghanshyam K. Zaveri (SC 1993; Bom HC 2000).

LIST OF ACTS

Drugs and Cosmetics Act, 1940 - Indian Penal Code, 1860.

LIST OF KEYWORDS

Criminal Revision - Cognizance, Summoning Order, Prima Facie Case, Adulterated Drugs, Spurious Drugs, Not of Standard Quality, Ethylene Glycol, Diethylene Glycol, Public Health, Directors’ Liability, Procedural Irregularities, Rule 46, Section 34, Vicarious Liability - Enforcement of public health laws – thwarted - health system - violations and deviations - fatal irregularity - establish guilt - legal and factual plausibility - ample opportunity - to redress themselves - devoid of merit - liable to be dismissed.

CASE ARISING FROM

Complaint Case No. 2462 of 2024 (Union of India v. Marion Biotech Pvt. Ltd. & Others), Police Station Phase III, Noida, District Gautam Budh Nagar.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Niraj Kumar Singh (holding brief of Sri Saroj Kumar Yadav).
Counsel for Respondent(s): Shri R.P.S. Chauhan.

(Delivered by Hon’ble Harvir Singh, J.)

1. Heard Sri Niraj Kumar Singh, holding brief of Sri Saroj Kumar Yadav, learned counsel for the revisionists, and Sri R.P.S. Chauhan, learned counsel for the opposite party-Union of India, and perused the record.

2. This Criminal Revision is directed against the impugned cognizance and summoning order dated 19.01.2024 passed by the learned Chief Judicial Magistrate, Gautam Budh Nagar in Complaint Case No. 2462 of 2024 (Union of India vs. Ms Marion Biotech Pvt. Ltd. & Others), under Sections 18(a)(i), 16, 17-A, 17-B, 18-A, 18-B, and punishable under Sections 27(a), 27(b)(i), 27(b)(ii), 27(c), 27(d), 28, 28-A, and 28-B of the Drugs and Cosmetics Act, 1940, Police Station Phase III, Noida, District Gautam Buddh Nagar.

3. The brief facts of the case, are that the revisionists, being directors and officials of M/s. Marion Biotech Pvt. Ltd., (hereinafter referred as Company) they were summoned, pursuant to a complaint filed by the Drugs Inspector, alleging various violations including manufacture/sale of drugs declared "not of standard quality" and further invoking sections related to adulterated and spurious drugs, procedural non-compliance, and liability of company officials. The case is primarily founded on a test analysis report declaring certain samples "not of standard quality," resulting in proceedings under relevant penal Sections of the Drugs and Cosmetics Act, 1940 (hereinafter referred as "Act").

4. Learned counsel for the revisionists submits, that the learned Magistrate has taken cognizance and issued summons without proper application of judicial mind. It is contended, that the complaint does not disclose any specific averment, showing that the directors or officers of the company were in charge of and responsible for the conduct of the business of the company at the relevant point of time, as required under Section 34 of the Drugs and Cosmetics Act, 1940. It is further argued, that the complaint has been filed without obtaining valid sanction, under Section 32 of the Act, and hence, the entire proceedings are vitiated by procedural irregularities.

5. The complaint, it is submitted, does not connect the alleged offences to specific acts of the revisionists; their roles, especially as Directors or functionaries, are not detailed with reference to the overt acts justifying prosecution under the Drugs and Cosmetics Act. The order is called a "manifestation of mechanical appreciation of facts," reflecting abdication of judicial duty in scrutinizing the record.

6. Learned counsel for the revisionists has submitted that the only finding by test analysis is that, the drug was "not of standard quality." Nowhere has the sample been found "adulterated" or "spurious," as defined in Sections 17A and 17B respectively. Thus, invocation of harsher sections (i.e., Sections 17A, 17B, 27a) is not permissible. Each section operates under different factual circumstances, and their criteria are exclusionary.

7. Learned counsel for the revisionists has, next submitted that the test analysis report, relied on, as the foundation of the complaint, lacks compliance with Rule 46 of the Drugs Rules, 1945, as much as, in that, it does not disclose the full protocol, methods, or results in detail. Further, the examination for Diethylene Glycol and Ethylene Glycol in this case was not mandated, but done

only upon special request by the Drug Inspector, raising further questions about the standard procedure being adopted.

8. Learned counsel for the revisionists has further submitted, that the sample in question was taken from the warehouse and control room, not from premises stipulated under Section 22 (such as sales/distribution points). This is claimed to be a "glaring procedural irregularity." Such deviation, the petition asserts, substantially prejudices the accused and vitiates further proceedings, since the Act prescribes these safeguards for fair prosecution.

9. Learned counsel for the revisionists has next submitted, that the complaint is described as "bald and fleeting" in asserting Directors' and officials' liability, failing to allege direct involvement, consent, connivance, or neglect required for criminal liability of company officials. Mere designation, the plea holds, does not attract liability; what is needed is proof of active participation or deliberate negligence, either in aid or in furthering of the offence.

10. On the other hand, learned counsel appearing on behalf of the Union of India has submitted, that the Drugs Inspector, operated well within his statutory mandate, collecting samples and initiating prosecution based on objective lab analysis. The complaint lays out the basis for prosecution, and the analytical report constitutes adequate prima facie evidence for the case to proceed. The prosecution submits that the adequacy of evidence or precise procedural compliance can only be tested during trial, not at the summoning stage, as a prima facie case is to be seen at the time of summoning order, while conducting enquiry at that stage by the learned Magistrate.

11. Learned counsel appearing on behalf of the Union of India has further submitted, that having a license to manufacture the certain drugs is not absolute. However, the company has to comply with the conditions of license is more important and, if there is any violation in respect of the conditions given in the license itself, an appropriate case can be made out against the revisionists, as far as, the revisionists have violated the conditions of license, as enumerated in Section 78 of the Act and all those conditions having referred in the counter affidavit filed by the opposite party nos. 1 and 2. Learned counsel for the Union of India has next submitted that the use of Ethylene Glycol in manufacturing the cough syrup was completely prohibited under the applicable British pharmacopoeia. At the time of manufacturing the drugs in question in September 2021, the British pharmacopoeia 2020 was applicable." Learned counsel for the Union of India has also referred to the quality of samples i.e. the sample in question was manufactured in September 2021 at that time. Indian Pharmacopoeia 2018 was enforced and applicable on manufacturing and export of drugs by the revisionist company.

According to IP 2018, "No peaks corresponding to ethylene glycol and diethylene glycol are obtained in the chromatogram obtained with the test solution" in the determination of DEG and EG in Propylene Glycol.

Ethylene Glycol and Diethylene Glycol was completely prohibited for using in manufacturing of DOK 1 Max Syrup. Whereas, according to the test reports dated 14.01.2023 of RDTL Chandigarh, have substantial amount of Di-Ethylene Glycol & Ethylene Glycol, which is toxic and harmful:

Sample No.	B. No.	Form 13	Remarks
NZSMP/PB/A-022/2022-23	DXS2105	CH/DLS/2022/394	The sample contains Ethylene Glycol 15.87% w/v
NZSMP/PB/A-023/2022-23	DXS2106	CH/DLS/2022/398	The sample contains Ethylene Glycol 34.28% w/v
NZSMP/PB/A-024/2022-23	DXS2107	CH/DLS/2022/396	The sample contains Di-Ethylene Glycol 4.09% & Ethylene Glycol 29.32% w/v
NZSMP/PB/A-026/2022-23	DXS2108	CH/DLS/2022/397	The sample contains Di-Ethylene Glycol 8.36% & Ethylene Glycol 24.97% w/v

The DEG and EG are not the content of PG. Both DEG and EG are toxic and poisonous for health.

Propylene Glycol (PG) is a viscous, colorless liquid. It is almost odourless and has a sweet taste. PG is approved and used as a vehicle/excipient for topical and oral pharmaceutical preparations and cosmetics products.

Ethylene Glycol (EG) and Diethylene Glycol (DEG) are produced from same starting material, Ethylene. EG and DEG are used in the production of coolants for engines (brake fluid, antifreeze, lubricants), wallpaper strippers, inks etc., where, most of these products are labelled as "harmful, if swallowed. EG and DEG are toxic to human health, their harmful effect may result in coma, seizure, metabolic acidosis and renal failure.

Ingestion of the glycols lead to systemic toxicity beginning with CNS effects, followed by cardiopulmonary effects, and finally renal failure. The progression of toxic effects can be roughly divided into the following three stages, although overlap is possible. The first phase consists of gastrointestinal symptoms with evidence of inebriation and developing metabolic acidosis. If poisoning is pronounced, patients can progress to a second phase with more severe metabolic acidosis and evidence of a emerging renal injury, which, in the absence of appropriate supportive care, can lead to death.

The US-FDA guidance document dated May 2023 states that "a drug manufacturer must perform the DEG and EG limit test on representative samples of each shipment of each lot of the component and shall ensure that the component contains no more than 0.10% of DEG and EG, before using that component in drug product manufacturing. Further, Bureau of Indian Standard (BIS) also prescribed PG monograph, Food Grade, where Ethylene Glycol is required to be Absent.

12. Learned counsel for the Union of India has further submitted that, at the time of joint investigation conducted by CDSCO and State Drugs Control, U.P. the revisionist company has failed to produce the manufacturer/ supplier Certificate of Analysis of Propylene Glycol in violation of Section 18-B. Purchasing and using of industrial grade/non-pharmaceutical grade propylene glycol from M/s Maya Chemtech India Pvt. Ltd., a firm, which does not hold any drug licence essentially required to sale/distribute ingredients to manufacture a drug, which was used in

production of syrup DOC Max 1. Industrial Grade PG is completely prohibited in manufacturing of drugs. During investigation, the company could not produce the manufacturer/supplier certificate provided as CoA.

The Ethylene Glycol and Diethylene Glycol are not available in Propylene Glycol, for the reasons that the same are poisonous and injurious to the human health.

13. The World Health Organization (WHO) had issued Medical Product Alert N°1/2023 vide Ref.RPQ/REG/ISF/Alert N°1/2023 dated 11.01.2023 related to two contaminated liquid products i.e. AMBRONOL syrup and DOK-1 Max Syrup manufactured by the Applicants Company i.e. M/s Marion Biotech Private Limited and also informed about risk associated with these products, which may results in serious injury or death due to presence of unacceptable amount of di-ethylene Glycol (DEG) and/or Ethylene Glycol (EG) as contaminants with the use of industrial grade/non-pharmaceutical grade propylene glycol and Glycerin and also submitted, that the Applicants/Accused Persons used the industrial grade/non-pharmaceutical grade propylene glycol and Glycerin for manufacturing the drugs in question. Hence, the Applicants/Accused Persons manufactured the Adulterated and Spurious drugs. Further, It is submitted that, if the Applicants/Accused Persons are not satisfied with the Govt. Analyst Report, then they have to avail the opportunity to challenge the Govt. Analyst Report, but they have not challenged the Govt. Analyst Report, within a stipulated time of 28 days, as per Drugs & Cosmetics Act, 1940. As such the opposite party filed the present complaint along with the documentary evidence, before the learned Trial Court with the panel section of Drugs and Cosmetics Act & Rules framed there under. Learned counsel for the Union of India emphasized the fact and laid stress upon the DOK-I Max syrup, as manufactured by the revisionists was found poisonous in Uzbekistan, which resulted in death of more than 18 children. Learned counsel for the Union of India argued that, at the time of passing of the cognizance/summoning order, the learned Magistrate has come to the conclusion that, a prima-facie case is made out against the accused persons and the learned Magistrate is not required to conduct the mini trial at this stage and further submitted that the cognizance/summoning order passed by the learned Magistrate is in accordance with law and calls for no interference by this Court, as the revisionist will have ample opportunity to redress themselves at the time of framing of the charge and the stage of charge is yet to come. Learned counsel for the Union of India has further submitted that the accused persons, revisionist herein are the Directors, Officers and the Employees of the company and therefore, they are closely associated with day to day working of the company and in the absence of the Directors and the responsible persons, there would be no existence of the company, as far as functionaries and operational activities are concerned. Learned counsel for the Union of India has next submitted that, it is not the case of the revisionists, that the revisionists are not at all aware of the operations and business being conducted in the company, as they work for gain and profit and enjoy the profit accordingly. Learned counsel for the Union of India has next submitted that a narrow interpretation of regulatory provisions would defeat the public purpose underlying the Act. Enforcement of public health laws cannot be thwarted by technical objections relating to mere technicalities. Learned counsel for the Union of India has further submitted that the action taken by the complainant, strengthens public health enforcement by curbing technical defences in regulatory prosecutions. Learned counsel for the Union of India has further submitted that in view of the fact that substandard drugs encounter a major stringent issue for the health system and the violations and

deviations cannot be ignored. The matter is at the initial stage, and there are specific allegations of the creation of forged test lab reports to claim substandard drugs of standard quality; those being subject matter of trial, therefore, on perusal of the contents of the impugned summoning order, the ingredients of commission of cognizable offence are prima- facie made out. Learned counsel for the Union of India has next submitted that the allegations made in the complaint, do clearly constitute a cognizable offence justifying the registration of complaint and the investigation thereon, and this does not fall under any of the categories of cases formulated by the Supreme Court in **State of Haryana v. Bhajan Lal: AIR 1992 SC 604**, as argued by the revisionists, calling for the exercise of extraordinary or inherent powers of the High Court to quash the impugned summoning order in the case. Otherwise also, it is not the case of the revisionists that, even if the allegations made in the complaint, are taken at their face value and-accepted in their entirety, do not prima facie constitute any offence or make out a case, against the accused even then sufficient material is available to summon the accused persons. The revisionists have also not pleaded any express bar engrafted in any provisions of the Code or any other law, including the Drugs and Cosmetics Act, to the institution and continuance of the proceedings, therefore, all the revisionists have been summoned rightly and the revision is devoid of merits, and hence liable to be dismissed.

14. Learned counsel for the Union of India has further submitted, that the process of collecting, sealing, sending the sample for analysis, and reporting were as per prescribed norms. The technicalities raised about sampling location or manner are characterized, as not having any procedural fatal irregularity, especially in criminal regulatory prosecutions governed by public safety standards.

15. Learned counsel for the Union of India has next submitted that the learned Magistrate, upon perusal of the complaint and supporting documents, found sufficient grounds to proceed against the revisionists. The requirement, at this stage is not to establish guilt, but to put the process in motion, when the complaint and annexed evidence shows legal and factual plausibility of the alleged offences to be tried upon the revisionists, under relevant sections under the Drugs and Cosmetics Act, 1940.

16. Learned counsel for the Union of India has further submitted that, by statutory provisions, those responsible for the company's affairs i.e. Directors, senior functionaries are within the sweep of Section 34 for offences committed under the Act, and they are wholly and fully responsible for conduct of the business of the company. The prosecution maintains that, vicarious liability arises due to any negligent act and omission committed in discharge of the duty and carrying out the business for the pecuniary gain of the company. Thus liability in civil and criminal prosecutions are different and may stand on different footings.

17. Learned counsel for the Union of India has next submitted that the application of various penal section is justified based on the overall conduct, findings, and the entire material collected during the course of investigation and documentation. The details of which section finally applies, is a matter for evidence and framing of charge and a prima facie case is to be seen at the time of cognizance and summoning of the accused persons.

18. Learned counsel for the Union of India has further submitted that the detailed appreciation can be finally conducted and concluded during the course of trial and the Magistrate's discretion at summoning stage should not be lightly interfered with, unless there is palpable illegality. In the present case, a prima facie case has been made out against the accused persons, at this stage of summoning the accused/revisionists and the order calls for no interference by this Court.

19. Learned counsel for the revisionists relied upon the following judgments of Hon'ble Supreme Court:-

- (i) M/s GHCL Employees Stock Option Trust vs M/s India Infoline Ltd: (2013) 4 SCC 505.*
- (ii) M/s Pepsi Foods Ltd. & Anr. vs Special Judicial Magistrate & Ors.: (1998) 5 SCC 749.*
- (iii) Lalankumar Singh vs The State of Maharashtra: 2022 SCC OnLine SC 1383.*
- (iv) Raj Kishan vs State: 1959 SCC OnLine All 152.*
- (v) Dharam Deo Gupta vs State: All. HC Crl. Rev. No. 143/1956.*
- (vi) Din Dayal vs State: All. HC Crl. Rev. No. 752/1954.*
- (vii) State of Maharashtra vs Ghanshyam K. Zaveri & Anr.: (1993) 1 SCC 526.*
- (viii) Mohd. Shabir vs State of Maharashtra: (1979) 1 SCC 568.*
- (ix) Drugs Inspector vs Chimanlal & Co. & Ors : AIR 1965 SC 1958.*
- (x) M/s Medicamen Biotech Ltd. & Anr. vs Rubina Bose, Drug Inspector: (2008) 7 SCC 196.*

20. Learned counsel for the opposite party no. 2-Union of India relied upon the following judgments of Hon'ble Supreme Court as well as Hon'ble High Courts:-

- (i) Amit Mittal and Another Vs. State of U.P. And Another in Application U/s. 482 Cr.P.C. No. 22832 of 2015.*
- (ii) State of Maharashtra Vs. Ghanshyam K. Zaveri and Another : 2000 SCC OnLine Bom 748.*
- (iii) Amit Kapoor Vs. Ramesh Chander: (2012) 9 SCC 460.*
- (iv) Gulam Mustafa Vs. State of Karnataka : 2023 SCC OnLine SC 603.*
- (v) CBI Vs. Aryan Singh: 2023 SCC OnLine SC 379.*
- (vi) Abhishek Vs. State of M.P. : 2023 SCC OnLine SC 1083.*
- (vii) Sanofi India Ltd. Vs. Union of India: (2021) 3 HCC (Del) 691.*
- (viii) State of Orrisa Vs. Debendra Nath Padhi, Appeal (Crl.) No. 497 of 2001 (SC)*

21. Having considered the rival contentions and after going through the order of cognizance and summoning, it would be appropriate to look into the relevant sections of the Drugs and Cosmetics Act, 1940, as enumerated below:-

“16. Standards of quality.”-(1) For the purposes of this Chapter, the expression “standard quality” means-

(a) in relation to a drug, that the drug complies with the standard set out in 5[the Second Schedule], and

(b) in relation to a cosmetic, that the cosmetic complies with such standard as may be prescribed.]

(2) The [Central Government], after consultation with the Board and after giving by notification in the Official Gazette not less than three months 'notice of its intention so to do, may by a like notification add to or otherwise amend 5[the Second Schedule] for the purposes of this Chapter, and thereupon 5[the Second Schedule] shall be deemed to be amended accordingly.

17. Misbranded drugs.-For the purposes of this Chapter, a drug shall be deemed to be misbranded,-

(a) if it is so coloured, coated, powdered or polished that damage is concealed or if it is made to appear of better or greater therapeutic value than it really is; or

(b) if it is not labelled in the prescribed manner; or

(c) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular.

17A. Adulterated drugs.- For the purposes of this Chapter, a drug shall be deemed to be adulterated,-

(a) if it consists in whole or in part, of any filthy, putrid or decomposed substance; or

(b) if it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or

(c) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or

(e) if it contains any harmful or toxic substance which may render it injurious to health; or

(f) if any substance has been mixed therewith so as to reduce its quality or strength.

17B. Spurious drugs.-For the purposes of this Chapter, a drug shall be deemed to be spurious,-

(a) if it is manufactured under a name which belongs to another drug; or

(b) if it is an imitation of, or is a substitute for, another drug or resembles another drug in a manner likely to deceive or bears upon it or upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug; or

(c) if the label or container bears the name of an individual or company purporting to be the manufacturer of the drug, which individual or company is fictitious or does not exist; or

(d) if it has been substituted wholly or in part by another drug or substance; or

(e) if it purports to be the product of a manufacturer of whom it is not truly a product.

17C. Misbranded cosmetics.-For the purposes of this Chapter, a cosmetic shall be deemed to be misbranded,-

(a) if it contains a colour which is not prescribed; or

(b) if it is not labelled in the prescribed manner; or

(c) if the label or container or anything accompanying the cosmetic bears any statement which is false or misleading in any particular.

17D. Spurious cosmetics.-For the purposes of this Chapter, a cosmetic shall be deemed to be spurious,-

- (a) if it is manufactured under a name which belongs to another cosmetic; or*
- (b) if it is an imitation of, or a substitute for, another cosmetic or resembles another cosmetic in a manner likely to deceive or bears upon it or upon its label or container the name of another cosmetic unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other cosmetic; or*
- (c) if the label or container bears the name of an individual or a company purporting to be the manufacturer of the cosmetic which individual or company is fictitious or does not exist; or*
- (d) if it purports to be the product of a manufacturer of whom it is not truly a product.]*

[17E. Adulterated cosmetics. - For the purposes of this Chapter, a cosmetic shall be deemed to be adulterated,-

- (a) if it consists in whole or in part, of any filthy, putrid or decomposed substance; or*
 - (b) if it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or*
 - (c) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or*
 - (d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or*
 - (e) if it contains any harmful or toxic substance which may render it injurious to health;*
- or*
- (f) if any substance has been mixed therewith so as to reduce its quality or strength.]*

18. Prohibition of manufacture and sale of certain drugs and cosmetics.-From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf-

- (a) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or*

Distribute-

- [(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;*

[(ii) any cosmetic which is not of a standard quality or is misbranded, adulterated or spurious;]]

[(iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof [the true formula or list of active ingredients contained in it together with the quantities thereof];]

- (iv) any drug which by means of any statement design or device accompanying it or by any other means, purports or claims [to prevent, cure or mitigate] any such disease or ailment, or to have any such other effect as may be prescribed;*

[(v) any cosmetic containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended;

(vi) any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made thereunder;]

(b) [sell or stock or exhibit or offer for sale,] or distribute any drug 9[or cosmetic] which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder;

(c) 3[manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug 9[or cosmetic], except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis :

Provided further that the [Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the [manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality.

18A. Disclosure of the name of the manufacturer, etc.-Every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall, if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the drug or cosmetic.

18B. Maintenance of records and furnishing of information.-Every person holding a licence under clause (c) of section 18 shall keep and maintain such records, registers and other documents as may be prescribed and shall furnish to any officer or authority exercising any power or discharging any function under this Act such information as is required by such officer or authority for carrying out the purposes of this Act.

27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter.-Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes,-

(a) any drug deemed to be adulterated under section 17A or spurious under section 6[17B and which] when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of section 320 of the Indian Penal Code (45 of 1860) solely on account of such drug being adulterated or spurious or not of standard quality, as the case may be, shall be 7[punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees or three times value of the drugs confiscated, whichever is more]:

[Provided that the fine imposed on and released from, the person convicted under this clause shall be paid, by way of compensation, to the person who had used the adulterated or spurious drugs referred to in this clause:

Provided further that where the use of the adulterated or, spurious drugs referred to in this clause has caused the death of a person who used such drugs, the fine imposed on and realised from, the person convicted under this clause, shall be paid to the relative of the person who had died due to the use of the adulterated or spurious drugs referred to in this clause.

Explanation.-For the purposes of the second proviso, the expression “relative” means-

- (i) spouse of the deceased person; or*
- (ii) a minor legitimate son, and unmarried legitimate daughter and a widowed mother; or*
- (iii) parent of the minor victim; or*
- (iv) if wholly dependent on the earnings of the deceased person at the time of his death, a son or a daughter who has attained the age of eighteen years; or*
- (v) any person, if wholly or in part, dependent on the earnings of the deceased person at the time of his death,-*
 - (a) the parent; or*
 - (b) a minor brother or an unmarried sister; or*
 - (c) a widowed daughter-in-law; or*
 - (d) a widowed sister; or*
 - (e) a minor child of a pre-deceased son; or*
 - (f) a minor child of a pre-deceased daughter where no parent of the child is alive; or*
 - (g) the paternal grandparent if no parent of the member is alive;]*
- (b) any drug-*
 - (i) deemed to be adulterated under section 17A but not being a drug referred to in clause*

(a),

Or

(ii) without a valid licence as required under clause (c) of section 18, shall be punishable with imprisonment for a term which shall 1[not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more].:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of 2[less than three years and of fine of less than one lakh rupees];

(c) any drug deemed to be spurious under section 17B, but not being a drug referred to in clause (a) shall be punishable with imprisonment for a term which shall 3[not less than seven years but which may extend to imprisonment for life and with fine which shall not be three lakh rupees or three times the value of the drugs confiscated, whichever is more].:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of 4[less than seven years but not less than three years and of fine of less than one lakh rupees];

(d) any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years 5[and with fine which shall not be less than twenty thousand rupees].:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than one year.

27A. Penalty for manufacture, sale, etc., of cosmetics in contravention of this Chapter. -
Whoever himself or by any other person on his behalf manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale-

(i) any cosmetic deemed to be spurious under section 17D or adulterated under section 17E shall be punishable with imprisonment for a term which may extend to three years and with

fine which shall not be less than fifty thousand rupees or three times the value of the cosmetics confiscated, whichever is more;

(ii) any cosmetic other than a cosmetic referred to in clause (i) in contravention of any provisions of this Chapter or any rule made thereunder shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees, or with both.

28. Penalty for non-disclosure of the name of the manufacturer, etc.-*Whoever contravenes the provisions of section 18A 2[or section 24] shall be punishable with imprisonment for a term which may extend to one year, or 3[with fine which shall not be less than twenty thousand rupees or with both.*

28A. Penalty for not keeping documents, etc., and for non-disclosure of information.-*Whoever without reasonable cause or excuse, contravenes the provisions of section 18B shall be punishable with imprisonment for a term which may extend to one year or [with fine which shall not be less than twenty thousand rupees or with both].*

28B. Penalty for manufacture, etc., of drugs or cosmetics in contravention of section 26A.-*Whoever himself or by any other person on his behalf manufactures or sells or distributes any drug or cosmetic in contravention of the provisions of any notification issued under section 26A, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend to five thousand rupees.*

34. Offences by companies.-*(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub -section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub -section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section-

(a) "company" means a body corporate, and includes a firm or other association of individuals;

And

(b) "director" in relation to a firm means a partner in the firm."

22. Besides the above provisions of the Act, the plea of the revisionists, alleging various violations including manufacture/sale of drugs declared "not of standard quality" and further invoking sections related to adulterated and spurious drugs, procedural non-compliance, and liability of company officials and that the learned Magistrate has taken cognizance and issued summons, without proper application of judicial mind and the complaint has been filed without obtaining valid sanction, under Section 32 of the Act. The test analysis report, relied on, as the

foundation of the complaint, lacks compliance with Rule 46 of the Drugs Rules, 1945 etc. are hereby discussed and examined in the light of the arguments raised from each side, the statutory provisions and the law laid down on the subjects.

23. After going through the record, it can be seen that the Drugs Inspector, operated well within his statutory mandate, collecting samples and initiating prosecution based on objective lab analysis. The complaint lays out the basis for prosecution, and the analytical report constitutes adequate prima facie evidence for the case to proceed in accordance with law. It is further noted that, having a license to manufacture the certain drugs is not sufficient and absolute. However, the company has to comply with the conditions of license, is equally important and, if there is any violation in respect of the conditions, given in the license itself, an appropriate case can be made out against the revisionists, as such the revisionists have violated the conditions of license, as enumerated in Section 78 of the Act. The use of Ethylene Glycol in manufacturing the cough syrup was completely prohibited under the applicable British pharmacopoeia. At the time of manufacturing the drugs in question in September 2021 the British pharmacopoeia 2020 was applicable and the sample in question was manufactured in September 2021, at that time, Indian Pharmacopoeia 2018 was enforced and made applicable on manufacturing and export of drugs by the revisionist company.

24. It has also been found that, at the time of joint investigation conducted by CDSCO and State Drugs Control, U.P. the revisionist company has failed to produce the manufacturer/supplier Certificate of Analysis of Propylene Glycol in violation of Section 18-B. Since purchasing and using of industrial grade/non-pharmaceutical grade propylene glycol from M/s Maya Chemtech India Pvt. Ltd., a firm, which does not hold any drug licence essentially required to sale/distribute ingredients to manufacture a drug, was used in production of syrup DOC Max 1. The DOK-I Max syrup manufactured by the revisionists, was found poisonous in Uzbekistan, which resulted in death of more than 18 children and at the time of passing of the cognizance/summoning order, the learned Magistrate has come to the conclusion that, a prima-facie case is made out against the accused persons and the learned Magistrate is not required to conduct the mini trial at this stage of summoning the accused persons.

25. The accused persons, revisionist herein are the Directors, Officers and the Employees of the company and therefore, they are closely associated with day to day working of the company and in the absence of the Directors and the responsible persons, there would be no existence of the company, as far as functionaries and operational activities are concerned and a narrow interpretation of regulatory provisions, would defeat the public purpose underlying the Act. Enforcement of public health laws cannot be thwarted by technical objections, relating to mere technicalities and in view of the fact, that substandard drugs encounter a major stringent issue for the health system and the violations and deviations cannot be ignored.

26. It can also be seen that, the process of collecting, sealing, sending the sample for analysis, and reporting were completed as per prescribed norms. The technicalities raised about sampling location or manner as characterized, are not having any procedural fatal irregularity, especially in criminal regulatory prosecutions governed by public safety standards and at this stage is not to establish guilt, but to put the process in motion, when the complaint and annexed evidence, shows

legal and factual plausibility of the alleged offences to be tried upon relevant sections under the Drugs and Cosmetics Act, 1940.

27. It can further be seen that, by statutory provisions, those responsible for the company's affairs i.e. Directors, senior functionaries are within the sweep of Section 34 for offences committed under the Act, and they are wholly and fully responsible for conduct of the business of the company and mere statement that the Directors of the company have nothing to do with the business of the company and the day to day working, leads nowhere.

28. Having considered the entire facts and circumstances of the case and the law, as laid down by the Hon'ble Supreme Court and the High Courts, the case of the revisionists is different, and the facts and grounds raised in the instant revision are mere technicalities, and no glaring mistake or gross irregularity has been noted in the summoning order. Therefore, the law, as cited by the revisionists does not help them, in the given circumstances and the cognizance/summoning order passed by the learned Magistrate is in accordance with law and calls for no interference by this Court, furthermore, the revisionist will have ample opportunity to redress themselves at the time of framing of the charge and the stage of charge is yet to come. Thus, there appears to be no illegality or infirmity in the summoning order passed by the learned Magistrate. All Criminal Revisions No. 4884 of 2024, 5442 of 2025, 5443 of 2025 and 5444 of 2025 are devoid of merit and are liable to be dismissed. Hence, **dismissed**.

29. A copy of this order be kept in each of the file of the above connected revisions.

(2026) 1 ILRA 1298
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.01.2026

BEFORE

THE HON'BLE CHAWAN PRAKASH, J.

Criminal Revision No. 6573 of 2024

Man Singh

...Revisionist

Versus

State of U.P. & Anr.

...Opposite Parties

ISSUE FOR CONSIDERATION

Whether the trial court erred in rejecting the application under **Section 319 CrPC** for summoning additional accused (in-laws of the deceased) in a dowry death case?

HEADNOTES

Criminal Law - Code of Criminal Procedure, 1973 - Section - 319 - Indian Penal Code, 1860 - Sections - 302, 304-B, 498-A,- Dowry Prohibition Act, 1961 - Sections - 3, 4 - Criminal Revision - against rejection of application filed by revisionist under Section 319 CrPC - for summoning in-laws of deceased - FIR - offences under Sections 498A, 302 IPC and 3/4 DP Act - investigation led to chargesheet, only against husband - statements of PW-1 and PW-2 recorded - application under Section 319 CrPC moved -

trial court rejected, citing contradictions and lack of sufficient evidence – revision, assailing rejection - applicant pleaded that in-laws were also involved in dowry demand and harassment – opposite parties argued they lived separately and no role was found in investigation – Court finds that Section 319 CrPC requires evidence adduced during trial, not charge-sheet material, and extraordinary power must be exercised sparingly – also observed that, contradictions in witness testimony, IO and doctor's evidence showed only husband's role – held, no sufficient material to summon in-laws – hence, revision is dismissed being lack of its merit. (Para – 16, 17, 18)

Revision Dismissed. (E-11)

CASE LAW CITED

Asim Akhtar v. State of W.B., 2024 SCC OnLine SC 2919

Hardeep Singh v. State of Punjab, (2014) 3 SCC 92

Omi v. State of M.P., (2025) 2 SCC 621

Shiv Baran v. State of U.P., 2025 SCC OnLine SC 1457

LIST OF ACTS

Indian Penal Code, 1860 - Dowry Prohibition Act, 1961 - Code of Criminal Procedure, 1973.

LIST OF KEYWORDS

Criminal Revision – Dowry death - additional accused - extraordinary power - prima facie case - trial evidence - charge sheet - witness contradictions - revision dismissed

CASE ARISING FROM

Case Crime No. 01 of 2020, Police Station Mohabbatpur Painsa, District Kaushambi - FIR lodged by informant Man Singh regarding death of his daughter Radhika.

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APPEARANCE OF PARTIES

Counsel for Appellant(s): Mr. Phool Singh Yadav, Vaibhav Yadav.

Counsel for Respondent(s): Shri Dev Raj Singh, Learned AGA.

(Delivered by Hon'ble Chawan Prakash, J.)

1. Heard Sri Phool Singh Yadav, learned counsel for the revisionist, learned A.G.A. for the State and Sri Dev Raj Singh, learned counsel for the opposite party nos. 2 to 4.

2. The present revision has been filed against the order dated 08.11.2024 passed by the learned Additional District & Sessions Judge/Fast Track Court, Court No. 1, Kaushambi, in S.T. No. 74 of 2020 (State Vs. Manoj Yadav), arising out of Case Crime No. 01 of 2020, under Sections 498A, 302 I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Mohabbatpur Painsa, District Kaushambi whereby the application under Section 319 Cr.P.C. filed by the revisionist has been rejected.

3. The brief facts of the case are that marriage of the daughter of the informant namely Radhika was solemnized with Manoj about five years ago according to Hindu Rites and Rituals and after marriage, husband Manoj, father-in-law Bhaiya Lal, mother-in-law and Dewar Ashok Kumar started demanding a buffalo and golden ring as additional dowry and harassing his daughter. Manoj had illicit relations with Sunita, sister-in-law. One month before the incident, Sunita and Manoj were called by the informant. On 07.01.2020 the husband and other in-laws hanged his daughter after killing her. The F.I.R. was registered as Case Crime No. 01 of 2020, under Sections 498-A, 304B I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Mohabbatpur Pairsa, District

Kaushambi against husband Manoj, father-in-law Bhaiya Lal, mother-in-law and brother-in-law (Dewar) Ashok Kumar and Sunita Devi on the basis of tehrir given by the informant Man Singh. During investigation, statement of prosecution witnesses and other witnesses were recorded by the Investigating Officer. After investigation, the Investigating Officer submitted charge sheet only against Manoj under Sections 498-A, 304B I.P.C. and Section 3/4 Dowry Prohibition Act. During trial, charges were framed against the accused Vinod. Thereafter, after recording statements of PW-1 and PW-2, accused-opposite party nos. 2 to 4 were summoned to face trial by the learned trial court vide impugned order dated 08.11.2024. Aggrieved against the said order, the present revision has been filed.

4. It is submitted by learned counsel for the revisionist that marriage of the daughter of the informant namely Radhika was solemnized with Manoj about five years ago of the alleged incident, according to Hindu Rites and Rituals in which sufficient dowry was given but the husband and other in-laws were not satisfied with the dowry. After marriage, husband Manoj and his family members started demanding a buffalo and golden ring as additional dowry and harassing his daughter. Manoj had illicit relations with his sister-in-law, Sunita. On 07.01.2020 the husband and other family members killed her daughter. On receiving information, he came there and found that the dead body of the deceased was lying on the floor. The F.I.R. was registered as Case Crime No. 01 of 2020, under Sections 498-A, 304B I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Mohabbatpur Pairsa, District Kaushambi against husband Manoj, father-in-law Bhaiya Lal, mother-in-law, brother-in-law (Dewar) Ashok Kumar and Sunita Devi on the basis of tehrir given by the informant Man Singh. During investigation, statement of informant and other witnesses were recorded by the Investigating Officer under Section 161 Cr.P.C. and they supported the prosecution version. After investigation, the Investigating Officer submitted charge sheet only against Manoj under Sections 498-A, 304B I.P.C. and Section 3/4 Dowry Prohibition Act. During trial, statements of PW-1 Man Singh and PW-2 Indresh Singh were recorded in which they supported the prosecution version and stated about the role of opposite party nos. 2 to 4. It is further submitted that a prima facie case is made out against the opposite party nos. 2 to 4 but the learned trial court rejected the application under Section 319 Cr. P.C.. It is next submitted that the impugned order is illegal and has been passed against the settled principles of law and liable to be set aside.

5. Learned counsel for the revisionist has placed reliance upon a judgment of Apex Court in the case of **Asim Akhtar Vs. The State of West Bengal and another** passed in Criminal Appeal No. of 2024 (Special Leave to Petition (Crl.) No. 12292 of 2022) decided on 18.10.2024.

6. Per contra, learned counsel for the opposite party nos. 2 to 4 as well as learned A.G.A. opposed the submissions made by learned counsel for the revisionist and submitted that the learned trial court has not committed any illegality in passing the impugned order and the said order has been passed as per the settled principles of law and as per fact of this case. The marriage of the daughter of the revisionist was solemnized with the son of opposite party nos. 2 and 3 about five years before the date of incident. The marriage was solemnized in very simple way. No demand of dowry was made by opposite party nos. 2 to 4 at the time of marriage or after the marriage. The opposite party nos. 2 to 4 are living separately from the family of his son Manoj. The deceased committed suicide due to some personal reason and the revisionist has falsely implicated the opposite party nos. 2 to 4 in the present case. The Investigating Officer recorded statements of

some independent witnesses who clearly stated that the opposite party nos. 2 to 4 are living separately from the deceased. The fair investigating was conducted by the Investigating Officer and he did not find any role of opposite party nos. 2 to 4 in the present case and has not filed any charge sheet against them. During trial, PW-1 Man Singh and PW-2 Indresh Singh being the relatives of the deceased has given their evidence but cross-examination they have clearly stated that it was husband of the deceased who made demand of a buffalo and golden ring. There are major contradictions in their statements. No prima facie case is made out against the opposite party nos. 2 to 4. The learned trial court has rightly rejected the said application and the revision is liable to be dismissed. Learned counsel for the opposite party nos. 2 to 4 has placed reliance upon a judgment of Hon'ble Apex Court in the Case of **Hardeep Singh & others Vs. State of Punjab & others 2014 0 Supreme(SC)27**.

7. As per fact of the case, an F.I.R. as Case Crime No. 01 of 2020, under Sections 498A, 302 I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Mohabbatpur Painsa, District Kaushambi was registered against the accused Manoj (husband), Bhैया Lal (father-in-law), mother-in-law and Ashok Kumar (Dewar). During investigation, the Investigating Officer recorded the statements of the informant and other witnesses. He recorded the statements of about 19 persons under Section 161 Cr.P.C. The Investigating Officer found no role of opposite party nos. 2 to 4 and did not file charge sheet against them and charge sheet was filed only against Manoj.

8. During trial, statements of PW-1 Man Singh and PW-2 Indresh Singh were recorded. An application under Section 319 Cr.P.C. was filed for summoning the accused opposite party nos. 2 to 4 and the same was rejected by the learned trial court.

9. The learned trial court while passing the impugned order held that we perused the certain portion of the evidence of PW-1 Man Singh and PW-2 Indresh Singh. PW-1 in his cross-examination dated 21.12.2021 has stated that Manoj had made demand of a buffalo and golden ring.

10. As per the impugned order, statement of Dr. Akhilesh Kumar was recorded as PW-3 who stated that cause of death of the deceased was hanging. The Investigating Officer Rajvir Singh as PW-5 has also stated that Manoj Kumar was living separately with his wife.

11. Learned counsel for the revisionist has placed reliance upon the judgment of the Hon'ble Apex Court in the case of **Asim Akhtar v. State of W.B., 2024 SCC OnLine SC 2919** and submitted that the Hon'ble Apex Court in paragraph 17 of the judgement held that complicity of any person sought to be arrayed as an accused can be decided with or without conducting cross-examination of the complainant and other prosecution witnesses, and there is no mandate to decide the application under Section 319 Cr.P.C. before cross-examination of other witnesses. The revisionist can not get benefit of the said case as the facts of the said case are different from the present case.

12. Section 319 Cr.P.C. read as under:-

"319. Power to proceed against other persons appearing to be guilty of offence.-(1)

Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then?

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

13. Therefore, from Section 319 Cr.P.C., it is apparent that trial court is empowered to summon a person to face trial, who is not the accused in the case on the basis of the evidence. The word 'evidence' used in Section 319 Cr.P.C. is significant. The Constitution Bench of the Apex Court in case of **Hardeep Singh Vs. State of Punjab & Others (2014) 3 SCC 92** held that the word 'evidence' used in Section 319(1) Cr.P.C. indicates, the word 'evidence' is limited to the evidence recorded during trial.

14. The Apex Court in case of **Omi v. State of M.P., (2025) 2 SCC 621** also held that trial court can add an individual as accused only on the basis of the evidence adduced before it and not on the basis of the materials available in the charge-sheet or the case diary because such materials contained in the charge-sheet or the case diary do not constitute evidence.

15. The Apex Court in the case of **Shiv Baran v. State of U.P., 2025 SCC OnLine SC 1457** also held that trial court can exercise power to summon an additional accused under Section 319 Cr.P.C. only on the basis of the evidence adduced before it and not any other material collected during investigation.

16. Therefore, from the above dictum of the Apex Court, it is apparent that while invoking power under Section 319 Cr.P.C. trial court should consider the statements of the witnesses adduced before it and it should not place reliance upon the material available in the charge-sheet or the case diary.

17. The law with regard to the summoning of an accused under Section 319 Cr.P.C. is settled that this power is an extraordinary power, which should be used sparingly with circumspection and while passing the summoning order under Section 319 Cr.P.C. court must consider whether more than prima-facie case is made out, or not. For summoning an additional accused under Section 319 Cr.P.C. mere prima-facie case is not sufficient. [See: **Constitution Bench judgment of Apex Court Hardeep Singh (supra)**]. Therefore, in light of the above principles, it is to analyze,

whether before the trial court material was sufficient to summon the revisionists under Section 319 Cr.P.C. or not.

18. Therefore, from the discussion made above, in considered view of this Court, impugned order dated 08.11.2024 passed by the learned Additional District & Sessions Judge/Fast Track Court, Court No. 1, Kaushambi has been passed by proper reasoning.

19. Accordingly, the revision lacks merit and is **dismissed**.

(2026) 1 ILRA 1303
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.01.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal From Order No. 1995 of 2024

Smt Mugga Devi & Ors.

...Appellant

Versus

Makkhan Singh & Ors.

...Respondent

Issue for Consideration

(i) Whether the Tribunal erred in computing compensation by deducting family pension from the pension of the deceased;

(ii) Whether the claimants were entitled to enhancement of compensation with respect to (a) income based on pension, (b) future prospects, (c) multiplier, and (d) non-pecuniary heads.

Headnotes

Motor Vehicles Act, 1988 — Compensation — Income — Pension — Deduction of family pension:

Held: Pension received by the deceased at the time of accident is to be taken as the basis for computation of compensation — Deduction of family pension received by the widow from the pension of the deceased is impermissible — Family pension has no nexus with compensation under the Act and cannot be treated as pecuniary advantage — The Tribunal erred in assessing income on the differential amount between pension and family pension. [Paras 8–10]

Motor Vehicles Act, 1988 — Compensation — Future prospects — Age above 50 years:

Held: In terms of Rule 220-A of the U.P. Motor Vehicles Rules, 1998, even where the deceased was above 50 years of age, addition of 20% towards future prospects is admissible — The Tribunal erred in not awarding compensation under this head. [Paras 11, 18]

Motor Vehicles Act, 1988 — Compensation — Multiplier — Age above 65 years:

Held: Where the deceased was above 65 years of age at the time of accident, multiplier of 5 is applicable in terms of the Second Schedule of the Act — The compensation is to be computed accordingly. [Paras 15–16]

Motor Vehicles Act, 1988 — Compensation — Deduction towards personal expenses — Dependants:

Held: Where the deceased had five dependants, deduction towards personal expenses is to be made to the extent of one-fourth and the remaining income is to be treated as contribution to the family. [Para 19]

Motor Vehicles Act, 1988 — Compensation — Non-pecuniary heads — Consortium — Enhancement:

Held: The claimants are entitled to compensation under conventional heads including consortium, loss of estate and funeral expenses in accordance with settled principles — The amounts awarded by the Tribunal were liable to be enhanced. [Paras 12–14, 18]

Motor Vehicles Act, 1988 — Appeal — Enhancement of compensation — Re-determination:

Held: Upon proper computation of income on the basis of pension, addition of future prospects, application of appropriate multiplier and enhancement under non-pecuniary heads, the compensation payable to the claimants was liable to be enhanced — The award of the Tribunal was modified accordingly. [Paras 19–21]

Appeal allowed. (E-14)

Case Law Cited

Hanumantharaju B. v. M. Akram Pasha, 2025 SCC OnLine SC 1106 — relied on; Sebastiani Lakra v. National Insurance Co. Ltd., (2019) 17 SCC 465 — relied on; National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 — relied on; Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 — relied on; Rahul Ganpatrao Sable v. Laxman Maruti Jadhav, (2023) 13 SCC 334 — relied on; National Insurance Co. Ltd. v. Sadhana Debnath, 2023 SCC OnLine Tri 846 — referred to; Sumitra Dwarkanath Sirsat v. Shivanand Hanumantappa Bisirotti, 2015 SCC OnLine Bom 276 — referred to.

List of Acts / Statutes

Motor Vehicles Act, 1988; U.P. Motor Vehicles Rules, 1998.

List of Keywords

Motor accident; Pension; Family pension; Deduction; Pecuniary advantage; Future prospects; Multiplier; Elderly deceased; Consortium; Compensation enhancement.

Case Arising From

Judgment and award dated 12.07.2024 passed by the Motor Accident Claims Tribunal, Moradabad in Motor Accident Claim Petition No. 253 of 2018 (Smt. Mugga Devi and others vs. Makkhan Singh and others).

Appearance for Parties

For the Appellants: Sri Mohd. Asim Zulfiquar

For the Respondents: Sri Nagendra Kumar Srivastava

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

1. The instant appeal has been preferred by the claimants for enhancement of compensation, under Section 173 of the Motor Vehicles Act, 1988 against the impugned judgment and award dated 12.07.2024 passed by the Motor Accident Claims Tribunal, Moradabad in Motor Accident Claim Petition No.253 of 2018 (Smt. Mugga Devi and others vs. Makkhan Singh and others) whereby for the untimely death of Jaiprakash Singh in a road accident that occurred on 07.02.2018, a compensation of Rs.4,76,620/- along with interest @ 7% per annum has been awarded to the

claimants(wife and sons), which has been ordered to be indemnified by the insurer of the offending vehicle No.UP-21-BK-5747.

2. Since there is no cross-appeal by owner, driver and insurer of the offending vehicle as such, the factum of accident and negligence of offending driver is not disputed by the respondents.

3. Sri Abhishek Tripathi holding brief of Mohd. Asim Zulfiquar, learned counsel for the claimants - appellants submitted that Jaiprakash Singh (deceased) was a pensioner, who was getting monthly pension of Rs.23,936/- per month and was about 73 years old at the time of the accident, which was duly proved by the claimants, but on the ground that the wife of the deceased was getting family pension of Rs.14,900/- per month, the Tribunal has assessed compensation on the differential amount of Rs.9,036/- per month, which is erroneous. Learned counsel submitted that in the light of the judgment of the Apex Court in the case of **Hanumantharaju B. through LR vs. M. Akram Pasha and another, 2025 SCC Online SC 1106**, the compensation should have been assessed on the basis of pension received by the deceased at the time of the accident and tribunal was not supposed to consider the family pension granted to the wife of the deceased after the accident. Learned counsel further submitted that the claimants were also entitled to compensation on future prospects of the deceased @ 20%, keeping in view **Rule 220-A of the U.P. Motor Vehicle Rules, 1998** but the Tribunal has not awarded any compensation towards it. It was further submitted that the Tribunal has awarded inadequate amount of compensation under non-pecuniary heads, which requires enhancement. With these submissions, it was prayed that the appeal be allowed and enhanced compensation be paid to the claimants.

4. Per contra, learned counsel for the respondent-Insurance Company submitted that the deceased was about 73 years old at the time of the accident, who had no future prospects and the wife of the deceased was also getting family pension of Rs.14,900/- per month, which the Tribunal has rightly deducted from the pension of the deceased for assessing the compensation, as such, the claimants are not entitled to any enhancement in compensation awarded by the Tribunal and this appeal deserves no interference from this Court in exercise of its appellate jurisdiction. With these submissions, it was prayed that the appeal is meritless and is liable to be rejected.

5. I have heard learned counsel for the parties, perused the impugned judgment and documents submitted with the appeal.

6. The Apex Court in the case of **Sebastiani Lakra and others vs. National Insurance Company Limited and another, (2019) 17 SCC 465, (By 3 Judges)**, while discussing the amount which are to be deducted for assessment of compensation has held as under:

12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependants or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependants are entitled to just compensation? under the Motor Vehicles Act as a result of the death of the deceased in a motor

vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependants as a result of some contract or act which the deceased performed in his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependants only after his death.

13. As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependants is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, share, debentures, etc. The tortfeasor cannot take advantage of the foresight and wise financial investments made by the deceased.

14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

15. As held by the House of Lords in *Parry v. Cleaver* [*Parry v. Cleaver*, 1970 AC 1 : (1969) 2 WLR 821 : 1969 ACJ 363 (HL)] the insurance amount is the fruit of premium paid in the past, pension is the fruit of services already rendered and the wrongdoer should not be given benefit of the same by deducting it from the damages assessed.

16. Deduction can be ordered only where the tortfeasor satisfies the court that the amount has accrued to the claimants only on account of death of the deceased in a motor vehicle accident.

7. The Apex Court in the case of **Hanumantharaju** (supra), while discussing whether the pension payable to the claimant can be deducted for computing his income, has held as under:

19. It is also now well settled that the amount of compensation is to be calculated on the basis of last drawn salary of the injured/deceased in respect of salaried persons and pension and such retirement benefits enjoyed cannot be deducted for computing the income, these being statutory rights receivable by the employee or his legal heirs irrespective of any unforeseen incident of accidents, fatal injuries etc. and such pensionary benefit is not directly relatable to the motor accident. Hence, pensionary benefit could not have been treated as pecuniary advantage? liable to be deducted for the purpose of computation of compensation within the scope of Motor Vehicles Act, 1988.

For this proposition of law, we may refer to the decision in *Vimal Kanwar v. Kishore Dan* (2013) 7 SCC 476, wherein this Court, by referring to the earlier decision in *Helen C. Rebello v. Maharashtra SRTC* (1999) 1 SCC 90, held as follows:-

“19. The aforesaid issue fell for consideration before this Court in *Helen C. Rebello v. Maharashtra SRTC* [(1999) 1 SCC 90 : 1999 SCC (Cri) 197]. In the said case, this Court held that provident fund, pension, insurance and similarly any cash, bank balance, shares, fixed deposits,

etc. are all a “pecuniary advantage” receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as “pecuniary advantage” liable for deduction. The following was the observation and finding of this Court : (SCC pp. 111-12, para 35)

“35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz. accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly, any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as “pecuniary advantage” liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any co-relation. The insured (the deceased) contributes his own money for which he receives the amount which has no co-relation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual.”

Thus, this Court has categorically held that any amount receivable on account of PF, pension or insurance cannot be deducted from the salary of the victim for the purpose of determining the income or loss of earning for calculating compensation. This principle was reiterated in Reliance General Insurance Co. Ltd. v. Shashi Sharma (2016) 9 SCC 627 and National Insurance Company Ltd. v. Birender (2020) 11 SCC 356.

8. It is apparent from the above judgements of the Apex Court that the pension paid to the claimant or family pension being paid to the legal heirs of the deceased employee is not to be considered and deducted while assessing compensation in the claim case and the compensation is to be determined on the basis of salary/pension of the injured/deceased, which he was getting at the time of the accident.

9. In the instant case, the deceased Jaiprakash Singh was about 73 years old at the time of the accident and was getting a gross pension of Rs.23,936/- at the time of the accident and after his death his wife Smt. Muggi Devi was getting family pension of Rs.14,900/- per month, as such, the Tribunal has assessed the compensation on the basis of differential amount of pension and family pension, which was Rs. 9,036/- per month, which is erroneous. It is apparent that the family pension which the wife of the deceased was getting after the death of the deceased was not at all to be considered for assessing the compensation in the instant case but that amount of Rs. 14,900/- per month has been deducted from the pension of Rs.23,936/- per month, which the deceased was getting at the time of the accident, which is erroneous.

10. In view of the above law laid down by the Apex Court, the claimants are entitled to get compensation on the basis of the monthly pension of the deceased, which was Rs.23,936/-.

11. **Rule 220-A of the UP Motor Vehicle Rules, 1998** w.e.f. 26.09.2011, mandates that when the deceased was aged above 50 years on the date of accident, the claimants are also entitled to compensation on future prospects @20% of his income.

12. The Constitutional Bench of the Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi & Ors.**(2017) 16 SCC 680 has awarded loss of consortium of Rs.40,000/- and Rs.15,000/- each towards loss of estate and funeral expenses, which is to be enhanced at the rate of 10% after every three years.

13. The Apex Court in the case of **Magma General Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram & others**, (2018) 18 SCC 130, has awarded Rs.40,000/- each towards spousal consortium, parental consortium and filial consortium.

14. Further, the Apex Court in the case of **Rahul Ganpatrao Sable vs Laxman Maruti Jadhav (Dead) through LRS and Others** (2023) 13 SCC 334, held as under:-

32. In the present case, MACT had granted a meagre amount of Rs 5000 towards loss of consortium. However, the High Court granted a total amount of Rs 70,000 as consolidated amount under all conventional heads, which included loss of consortium, loss of estate and funeral expenses. In Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , the Constitution Bench of this Court had provided that all dependents should be separately awarded towards loss of consortium and had actually awarded Rs 40,000 to each of the dependents. Considering the same, an amount of Rs 40,000 each is awarded to each of the four dependents towards loss of consortium.

(emphasis supplied)

15. It is apparent from Rule 220-A of the above Rules, the multiplier for determination of compensation is to be applied as per Second Schedule provided in the Act of 1988. At the time of the accident, the Second Schedule was in force, according to which, where the claimant/deceased was above 65 years old at the time of accident, a multiplier of 5 is to be applied for assessing the compensation in a claims case.

16. The High Court of Tripura at Agartala in the case of **National Insurance Co. Ltd. vs Sadhana Debnath & Ors 2023 SCC OnLine Tri 846** held as under:-

19. According to the Pension Payment Order book, on the date of the accident, the age of the deceased was 78 years. So, in terms of the multiplier as made applicable under the table decided at Column No. (4) in Sarla Verma (supra), multiplier 5 is to be applied for the age group of 65 years and above, the same is taken on record. Accordingly, the first point of argument of Mr. Deb, learned counsel appearing for the appellant-Insurance Company is answered in favour of the claimants. Here the argument of Mr. Deb, learned counsel that in Sarla Verma (supra) multiplier 5(five) is allowed up to the age schedule 66 years to 70 years does not stand because the same was said by the Hon'ble Apex Court in the said Judgment in the context of other cases. Therefore, the age of the deceased 78 years is considered as per table 65 years and above and considered the case of the claimants accordingly as there is no restriction up to 70 years. The lifespan as per table can be beyond 70 years. Thus, the argument of the Insurance-counsel is rejected.

17. Similarly, The High Court of Bombay in the case of **Sumitra Dwarkanath Sirsat & Ors vs Shivanand Hanumantappa Bisirotti and Others 2015 SCC OnLine Bom 276** held as under:-

15. Admittedly deceased was about 71 years old at the time of death, therefore, appropriate multiplier would be 5, hence compensation towards loss of dependency comes to Rs. 135,000/- (Rupees one lakhs thirty five thousand only).

18. It is further apparent that as per **Rule 220-A of the U.P. Motor Vehicle Rules, 1998**, since the deceased was above 50 years old at the time of the accident, the claimants are entitled to compensation on future prospects @ 20% of his income but no compensation has been awarded by the Tribunal on this account, which is erroneous. It is apparent that in the above Rule, there is no upper age limit upto which the compensation towards future prospects of the deceased are admissible, as such, even if the deceased was aged about 73 years at the time of the accident, even then the claimants were entitled to compensation towards future prospects of the deceased @ 20% of his income in accordance with the above Rules. It is further apparent that the claimants are entitled to enhanced compensation under non-pecuniary heads, keeping in view the judgment of the Apex Court in the case of **Pranay Sethi (supra)**, **Magma General Insurance Company Ltd. (supra)** and **Rahul Ganpatrao Sable (supra)**.

19. In view of the above statutory law and precedents of the Apex Court, the compensation payable to the claimants is redetermined as under:-

S.No.	Compensation Heads	Amount Awarded in Rs.	In Accordance with.
1.	Monthly income of deceased as per his pension	23,936/-	Sebastiani Lakra(supra) and Hanumantharaju (supra)
2.	Annual income of deceased	23,936x12=2,87,232/-	Sebastiani Lakra(supra) and Hanumantharaju (supra)
3.	Less 1/4th deduction towards personal expenses of the deceased (5 dependents)	71,808/-	Pranay Sethi(supra)
4.	Net annual income on which claimants were dependent	2,15,424/-	Pranay Sethi (supra)

5.	Add future prospects @ 20% since deceased was aged about 73 years	43,085/-	Rule 220-A of UP Motor Vehicle Rules,1998
6.	Total annual dependency of claimants on deceased	2,58,509/-	Rule 220-A of UP Motor Vehicle Rules,1998
7.	Multiplier applied since age of deceased was about 73 years	5	Second Schedule of the Act
8.	Total loss of dependency to the claimants	2,58,509X5=12,92,545/-	Second Schedule of the Act
9.	Loss of consortium @Rs.40,000/- each (5 claimants)	40,000X5=2,00,000/-	Pranay Sethi (supra), Magma General Insurance Co. Ltd. (supra) and Rahul Ganpatrao Sable (supra)
10.	Loss of estate	15,000/-	As awarded by the tribunal
11.	Funeral Expenses	15,000/-	As awarded by the tribunal
12.	Total compensation	15,22,545/-	

20. In this way, the claimants are entitled to total compensation of Rs.15,22,545/- alongwith interest @ 7% per annum from the date of filing of the claim petition till it's actual payment, which is to be indemnified by the insurer of the offending vehicle No.UP-21-BK-5747.

21. The appeal is allowed. The impugned judgment and award of the tribunal dated 12.07.2024 is modified to the above extent.

22. If any amount has been paid by the insurance company previously, then it is entitled to adjust it accordingly. The insurance company is directed to deposit the enhanced amount of compensation before the concerned tribunal within two months. The tribunal will be at liberty to proportionally award the enhanced amount of compensation to the claimants, keeping in view their age and dependency.

(2026) 1 ILRA 1310
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.01.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal From Order No. 3821 of 2011

Smt. Jyoti & Ors.

...Appellants

Versus

Neha Khatri & Ors.

...Respondents

Issue for Consideration

(i) Whether the finding of contributory negligence to the extent of 20% attributed to the deceased was sustainable;

(ii) Whether the compensation awarded by the Tribunal required enhancement with respect to (a) computation of income including allowances, (b) future prospects, (c) deduction towards personal expenses, (d) non-pecuniary heads, and (e) effect of compassionate appointment and pension.

Headnotes

Motor Vehicles Act, 1988 — Accident — Negligence — Contributory negligence — Evidence:

Held: The finding of contributory negligence must be based on cogent evidence — Where the eye witness categorically deposed that the offending vehicle crossed the divider, came to the wrong side of the road and collided head-on with the motorcycle, the accident stood proved to have occurred due to sole negligence of the offending driver — The Tribunal erred in attributing 20% contributory negligence to the deceased — The said finding being perverse was liable to be set aside. [Paras 13–17]

Motor Vehicles Act, 1988 — Compensation — Income — Salary — Allowances:

Held: While determining income of the deceased, all allowances forming part of salary are to be included — Exclusion of allowances such as HRA, conveyance, diet and washing allowance by the Tribunal was erroneous — Compensation is to be computed on the basis of gross salary and only statutory deductions such as income tax are permissible — The income of the deceased was liable to be taken at Rs.13,049/- per month. [Paras 21–22]

Motor Vehicles Act, 1988 — Compensation — Future prospects — Compassionate appointment — Pension:

Held: Grant of compassionate appointment and receipt of family pension by dependants are not relevant for denying compensation towards future prospects — Such benefits arise out of separate contractual or service rights and have no nexus with compensation under the Act — The claimants were entitled to addition of 50% towards future prospects in terms of Rule 220-A of the U.P. Motor Vehicles Rules, 1998 — The Tribunal erred in denying the same. [Paras 28, 31–32]

Motor Vehicles Act, 1988 — Compensation — Deduction — Personal expenses — Dependants:

Held: Where the deceased had four dependants, deduction towards personal expenses is to be made to the extent of one-fourth and not otherwise — The dependency is to be computed on the remaining income. [Para 33]

Motor Vehicles Act, 1988 — Compensation — Non-pecuniary heads — Consortium — Enhancement:

Held: The claimants are entitled to compensation under conventional heads including consortium, loss of estate and funeral expenses in accordance with settled principles — The amounts awarded by the Tribunal were inadequate and required enhancement. [Paras 24–26, 28]

Motor Vehicles Act, 1988 — Appeal — Enhancement of compensation — Re-determination:

Held: Upon re-determination of income, addition of future prospects, appropriate deduction towards personal expenses, application of correct multiplier and enhancement under non-pecuniary heads, the compensation payable to the claimants was liable to be substantially enhanced — The award of the Tribunal was modified accordingly. [Paras 33–35]

Appeal allowed. (E-14)

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Case Law Cited

Vimal Kanwar and others Vs. Kishore Dan and others (2013) 7 SCC 476; Jiju Kuruvila v. Kunjamma Mohan, (2013) 9 SCC 166 — relied on; Prabhavati v. Managing Director, BMTC, 2025 SCC OnLine SC 455 — relied on; National Insurance Co. Ltd. v. Indira Srivastava, (2008) 2 SCC 763 — relied on; Shyamwati Sharma v. Karam Singh, (2010) 12 SCC 378 — relied on; Manasvi Jain v. Delhi Transport Corporation Ltd., (2014) 13 SCC 22 — relied on; Kavita Devi v. Sunil Kumar, 2025 SCC OnLine SC 1639 — relied on; Manorma Sinha v. Divisional Manager, Oriental Insurance Co. Ltd., 2025 SCC OnLine SC 2241 — relied on; National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 — relied on;

Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 — relied on; Rahul Ganpatrao Sable v. Laxman Maruti Jadhav, (2023) 13 SCC 334 — relied on; FAFO No.2581 of 2011, Sushil Kumar & Another vs. M/S Sampark Lojastic Pvt. Ltd. & Another, decided on 26.04.2017; Sebastiani Lakra v. National Insurance Co. Ltd., (2019) 17 SCC 465 — relied on; Hanumantharaju B. v. M. Akram Pasha, 2025 SCC OnLine SC 1106 — relied on; National Insurance Co. Ltd. v. Rekhaben, (2017) 13 SCC 547 — relied on.

List of Acts / Statutes

Motor Vehicles Act, 1988; U.P. Motor Vehicles Rules, 1998.

List of Keywords

Motor accident; Contributory negligence; Sole negligence; Salary computation; Allowances; Future prospects; Compassionate appointment; Pension; Dependency; Multiplier; Consortium; Compensation enhancement.

Case Arising From

judgment and award dated 30.07.2011 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No. 7, Muzaffarnagar in MACP No. 74 of 2010 (Smt. Jyoti and others Vs. Neha Khatri and others).

Appearance for Parties

For the Appellants: Sri Rajiv Sisodia, Sri Santosh Kumar Singh, Sri Shashank Kumar

For the Respondents: Sri Arun Prakash, Sri Harbansh Prasad Pandey

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

1. The instant appeal has been filed by the claimants for enhancement of compensation under Section 173 of the Motor Vehicles Act, 1988, against the impugned judgment and award dated 30.7.2011 passed by the Motor Accident Claims Tribunal/ Additional District Judge, Court No. 7, Muzaffarnagar in MACP No. 74 of 2010 (Smt. Jyoti and others Vs. Neha Khatri and others), whereby for the untimely death of Sachin Kumar on 30.12.2009 due to injuries suffered in a motor accident that occurred on 23.12.2009, a compensation of Rs.14,74,445/- along with interest @ 6% per annum has been awarded to the claimants, 80% of which has been ordered to be indemnified by the insurer of offending Car No. UA 07 G 1313.

2. Since no cross appeal has been preferred by the owner, driver, and insurer of the offending car, the factum of accident and negligence of the offending driver is not disputed by the respondents.

3. Learned counsel for the claimants-appellants submitted that Sachin Kumar (deceased) was driving his motorcycle number UP-11-S-2228 cautiously on his side of the road, which was hit by the offending Car No.UA-07-G-1313, which was being driven rashly and negligently, which was proved by eye witness PW-2 Satish Kumar. Still, the tribunal held there was 20% contributory negligence of the deceased, which is against the evidence on record. It was further submitted that the offending car crossed the divider and came to the wrong side of the road, causing the accident.

4. In view of the above, the tribunal erred in concluding that there was 20% negligence of the deceased. It was further submitted that the gross salary of the deceased was Rs.13,049/- per month, but the tribunal assessed compensation on a salary of Rs.11,659/- per month, which is erroneous,

because all allowances being paid to the deceased were to be considered for assessing compensation.

5. It was further submitted that on the ground that a compassionate appointment was offered to the wife of the deceased, Jyoti, the tribunal has not awarded any compensation towards future prospects of the deceased, which is erroneous. It was submitted that in light of the decision of the Apex Court in the case of **Vimal Kanwar and others Vs. Kishore Dan and others (2013) 7 SCC 476**, the fact of compassionate appointment of the wife of the deceased should not have been considered while assessing compensation. It was submitted that claimants were entitled to get compensation towards future prospects of the deceased @ 50% of the income of the deceased, keeping in view **Rule 220-A of the U.P. Motor Vehicle Rules, 1998**.

6. It was further submitted that the tribunal awarded inadequate compensation under non-pecuniary heads and also awarded less interest @ 6% per annum instead of 7% per annum.

7. With these submissions, it was prayed that the appeal preferred by the claimants be allowed and compensation payable to them be enhanced.

8. Per contra, learned counsel for the respondent-Insurance Company submitted that the deceased was driving his motorcycle at the time of accident rashly and negligently, who contributed to the accident as proved by the evidence of the offending car's driver Neha Khatri, who was examined as DW-1 before the tribunal. Hence, the tribunal rightly assessed 20% contributory negligence on the part of the deceased. It was further submitted that since the wife of the deceased was offered compassionate appointment and was getting a salary of Rs.7,100/- and family pension of Rs.4,690/- per month, the tribunal has rightly not awarded any compensation towards future prospects of the deceased. It was also submitted that the deceased was getting house rent allowance of Rs.760/-, vehicle allowance of Rs.50/-, special diet allowance of Rs.550/-, and washing allowance of Rs.30/- per month, which were personal allowances for his benefit, which are not to be considered for assessing compensation. The tribunal rightly excluded these allowances while assessing compensation. With these submissions, it was prayed that the appeal has no merit and is liable to be dismissed.

9. I have heard learned counsel for both parties and perused the impugned judgment and the documents submitted with the appeal.

10. The Apex Court in the case of **Jiju Kuruvila & Ors. vs. Kunjamma Mohan & Ors. (2013) 9 SCC 166**, held as under:-

“20.5. The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was

negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.

20.6. The post-mortem report, Ext. A-5 shows the condition of the deceased at the time of death. The said report reflects that the deceased had already taken meal as his stomach was half-full and contained rice, vegetables and meat pieces in a fluid with strong smell of spirit. The aforesaid evidence, Ext. A-5 clearly suggests that the deceased had taken liquor but on the basis of the same, no definite finding can be given that the deceased was driving the car rashly and negligently at the time of accident. The mere suspicion based on Ext. B-2 "scene mahazar" and Ext. A-5 post-mortem report cannot take the place of evidence, particularly, when the direct evidence like PW 3 (independent eyewitness), Ext. A-1 (FIR), Ext. A-4 (charge-sheet) and Ext. B-1 (FI statement) are on record."

11. The Apex Court in the case of Prabhavati & Ors. vs. Managing Director, Bangalore Metropolitan, Transport Corporation 2025 SCC OnLine SC 455, held as under:-

"10. We are unable to agree with the view taken by the High Court on the 25% contributory negligence of the deceased and 75% upon the driver of the bus. We find ourselves to agree with the view taken by the Tribunal on this issue. The Tribunal rightly, after considering the evidence on record and on perusal of the Ex. P3 Spot Mahazar, came to the conclusion that there wasn't any sufficient evidence on record, indicating that the accident occurred due to negligent driving on the part of the deceased, and after considering the oral evidence of P.W.1, held the cause of the accident to be rash and negligent on the part only of the offending vehicle.

11. Thus, in our considered view, the contributory negligence taken by the High Court at 25% of the deceased is erroneous. We advert to the principles laid down in Jiju Kuruvila v. Kunjamma(supra) where it was held that in the absence of any direct or corroborative evidence on record, it cannot be assumed that the accident occurred due to the rash and negligent driving of both the vehicles. This exposition came to be followed in Kumari Kiran v. Sajjan Singh (2015) 1 SCC 539. In the present case, therefore, on an allegation simpliciter, it cannot be presumed that the accident occurred due to rash and negligent driving of both vehicles, for having driven at high speed."

12. Before the tribunal the claimants have examined the wife of the deceased Smt. Jyoti as PW-1, eye witness Satish Kumar Latiyan as PW-2. Whereas, the offending car driver Smt. Neha Khatri has examined herself as DW-1.

13. Smt. Jyoti PW-1 has very fairly accepted that she was not an eye witness of the accident. PW-2 Satish Kumar Latiyan deposed that the accident occurred on 23.12.2009 at about 09.00 PM, when his brother in law Sachin Kumar (deceased) was going by his motorcycle from Vikas Nagar, Dehradun to police Station Kalsi and when the deceased reached near petrol pump in Vikas Nagar, then his motorcycle was hit head- on by the offending Car No. UA07-G-1313, which was being driven in a rash and negligent manner, which came towards the wrong side of the road, due to which the deceased suffered grievous injuries, who was taken to Herbertpur Christian Hospital from where he was referred to Joly Grant Hospital, Dehradun, where he died during treatment on 30.12.2009. He further deposed that the car fled after the accident and the accident was witnessed

by him and deceased's cousin brother Amit, who were getting their vehicle refilled at the petrol pump. He further deposed that in the accident the deceased suffered grievous injuries in his head.

14. In the cross-examination he deposed that the offending car hit the motorcycle of the deceased head on. He further deposed that the car was being driven on the wrong side of the divider. He denied the suggestion that the accident was caused due to the rashness and negligence of the deceased who was driving the motorcycle at that time.

15. The offending car driver Smt. Neha Khatri DW-1 deposed that at the time of the accident, the deceased was driving his motorcycle rashly and negligently, due to which his motorcycle skidded and his head collided with the divider, due to which his head was got severely injured, but the tribunal has disbelieved the above testimony. She admitted that the deceased was driving his motorcycle at the time of the accident, which collided with her car, which was being driven slowly and cautiously, due to which the bumper, radiator, headlight of the front left side and front wind screen of the car were damaged. She further admitted that the police seized her car which was subsequently released by the Court.

16. The tribunal has also considered the site plan prepared in the criminal case, which disclosed that the offending car crossed the divider and came towards the wrong side of the road and then it hit the motorcycle of the deceased head on and due to this, the tribunal concluded that the offending car driver contributed 80% towards the accident whereas, the deceased contributed only 20%, which is a perverse finding. It was proved from the evidence of PW-2 that the offending car crossed the divider, came to the wrong side of the road and then collided head-on with the motorcycle of the deceased, which proved that the accident occurred due to the sole negligence of the offending car driver.

17. Accordingly, the finding of the tribunal regarding the contributory negligence of the deceased in the accident is set aside and it is held that the accident occurred due to the sole rashness and negligence of the offending car driver Smt. Neha Khatri.

18. The Apex Court in the case of **National Insurance Company Ltd vs Indira Srivastava & Ors (2008) 2 SCC 763** has held that the amount paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit and from the said amount of income, the statutory amount of tax payable thereupon must be deducted. It was further held that net income would ordinarily mean gross income minus the statutory deductions.

19. The Apex Court in the case of **Shyamwati Sharma & Ors vs Karam Singh & Ors (2010) 12 SCC 378** and **Manasvi Jain Vs. Delhi Transport Corporation Ltd. & Ors. (2014) 13 SCC 22 (By 3 Judges)** has held that while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased.

20. The Apex Court in the case of **Kavita Devi and others vs Sunil Kumar and another** 2025 SCC OnLine SC 1639 and **Manorma Sinha and another vs The Divisional Manager, Oriental Insurance Co. Ltd. and another** 2025 SCC OnLine SC 2241 has held that the allowances paid to the deceased, which are included in the salary, whether taxable or not, should be included while assessing loss of income as they are used for supporting the family, if the allowances were regularly received and used for the family's benefit.

21. In view of the above law laid down by the Apex Court, it is clear that all the allowances being paid to the deceased by his employer should be considered while assessing the compensation in a claim case and only the amount deducted towards income tax and surcharge should be considered to arrive at the net income of the deceased.

22. It is apparent that the gross salary of the deceased was Rs.13,049/- per month but the tribunal has ignored HRA of Rs.760/-, conveyance allowance of Rs.50/-, special diet allowance of Rs.550/- and washing allowance of Rs.30/- per month, which comes to Rs.1,390/- per month, and the tribunal after deducting the above allowances, has assessed the compensation by taking the salary of the deceased at only Rs.11,659/- per month. It is well settled that all the allowances being paid to a salaried employee are required to be considered for assessing compensation and only the income tax paid on the salary is required to be deducted. It is further apparent that if the above allowances have not been given to the deceased then certainly he would have spent it from his salary which would have reduced the resources available to the family and affected their dependency, as such, the compensation is to be determined on the basis of gross salary of the deceased, which was Rs.13,049/- per month, on which no income tax was payable at that time, because the exemption limit was Rs. 1,60,000/- per annum.

23. **Rule 220-A of the UP Motor Vehicle Rules,1998** w.e.f. 26.09.2011, mandates that when the deceased was aged below 40 years on the date of accident, the claimants are also entitled to compensation on future prospects @50% of his income.

24. The Constitution Bench of the Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi & Ors.**(2017) 16 SCC 680 has awarded loss of consortium of Rs.40,000/- and Rs.15,000/- each towards loss of estate and funeral expenses, which is to be enhanced at the rate of 10% after every three years.

25. The Apex Court in the case of **Magma General Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram & others**, (2018) 18 SCC 130, has awarded Rs.40,000/- each towards spousal consortium, parental consortium and filial consortium.

26. Further, the Apex Court in the case of **Rahul Ganpatrao Sable vs Laxman Maruti Jadhav (Dead) through LRS and Others** (2023) 13 SCC 334, held as under:-

"32. In the present case, MACT had granted a meagre amount of Rs 5000 towards loss of consortium. However, the High Court granted a total amount of Rs 70,000 as consolidated amount under all conventional heads, which included loss of consortium, loss of estate and funeral expenses. In Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 :

(2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , the Constitution Bench of this Court had provided that all dependents should be separately awarded towards loss of consortium and had actually awarded Rs 40,000 to each of the dependents. Considering the same, an amount of Rs 40,000 each is awarded to each of the four dependents towards loss of consortium."

(emphasis supplied)

27. A Division Bench of this Court in **FAFO No.2581 of 2011, Sushil Kumar & Another vs. M/S Sampark Lojastic Pvt. Ltd. & Another**, decided on 26.04.2017 has held that even if the accident occurred prior to 26.09.2011, the claimants are entitled to compensation on future prospects as per amended Rule 220-A of the UP Motor Vehicle Rules, 1998, since it is a beneficial legislation.

28. It is further apparent that as per the decision of the Apex Court in the case of **Pranay Sethi** (supra) read with **Rule 220-A of the UP Motor Vehicle Rules, 1998**, the claimants were entitled to get compensation towards future prospect of the deceased at the rate of 50% of his income, but the tribunal has not awarded any amount towards it, which is erroneous. It is further apparent that as per the above Rule, the claimants were entitled to get interest on the compensation at the rate of 7% per annum but the tribunal has awarded it at the rate of 6% per annum, which requires enhancement. It is further apparent that the claimants are entitled to enhanced compensation under non-pecuniary heads keeping in view of the judgment of the Apex Court in **Pranay Sethi** (supra), **Magma General Insurance Co. Ltd.** (supra) and **Rahul Ganpatrao Sable** (supra).

29. The Apex Court in the case of **Sebastiani Lakra and others vs. National Insurance Company Limited and another, (2019) 17 SCC 465, (By 3 Judges)**, while discussing the amount which are to be deducted for assessment of compensation has held as under:

"12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependants or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependants are entitled to ?just compensation? under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependants as a result of some contract or act which the deceased performed in his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependants only after his death.

13. As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependants is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits,

share, debentures, etc. The tortfeasor cannot take advantage of the foresight and wise financial investments made by the deceased.

14. *As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.*

15. *As held by the House of Lords in Parry v. Cleaver [Parry v. Cleaver, 1970 AC 1 : (1969) 2 WLR 821 : 1969 ACJ 363 (HL)] the insurance amount is the fruit of premium paid in the past, pension is the fruit of services already rendered and the wrongdoer should not be given benefit of the same by deducting it from the damages assessed.*

16. *Deduction can be ordered only where the tortfeasor satisfies the court that the amount has accrued to the claimants only on account of death of the deceased in a motor vehicle accident."*

30. The Apex Court in the case of **Hanumantharaju B. through LR vs. M. Akram Pasha and another, 2025 SCC Online SC 1106**, while discussing whether the pension payable to the claimant can be deducted for computing his income, has held as under:

"19. It is also now well settled that the amount of compensation is to be calculated on the basis of last drawn salary of the injured/deceased in respect of salaried persons and pension and such retirement benefits enjoyed cannot be deducted for computing the income, these being statutory rights receivable by the employee or his legal heirs irrespective of any unforeseen incident of accidents, fatal injuries etc. and such pensionary benefit is not directly relatable to the motor accident. Hence, pensionary benefit could not have been treated as "pecuniary advantage" liable to be deducted for the purpose of computation of compensation within the scope of Motor Vehicles Act, 1988.

For this proposition of law, we may refer to the decision in Vimal Kanwar v. Kishore Dan (2013) 7 SCC 476, wherein this Court, by referring to the earlier decision in Helen C. Rebello v. Maharashtra SRTC (1999) 1 SCC 90, held as follows:-

"19. The aforesaid issue fell for consideration before this Court in Helen C. Rebello v. Maharashtra SRTC [(1999) 1 SCC 90 : 1999 SCC (Cri) 197]. In the said case, this Court held that provident fund, pension, insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and finding of this Court : (SCC pp. 111-12, para 35)

"35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz. accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs

after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly, any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any co-relation. The insured (the deceased) contributes his own money for which he receives the amount which has no co-relation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

Thus, this Court has categorically held that any amount receivable on account of PF, pension or insurance cannot be deducted from the salary of the victim for the purpose of determining the income or loss of earning for calculating compensation. This principle was reiterated in Reliance General Insurance Co. Ltd. v. Shashi Sharma (2016) 9 SCC 627 and National Insurance Company Ltd. v. Birender (2020) 11 SCC 356."

31. The Apex Court in the case of **National Insurance Co. Ltd. vs Rekhaben and others (2017) 13 SCC 547**, held as under:-

"22. In the present cases, the claimants were offered compassionate employment. The claimants were not offered any sum of money equal to the income of the deceased. In fact, they were not offered any sum of money at all. They were offered employment and the money they receive in the form of their salary, would be earned from such employment. The loss of income in such cases cannot be said to be set off because the claimants would be earning their living. Therefore, we are of the view that the amount earned by the claimants from compassionate appointments cannot be deducted from the quantum of compensation receivable by them under the Act.

23. In the cases before us, compensation is claimed from the owner of the offending vehicle who is different from the employer who has offered employment on compassionate grounds to the dependants of the deceased/injured. The source from which compensation on account of the accident is claimed and the source from which the compassionate employment is offered, are completely separate and there is no co-relation between these two sources. Since the tortfeasor has not offered the compassionate appointment, we are of the view that an amount which a claimant earns by his labour or by offering his services, whether by reason of compassionate appointment or otherwise is not liable to be deducted from the compensation which the claimant is entitled to receive from a tortfeasor under the Act. In such a situation, we are of the view that the financial benefit of the compassionate employment is not liable to be

deducted at all from the compensation amount which is liable to be paid either by the owner/the driver of the offending vehicle or the insurer."

32. It is further apparent that since Smt. Jyoti, the wife of the deceased was offered compassionate appointment after the death of her husband as Constable, who was getting a salary of Rs.7,100/- per month and also family pension of Rs.4,690/- per month, the tribunal has not awarded any compensation towards the future prospect of the deceased, which is erroneous. It is well settled that the compassionate appointment offered to legal heirs as well as the amount of family pension, awarded to them, is not to be considered while assessing compensation in a claims case. In view of this, the claimants are entitled to get compensation towards future prospect of the deceased @50% of the income of the deceased.

33. In view of the above statutory law and precedents of the Apex Court, the compensation payable to the claimants is redetermined as under:-

S.No.	Compensation Heads	Amount Rs.)	Awarded(in	In Accordance with.
1.	Monthly income of deceased	13,049/-		Salary certificate of the deceased
2.	Annual Income of deceased	13,049X12=1,56,588/-		Salary certificate of the deceased
3.	Less 1/4th deduction towards self expenses(4 dependents)	39,147/-		Pranay Sethi(supra)
4.	Net annual income on which claimants were dependent	1,17,441/-		Pranay Sethi(supra)
5.	Add future prospects @50% since deceased was aged about 29 years	58,720/-		UP Motor Vehicle Rules,1998
6.	Total annual dependency of claimants on deceased	1,76,161/-		Pranay Sethi(supra)
7.	Multiplier applied since age of deceased was about 29 years at the time of accident	17		Pranay Sethi(supra)
8.	Total loss of dependency to the claimants	1,76,161X17=29,94,737/-		Pranay Sethi(supra)
9.	Loss of consortium @Rs.40,000/-each, increased by 10% after every 3 years (4 claimants)	48,400X4=1,93,600/-		Pranay Sethi(supra) , Magma General Insurance Co. Ltd. (supra) and Rahul Ganpatrao Sable (supra)
10.	Loss of estate @ Rs.15,000/- increased by 10% after every 3 years.	18,150/-		Pranay Sethi(supra)
11.	Funeral Expenses@ Rs.15,000/- increased by 10% after every 3 years.	18,150/-		Pranay Sethi(supra)
12.	Treatment expenses	49,730/-		As awarded by the tribunal
13.	Total compensation	32,74,367/-		

34. In this way, the claimants are entitled to total compensation of Rs.32,74,367/- alongwith interest @ 7% per annum from the date of filing of the claim petition till it's actual payment, which is to be indemnified by the insurer of the offending car No. UA-07-G-1313.

35. Accordingly, the appeal is allowed. The award of the tribunal dated 30.07.2011 is modified to the above extent.

36. If any amount has been paid by the insurance company previously, then the insurance company is entitled to adjust it accordingly. The insurance company is directed to deposit the enhanced amount of compensation before the concerned tribunal within two months. The tribunal will be at liberty to proportionally award the enhanced amount of compensation to the claimants keeping in view their age and dependency.

(2026) 1 ILRA 1321
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 21.01.2026
BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE JASPREET SINGH, J.

Special Appeal No. 221 of 2023 & 225 of 2023

Dr. Dinesh Kumar Agarwal & Ors. ...Appellant
Versus
State of U.P. & Ors. ...Respondents

Issues for Consideration

- (i) Whether, in exercise of *parens patriae* jurisdiction, custody of a minor child already held to be lawful with the mother could be transferred to the father in intra-court appeal arising out of habeas corpus proceedings;
- (ii) Whether, in the alternative, the Court ought to direct that the minor child be sent to a boarding school in the alleged interest of his welfare;
- (iii) Whether modification of visitation arrangements by the learned Single Judge was justified when the original visitation order itself remained unimplemented.

Headnotes

Child Custody — Habeas Corpus — Scope — Custody already adjudicated:

Held: Where custody of the minor child had already been adjudicated and restored to the mother pursuant to orders affirmed by the Supreme Court, and subsequent habeas corpus petition filed by the father stood dismissed, the issue of custody cannot be reopened in intra-court appeal in absence of emergent or exceptional circumstances. [Paras 60, 77]

Child Custody — Paramount consideration — Welfare of child:

Held: Welfare of the child is the paramount consideration and must be assessed on holistic factors including stability, education, environment and emotional well-being — Mere comparative financial superiority of one parent is not determinative — Where the child is settled, studying well and accustomed to the mother's care, change of custody is unwarranted. [Paras 73–76]

Parens Patriae Jurisdiction — Limits — Absence of exceptional circumstances:

Held: Though the Court possesses wide powers under *parens patriae* jurisdiction, such powers must be exercised on cogent material — In absence of evidence indicating adverse environment or harm to the child, drastic measures like change of custody cannot be resorted to. [Paras 59, 76–77]

Child Custody — Boarding school — Direction to send child — Refusal:

Held: Sending a minor child to a boarding school cannot be directed merely to resolve parental conflict or facilitate visitation — Such decision requires psychological evaluation and expert material — In absence thereof, no such direction can be issued. [Paras 79–80]

Child Custody — Visitation rights — Modification — Validity:

Held: Where original visitation order was comprehensive and remained unimplemented, modification by introducing minor changes was unwarranted — The original visitation order dated 06.01.2022 was sufficient and required adherence rather than alteration. [Paras 83–85]

Child Custody — Pending guardianship proceedings — Effect:

Held: Substantive rights of custody are to be adjudicated in proceedings under the Guardians and Wards Act — Observations in habeas corpus or intra-court appeal shall not prejudice such proceedings — Parties are at liberty to agitate all issues before the competent court. [Paras 78, 81–82]

Result: Appeals disposed of — No change in custody — Direction to adhere to original visitation order — Liberty to parties before Family Court. (E-14)

Case Law Cited

Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka, (1982) 2 SCC 544 — referred to; Sheoli Hati v. Somnath Das, (2019) 7 SCC 490 — referred to; Yashita Sahu v. State of Rajasthan, (2020) 3 SCC 67 — relied on; Amyru Dwivedi v. Abhinav Dwivedi, (2021) 4 SCC 698 — referred to; Col. Ramneesh Pal Singh v. Sugandhi Aggarwal, [2024] 6 SCR 259 — referred to.

List of Acts / Statutes

Child custody; Habeas corpus; Welfare of child; Parens patriae; Visitation rights; Boarding school; Modification of orders; Guardianship proceedings; Stability of child; Shared parenting.

List of Keywords

Child custody; Habeas corpus; Welfare of child; Parens patriae; Visitation rights; Boarding school; Modification of orders; Guardianship proceedings; Stability of child; Shared parenting.

Case Arising From

Order dated 07.04.2023 passed by learned Single Judge in Habeas Corpus Petition No. 9307 of 2020, modifying earlier visitation order dated 06.01.2022.

Appearance for Parties

For the Appellants: Shri Prashant Chandra, Senior Advocate with Ms. Meha Rashmi, Ashok Kumar Singh, Anilesh Tewari, Siddhartha Sinha

For the Respondents: Learned C.S.C.; Shri H.G.S. Parihar, Senior Advocate with Meenakshi Singh Parihar, Divyarth Singh Chauhan, Govind Narayan Shukla, Sushil Kumar Singh

(Delivered by Hon'ble Jaspreet Singh, J.)

1. Two warring spouses have filed the instant two intra-court appeals assailing the order dated 07.04.2023, passed by the learned Single Judge, whereby three applications filed, were disposed of by the said order, in a Habeas Corpus Petition No.9307 of 2020.

2. The two spouses have been at loggerheads and have filed multiple petitions which have had a chequered history and in order to appreciate the controversy, it will be appropriate to take a glance at the facts which have given rise to the instant intra-court appeals.

3. Intra-court Appeal No.221 of 2023 has been filed by the father and the grandparents of the detainee whereas Intra-court Appeal No.225 of 2023 has been filed by the mother of the detainee. For the sake of convenience, the Court shall be referring to the appellants of Intra-court Appeal No.221 of 2023 as 'father', 'grandparents' as the case may be, the respondent No.2 i.e. the detainee shall be referred as the 'son' and the respondent No.3, who is also the appellant of the connected Intra-court Appeal No.225 of 2023, shall be referred to as the 'mother'.

4. The facts have been taken from the Intra-court Appeal No.221 of 2023, however, wherever required, the relevant facts of the connected Intra-court Appeal No.225 of 2023 shall also be noticed.

5. Since, the issue involved in both the intra-court appeals is the same including the parties, hence, both the intra-court appeals are being decided by this common judgment.

6. Dr. Dinesh Kumar Agarwal and Smt. Deepti Goel were married on 30.06.2017. They were blessed with a son on 03.07.2018. Both the aforesaid spouses could not stay together for long as their married life was ensconced with bitterness and acrimonious legal proceedings. The son has been caught in the cross fire and is a victim of battle between the spouses.

7. Both the appellants are well educated and are professional degree holders in their own rights. The father is a Doctor by profession whereas the mother is an Assistant Professor. On account of matrimonial disputes, the mother left her matrimonial home at Dhanbad in the State of Jharkhand alongwith her minor son and started living in Lucknow with her parents. In the month of July, 2020, the father came down to Lucknow to meet with his son and he stayed at the residence of his in-laws at Lucknow. During his stay at Lucknow, it is alleged that the father on the pretext of taking his son for a short drive, instead, took his son out of the care and custody of his mother and drove down to Dhanbad and that too without informing or intimating the mother.

8. In the aforesaid backdrop, the mother lodged an FIR and also instituted a Habeas Corpus Petition before a learned Single Judge of this Court, registered as **Writ Petition No.9307 of 2020 (HC) [Master Devansh Agarwal Detenue through Mother and next friend Deepti Goel and another v. State of U.P. and others]**.

9. The record further reflects that the learned Single Judge seized with the Habeas Corpus Petition had passed an order of production of the detainee, however, the order could not be communicated to the father. In the meantime, the father instituted two petitions at Dhanbad, one under Section 9 of the Hindu Marriage Act, 1955 (in short, 'the Act of 1955') which was registered as Case No.333 of 2020 and another petition under the Guardians and Wards Act, 1890, which was registered as Case No.385 of 2020.

10. The mother approached the Apex Court, at this stage, by filing a transfer petition seeking transfer of the two suits filed by the father at Dhanbad, to Lucknow. The mother also filed a suit under Section 13 of the Act of 1955 at Lucknow and also an FIR under Section 498-A, 336, 506 IPC and Section 3/4 Dowry Prohibition Act, 1961.

11. The learned Single Judge seized with Habeas Corpus Petition found that the order of production of the detainee was not being complied with, hence, it directed the police concerned to ensure the production of the detainee before the Court fixing 05.01.2022. On the said date, before the learned Single Judge, the Government Counsel informed that the detainee and the father were at New Delhi in connection with a petition filed by the father, before the Apex Court, challenging the order passed by the learned Single Judge on 14.12.2021. However, the said Special Leave Petition of the father was dismissed on 05.01.2022 and the Apex Court had directed them to appear in the Habeas Corpus Petition at Lucknow. On the basis of the said information, the learned Single Judge fixed the matter on the next day i.e. 06.01.2022.

12. On the said date, the father along with the detainee appeared before the learned Single Judge, who after taking note of the earlier orders including the order passed by the Apex Court dated 05.01.2022 directed the custody and corpus of the detainee i.e. son, be handed over to the mother and thereafter it considered the plea of the father regarding visitation rights and passed a detailed order, which reads as under:-

"Called on.

Today on 06.01.2022, Sub Inspector Sri Durga Prasad Yadav, PNO 930440020 and lady Constable Ms. Antima Singh PNO 112304472, Police Station, District Lucknow appeared before the Court to produce the child Master Devansh Agarwal with his father Dr. Dinesh Agarwal in Court in compliance of judgment and order dated 14.12.2021 and subsequent order dated 21.12.2021.

In accordance with the order dated 05.01.2022 passed in Special Leave to Appeal (Crl.) No. 10080 of 2021 (Dr. Dinesh Agarwal Vs. State of U.P. and others) by Hon'ble Apex Court with direction to hand over the child to mother at 2:00 p.m., the child is handed over today to the mother Smt. Deepti Goel.

The father Dr. Dinesh Agarwal, private opposite party no. 3 and mother, next friend of the child Master Devansh Agarwal, Smt. Deepti Goel both have signed the ordersheet with regard to delivery of child to the mother and receiving by the mother, the petitioner's next friend.

In the order dated 14.12.2021, order as to visitation right to father was kept contingent upon the handing over the child by opposite party no.3, Dr. Dinesh Agarwal to the petitioner's next friend Smt. Deepti Goel, therefore this is the occasion to pass the order with regard to right of visitation of the child to the father.

(i) On conversation with opposite party no. 3, Dr. Dinesh Agarwal, father of the child Master Devansh Agarwal, as per his request, on every weekend (Sunday) shall visit the child at the residence of petitioner's next friend Smt. Deepti Goel i.e. B-47, Sector-H, Aliganj, District Lucknow where the petitioner's next friend the mother Smt. Deepti Goel use to reside with the child.

(ii) In case, for any reason if opposite party no. 3 Dr. Dinesh Agarwal fails to visit the child on Sunday, after informing the next immediate day after Sunday within one or two days to the petitioner's next friend Smt. Deepti Goel, may visit the child on that altered day.

(iii) Reciprocally, the petitioner's next friend, mother of the child Master Devansh shall ensure to remain present at the House No. B-47, Sector-H, Aliganj, District Lucknow for the purpose of complying with the direction as to the visitation right given to the father or on any other date as stipulated herein-above. The mother shall not leave or change the house of her abode with child without seeking prior permission of the Court and informing to the father of the child, opposite party no. 3. She will not leave with child Master Devansh the jurisdiction of the Court without prior permission as directed herein-above.

(iv) The father, opposite party no. 3 will have the right to visit the child Master Devansh within 10 a.m. to 5 p.m. in day time in the presence of petitioner's mother or any other family members of her parental house, in their supervision and control, however they are not permitted to make any obstruction in such visiting of the child by the father.

(v) The father of Master Devansh, opposite party no. 3, will have a right to contact with the child Master Devansh his son, telephonically either audio or video mode. For this purpose the mother will facilitate such telephonic connection with father of the child. It may be appropriate for both of them (father and mother of the child Master Devansh) to fix a particular time for the purpose of telephonic conversation with child.

(vi) The father if wants to give any gift in love and affection with child, brings anything for his use or do something necessary for well being of child, the mother, petitioner's next friend or any of the family members of her parental house will not make any forbiddance or obstruction in such acts. However, father shall keep in mind that such things would be safe in use and occupationed by the child.

(vii) Since the child is of so young age that still is under scheduled vaccination prescribed by the health department, the record of vaccination and as to the further vaccination shall be handed over by the father Dr. Dinesh Agarwal to the mother Smt. Deepti Goel as soon as possible within 15 days from the date of order so that further vaccination, if any, may be given timely without failure on her part.

(viii) It would be the duty of the father, whenever he visits the child to maintain the safe distance, put mask and keep the hand sanitized and to follow the protocol of the Covid-19 guidelines.

(ix) It is expected that the father till now has been twice vaccinated. If it is not so, he will ensure to be vaccinated twice as soon as possible. Mother shall also keep herself vaccinated twice.

(x) In case, the father is twice vaccinated with Covid-19 Vaccine, the rider of the safe distance and putting mask need not to be followed during visitation.

Looking into the pendency of matrimonial petition in competent court of law, the request of opposite party no. 3 with regard to overnight stay during visit to the child in the home of the petitioner's next friend, the mother of the child, is not permitted. However, this would be subject to the result of possible mediation held between them in such legal proceeding"

13. The father visited Lucknow on several occasions in furtherance of visitation order dated 06.01.2022, however, it is his grievance that the mother did not cooperate to allow the father to meet his son and despite detailed directions having been given by the learned Single Judge in its order, yet efforts were made to frustrate the spirit and intent of the visitation order.

14. The father being aggrieved from the attitude of the mother in not facilitating the visitation order rather she was alleged of creating obstructions, hence, the father filed a fresh Habeas Corpus Petition bearing No.353 of 2022.

15. Another learned Single Judge of this Court by means of the judgment and order dated 20.10.2022 passed in the above-mentioned Habeas Corpus Petition No.353 of 2022 dismissed the petition filed by the father. The order dated 20.10.2022 reads as under:-

"Heard Shri Prashant Chandra, learned Senior Counsel assisted by Ms. Meha Rashmi, learned counsel for the petitioner, Shri S.K. Singh appearing for respondent no.3 as well as learned AGA for the respondents no.1 and 2 and perused the record.

The instant petition has been filed under Article 226 of the Constitution of India requesting for issuance of a writ in the nature of habeas corpus with the following prayers:-

"a) issue a writ of habeas corpus or a writ, order or direction in the nature of habeas corpus, directing the respondents to produce the petitioner in person in this Hon'ble Court to be set at liberty forthwith and be freed from the custody of the respondents no. 3 to 7.

b) direct the respondents no. 3 to 7 to forthwith cease making video recording of the meeting between the petitioner and his father and surrender original copies of all the recordings made by her of previous meetings before this Hon'ble Court and file an affidavit of compliance in this regard;

c) issue any other appropriate writ, order or direction which this Hon'ble Court may deem just and necessary in the circumstances of the case may also be passed."

Shri Prashant Chandra, learned Senior Counsel appearing for the petitioner (next friend/ father) Dr. Dinesh Agrawal, submits that the detenue is the son of the petitioner and he has been illegally confined/ restrained by the respondents no.3 to 7 and the custody of the petitioner is not safe with the respondent no.3 (mother) as she is not paying required care and attention to the petitioner who is aged about 4 years and 3 months and is not capable of looking after himself and is suffering from abuse and neglect at the hands of the respondents no. 3 to 7.

It is further submitted that so far as the custody of a minor children is concerned the paramount consideration is the welfare of the minor. In this connection learned Senior Counsel has relied on paragraph no.34 of the report Gaurav Nagpal Vs. Sumedha Nagpal (2009) 1 Supreme Court Cases 42, in order to canvass that primary purpose of said proceeding is to secure the welfare of the child and in order to do so the legal rights of all, including the parents could be ignored.

While referring to the various photographs and whats app messages exchanged between the parties, it is submitted that the respondents no.3 to 7 are not complying the order of this Court dated 6.1.2022 passed in Writ Petition No. 9307 (H/C) of 2020 so far as visiting rights provided to the father Dr. Dinesh Agarwal is concerned, in letter and spirit.

It is further submitted that though the custody of the detenue has been provided to the respondent no.3 under the orders of this Court but due to the change of circumstances the order dated 14.12.2021 could be interfered in order to secure the welfare of the detenue - child.

It is further submitted that since upbringing of the detenue is not good under the hands of the respondent no.3, as an interim measure the detenue be directed to be produced before this Court and be given in the custody of next friend/ father. To buttress his submissions learned Senior

Counsel had relied on paragraph 18 of the report (1973) 1 SCC 840 Rosy Jacob Vs. Jacob A. Chakramakkal.

Shri Sushil Kumar Singh appearing for respondent no.3 on the other hand submits that in Writ Petition No. 9307 (H/C) of 2020, vide order dated 14.12.2021 the father/ next friend was directed to produce the child in the Court for the purpose of handing over the custody of the child to the respondent no.3 (mother) and against this order the father/ next friend had approached the Hon'ble Supreme Court of India by filing an Special Leave to Appeal (Crl.) No. 10080 of 2021, however, vide order dated 5.1.2022 the Special Leave Petition was dismissed and the next friend / father was directed to handover the child to the mother and it was in compliance of the order of the Hon'ble Supreme Court the custody of the child was given to the mother/ respondent no.3. Thus the order dated 14.12.2021 of this Court, whereby the custody of the child/ detenue was directed to be given to the mother/ respondent no.3 was affirmed by the Hon'ble Supreme Court and so far as the issue of custody of the child is concerned the same has been set at rest by the Hon'ble Supreme Court and the same could not be interfered by initiating the proceeding by filing writ of habeas corpus again.

He further submits that vide order dated 25.1.2021 passed in Special Lave to Appeal No. 586/2021 the Supreme Court has referred the matter for mediation also.

It is also submitted that an application for recall of the order dated 14.11.2021 was also filed by the petitioner.

It is also submitted that the aforesaid writ petition wherein the custody of the detenue was provided to the mother/ respondent no.3 is still pending and the same has been listed today also before an appropriate Court and there was neither any requirement nor any occasion for the petitioner to have filed the instant petition.

Having heard learned counsel for the parties having perused the record, it is evident that Writ Petition No. 9307 (H/C) of 2020 was initially filed on behalf of the detnue by her mother, namely, Smt. Deepti Goel and a Coordinate Bench of this Court vide order dated 14.12.2021 after considering the rival submissions of the parties by writing a detailed judgment had directed that the mother/ respondent no.3 deserves the custody of the child and the custody of the child which was till that time was with the father (petitioner) was directed to be given to the mother/ respondent no.3 and for this purpose the child was directed to be produced in the Court on 20.12.2021 at 2.00 P.M. This order was challenged by the petitioner of the instant petition before the Hon'ble Apex Court by filing an S.L.P. and while rejecting the S.L.P. (Crl.) No. 10080 of 2021 the Apex Court vide order dated 5.1.2022 declined to interfere in the judgement passed by the High Court and dismissed the S.L.P. with a direction to handover the child to the mother on 6.1.2022 at 2.00 P.M. and it is in compliance of this order of the Hon'ble Apex Court the custody of the child was shifted and given to the mother/ respondent no.3. Thus, so far as the dispute pertaining to the custody of the child is concerned, the same was finally set at rest by the order dated 5.1.2022 by the Hon'ble Apex Court passed in S.L.P. (Crl.) No. 10080/2021 and in the considered opinion of this Court could not be reopened by filing a writ of habeas corpus again.

Now coming to the next submission of learned Senior Counsel appearing for the petitioner that the order of this Court dated 6.1.2022 pertaining to the visiting rights given to the petitioner is not being complied in letter and spirit and in this regard learned Senior Counsel has drawn the attention of this Court towards various photographs and whats app messages exchanged between the parties. It is evident that Writ Petition No. 9307 (H/C) of 2020 wherein the order for transferring of the custody of the child detenue was passed and the vising rights were also given to

the instant petitioner vide order dated 6.1.2022 is still pending before this Court and in this regard an order of date 30.8.2022 has been placed before this Court by Shri S.K. Singh, learned counsel for the respondent no.3, which shows that petition has also been heard in part by a Coordinate Bench.

It is also admitted to the parties that a contempt petition has also been filed by the instant petitioner against respondent no.3.

Thus, in the considered opinion of this Court if there is any grievance to any party pertaining to the non compliance of the order dated 6.1.2022 passed in Writ Petition No. 9307 (H/C) of 2020, which is still pending, the same could only be agitated in the same writ petition and could not be raised by filing another writ petition, more so in the life of Writ Petition No. 9307 (H/C) of 2020.

Thus, in the considered opinion of this Court for the reasons aforesaid and keeping in view the order of the Hon'ble Supreme Court as well as of a Coordinate Bench of this Court passed in Writ Petition No. 9307 (H/C) of 2020, which is still alive, the instant writ petition, so far as the prayers sought by the petitioner is concerned, is not maintainable and is dismissed as such.

However, the dismissal of the instant writ petition shall not preclude the petitioner from approaching this Court by filing any application in Writ Petition No. 9307 (H/C) of 2020, which is still pending, for the purpose of compliance of order dated 06.01.2022 or for modification of that or any other forum for the purpose of establishing his right to the custody of detenue, as provided in para No. 85 of the Judgment dated 14.12.2021 passed in Habeas Corpus No. 9307 of 2020."

16. The father thereafter filed a Contempt Application (Civil) No.1214 of 2022 alleging violation and deliberate disobedience of the order dated 06.01.2022 passed in Habeas Corpus Petition No.9307 of 2020 filed by the mother. The said contempt application was entertained by the Contempt Court and the record further reflects that the mother and the son, were also called before the Contempt Court, however, nothing significant transpired in the contempt proceedings except that the assurances were extended by the mother before the Contempt Court, that she would facilitate a cordial meeting of the father and the son in terms of the visitation order dated 06.01.2022.

17. Be that as it may, despite efforts made by the Contempt Court to facilitate the implementation of the visitation order but the chasm between the warring spouses could not be bridged. Ultimately, the Contempt Court by its detailed order dated 27.08.2025 dismissed the contempt application and the relevant portion of the said order is being reproduced hereinafter:-

"6. Learned counsel for the applicant has submitted that the applicant, who runs his own hospital at Dhanbad, is a renowned spine surgeon and the child is entitled for getting privileges from his father for his better development and for getting comfort of the material of the world. The respondent, on the other hand, is unemployed and a dependent lady.

Learned Senior Counsel also proposed that in the event, the respondent is violating the directions of the writ Court, the Court, under the parens patriae jurisdiction, may pass order to send the child to a Boarding School, where he would be properly taken care of, groomed and would have an occasion to mix around with the children of his own age.

It has been added by learned counsel for the applicant that being a Court of record, inherent powers can be exercised under Article 215 of Constitution of India and the minor child

may be sent to Boarding School with such arrangements, as may be deemed just and necessary, to divide the period of vacation of the child in the company of his parents equally.

While giving the list of Boarding Schools, it has been submitted by Sri Chandra that the applicant is ready to bear all the expenses of the Boarding School.

7. The list of the top Boarding Schools produced before this Court is as under:-

Sr. No.	School	Address	Board	Grade	Gender
1.	Doon International School (Riverside Campus)	University Nanda Ki Chowki, 4 kms from Petroleum Pondha, Dehradun, Uttarakhand 248007	CBSE	1st to 12 th	Co-ed
2.	Ganga International School	Rohtak Road, Hiran Kudna, New Delhi, Delhi, 110041	CBSE	1st to 12 th	Co-ed
3.	Roots Country School	Trimount View, P.O. Baghi, Teh, Kotkhai, Himachal Pradesh, 171225	CBSE	1st to 12 th	Co-ed
4.	GD Goenka International School, Rohtak	8th Mile Stone, Sonapat Road, Rohtak, 124001, Haryana	CBSE	1st to 12 th	Co-ed
5.	Pinegrove School	Kasauli Road, Dharampur, Himachal Pradesh- 173209	CBSE	1st to 12 th	Co-ed
6.	New Era Public School	Chesson Road, Panchgini Satara District, Maharashtra- 412805	CBSE	1st to 12 th	Co-ed
7.	Birla Public School, Pilani	Vdya Niketan Birla Public School, Pilani Rajasthan, 333031	CBSE	1st to 12 th	Co-ed
8.	Emerald Heights International School	A.B. Road, Rau, opposite Akashwani, Indore, M.P., 453331	CBSE	1st to 12 th	Co-ed
9.	The Asian School	Asian Acres, Vasant Vihar, Indra Nagar Colony, Dehradun, Uttarakhand, 248006	CBSE	1st to 12 th	Co-ed
10.	Vidyasagar International School	Jafarpur Majra, Gharora, Greater, Manjhawali Road, Tigaon, Haryana, 121101	CBSE	1st to 12 th	Co-ed

15. Having perused the record, it is also evident that the order dated 14.12.2021 was challenged by the applicant before Hon'ble Supreme Court in Special Leave to Appeal No. 10080 of 2021, which was dismissed on 05.01.2022 directing the father to hand over the child to the mother on 06.01.2022 at 2:00 pm. The order dated 05.01.2022 passed in Special Leave to Appeal No. 10080 of 2021 is as under:-

"We are not inclined to interfere with the judgment passed by the High Court. The Special Leave Petition is, accordingly, dismissed. Pending application(s), if any, shall stand disposed of.

However, the petitioner is directed to hand over the child to Respondent No.4 tomorrow i.e. 06.01.2022 at 2.00 p.m."

16. Evidently, the child was produced before this Court on 06.01.2022 and he was handed over to the mother by giving visitation rights to the father. Thereafter, the orders passed in the

habeas corpus writ petition were challenged by the applicant as well as the respondent in Special Appeal No. 221 of 2023 (Dr. Dinesh Kumar Agrawal and Ors. Vs. State of U.P. and Ors.) and Special Appeal No. 225 of 2023 (Master Devansh Agarwal (Detenue), thru. his mother Smt. Deepti Goel and Anr. Vs. State of U.P. and Ors.). It is undisputed that these special appeals are pending before the Division Bench.

The order dated 27.03.2025 passed by the Division Bench with the consent of the parties in Special Appeal No. 221 of 2023 and Special Appeal No. 225 of 2023 reads as under:-

- "1. Both the parties are present and they are represented by their respective counsel.*
- 2. The operative part of the order passed by this Court on 6.7.2023 operating between the parties reads as under :-*
"The matter shall now be listed on 27.07.2023.
On the next date of listing, the appellant No.1/Dr. Dinesh Kumar Agarwal and respondent No.3/Smt. Deepti Agarwal shall be present before the Court.
In the meantime, the visitation arrangement in terms of the order dated 06.01.2022 passed in Habeas Corpus Petition No. 9303 of 2020 shall continue till the next date of listing.
However, we provide that while the father visits the child at his in-laws' place, he shall be free to bring with him gifts or any food items or fruits, whereas the mother of the child will also be free to provide necessary foods.
We also provide that visitation period will be five hours.
We request the mother of the child that she shall try her level best to be present during the period the father visits the child.
We request the parents of the child to try to maintain a congenial atmosphere during the visitation hours".
- 3. Having heard learned counsel for both the parties who are also present in person, we modify the operative part of the order dated 6.7.2023 to the extent that the visitation period restricted up to five hours is enhanced to ten hours. This period would begin at 10 O'clock in the morning and last up to 8.00 p.m. on the date of visit. During this period, the wife namely Deepti Agarwal shall treat her husband well by providing him humble treatment and hospitality. The father shall be left at liberty to meet the child without interference of any relatives. The father shall maintain dignified standard of behaviour towards the child and family members. No obstruction shall be caused by any family member during the visitation period and hassle-free atmosphere shall be maintained at the time of ingress and egress for the father. Other conditions stipulated in the order dated 6.7.2023 shall remain intact until further orders of this Court.*
- 4. This order has been passed as mutually agreed between the parties.*
- 5. List/put up on 29.4.2025."*

17. Considering the aforesaid facts and discussions coupled with the fact that the dispute is being adjudicated by the Division Bench and the interim order dated 27.03.2025 (supra) was passed with mutual consent of the parties in the pending special appeals, i.e., Special Appeal No. 221 of 2023 (Dr. Dinesh Kumar Agrawal and Ors. Vs. State of U.P. and Ors.) and Special Appeal No. 225 of 2023 (Master Devansh Agarwal (Detenue), thru. his mother Smt. Deepti Goel and Anr. Vs. State of U.P. and Ors.), this Court is of the view that judgments relied by learned counsel for the

applicant are not applicable in the present case, hence, no contempt is made out. Accordingly, the contempt application, being misconceived, stands dismissed."

18. The father again assailed the order dated 27.08.2025 passed in contempt proceedings before the Apex Court. It will also be relevant to point out that while the aforesaid proceedings were being agitated in different forums, the father had also moved an application bearing **IA No.14 of 2022** on 07.03.2022 seeking recall of the order dated 14.12.2021 and 06.01.2022 passed in Habeas Corpus Petition No.9307 of 2020. Significantly, the mother also moved an application seeking modification of the order dated 06.01.2022 in Habeas Corpus Petition No.9307 of 2020 which was bearing **Application IA No.15 of 2022**.

19. While the two applications were pending in the Habeas Corpus Petition No.9307 of 2020, thereafter the father made another application in the Habeas Corpus Petition No.9307 of 2020 on 02.12.2022 bearing **Application IA No.25 of 2022**, wherein it sought the modification of the orders dated 14.12.2021 and 06.01.2022.

20. It is these three applications (two filed by the father i.e. **Application IA No.14 of 2022** and **Application IA No.25 of 2022** and one filed by the mother bearing **Application IA No.15 of 2022**) which came to be considered by the learned Single Judge, who by means of its order dated 07.04.2023 decided the said three applications. As a consequence, the earlier detailed visitation order dated 06.01.2022 came to be modified with certain observations, which are reproduced hereinafter:-

"24. In the present case the detenue is living with his mother as directed by a co-ordinate Bench of this Court vide order dated 06.01.2022. The custody of minor son Master Devansh Agarwal shall remain with the mother but the parties will be at liberty to get their exclusive rights for custody of the minor son Master Devansh Agarwal as guardian by filing appropriate application under the Guardians and Wards Act or before any other forum in accordance with law.

Further, in the interest of justice and considering the arguments advanced by learned counsel for the parties, the orders dated 14.12.2021 and 06.01.2022 are modified to the following extent:

1. During Summer Season (April to September): Dr. Dinesh Agarwal, father of the detenue-Master Devansh Agarwal as agreed will have right to visit the child Master Devansh at the residence of detenue's mother Smt. Deepti Goyal at House No. B-47, Sector-H, Aliganj, District Lucknow, where she used to reside with the child between 10.00 a.m. to 01.00 p.m. on every Sunday of each month w.e.f. 09.04.2023 and onwards in the presence of mother of the detenue, namely, Smt Deepti Goyal or any other family members of her parental house, in their supervision and control, however they are not permitted to make any obstruction in such visiting of the child by the father.

Further on the same day, Dr. Dinesh Agarwal, father of the detenue-Master Devansh Agarwal, shall have visitation rights to meet Master Devansh Agarwal in the neighbourhood park i.e. Science Centre, Aliganj, Lucknow between 5.00 p.m. to 7.30 p.m. in the presence of detenue's mother/ her next friend Smt Deepti Goyal or any other family members of her parental house, in their supervision and control, however they are not permitted to make any obstruction in such visiting of the child by the father and before 8.00 p.m. the minor child should be safely given in the

custody of detenue's mother/ her next friend Smt Deepti Goyal at her residence address, as noted above by the father-respondent No.3 Dr. Dinesh Agarwal.

2. During Winter Season (October to March): Dr. Dinesh Agarwal, father of the detenue-Master Devansh Agarwal, shall have visitation rights to meet Master Devansh Agarwal in the neighbourhood park i.e. Science Centre, Aliganj, Lucknow between 10.00 a.m. to 1.00 p.m. on every Sunday of each month in the presence of mother of the detenue/ her next friend, namely Smt. Deepti Goyal or any other family members of her parental house, in their supervision and control, however they are not permitted to make any obstruction in such visiting of the child by the father and before 1.30 p.m. the minor child should be safely given in the custody of detenue's mother/ her next friend Smt Deepti Goyal at her residence address, as noted above.

Further on the same day Dr. Dinesh Agarwal, father of the detenue-Master Devansh Agarwal will have to right to visit the child Master Devansh at the residence of Smt. Deepti Goyal at House No. B-47, Sector-H, Aliganj, District Lucknow, where she used to reside with the child between 05.00 p.m. to 07.30 p.m. on every Sunday of each month in the presence of detenue's mother/ her next friend or any other family members of her parental house, in their supervision and control, however they are not permitted to make any obstruction in such visiting of the child by the father.

3. The grandfather and grandmother of the detenue-Master Devansh Agarwal are also permitted to meet the detenue along with Dr. Dinesh Agarwal, father of the corpus on fourth Sunday of each month (January to December) at any standard Hotel/Shopping Mall/Restaurant within the 5 Km radius of house of petitioner's next friend/mother-Smt Deepti Goyal for refreshment and outing and to build the social and mental ability of the child in the morning between 10.00 a.m. to 1.00 p.m. for the first meeting and in the evening between 5.00 p.m to 7.30 p.m. for the second meeting. The minor child should be safely given in the custody of petitioner's next friend / mother-Smt Deepti Goyal at her residence address i.e. House No. B-47, Sector-H, Aliganj, District Lucknow before 1.30 p.m in the afternoon after first meeting and before 8.00 pm in the night after second meeting . The petitioner-Smt Deepti Goyal and her one relative may also accompany the detenue, if they so desired during that period.

4. In case, for any reason if respondent No. 3-Dr. Dinesh Agarwal fails to visit the child on Sunday, after informing the next immediate day after Sunday within one or two days to the petitioner's next friend/ mother Smt. Deepti Goel, may visit the child on that altered day.

5. Dr. Dinesh Agarwal, father of the detenue- Master Devansh Agarwal, has right to contact with his son telephonically either audio or video mode. For the purpose of telephonic conversation, Smt Deepti Goyal, the mother will facilitate the child with telephone/mobile phone. It may be appropriate for both of them i.e. father and mother of the detenue-Master Devansh to fix a time for telephonic conversations between the children and his father not less than ten minutes.

6. If the father of the child wants to give any gift on account of love and affection of his child or do anything for well- being of child at house/shopping mall/park then mother of child or any family members of Smt. Deepti Goyal will not make any objection. However, father shall keep in mind that such thing will be given, which are for use and safety of the children.

7. Reciprocally, the petitioner's next friend, mother of the child Master Devansh shall ensure to remain present at the House No. B-47, Sector-H, Aliganj, District Lucknow for the purpose of complying with the direction as to the visitation right given to the father or on any other date as stipulated herein-above. The mother shall not leave or change the house of her abode with child without seeking prior permission of the Court and informing to the father of the child,

respondent no. 3. She will not leave with child Master Devansh the jurisdiction of the Court without prior permission as directed herein-above.

25. With these observations/directions C.M. Application No. 1A/14/2022, C.M. Application No. 25/2022 and C.M. Application No.15/2022 are finally disposed off."

21. It is this order which has been challenged by the father in Intra-court Appeal No.221 of 2023 and also by the mother in Intra-court Appeal No.225 of 2023.

22. Both the intra-court appeals were entertained by a Coordinate Bench of this Court and as the record would reflect that serious efforts were made by the Court to resolve the issue between the parties in an amicable manner. The spouses were directed to appear before the Court along with the son. Meaningful efforts were made by the Court to counsel the parties including by taking professional help of Dr. Amit Arya, Professor of Psychiatric Department of King George's Medical University, Lucknow.

23. At this stage, it will be relevant to notice the order passed by a Coordinate Bench of this Court dated 06.07.2023, which reads as under:-

"In deference to our order dated 10.05.2023, the appellant No.1/Dr. Dinesh Kumar Agarwal and respondent No.3/Smt. Deepti Agarwal are present alongwith their child Master Devansh Agarwal.

In our request, the Vice-Chancellor, King George's Medical College (KGMC) has nominated Dr. Amit Arya, a Professor in the Psychiatric Department of the University who is also present.

We have deliberated with the appellant No.1 and respondent No.3 with the assistance of Dr. Arya. We also deliberate a bit with the child.

Dr. Amit Arya is of the opinion that both the husband and wife need to be psychologically evaluated. He is also of the opinion that even the child also needs to be psychologically evaluated so as to evolve some arrangement which can be evolved to ensure that the child is able to develop himself and grow in a more conducive environment. The appellant No.1 and respondent No.3 have consented for their psychological evaluation.

Accordingly, we request Dr. Amit Arya to psychologically evaluate both these individuals as also the child in the Psychiatry Department of the KGMC. While making the psychological evaluation, Dr. Amit Arya will be free to take assistance of other doctors/nurses/employees and also a Child Psychiatrist/Psychologist in his department. He shall furnish his report by the next date of listing through Sri Shubham Tripathi, learned counsel representing KGMC.

The matter shall now be listed on 27.07.2023.

On the next date of listing, the appellant No.1/Dr. Dinesh Kumar Agarwal and respondent No.3/Smt. Deepti Agarwal shall be present before the Court.

In the meantime, the visitation arrangement in terms of the order dated 06.01.2022 passed in Habeas Corpus Petition No. 9303 of 2020 shall continue till the next date of listing.

However, we provide that while the father visits the child at his in-laws' place, he shall be free to bring with him gifts or any food items or fruits, whereas the mother of the child will also be free to provide necessary foods.

We also provide that visitation period will be five hours.

We request the mother of the child that she shall try her level best to be present during the period the father visits the child.

We request the parents of the child to try to maintain a congenial atmosphere during the visitation hours."

24. Another Coordinate Bench of this Court also explored possibility of bridging the gap between the competing spouses and in its effort to do so it enhanced the visitation hours as shall be seen from the order dated 27.03.2025, which reads as under:-

"1. Both the parties are present and they are represented by their respective counsel.

2. The operative part of the order passed by this Court on 6.7.2023 operating between the parties reads as under :-

"The matter shall now be listed on 27.07.2023.

On the next date of listing, the appellant No.1/Dr. Dinesh Kumar Agarwal and respondent No.3/Smt. Deepti Agarwal shall be present before the Court.

In the meantime, the visitation arrangement in terms of the order dated 06.01.2022 passed in Habeas Corpus Petition No. 9303 of 2020 shall continue till the next date of listing.

However, we provide that while the father visits the child at his in-laws' place, he shall be free to bring with him gifts or any food items or fruits, whereas the mother of the child will also be free to provide necessary foods.

We also provide that visitation period will be five hours.

We request the mother of the child that she shall try her level best to be present during the period the father visits the child.

We request the parents of the child to try to maintain a congenial atmosphere during the visitation hours".

3. Having heard learned counsel for both the parties who are also present in person, we modify the operative part of the order dated 6.7.2023 to the extent that the visitation period restricted up to five hours is enhanced to ten hours. This period would begin at 10 O' clock in the morning and last up to 8.00 p.m. on the date of visit. During this period, the wife namely Deepti Agarwal shall treat her husband well by providing him humble treatment and hospitality. The father shall be left at liberty to meet the child without interference of any relatives. The father shall maintain dignified standard of behaviour towards the child and family members. No obstruction shall be caused by any family member during the visitation period and hassle-free atmosphere shall be maintained at the time of ingress and egress for the father. Other conditions stipulated in the order dated 6.7.2023 shall remain intact until further orders of this Court.

4. This order has been passed as mutually agreed between the parties.

5. List/put up on 29.4.2025."

25. In the same vein, another detailed order was passed by a Coordinate Bench of this Court on 09.05.2025, which reads as under:-

"1. Both the parties are present in person alongwith their counsel in the Chamber proceedings. The minor child has also been produced.

2. The period of visitation was extended up to ten hours by our order passed on 27.3.2025. The relevant part of the said order is reproduced hereinbelow:

".....Having heard learned counsel for both the parties who are also present in person, we modify the operative part of the order dated 6.7.2023 to the extent that the visitation period restricted up to five hours is enhanced to ten hours. This period would begin at 10 O' clock in the morning and last up to 8.00 p.m. on the date of visit. During this period, the wife namely Deepti Agarwal shall treat her husband well by providing him humble treatment and hospitality. The father shall be left at liberty to meet the child without interference of any relatives. The father shall maintain dignified standard of behaviour towards the child and family members. No obstruction shall be caused by any family member during the visitation period and hassle-free atmosphere shall be maintained at the time of ingress and egress for the father. Other conditions stipulated in the order dated 6.7.2023 shall remain intact until further orders of this Court.

This order has been passed as mutually agreed between the parties. "

3. It is evident that the extended period of time is none other than building of trust and faith between the parents. This alone would streamline the overall development of the child, both educational and social.

4. We spoke to the child in the proceedings and we find it desirable that both the parents spend time with him indoors and outdoors on the date of meeting. Looking to the convenience of the child, both the parents shall manage an outdoor visit for a period of two hours approximately so that the child gets exposure of an open environment in the city and his personality is developed in a manner compatible to the surrounding atmosphere.

5. It is expected of both the parties to maintain a cordial relationship both in conversation as well as in terms of the attitude towards each other keeping in mind the wellness and comfort of the child. On resuming the company at home after outdoor visit, we make it clear, that the visit shall be monitored under the CCTV with audio facility so that the Court may have a view of the behaviour of both the parents coupled with the gestures of the child.

6. We also expect both the parents to shall maintain a decency of language so that the meeting of the child with the parents brings out an optimum good for building a bond of respect and fearlessness in his upbringing. Both the parents shall ensure to have a pleasing interaction with the child and they may also offer the child anything which goes by his liking and is safe and healthy.

7. We also make it clear that the freedom of the child to participate in the deliberations of the parents during the meeting shall not be overpowered by disorienting his attention through digital mediums, rather playful things be kept around so that an enjoyable atmosphere is built to consume time in a manner which inculcates a sense of enjoyment and interest in the child for having physical activities and verbal interaction with the parents. Since the Court cannot carve out the behavioural conditions in strict terms, it is nevertheless expected of both the parents who are well educated, to evolve a pleasing and playful environment so that the minor child feels at ease during the course of meeting.

8. The meeting shall be confined to the parents and the child alone and there shall be interference of none-else.

9. List this matter on 23rd of May, 2025."

Despite the aforesaid efforts made by the Court, no substantial progress could be made on account of recalcitrance of the spouses.

26. In the aforesaid backdrop, once again the father moved another application in the instant intra-court appeal bearing IA No.2 of 2025 on 24.04.2025 seeking modification/clarification of the order dated 07.03.2025. In response, the mother filed her objections bearing IA No.3 of 2025. Apart from filing her objections, the mother too filed her separate application bearing IA No.4 of 2025 whereby she sought the modification of the orders dated 06.07.2023, 27.03.2025 and 09.05.2025. This was responded by the father, by filing his objections which was followed by a rejoinder affidavit filed by the mother.

27. Another important fact as reflected from the record is that the Special Leave Petition No.32470 of 2025 preferred by the father before the Apex Court assailing the order dated 27.08.2025 passed by the Contempt Court dismissing the contempt petition was disposed of by the Apex Court by means of its order dated 17.11.2025 which reads as under:-

"1. We have heard learned senior counsel for the petitioner.

2. We find that the Contempt Petition was filed by the petitioner with regard to interim order(s) passed by the High Court out of which this Special Leave Petition arises.

3. We dispose of this Special Leave Petition by reserving liberty to the petitioner herein to press the application seeking modification of the interim order regarding visitation rights of the petitioner herein passed by the High Court. Further learned senior counsel submitted that the interim orders were not passed by mutual consent and therefore another application has been filed in that regard. The petitioner is also at liberty to press that application.

4. In the above circumstances, we also reserve liberty to press for a final disposal of Special Appeal No.221/2023 (Dr. Dinesh Kumar Agrawal and Others vs. State of Uttar Pradesh and Others) and Special Appeal No.225/2023 (Master Devansh Agarwal (Detenue) thr. his Mother Smt. Deepti Goel and Anr. vs. State of U.P. and Others) which are connected to each other.

5. It is needless to observe that if the petitioner makes the aforesaid requests to the High Court, the same shall be considered expeditiously and the High Court shall either modify the interim order or dispose of the case as early as possible in accordance with law and preferably within a period of three months from today.

6. Pending application(s), if any, shall stand disposed of."

28. In the aforesaid factual backdrop and especially noticing the decision of the Apex Court as quoted above, it would reveal that liberty was granted to the father to press his applications for modification and this Court was also requested to decide the appeals expeditiously. Hence, this Court heard the learned counsel for the parties, both on, the pending applications filed by the respective parties and also on merits of the appeals.

29. Shri Prashant Chandra, learned Senior Counsel ably assisted by Ms Meha Rashmi, learned counsel for the father has vehemently urged that a life of a young child is being jeopardised by a recalcitrant mother.

30. It has been urged that the son was with the father from 07.07.2020 till 06.01.2022 and the custody of the child was handed over to the mother. The father was granted visitation right with a fond hope that the child would get the love and affection of both his mother and father, which is essential for a secured upbringing of any child. It is with the aforesaid intent that the learned Single

Judge had passed a detailed visitation order dated 06.01.2022 by keeping the best interest of the child in mind.

31. The father being a doctor by profession could very well understand the trauma which a child may face having to shift from one place to another, hence, to provide stability, the father agreed to the visitation order despite the fact that the father is based out of Dhanbad, which is about 800 kilometers from Lucknow

32. The father travelled every weekend from Dhanbad to Lucknow to spend time with his son. However, this was not appreciated by the mother, who left no stone unturned to thwart the meeting of the father with his son. Frivolous objections were raised sometime citing the ill health of the son or that he was not upto it to meet his father or to go out for an outing with his father, during the visitation period.

33. It was urged that the mother does not enjoy a sound financial status. However, to overcome the aforesaid obstacle and to ensure that the son does not suffer on this count, the father voluntarily deposited Rs.25,000/- every month in the account of the mother, for the well being. All that the father wanted was a congenial relationship with son and to strengthen his emotional bond with his son.

34. It was further urged that a child in his formative years not only requires the love and affection of his mother, but it is equally important that he is nourished with the support, love, affection and security of his father and even the grandparents have a right to meet their grandson. Despite, the long distance between Dhanbad and Lucknow, yet the father took an extra-step of taking a rented accommodation near the house of his in-laws at Lucknow so that the grandparents could also meet their grandson in a homely and congenial atmosphere. All efforts made by the father to smoothen the visitation hours were frustrated by the mother, least realizing that any animosity between the warring couple, would adversely impact their son.

35. It was also submitted that this Court noticing the welfare of the child invoked '*parens patriae*' jurisdiction and enhanced the visiting time to 10 hours a day with a fond hope that the child gets the love and affection of both parents and reap the benefits of shared parenting. The father did not shirk from his responsibility, whether it be emotional, financial or otherwise. On quite a few occasions, when the meeting did take place, but, it was not held in a neutral environment, as the mother did not accompany the son rather the unmarried sister of the mother accompanied the child and she used to behave in an obnoxious manner. She used to speak in a loud voice, in a public place and she recorded the meeting between the father and son which was undesirable and embarrassing for a young child.

36. Moreover, when the father went to meet the child at his in-laws residence, the mother would not permit the father to carry his mobile phone or laptop inside the house rather he was directed to leave the same with the guards posted at the gate. Even while the visitation was to be monitored through CCTV Cameras as provided in the order passed by the learned Single Judge dated 06.01.2022, but the fact remained that the atmosphere in the house was negatively charged with a particular narrative, which rendered the visitation to be a futile exercise.

37. Learned Senior Counsel also submitted that over the period of years and during the legal proceedings, attempt has always been made by the father to ensure that the impact of the litigation may not adversely affect the son. On the contrary, the mother has always put spokes in the smooth implementation of the visitation order. As a consequence, the child appears to have developed emotional insecurity, which, in years to come would impact the son, adversely. Constant negative brainwashing of the child against the father, by the mother, is not at all good for the welfare of the child.

38. It is in the aforesaid circumstances and keeping the best interest of the child in mind, it was prayed by the learned Senior Counsel for the father that the custody of the child be handed over to the father, who is not only economically sound to take care of his son and his education, but also has a stable and affectionate household where the child can receive love and affection of his grandparents and even his cousins i.e. a family as a whole.

39. It was alternatively urged that if agreed, the father is ready to pay exclusively for the education of the child, by putting him in a good and reputed residential school so that the child is kept away from the manipulative conditioning which is being done at the behest of the mother. Education in a boarding school would be helpful for a holistic development of the child and it would also facilitate both the parents to meet the child in an unbiased and neutral surroundings while the vacations can be shared between the two parents as per any appropriate arrangement to be made by the Court.

40. Learned Senior Counsel further urged that the orders passed by the Court in matters relating to custody are never final and they can be modified so as to achieve the well being and best interest of the child, which is of prime importance. Thus, any orders which may have been passed earlier, either in the habeas corpus petition or in the instant intra-court appeals, yet they cannot act as a legal bar for this Court to pass appropriate orders.

41. Shri Chandra, learned Senior Counsel in order to buttress his submissions has relied upon the following decisions of the Apex Court (i) **Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka : (1982) 2 SCC 544**; (ii) **Sheoli Hati v. Somnath Das : (2019) 7 SCC 490**; (iii) **Yashita Sahu v. State of Rajasthan and others : (2020) 3 SCC 67**; (iv) **Amyru Dwivedi v. Abhinav Dwivedi and others : (2021) 4 SCC 698** (iv) **Col. Ramneesh Pal Singh v. Sugandhi Aggarwal : [2024] 6 SCR 259**.

42. **Per contra**, Shri H.G.S. Parihar, learned Senior Counsel assisted by Ms. Meenakshi Singh Parihar has vehemently urged that the mother knows the best interest of her child and deliberate endeavour have been made to vilify the mother. It was submitted that the mother had given birth to her son at Lucknow on 03.07.2018 and her son has never left the sight of his mother.

43. Matrimonial disputes arose between the mother and Dr. Agarwal and she was turned out from her matrimonial home, on account of dowry demands. The mother and the child have been staying together at Lucknow. The father with a devious plan in mind visited the mother and the child at Lucknow in the month of July 2020, during COVID-19 Pandemic. During his stay at his in-law's residence, the father on the pretext of taking his son for a short drive rather abducted the child

and without information removed the child from the care and custody of the mother. When the child did not reach home, then frantic efforts were made and then it revealed that the father had forcibly taken the child away from the mother.

44. It was urged, that in this backdrop, an FIR was lodged against the father and also a habeas corpus petition was filed before this Court bearing Writ Petition No.9307 of 2020 wherein several orders were passed but the father did not produce the child, keeping the mother in the dark. Instead the father filed a suit under Section 9 of Act of 1955 at Dhanbad and also filed a petition under the Guardian and Ward Act at Dhanbad.

45. Upon receiving the aforesaid information, the mother filed a transfer petition before the Apex Court. All along, the habeas corpus petition was pending before this Court, but the father did not put in appearance. Only when the order dated 14.12.2021 was passed in the habeas corpus petition that the father assailed the same before the Apex Court by means of Special Leave Petition No.10080 of 2021 which was dismissed on 05.01.2022. It is only under the orders of the Court that the child was handed over to the mother. As a matter of fact, the order of production of the child passed by the Court seized with the habeas corpus petition was known to the father, yet it was not complied and only with the intervention of the Apex Court through its order dated 05.01.2022 that the physical custody of the child was handed over to the mother on 06.01.2022.

46. In this backdrop, a person who is so irresponsible that when the entire country was raging under the COVID-19 Pandemic and in such grave times, the son was taken away from his mother and was made to travel from Lucknow to Dhanbad, jeopardizing his health and life. Prior to 07.07.2020 the son always remained with his mother, and he was compelled to stay with his father due to his forcible removal from the custody of the mother during the period 07.07.2020 to 06.01.2022. Since thereafter the son has been in the custody of his mother who is taking full care of the child. He is studying in one of the better school of Lucknow and performing well academically and even otherwise.

47. Shri Prihar, learned Senior Counsel further urged that as far as the development of the child is concerned, there is no difficulty on that front as the son is being raised in a congenial atmosphere in a stable household. The mother is professionally qualified and has adequate finances so as to take care of her child and it is not as if the mother and her family are financially in doldrums.

48. It has further been urged that the child is not a commodity or a machine who is to be brought up and raised as per some prescribed formula. It was pointed out that the Court while passing the detailed visitation order dated 06.01.2022 had permitted the father to meet the son every weekend between 10.00 A.M. to 5.00 P.M. The father was also permitted to talk to his son telephonically either through audio or video mode, however, the said arrangement was not working out well for the child.

49. It was pointed out that permitting the father to meet the son, who was 6 to 7 years of age (at the time when the order dated 06.01.2022 passed) was not practical. The growing child has his own needs and frame of mind, which changes quickly and frequently and to direct a child to be

with his father for 7 hours between 10.00 A.M. to 5.00 P.M., is unworkable especially when the son is unwillingly required to stay in the company of his father (under compulsion of the Court order) makes the child insecure and he shows reluctance. Moreover, the child had started going to school and a weekend is the time for relaxed routine and compelling a child to follow something against his will is not conducive, but it made the child more irritable.

50. It has also been urged that these issues were cropping up which prompted the mother to file an application for modification of the order dated 06.01.2022. In the meantime, the father had also moved two applications for modification and all the three applications came to be decided by the order impugned dated 07.04.2023 whereby the earlier order dated 06.01.2022 was modified.

51. It was urged that a deliberate attempt was made by the father to some how use the son as a bait to get over the fact that the mother had received the custody of the child through the Court, hence several applications and efforts were made including filing a contempt petition which was dismissed. The father also preferred a separate habeas corpus petition which too came to be dismissed. The order of dismissal of the contempt proceedings was assailed before the Apex Court but unsuccessfully and then the intra-court appeal has been filed attempting to seek an order in appeal which the father was unable to secure from the substantive proceedings filed by him.

52. Shri Parihar has further urged that as far as the issue of custody is concerned, the same was handed over to the mother not by choice but only on intervention of the Court. Once the custody of the child was given to the mother and it has been held to be legal, and on the same premise, the separate habeas corpus petition filed by the father bearing No.353 of 2022 was dismissed on 20.10.2022 and the said order attained finality. Now, the issue of custody cannot be questioned nor it can be raised afresh in the instant intra-court appeal.

53. Shri Parihar has further urged that the submission advanced by the counsel for the father relating to putting the child in a boarding house was also raised by the father during the contempt proceedings and even the Contempt Court did not find favour with it. The order passed by the contempt court was challenged before the Apex Court in Special Leave Petition No.32470 of 2025 and the said SLP was also dismissed. Hence, the said issue too, cannot be raised in the instant intra-court appeal. It is, thus, urged that all attempts of the father to get the custody have failed and now the submissions are made to put the child in a boarding school, which would be a novel method to get the child removed from the custody of the mother and this attempt is being cloaked under the appellations of 'welfare of the child'.

54. It was further urged that though the father had been contesting the proceedings before the High Court with vehemence but the substantive proceedings for guardianship are pending before family court at Lucknow, which is not being pursued diligently. Hence, the habeas corpus petition cannot be a substitute to contest the guardianship issue. In the instant case, custody of the child has been found to be legal with the mother, hence the issue of any illegality does not arise. The issue of visitation rights, has already been considered by the Court and there has been no conscious efforts on behalf of the mother to violate the same. However, it is to be kept in mind that despite the best efforts, the child can behave differently and this cannot be construed as an act of the mother to

violate the order of the court. Moreover, the regular guardianship proceedings are pending and subject to evidence to be led in the said proceedings, the father can get his rights adjudicated.

55. It was also urged that the child was receiving good care and attention from his mother and her family and is performing well and in such circumstances, it will not be in the interest of the child to send him to a boarding school at 7 years of age. It was submitted that the order dated 07.04.2023 passed by the learned Single Judge upon the modification application is also not feasible and it goes beyond the scope of the petition itself especially noticing the fact that any visitation order made in a habeas corpus petition is only a temporary measure, till the substantive proceedings are finally decided in the appropriate forum. However, in the instant case, the habeas corpus petition is being treated as the regular proceedings and orders are being passed whereas the regular proceedings are still held up. It is, thus, for all the aforesaid reasons, the intra-court appeal filed by the father deserves to be dismissed and the order dated 07.04.2023 deserves to be set aside after allowing the connected intra-court appeal of the mother.

56. The Court has heard the learned Senior Counsel for the contesting parties at length and also perused the material on record.

57. At the outset, it may be noticed that howsoever noble an act, its implementation will squarely depend on the intent of the person who is required to abide with it. This Court finds that from time to time several orders were passed and a Co-ordinate Bench of this Court also took pains to resolve the deadlock between the spouses so that the child may not be deprived of his right of good parenting, love and affection of both his parents and grandparents. Unfortunately, the efforts did not bear any fruit.

58. The warring couple has made allegations and counter allegations against each other, which are basically, factual in nature and can be best appreciated after the parties are permitted to lead evidence. However, the dilemma before this Court is how to secure the best interest of the child amidst the marital conflict.

59. It is no doubt true that this Court exercises its parens patriae jurisdiction where the welfare of a child is involved. It is equally true that while exercising such powers the Court is not handicapped with any technicalities rather in order to achieve the best interest of the child a Court is empowered to pass any such orders as the Court may deem fit to secure the best interest of the child, regardless the rigorous of codified law, which are subservient and will not undermine the power of this Court.

60. In the light of the material brought on record, certain undisputed facts, which emerge are:-

(i) The parties are already contesting the substantive proceedings before the family court at Lucknow. The mother has filed a suit for divorce whereas the father of the child has filed a petition under section 9 of the Hindu Marriage Act and a separate application under the Guardians and Wards Act, 1890.

(ii) The proceedings before the High Court commenced only after the father had taken the son away from the custody of the mother as alleged, on 07.07.2020 and it was only with the

intervention of the Court and orders passed in the Habeas Corpus No.9307 of 2020 that the custody of the child was restored to the mother on 06.01.2022.

(iii) While handing over the custody to the mother, the learned Single Judge passed a detailed order regarding visitation rights of the father, at the time when the child was 4 years of age.

(iv) The said directions made in the order dated 06.01.2022 for visitation were not followed. Nevertheless, this Court in these proceedings cannot really decide who was responsible for the violation of the said order especially when the father had already filed a contempt petition alleging deliberate disobedience of the order passed by the High Court on 06.01.2022 and the said contempt petition came to be dismissed on 27.08.2025 and though the said order was assailed before the Apex Court but unsuccessfully as the said SLP was dismissed by the Apex Court vide its order dated 17.11.2025.

(v) Significantly, the initial detailed order dated 14.12.2021 passed in Habeas Corpus Petition No.9307 of 2020 was also assailed by the father before the Apex Court and the said S.L.P. No.10080 of 2021 was dismissed by the Apex Court on 05.01.2022.

(vi) The father had filed his separate writ petition praying for a writ of habeas corpus, by means of Writ Petition No.353 of 2022 which was dismissed by the Court on 20.10.2022 and the said order was never challenged by the father before any Court.

61. In view of the aforesaid undisputed facts, the two issues before this Court are : (i) The plea of the father to get the custody of the child and (ii) Alternatively, to put the child in a boarding school.

62. It may be true that the orders passed in proceedings relating to the custody and the visitation rights are not final in the sense that with change in circumstances, they can be moulded and modified to meet the contingencies and for the ends of justice, keeping the welfare of the child in mind. However, at the same time it is to be remembered that the orders passed, continue to bind the parties unless there is a change in the circumstance, and the changed circumstances are such that it impacts the feasibility or the work-ability of the orders or the circumstances have undergone such a major change in complexion that fresh orders are necessitated.

63. From a careful perusal of the material on record, this Court finds that the recalcitrance of the spouses resulted in rendering the orders and the efforts made by the Co-ordinate Bench, unworkable and it is the cause of heart burn between parties. Nevertheless, it is the child which is being made the scapegoat.

64. As far as the issue of shared parenting is concerned, it is no doubt a better way of bringing up the child. However, in the instant case, the parents are embroiled in a legal battle. They are both, well educated and qualified yet for their own personal reasons, they have not been able to bridge their differences. The Court had made several efforts as noticed in the narrative of facts and even referred the parties to the Mediation Centre, but it did not yield any positive results.

65. At this stage, it will be worthwhile to refer to the decisions of the Apex Court cited by the learned Senior Counsel for the father, wherein the issues relating to child custody, visitation rights issued in the best interest of the child and the parens patriae jurisdiction has been considered.

66. The Apex Court in **Thirty Hoshie Dolikuka** (supra) has held as under:-

“17. The principles of law in relation to the custody of a minor appear to be well-established. It is well-settled that any matter concerning a minor, has to be considered and decided only from the point of view of the welfare and interest of the minor. In dealing with a matter concerning a minor, the Court has a special responsibility and it is the duty of the Court to consider the welfare of the minor and to protect the minor's interest. In considering the question of custody of a minor, the Court has to be guided by the only consideration of the welfare of the minor.

18. In Halsbury's Laws of England, 3rd Edn., Vol. 21, the law is succinctly stated in para 428 at pp. 193-94 in the following terms:

“428. Infant's welfare paramount.-In any proceedings before any court, concerning the custody or upbringing of an infant or the administration of any property belonging to or held on trust for an infant or the application of the income thereof, the court must regard the welfare of the infant as the first and paramount consideration, and must not take into consideration, whether from any other point of view, the claim of the father, or any right at common law possessed by the father in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father. This provision applies whether both parents are living or either or both is or are dead.

Even where the infant is a foreign national, the court, while giving weight to the views of the foreign court, is bound to treat the welfare of the infant as being of the first and paramount consideration whatever orders may have been made by the courts of any other country. ”

19. In the case of Rosy Jacob v. Jacob A. Chakramakkal [(1973) 1 SCC 840 : AIR 1973 SC 2090 : (1973) 3 SCR 918] this Court has observed at SCR pp. 934-35: (SCC pp. 354-55, paras 15-17)

“...Where, however, family dissolution due to some unavoidable circumstances becomes necessary the Court has to come to a judicial decision on the question of the welfare of the children on a full consideration of all the relevant circumstances. Merely because the father loves his children and is not shown to be otherwise undesirable cannot necessarily lead to the conclusion that the welfare of the children would be better promoted by granting their custody to him as against the wife who may also be equally affectionate towards her children and otherwise equally free from blemish, and who, in addition, because of her profession and financial resources, may be in a position to guarantee better health, education and maintenance for them. The children are not mere chattels: nor are they mere playthings for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them. The approach of the learned Single Judge, in our view, was correct and we agree with him. The Letters Patent Bench on appeal seems to us to have erred in reversing him on grounds, which we are unable to appreciate.

At the Bar reference was made to a number of decided cases on the question of the right of father to be appointed or declared as guardian and to be granted custody of his minor children under Section 25 read with Section 19 of the Guardians and Wards Act. Those decisions were

mostly decided on their own peculiar facts. We have, therefore, not considered it necessary to deal with them. To the extent, however, they go against the view we have taken of Section 25 of the Guardians and Wards Act, they must be held to be wrongly decided.

The respondents contention that the Court under the Divorce Act had granted custody of the two younger children to the wife on the ground of their being of tender age, no longer holds good and that, therefore, their custody must be handed over to him appears to us to be misconceived. The age of the daughter at present is such that she must need the constant company of a grown-up female in the house genuinely interested in her welfare. Her mother is in the circumstances the best company for her. The daughter would need her mother's advice and guidance on several matters of importance...."

paramount consideration of the welfare of the child, we are of the opinion that the child's interest and welfare will be best served by removing her from the influence of home life and by directing that she should continue to remain in the Boarding School. It is not in dispute that Kimmins Boarding School at Panchgani to which the child has been admitted is a good institution.

* * *

36. *The question of custody of the child must necessarily be considered from the only viewpoint of the welfare of the child. In view of our finding that in the instant case the best interest of the child shall be served by keeping her in a Boarding School away from the unhealthy atmosphere of strain and tension which she had been undergoing at home, the question of custody has to be judged in this background. In that view of the matter it does not really become necessary for us to go into the question of the merits of the respective competence of either of the parents. The person to whom the custody of the child has to be entrusted will necessarily be answerable to the school for payment of all charges and expenses of the child and also in relation to any matter concerning the child in her school life. It is clear that the father is not inclined to allow the child to remain in a Boarding Institution. If the custody be left to him, the father in view of the disinclination to allow the child to remain in the Boarding Institution, may be in a position to create difficulties for the child for her remaining in the institution by non-payment of fees or otherwise. As we have earlier noticed, the father is obsessed with the idea of obtaining exclusive control of the daughter and keeping the daughter with him in his house. It is not in dispute and it cannot be disputed that the mother has a great deal of affection for her daughter and the daughter is also very fond of the mother. The mother has the welfare of the daughter in her heart and to serve the best interest of the daughter the mother is prepared to make any necessary sacrifice. For the welfare of the daughter the mother at considerable expense had put her in Kimmins Boarding School, Panchgani which is recognised to be a good institution. She has been paying for all the expenses of the daughter at the school. She has a steady income out of which she is in a position to meet all the expenses of her daughter at the school. The mother also does not suffer from any obsession regarding possession of the girl and she wants her daughter to lead a healthy normal life essential for her proper growth and development. The mother is very anxious that the child should continue to remain in the Boarding School. The girl now aged about 11 years, is reaching an age when she will need the guidance of her mother. We are, therefore, of the opinion that the custody of the girl should be given to the mother. The argument of Mr Desai that the Bombay High Court went wrong in refusing the custody of the daughter to the mother mainly on the ground that the mother is a working girl, is not without force. It also appears that the High Court failed to properly*

appreciate that home influence in the present case had been doing very great damage to the healthy growth of the child and had brought about a near nervous breakdown of the girl. The argument of Mr Bhandare that the girl needs in any event the company of her brother to whom she is deeply attached, has not impressed us. The girl had been staying with her father at home and had been enjoying the company of her brother. It does not, however, appear that the home influence including influence of the brother, has done her any good. The influence at home, as we have earlier noticed, has more or less made her a nervous wreck. The further fact also remains that the brother is now grown up and he may not be there at the house to give her company. At the time of hearing of the appeal we were given to understand that the brother was away at Ceylon as a Sea Cadet and was likely to return soon. We may also add that by the directions already given by this Court, all necessary and proper opportunities have been given to the brother to meet the minor. "

67. The Apex Court in **Sheoli Hati** (supra) held as under:-

"15. Before we close, few observations on the issues which have arisen before us need to be made. The present is a case, where limited issue has arisen regarding giving education to the child in boarding school or to permit the status quo regarding education of the child as was on the date when the Family Court passed order dated 31-3-2016. When the child has to go in the environment, where there is marital discord between her parents affecting the peace of mind of all including the parents and children, child suffers physical and mental distress. The ill consequences of the discord between mother and father affect the child in her normal upbringing and is a negative factor on child's personality and upbringing. This Court in Vivek Singh v. Romani Singh [Vivek Singh v. Romani Singh, (2017) 3 SCC 231 : (2017) 2 SCC (Civ) 1] , has discussed the term "Parental Alienation Syndrome". In para 18 of the judgment, following was observed: (SCC p. 245)

"18. ... Psychologists term it as "The Parental Alienation Syndrome". It has at least two psychological destructive effects:

(i) First, it puts the child squarely in the middle of a contest of loyalty, a contest which cannot possibly be won. The child is asked to choose who is the preferred parent. No matter whatever is the choice, the child is very likely to end up feeling painfully guilty and confused. This is because in the overwhelming majority of cases, what the child wants and needs is to continue a relationship with each parent, as independent as possible from their own conflicts.

(ii) Second, the child is required to make a shift in assessing reality. One parent is presented as being totally to blame for all problems, and as someone who is devoid of any positive characteristics. Both of these assertions represent one parent's distortions of reality. "

16. In the above case also there was bitter fight between father and mother. The Family Court has allowed the custody of the minor girl child to the father by dismissing the petition of the respondent mother for custody. The High Court on appeal decided [Romani Singh v. Vivek Singh, 2013 SCC OnLine Del 1264 : (2013) 136 DRJ 675] the entitlement of the custody of the child to the mother. Aggrieved by the order of the High Court, the father had filed the appeal in which backgrounds the above observations were made by this Court. The ill-effect on child, due to discord between the parents with negative feeling against each other has natural effect, which hinders the child's normal development.

17. It is well settled that while taking a decision regarding custody or other issues pertaining to a child, welfare of the child is of paramount consideration. This Court in Gaurav Nagpal v. Sumedha Nagpal [Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42 : (2009) 1 SCC

(Civ) 1] , had the occasion to consider the parameters while determining the issues of child custody and visitation rights, entire law on the subject was reviewed. This Court referred to English Law, American Law, the statutory provisions of the Guardians and Wards Act, 1890 and provisions of the Hindu Minority and Guardianship Act, 1956, this Court laid down following in paras 43, 44, 45, 46 and 51: (SCC pp. 55-57)

“43. The principles in relation to the custody of a minor child are well settled. In determining the question as to who should be given custody of a minor child, the paramount consideration is the “welfare of the child” and not rights of the parents under a statute for the time being in force.

44. The aforesaid statutory provisions came up for consideration before courts in India in several cases. Let us deal with few decisions wherein the courts have applied the principles relating to grant of custody of minor children by taking into account their interest and well-being as paramount consideration.

45. In *Saraswatibai Shripad Vad v. Shripad Vasanji Vad* [*Saraswatibai Shripad Vad v. Shripad Vasanji Vad*, 1940 SCC OnLine Bom 77 : ILR 1941 Bom 455 : AIR 1941 Bom 103] the High Court of Bombay stated: (SCC OnLine Bom)

“...It is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the court. It is the welfare of the minor and of the minor alone which is the paramount consideration ...’

46. In *Rosy Jacob v. Jacob A. Chakramakkal* [*Rosy Jacob v. Jacob A. Chakramakkal*, (1973) 1 SCC 840] , this Court held that object and purpose of the 1890 Act is not merely physical custody of the minor but due protection of the rights of ward's health, maintenance and education. The power and duty of the court under the Act is the welfare of minor. In considering the question of welfare of minor, due regard has of course to be given to the right of the father as natural guardian but if the custody of the father cannot promote the welfare of the children, he may be refused such guardianship.

* * *

51. The word “welfare” used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its *parens patriae* jurisdiction arising in such cases.”

(emphasis in original)

* * *

20. In the above case, the child was allowed to continue in the boarding school. We notice one more decision of this Court in *Nutan Gautam v. Prakash Gautam* [*Nutan Gautam v. Prakash Gautam*, (2019) 4 SCC 734 : (2019) 2 SCC (Civ) 642] , which was a case where an appeal was filed by the mother of a child against the order [*Nutan Gautam v. Prakash Gautam*, 2018 SCC OnLine All 4517] , [*Nutan Gautam v. Prakash Gautam*, 2018 SCC OnLine All 4518] of

the High Court passed in first appeal. While decreeing the divorce petition of the husband ex parte the trial court had directed the son, the minor boy, to be admitted in a boarding school at New Delhi. Ex parte order passed by the trial court was challenged by the mother in the High Court, which matter was pending before the High Court. The High Court by interim order had permitted the father to take the boy to boarding school. The said interim order was challenged in this Court. This Court interacted with the boy and took the view that in the facts of the case, the child should not be compelled to go to boarding school. This Court allowed the child to continue his studies at Global International School, Shahjahanpur, where he was earlier studying in the interest of the child. Every case where issue pertaining to custody of child and education is decided depends upon the facts of each case. No hard and fixed formula can be found out which can be applied to each and every case. Each case has to be examined in its own facts. ...

21. We, thus, are of the view that what is in the interest of the child depends on the facts and circumstances of each case and has to be decided on its own merits without adhering to any fixed formula or rule. The appeals being pending before the High Court, we are of the view that while deciding the appeals finally, High Court should also take into consideration subsequent materials which may be brought before it by the parties including the progress report of the child from Good Shepherd International School, Ooty. The learned counsel has also raised certain medical issues pertaining to the child. It is also open for the High Court to take decision on the said issues and if necessary to obtain medical reports as may be required. Insofar as interacting with the child, the High Court during hearing of the appeals had already interacted with the child on many occasions and it is for the High Court to take a decision with regard to interacting with the child."

68. The Apex Court in **Yashita Sahu** (supra) held as under:-

"Welfare of the child - the paramount consideration

20. It is well settled law by a catena of judgments that while deciding matters of custody of a child, primary and paramount consideration is welfare of the child. If welfare of the child so demands then technical objections cannot come in the way. However, while deciding the welfare of the child, it is not the view of one spouse alone which has to be taken into consideration. The courts should decide the issue of custody only on the basis of what is in the best interest of the child.

21. The child is the victim in custody battles. In this fight of egos and increasing acrimonious battles and litigations between two spouses, our experience shows that more often than not, the parents who otherwise love their child, present a picture as if the other spouse is a villain and he or she alone is entitled to the custody of the child. The court must therefore be very wary of what is said by each of the spouses.

22. A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to one parent, the other parent must have sufficient visitation rights to ensure that the child keeps in

touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.

23. The concept of visitation rights is not fully developed in India. Most courts while granting custody to one spouse do not pass any orders granting visitation rights to the other spouse. As observed earlier, a child has a human right to have the love and affection of both the parents and courts must pass orders ensuring that the child is not totally deprived of the love, affection and company of one of her/his parents.

24. Normally, if the parents are living in the same town or area, the spouse who has not been granted custody is given visitation rights over weekends only. In case the spouses are living at a distance from each other, it may not be feasible or in the interest of the child to create impediments in the education of the child by frequent breaks and, in such cases the visitation rights must be given over long weekends, breaks and holidays. In cases like the present one, where the parents are in two different continents, effort should be made to give maximum visitation rights to the parent who is denied custody.

25. In addition to "visitation rights", "contact rights" are also important for development of the child specially in cases where both parents live in different States or countries. The concept of contact rights in the modern age would be contact by telephone, e-mail or in fact, we feel the best system of contact, if available between the parties should be video calling. With the increasing availability of internet, video calling is now very common and courts dealing with the issue of custody of children must ensure that the parent who is denied custody of the child should be able to talk to her/his child as often as possible. Unless there are special circumstances to take a different view, the parent who is denied custody of the child should have the right to talk to his/her child for 5-10 minutes every day. This will help in maintaining and improving the bond between the child and the parent who is denied custody. If that bond is maintained, the child will have no difficulty in moving from one home to another during vacations or holidays. The purpose of this is, if we cannot provide one happy home with two parents to the child then let the child have the benefit of two happy homes with one parent each."

69. Again in **Amyru Dwivedi** (supra) the Apex Court has held as under:-

"2. We are not at all happy with the manner in which the visitation rights have been granted in the present case. The High Court has directed that the mother can meet the child for two hours once a month, that too, in the office of Secretary, District Legal Services Authority, Lucknow or at a place, mutually agreed to by the parties and in case of disagreement, before the District Legal Services Authority, Lucknow. However, it has been ordered that the meeting would be held in a secured atmosphere and it will be the duty of the Secretary to provide cordial atmosphere and security to the parties.

3. In Yashita Sahu v. State of Rajasthan [Yashita Sahu v. State of Rajasthan, (2020) 3 SCC 67 : (2020) 2 SCC (Civ) 39] , this Court held that the welfare of the child is of paramount consideration in matters relating to custody of children. In this context, we may refer to para 22 of the judgment, which reads as follows : (SCC p. 80)

“22. A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to one parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.”

4. When a court grants visitation rights, these rights should be granted in such a way that the child and the parent who is granted visitation right, can meet in an atmosphere where they can be like parent and child and this atmosphere can definitely not be found in the office of District Legal Services Authority. That atmosphere may be found in the home of the parent or in a park or a restaurant or any other place where the child and the parent are comfortable.”

70. In Col. Ramneesh Pal Singh (supra), the Apex Court has held as under:-

8. It is well settled that the principal consideration of the Court whilst deciding an application for guardianship under the Act in exercise of its parens patriae jurisdiction would be the 'welfare' of the minor children.

* * *

10. In this context, it would be appropriate to refer to a decision of this Court in Nil Ratan Kundu (Supra) wherein parameters of 'welfare' and principles to be considered by courts whilst deciding questions involving the custody of minor children came to be enunciated. The relevant paragraph(s) are reproduced as under:

“52. In our judgment, the law relating to custody of a child is fairly well settled and it is this : in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and wellbeing of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor.

* * *

55. *We are unable to appreciate the approach of the courts below. This Court in a catena of decisions has held that the controlling consideration governing the custody of children is the welfare of children and not the right of their parents.*

56. *In Rosy Jacob [(1973) 1 SCC 840] this Court stated: (SCC p. 854, para 15)*

"15. ... The contention that if the husband [father] is not unfit to be the guardian of his minor children, then, the question of their welfare does not at all arise is to state the proposition a bit too broadly and may at times be somewhat misleading."

It was also observed that the father's fitness has to be considered, determined and weighed predominantly in terms of the welfare of his minor children in the context of all the relevant circumstances. The father's fitness cannot override considerations of the welfare of the minor children.

57. *In our opinion, in such cases, it is not the "negative test" that the father is not "unfit" or disqualified to have custody of his son/daughter that is relevant, but the "positive test" that such custody would be in the welfare of the minor which is material and it is on that basis that the court should exercise the power to grant or refuse custody of a minor in favour of the father, the mother or any other guardian."*

11. *Furthermore, this Court in Gaurav Nagpal (Supra) undertook a comprehensive and comparative analysis of laws relating to custody in the American, English, and Indian jurisdiction(s) and observed that the Court must construe the term "welfare" in its widest sense i.e., the consideration by the Court would not only extend to moral and ethical welfare but also include the physical well-being of the minor children.*

12. *Accordingly, in view of the aforesaid, not only must we proceed to decide the present lis on the basis of a holistic and all-encompassing approach including inter alia (i) the socioeconomic and educational opportunities which may be made available to the Minor Children; (ii) healthcare and overall-wellbeing of the children; (iii) the ability to provide physical surroundings conducive to growing adolescents but also take into consideration the preference of the Minor Children as mandated under Section 17(3) of the Act.³ Furthermore, we are equally conscious that the stability of surrounding(s) of the Minor Children is also a consideration to be weighed appropriately.*

* * *

21. *The role of a Court vis-a-vis allegation(s) of PAS came to be considered recently by an English Court i.e., the High Court of Justice Family Division in Re C ('parental alienation'; instruction of expert), [2023] EWHC 345 (Fam). Pertinently, the Court reflected on the changing narrative in relation to PAS - placed before the Court therein, by an expert body i.e., the Association of Clinical Psychologists - UK ('ACP') and thereafter observed as under:*

"103. Before leaving this part of the appeal, one particular paragraph in the ACP skeleton argument deserves to be widely understood and, I would strongly urge, accepted:

'Much like an allegation of domestic abuse; the decision about whether or not a parent has alienated a child is a question of fact for the Court to resolve and not a diagnosis that can or should be offered by a psychologist. For these purposes, the ACP-UK wishes to emphasise that 'parental alienation' is not a syndrome capable of being diagnosed, but a process of manipulation of children perpetrated by one parent against the other through, what are termed as, 'alienating behaviours'. It is, fundamentally, a question of fact.'

It is not the purpose of this judgment to go further into the topic of alienation. Most Family judges have, for some time, regarded the label of "parental alienation", and the suggestion that there may be a diagnosable syndrome of that name, as being unhelpful. What is important, as with domestic abuse, is the particular behaviour that is found to have taken place within the individual family before the court, and the impact that that behaviour may have had on the relationship of a child with either or both of his/her parents. In this regard, the identification of "alienating behaviour" should be the court's focus, rather than any quest to determine whether the label "parental alienation" can be applied."

22. *We find ourselves in agreement with the aforesaid position. Courts ought not to prematurely and without identification of individual instances of 'alienating behaviour', label any parent as propagator and/or potential promoter of such behaviour. The aforesaid label has far-reaching implications which must not be imputed or attributed to an individual parent routinely.*

23. *Accordingly, it is our considered opinion that Courts must endeavour to identify individual instances of 'alienating behaviour' in order to invoke the principle of parental alienation so as to overcome the preference indicated by the minor children.*⁵

24. *In the instant appeal, the Family Court has categorically recorded that there was nothing on record to suggest that the interests and welfare of the Minor Children were in any manner affected during their stay with the Appellant. Additionally, the Learned Single Judge of the High Court interacted with the Minor Children on 24.02.2020 i.e., a period of close to 4.5 (four and a half) years after the alleged incident on 08.08.2015, and categorically recorded that the Minor Children expressed no overt preference amongst their parents - the aforesaid observation by the Learned Single Judge, is crucial as it underscores that while the relationship between the parties may have been strained; the Minor Children could not be said to have exhibited any indication of 'parental alienation' i.e., there was no overt preference expressed by the Minor Children between the parents and thus, the foundation for any claim of parental alienation was clearly absent. The aforesaid position is also supported by materials on record to suggest that (i) the Minor Children are cognisant and aware of the blame game being played inter se the parties; and (ii) that the Minor Children did not foster unbridled and prejudiced emotions towards the Respondent. Accordingly, we find that the Appellant could not have been said to have engaged or propagated 'alienating behaviour' as alleged by the Respondent."*

71. Having considered the aforesaid decisions and applying the underlying principles for the purposes of testing the veracity of the submissions, the questions would be, that even if at all, the order of visitation rights is being flouted by one of the party then in such circumstances whether it will be appropriate to handover the custody from the mother to the father or alternatively to put the child in a boarding school.

72. Considering the welfare of the child which is of prime importance and in the given facts and circumstances of the instant case, it is clear that since birth the child has been with the mother except for the period when he was taken away from the custody of the mother on 07.07.2020 and till 06.01.2022, when the custody of the child was restored to his mother.

73. For almost last 4 years, the son is with his mother and he has started going to school. From the material on record, it appears that the child is taking education in one of the better institutions in the city. As per the progress card brought on record, the child appears to be fairing well

academically as also in co-curricular activities. The child is accustomed to his mother and there is no material on record to prima-facie indicate that the household atmosphere and surroundings of the household of the mother and the son is such that it may have an adverse impact on the child or his upbringing. There is no material on record, which reflects that the child is showing signs of stress and discomfort while residing with his mother.

74. Had it been a case where both the spouses were living together and there was in fighting between them because of which the home environment may have become toxic and distressful for the child then perhaps it could have been ascertained whether it is appropriate to change/modify the order of the Court, regarding the custody or putting the child in a boarding school.

75. As far as, the issue regarding financial status of the spouses is concerned, even though the father may be comparatively more economically sound than the mother, as is suggested by the learned Senior Counsel appearing for the father, but nevertheless, it cannot be said that the mother or her family is financially incapable to take care and raise the child in a respectable and in a decent manner. The child is taking education in a good institution and fairing well and there is no cogent material to indicate that the child is deprived of any essential amenities or benefits either in relation to his education or his health and upbringing which may be attributable to sheer lack of finances available with the mother.

76. The child is about 7 years of age at present and at this stage where there are no accentuating circumstances on record, which can indicate that the child is living in a toxic household with his mother, in such circumstances, uprooting the child from his mother and permitting the custody of the child to the father may not be in the fitness of things especially when the child is accustomed to a life style, is going to school and has friends and is cocooned in his own ecosystem, which is comfortable for him.

77. Thus, as far as the issue of change in custody is concerned, this Court taking note of the facts and circumstances including that the custody has been held to be legal with the mother. This aspect has already been noticed by the Apex Court and it was also considered by a learned Single Judge of this Court in a separate writ petition seeking a relief of Habeas Corpus, filed by the father bearing Habeas Corpus Petition No.353 of 2022 which was dismissed by the High Court on 20.10.2022 and that order was also not challenged and over the time the said order is final. Moreover, it is also not disputed that the father has already filed a petition under the Guardians and Wards Act, 1890 which is engaging the attention of the trial Court concerned. In the aforesaid circumstances, this Court does not find, at this stage, that there are any emergent or such eminent circumstances which may warrant any immediate attention for removing the child from the care and custody of the mother and be provided to the father.

78. Having said so, it is clarified that merely because this Court in this intra-Court appeal has not found it appropriate to pass an order for change of custody of the child, it may not be considered as an expression of opinion on merits of the controversy as it will be open for the parties to raise all the pleas which may be available to them in law before the concerned Family Court which shall take note of it strictly in light of the evidence produced and pass appropriate orders regarding the custody, in accordance with law.

79. Now considering the other issue regarding putting the child in boarding school. This is a tricky issue, which primarily depends on facts and there cannot be any straightforward answer. In the instant case, the child has been with his mother and even though the child was with the father for some limited time for the reasons and circumstances noticed above and it was with the intervention of the Court that the custody has been handed over to the mother. Apparently, the child is comfortable in the school which he is attending and there is no material to suggest that the child is mentally prepared or emotionally strong enough to stay in a boarding school i.e. in a far away place and without his mother,

80. The Court has to ensure that in a legal battle between the conflicting couple, the child is not used as a weapon nor is he victimized. Sending a child to a boarding school cannot be an answer in black and white. It is necessary to psychologically evaluate the child to assess as to whether it is necessary to remove the child from the custody of his mother and put him in a boarding school. How the child will react is an important aspect to be considered before taking such a decision. Unfortunately, there is nothing on record to shed light on this aspect of the matter and in absence of any expert's report, this Court will not take a decision merely on the asking of the father or only to smoothen the implementation of the visitation order which has already been passed in favour of the father. In absence of any professional evaluation or expert report or specific circumstances, this Court observes that it cannot order to send the son to the boarding school.

81. As noticed above, the substantive petition is already pending before the Family Court, Lucknow, accordingly, it will be open for the parties to place such expert report or material to indicate whether it would be feasible and in the best interest of the child to send him to the boarding school or not. Hence, this Court is not giving any definitive finding in this regard and once again reiterating that even though this Court has declined to pass an order permitting the child to be sent to a boarding school, will not mean that the Family Court concerned would not consider it in light of the evidence and in accordance with law. It shall also be open for the Family Court concerned to examine as to whether it would be feasible and in the best interest of the child to share his vacations with both his parents so that each of the parent gets a chances to spend time with the child and to strengthen the emotional bond.

82. In this regard, a direction is issued to the Family Court where the substantive proceedings are pending to consider the matter between the parties expediently and priority be accorded to the Case No.385 of 2020, under the Guardians and Wards Act. The parties are further directed to cooperate in early hearing and in case if any party chooses to misuse the liberty, it will be open for the Family Court to pass appropriate orders in accordance with law.

83. In light of the aforesaid discussions and having taken note of the order passed by the learned Single Judge dated 06.01.2022 and the other order dated 07.04.2023 which modified the earlier visitation order, this Court finds that there is hardly much difference in the two and to take a Bird's Eye View the differences in the two orders is being noticed hereinafter in the shape of a chart:-

First Order dated 06.01.2022	Second Order dated 07.04.2023

(a)	Weekly Sunday visitation	Season wise, time segmented
(b)	Location- Home only	Location-Home and Outing included to neighborhood part (Regional Science Centre, Aliganj)
(c)	Time - 10:00 AM to 05:00 PM	Summer -Morning 10:00 AM to 01:00 PM (home visitation) Evening - 05:00 to 07:30 PM outside visit (home before : 07:30 PM) Winter -Morning 10:00 AM to 01:00 PM (home before : 01:30 PM), outside visit Evening 05:00 PM to 07:30 PM (home visitation)
(d)	Visitation of Grandparents not included	Grandparents could visit every 4th Sunday- Outside within 5 km radius
(e)	No time limit specified for phone/Video call	Minimum 10 minutes mandated

84. Having considered the aforesaid two orders and noticing the modification made, this Court finds that where the original order dated 06.01.2022 which otherwise is a robust order, but it could not be implemented, in such circumstances, there was actually no reason to modify the said order especially when the earlier order itself was not being appropriately adhered. By making cosmetic changes and including the right of grandparents to visit the child in itself was not required when the initial order itself did not prohibit the grandparents.

85. In the given circumstances, this Court finds that the order dated 06.01.2022 was good enough to protect the visitation rights of the father. Hence, this Court does not deem it fit to change the order dated 06.01.2022 insofar as the visitation rights of the father is concerned. The same shall be adhered by the parties and this Court expresses a hope that the warring parties, for the sake of welfare and best interest of their son, may not adopt a recalcitrant attitude rather the child be permitted to have the love and affection of both his parents.

86. In the aforesaid facts and circumstances and in light of the aforesaid directions, all pending applications are disposed of and both the intra-Court appeals are also disposed of in light of the observations and directions made hereinabove. The parties shall bear their own costs.

(2026) 1 ILRA 1354
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.01.2026

BEFORE

THE HON'BLE MANISH MATHUR, J.

Writ A No. 227 of 2026

Sohan Lal

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Whether re-fixation of pay and recovery of alleged excess salary after retirement of the petitioner, without affording opportunity of hearing and in absence of any fraud or

misrepresentation, was legally sustainable in view of settled law governing recovery of excess payments.

Headnotes

Service Law — Pay fixation — A.C.P. benefit — Re-fixation after superannuation — Recovery of excess payment — No misrepresentation — No opportunity of hearing — Violation of natural justice — Recovery impermissible — Orders quashed — Pension to be fixed on last pay drawn — Refund directed.

HELD:

The impugned orders re-fixing the petitioner's pay and directing recovery of alleged excess payment were passed after his superannuation and without affording any opportunity of hearing. Such action is violative of principles of natural justice. [Paras 6, 12]

The material on record does not indicate any fraud or misrepresentation on the part of the petitioner in receiving the benefits of first A.C.P. granted in the year 2013. The excess payment, if any, was on account of error attributable to the employer. [Paras 3, 7]

The Hon'ble Supreme Court in *State of Punjab v. Rafiq Masih (White Washer)* has categorically held that recovery from Class III and IV employees, particularly in absence of fraud or misrepresentation, is impermissible. [Para 7]

It has further been reiterated in *Jagdish Prasad Singh v. State of Bihar* that reduction of pay scale and recovery of excess payment after long lapse of time, especially post-retirement, is arbitrary, inequitable and unsustainable. [Paras 9–10]

Similarly, in *Sushil Kumar Singhal v. Pramukh Sachiv*, it has been held that where mistake in pay fixation occurred long prior to retirement, neither recovery of salary nor reduction of pension is permissible, particularly in light of Government Order dated 16.01.2007. [Paras 8, 11]

In the present case, the re-fixation of pay and consequential recovery, effected more than a decade after grant of benefit and after retirement of the petitioner, is contrary to the settled principles laid down by the Supreme Court and applicable Government policy. [Paras 10, 12]

Accordingly, the impugned orders are liable to be quashed. The respondents are directed to determine pensionary benefits on the basis of last pay drawn and to refund any recovered amount within stipulated time. [Para 12]

Petition allowed. (E-14)

Case Law Cited

***State of Punjab and others v. Rafiq Masih (White Washer) and others*, (2015) 4 SCC 334 — relied on; *Sushil Kumar Singhal v. Pramukh Sachiv Irrigation Department and others*, (2014) 16 SCC 444 — relied on; *Jagdish Prasad Singh v. State of Bihar and others*, (2024) 8 SCR 377 — relied on; *Mohinder Singh Gill and others v. Chief Election Commissioner*, AIR 1978 SC 851 — referred to.**

List of Acts / Statutes

Constitution of India; Relevant Government Order dated 16.01.2007.

List of Keywords

Pay re-fixation; Recovery of excess payment; A.C.P.; Post-retirement recovery; Natural justice; No misrepresentation; Pension fixation; Refund of recovery.

Case Arising From

Orders dated 29.09.2025 and 30.10.2025 whereby pay of the petitioner was re-fixed and recovery of alleged excess payment was directed.

Appearance for Parties

For the Petitioner: Sri Pankaj Pandey

For the Respondents: Learned C.S.C.

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

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 29.09.2025 and 30.10.2025 whereby pay-fixation of petitioner has been redetermined with orders of recovery also being issued on allegation that benefit of first A.C.P. granted to petitioner on 28.06.2013 was incorrectly granted.

3. It has been submitted that impugned orders have been passed after superannuation of petitioner from service on 31.07.2025 and by means of impugned order, recovery has been effected without affording him any opportunity of hearing, for benefits which petitioner has been drawing for the past twelve years. It is submitted that impugned order does not indicate any complicity or misrepresentation on part of petitioner in the alleged excess payment of salary. He has relied upon judgment rendered by Hon'ble the Supreme Court in **State of Punjab & others v. Rafiq Masih (White Washer) & others** reported in (2015) 4 SCC 334.

4. Learned State Counsel has not been provided written instructions in this matter but submits that impugned orders have been passed in view of fact that due to some error, excess payment has been made to petitioner.

5. In view of fact that ACP granted to petitioner with effect from 28.06.2013 has been redetermined and benefits withdrawn on the allegations that the same were provided to him/her incorrectly, has been clearly indicated in impugned order. Since the facts have clearly been brought on record by means of impugned order, the petition is being adjudicated upon at the admission stage itself in terms of judgment rendered by the Supreme Court in the case of **Mohinder Singh Gill & others v. Chief Election Commissioner, New Delhi and others** [AIR 1978 SC 851] dispensing with requirement of filing of counter affidavit.

6. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is evident from material on record that re-fixation of pay of petitioner with effect from year 2013 has been effected along with directions for recovery but it is also evident that prior to passing of impugned order, no opportunity of hearing has been provided to petitioner.

7. Hon'ble the Supreme Court in **State of Punjab & others v. Rafiq Masih** (supra) has clearly enunciated that recovery cannot be effected from salary of Class III and Class IV employees particularly when there is no allegation of any fraud or misrepresentation on part of the employee.

8. Learned counsel for petitioner has relied upon judgment rendered by Hon'ble the Supreme Court in **Sushil Kumar Singhal v. Pramukh Sachiv Irrigation Department and others** reported in (2014)16 SCC 444:2014(2) ESC 271 (SC) in which Hon'ble the Supreme Court was seized of a similar dispute and placing reliance on Government Order dated 16.01.2007 has held that if any mistake had been committed in pay fixation prior to retirement then by virtue of Government Order dated 16.01.2007 neither any salary paid by mistake could have been recovered nor pension could have been reduced since records of 34 months prior to superannuation only could be examined for the purpose of grant of pension.

9. The said aspect has also been considered by Hon'ble Supreme Court in the case of **Jagdish Prasad Singh v. State of Bihar and others** (2024) 8 SCR 377 in the following manner: -

"21. We firmly believe that any decision taken by the State Government to reduce an employees pay scale and recover the excess amount cannot be applied retrospectively and that too after a long time gap. In the case of Syed Abdul Qadir and Others V. State of Bihar and others¹, this Court held that when the excess unauthorized payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. The relevant paras of the Syed Abdul Qadir (supra) are extracted herein below: -

"57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made. (emphasis supplied)

*22. Similarly, this Court in **ITC Limited V. State of Uttar Pradesh and Others**, held as under: -*

"108. We may give an example from service jurisprudence, where a principle of equity is frequently invoked to give relief to an employee in somewhat similar circumstances. Where the pay or other emoluments due to an employee is determined and paid by the employer, and subsequently the employer finds, (usually on audit verification) that on account of wrong understanding of the applicable rules by the officers implementing the rules, excess payment is made, courts have recognised the need to give limited relief in regard to recovery of past excess payments, to reduce hardship to the innocent employees, who benefited from such wrong interpretation. (emphasis supplied)

23. In the case of **State of Punjab and Others V. Rafiq Masih** (White Washer) and others³, this Court held as under:-

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover. (emphasis supplied)

24. Recently, this Court in **Thomas Daniel V. State of Kerala and Others**, held that the State cannot recover excess amount paid to the ex-employee after the delay of 10 years.

25. The Government Resolution dated 8th February, 1999 to be specific, the highlighted portion supra is amenable to the interpretation that it protects the status and pay of those employees who had received their time bound promotions prior to 31st December, 1995. As a consequence, the Secretary concerned, while rejecting the representation clearly misinterpreted and misapplied the said Resolution to the detriment of the appellant.

26. The learned Single Judge as well as the Division Bench of the High Court of Patna also seem to have fallen in the same error. In addition thereto, we are of the view that any step of reduction in the pay scale and recovery from a Government employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences. Thus, no such action could have been taken against the appellant, more particularly, because he 4 2022 SCC OnLine SC 536 had been promoted as an ADSO, while drawing the pay scale of Rs.6500-10500 applicable to the post, way back on 10th March, 1991 and had also superannuated eight years ago before the recovery notice dated 15th April, 2009 was issued. The impugned action directing reduction of pay scale and recovery of the excess amount is grossly arbitrary and illegal and also suffers from the vice of non-adherence to the principles of natural justice and hence, the same cannot be sustained."

10. Upon applicability of the aforesaid judgement in the present case and considering the facts and circumstances of this case, it is quite evident that re-fixation of pay scale, therefore, is clearly against verdict of Hon'ble Supreme Court in the case of **Jagdish Prasad Singh** (supra) not to mention the Government order dated 16.1.2007.

11. The aforesaid aspect has also been considered in the case of **Sushil Kumar Singhal** (supra) in the following manner:-

"7. Upon perusal of the aforesaid G.O. and the submission made by the learned counsel appearing for the Appellant, it is not in dispute that the Appellant had retired on 31st December, 2003 and at the time of his retirement his salary was Rs. 11,625/- and on the basis of the said salary his pension had been fixed as Rs. 9000/-. Admittedly, if any mistake had been committed in pay fixation, the mistake had been committed in 1986, i.e. much prior to the retirement of the appellant and therefore, by virtue of the aforesaid G.O. dated 16th January, 2007, neither any salary paid by mistake to the Appellant could have been recovered nor pension of the Appellant could have been reduced. "

"11. The submission made on behalf of the learned Counsel appearing for the Respondent that the Appellant would be getting more amount than what he was entitled to cannot be accepted in view of the policy laid down by the Government in G.O. dated 16th January, 2007. If the Government feels that mistakes are committed very often, it would be open to the Government to change its policy but as far as the G.O. dated 16th January, 2007 is in force, the Respondent-employer could not have passed any order for recovery of the excess salary paid to the Appellant or for reducing pension of the Appellant. "

12. Considering aforesaid pronouncements, it is evident that the impugned orders are clearly against the dictum enunciated by Hon'ble the Supreme Court in the aforesaid judgments. In view thereof, the impugned order(s) is/are hereby quashed by issuance of writ in the nature of Certiorari. Further a writ in the nature of Mandamus is issued commanding the opposite parties to determine pension and pensionary benefits admissible to petitioner on the basis of the last pay drawn. Any recovery made from petitioner shall be refunded within six weeks from the date certified copy of this order.

13. Resultantly, the petition succeeds and is allowed.

(2026) 1 ILRA 1359
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 29.01.2026

BEFORE

THE HON'BLE AMITABH KUMAR RAI, J.

Writ A No. 235 of 2004

Jai Prakash Verma
State of U.P. & Ors.

...Petitioner
Versus
...Respondents

Issue for Consideration

- (i) Whether the disciplinary proceedings culminating in the punishment of removal from service were vitiated for non-compliance of Rule 55 of the U.P. Civil Services (Classification, Control and Appeal) Rules, 1930 and principles of natural justice;
- (ii) Whether the punishment order could be sustained where no oral enquiry was conducted and the disciplinary authority differed from the enquiry report without affording opportunity of hearing.

Headnotes

Service Law — Disciplinary proceedings — Major penalty — Non-holding of oral enquiry — Violation of Rule 55 of 1930 Rules:

Held: In disciplinary proceedings involving major penalty, compliance with Rule 55 of the U.P. Civil Services (Classification, Control and Appeal) Rules, 1930 is mandatory — Even where the delinquent does not specifically demand oral enquiry, it is incumbent upon the Enquiry Officer to fix a date and conduct enquiry by examining oral and documentary evidence in support of charges — Where no oral evidence was recorded and the enquiry was concluded merely on the basis of reply to charge-sheet, the proceedings stand vitiated — Such enquiry is non-est in the eyes of law. [Paras 17–18, 23]

Service Law — Disciplinary proceedings — Proof of charges — Requirement of evidence:

Held: Mere production of documents is not sufficient and contents thereof must be proved by examining witnesses — Even in ex parte enquiry, the Enquiry Officer is required to assess whether the evidence adduced is sufficient to prove the charges — In absence of any oral evidence, findings of guilt cannot be sustained. [Paras 19–21]

Service Law — Disciplinary authority — Disagreement with enquiry report — Opportunity of hearing:

Held: Where the disciplinary authority differs from the findings of the Enquiry Officer, it is mandatory to record reasons for disagreement and to furnish the delinquent employee with an opportunity to represent against such tentative conclusions — Failure to do so vitiates the punishment order — The order of removal passed without such opportunity is illegal. [Paras 24–26]

Service Law — Punishment — Removal from service — Validity:

Held: The punishment order dated 02.08.1995 passed in violation of principles of natural justice and statutory rules was liable to be quashed — Consequently, the order rejecting representation for re-employment also could not survive. [Paras 27–28]

Service Law — Relief — Back wages — Continuity of service — Acquittal on benefit of doubt:

Held: Considering that acquittal in criminal case was on benefit of doubt and the petitioner challenged the removal belatedly, arrears of salary were restricted to 25% and confined from the date of filing of writ petition — The petitioner was entitled to continuity of service and consequential benefits including pensionary benefits. [Paras 29–30]

Writ petition allowed. (E-14)

Case Law Cited

Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570 — relied on; State of Uttar Pradesh v. Saroj Kumar Sinha, (2010) 2 SCC 772 — relied on; Nirmala J. Jhala v. State of Gujarat, (2013) 4 SCC 301 — relied on; Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84 — relied on; Lav Nigam v. Chairman & MD, ITI Ltd., (2006) 9 SCC 440 — relied on.

List of Acts / Statutes

U.P. Civil Services (Classification, Control and Appeal) Rules, 1930 (Rule 55); Public Servants Inquiries Act, 1850; Indian Penal Code, 1860 (Section 409).

List of Keywords

Disciplinary proceedings; Oral enquiry; Natural justice; Rule 55; Major penalty; Proof of charges; Disagreement with enquiry report; Removal from service; Back wages; Continuity of service.

Case Arising From

Punishment order dated 02.08.1995 removing the petitioner from service as Collection Amin and order dated 27.11.2003 passed by District Magistrate, Lakhimpur Kheri rejecting representation for re-employment.

Appearance for Parties

For the Petitioner: Sri Mohammad Ali, Sri Avinash Chaturvedi, Ms. Mansi Singh, Sri Mohan Singh, Sri Rahul Singh, Sri Ravindra Singh, Sri Saket Gupta, Sri Vishal Singh
For the Respondents: Learned C.S.C.

(Delivered by Hon'ble Amitabh Kumar Rai, J.)

1. Heard Sri Rahul Singh, learned counsel for the petitioner, and Sri Nitin Mathur, learned Additional Standing Counsel for the State-respondent.

2. The instant writ petition has been filed seeking quashing of the punishment order of removal from service dated 02.08.1995 from the post of Collection Amin, as well as the order dated 27.11.2003 passed by the District Magistrate, Lakhimpur Kheri, whereby the representations of the petitioner dated 20.03.2002 and 18.03.2003 seeking re-employment in service were rejected.

3. The brief facts, shorn of unnecessary details, are that the petitioner was initially appointed to the post of Collection Amin in the year 1988 in Tehsil Dhauraha, District Lakhimpur Kheri. The petitioner was charge-sheeted and placed under suspension vide order dated 19.01.1994 on three charges; firstly, that during the period from 01.11.1993 to 31.12.1993, he made a recovery of only Rs.1,328/- against the outstanding main dues of Rs.46,436/- and a recovery of only Rs.495/- against miscellaneous dues amounting to Rs.2,45,565/-, which was much below the prescribed norms; secondly, that he failed to prepare the list of defaulters in respect of development tax dues amounting to Rs.6,446/- in his assigned area along with the statement of outstanding amounts; and thirdly, that he did not remain present on the fixed dates for filing of returns. In the meantime, criminal proceedings were also initiated against the petitioner and he was arrested by the police on 01.02.1994 and was later released on bail in April 1994.

4. The charge-sheet dated 19.01.1994 was served upon the petitioner on 01.02.1994. Thereafter, the petitioner submitted his reply to the charges vide letter dated 09.04.1994 and also filed Writ Petition No. 1941 (S/S) of 1994 challenging the order of suspension. The said writ petition was disposed of vide judgment and order dated 26.04.1994, whereby a timeline was fixed for completion of the disciplinary proceedings, failing which it was directed that the suspension order would stand revoked. The petitioner served a copy of the order dated 26.04.1994 passed in the aforesaid writ petition upon the authorities vide letter dated 06.05.1994.

5. The Enquiry Officer, thereafter, on the basis of the reply submitted by the petitioner to the charges, submitted an enquiry report dated 20.09.1994. In the meantime, an additional charge-sheet dated 27.05.1994, containing four additional charges, was also issued to the petitioner and was served upon him by the District Magistrate, Kheri. Charge nos. 4 and 5 pertained to allegations of misappropriation of amounts of Rs. 4,181/- and Rs. 1,360/- respectively; Charge no. 6 related to delay on the part of the petitioner in depositing an amount of Rs. 45/- in the Sub-Treasury; and Charge no. 7 alleged that during the period of his suspension, the petitioner failed to hand over the documents in his possession to any other officer or employee, as a result whereof the department faced difficulty in effecting recovery of the said amounts from the concerned persons. In support of the aforesaid charges, reliance was placed upon the report of the Naib Tahsildar, Firozabad dated 06.05.1994 and the report of the Tahsildar, Dhauraha dated 17.05.1994 along with the related records, and the petitioner was directed to submit his written reply to the said charges on or before 08.06.1994.

6. In relation to the aforesaid additional charges, the petitioner submitted an application before the District Magistrate, Kheri dated 06.06.1994, stating therein that he had not been supplied with the report of the Naib Tahsildar, Firozabad dated 06.05.1994, the report of the Tahsildar, Dhauraha dated 17.05.1994, or the related records, on the basis of which the allegations had been levelled against him in the charge-sheet served upon him, and he accordingly requested that the said documents be furnished to him so as to enable him to submit an appropriate and effective reply to the charges.

7. The petitioner did not receive any reply from the District Magistrate, Kheri on the above-made application and proceeded to file his reply to the additional charge-sheet on 24.06.1994, wherein he submitted that the total amount of Rs. 5,541/- alleged to have been misappropriated under Charge nos. 4 and 5 had already been deposited by him on 16.04.1994 through different vouchers in compliance with the order dated 05.04.1994 passed by the learned District Judge on his bail application; with respect to Charge no. 6, it was stated that the collection charges amounting to Rs. 735/-, which were required to be deposited on 10.12.1993, were in fact deposited on 21.12.1993, the delay having occurred due to his sudden illness; and as regards Charge no. 7 relating to non-deposit of his documents in the Tehsil, the petitioner explained that he was arrested on 01.02.1994 and remanded to judicial custody on 02.02.1994, while the suspension order was served upon him only on 01.02.1994, that he remained in jail for about two months, and that he received the order of the Tehsildar only on 17.05.1994 directing him to hand over charge to Shri Ravindra Kumar, who had been appointed in his place, pursuant to which Shri Ravindra Kumar met him on 20.05.1994 and the charge was duly handed over; it was specifically asserted that the delay in handing over charge was neither deliberate nor willful but occurred due to the aforesaid circumstances.

8. Oblivious to the petitioner's reply dated 24.06.1994, the Enquiry Officer proceeded to conclude the enquiry ex parte and submitted an enquiry report dated 26.09.1994, concluding that all seven charges against the petitioner, contained in the two charge sheets dated 19.01.1994 and 27.05.1994, stood proved. The enquiry report dated 26.09.1994 was forwarded to the District Magistrate by the Enquiry Officer (Sub-Divisional Magistrate), who, taking note of the reply dated 24.06.1994 to the additional charge-sheet passed order dated 08.10.1994, remitting the enquiry

back to the Enquiry Officer for submission of fresh enquiry report after taking into consideration the reply submitted by the petitioner.

9. In the meantime, as per the directions of the Hon'ble High Court in Writ Petition No. 1941 (S/S) of 1994; the District Magistrate passed an order dated 22.05.1995 revoking the suspension and reinstating the petitioner in the services as the enquiry could not be completed within the time framed fixed by the Court. It was also mentioned in the said order that as additional charge-sheet was also issued against the petitioner containing serious charges, hence enquiry proceedings would continue against him.

10. Subsequently, the petitioner was served with a fresh enquiry report dated 05.05.1995 submitted by the Enquiry Officer, wherein Charge Nos. 1 and 3 to 7 were held to be partly proved against the petitioner, while Charge No. 2 was found not proved. The said findings were forwarded to the District Magistrate for consideration. The District Magistrate did not concur with the findings of the Enquiry Officer insofar as Charge Nos. 1 and 3 to 7 were concerned, though he concurred with the finding that Charge No. 2 was not proved. Accordingly, a show-cause notice dated 09.06.1995 was issued to the petitioner calling upon him to explain as to why his services should not be terminated and requiring him to submit his reply within 14 days from the date of receipt of the notice. No reply to the show cause notice was submitted by the petitioner, though it was received by the petitioner on 13.06.1995. Thereafter, the District Magistrate passed punishment order of removal dated 02.08.1995 terminating the service of the petitioner.

11. It is also noteworthy that the petitioner did not immediately challenge the order of removal, as a criminal case relating to the charges of embezzlement/misappropriation of government funds had also been instituted against him. In the said criminal case, the petitioner was arrested on 01.02.1994 and was granted bail in April, 1994. Ultimately, the petitioner was acquitted in Criminal Case No. 1803 of 2000 under Section 409 IPC vide judgment and order dated 02.03.2002, granting him the benefit of doubt. After his acquittal, the petitioner submitted representations dated 20.03.2002 and 18.10.2003 seeking re-employment.

12. The representations dated 20.03.2002 and 18.10.2003 were rejected by the District Magistrate, Kheri, vide order dated 27.11.2003. Aggrieved thereby, the petitioner filed the present writ petition challenging both the order of rejection dated 27.11.2003 and the removal order dated 02.08.1995.

13. The petitioner had not challenged the punishment order of removal dated 02.08.1995 immediately, but waited for acquittal in the criminal case and thereafter sought re-employment on the basis of acquittal, which was rejected vide order dated 27.11.2003. The petitioner was also not honorably exonerated in the criminal trial; rather, the benefit of doubt was given, as the charges could not be proved against him.

14. A bare perusal of the enquiry report dated 05.05.1995 reveals that the entire disciplinary proceeding was conducted in utter violation of the statutory provisions contained in the U.P. Civil Services (Classification, Control and Appeal) Rules, 1930 (hereinafter referred to as the "Rules, 1930"). The enquiry report was prepared solely on the basis of the reply of the petitioner to the

charges and no personal hearing was granted to the petitioner by fixing any date, time or place for such hearing.

15. The procedure laid down in Rule 55 of the Rules, 1930 has to be followed before any order of punishment inflicting dismissal, removal, or reduction in rank is passed. It also provides for holding an oral enquiry. Rule 55 of the Rules, 1930 is reproduced hereinbelow:

55. (1) Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order (other than an order based on facts which had led to his conviction in a criminal court or by a Court Martial) of dismissal, removal or reduction in rank (which includes reduction to a lower post or, time-scale or to a lower stage in a time-scale but exclude the reversion to a lower post of a person who is officiating in a higher post) shall be passed on a person who is member of a Civil Service or holds a civil post under the State unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced in the form of definite charge or charges which shall be communicated to the person charged and which shall be so clear and precise as to give sufficient indication to the charged Government servant of the facts and circumstances against him. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires, or if the autho-ry concerned so directs, an oral enquiry shall be held in respect of such of the allegations as are not admitted. At that enquiry such oral evidence will be heard as the inquiring officer considers necessary. The person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the enquiry may, for sufficient reasons to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof. The officer conducting the enquiry may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Government servant.

(2) Where the punishing authority itself inquiries into any charge or appoints an inquiring officer for holding an enquiry into such charge, the punishing authority, if it considers it necessary to do so, may, by an order, appoint a Government servant or a legal practitioner, to be known as 'Pre-senting Officer' to present the case on its behalf in support of the charge.

(3) The Government servant may take the assistance of any other Gov-ernment servant to present the case on his behalf, but not engage a legal practitioner for the purpose unless the presenting officer appointed by the punishing authority is a legal practitioner or the punishing authority having regard to the circumstance of the case, so permits.

(4) This rule shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may, for sufficient reasons to be recorded in writing, be waived, where there is difficulty in observing exactly the requirements of the rule and those requirements can in the opinion of the inquiring officer be waived without injustice to person charged.

(5) This rule shall also not apply where it is proposed to terminate the employment of either temporary Government servant or of a probationer whether during or at the end of the period of probation, In such cases a simple notice of termination, which in the case of a temporary Government servant, must conform to the conditions of his service, will be sufficient.

16. It is made clear that Rule 55 of the Rules, 1930 has been made applicable to the members of the subordinate services vide Rule 1-A(5), vide Notification No. 2627/11-264 dated 08.08.1932, issued under Rule 54 of the Rules, 1930.

17. The requirement under Rule 55 of the Rules, 1930 for an oral enquiry is that if the delinquent employee so desires, or if the concerned authority so directs, an oral enquiry shall be held in respect of such allegations as are not admitted.

18. In the instant case, the charge-sheet dated 19.01.1994 specifically posed a question to the petitioner as to whether he required any oral enquiry and examination/cross-examination of any witness, and if so, the same was to be informed through his reply to the charge-sheet. The additional charge-sheet dated 20.05.1994 also poses the same question. However, the reply to the charge-sheet filed by the petitioner on 24.06.1994 does not reflect that the petitioner, at any stage, requested an oral enquiry. It appears that the Enquiry Officer, in the absence of any such request by the petitioner, proceeded with the departmental enquiry relying upon the reply submitted by the petitioner to the charges. Such approach of the Enquiry Officer in holding the oral enquiry cannot be appreciated. Even if the delinquent employee does not request for personal hearing the burden of proving the charges normally being upon the department, the enquiry officer was under obligation to fix a date for such enquiry, with information to the delinquent and to conduct enquiry wherein he was required to examine documentary as well as oral evidence, if any, in support of the charges.

19. The Hon'ble Supreme Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a major punishment is mandatory. Reference in this regard may be held to **Roop Singh Negi v. Punjab National Bank⁹ and Nirmala J. Jhala v. State of Gujarat : (2013) 4 SCC 301.**

20. In the case of **Roop Singh Negi (Supra)**, Hon'ble Supreme Court held that mere production of documents is not enough, contents of documentary evidence have to be proved by examining witnesses. Relevant extract thereof reads as under :-

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect

evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

.....

19. *The judgment and decree passed against the respondent in Narinder Mohan Arya case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. ..."*

21. Same view was reiterated in **State of Uttar Pradesh v. Saroj Kumar Sinha : (2010) 2 SCC 772** wherein, Hon'ble Supreme Court has held that even in an ex-parte inquiry, it is the duty of the Inquiry Officer to examine the evidence presented by the Department to find out whether the un rebutted evidence is sufficient to hold that the charges are proved. The relevant observations made in **Saroj Kumar Sinha (Supra)** are as follows :-

"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

.....

33. *As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet."*

22. In the case of **Nirmala J. Jhala (Supra)**, Hon'ble Supreme Court held that evidence recorded in a preliminary inquiry cannot be used for a regular inquiry as the delinquent is not associated with it and the opportunity to cross-examine persons examined in preliminary inquiry is not given. Relevant extract thereof reads as under :-

“42. A Constitution Bench of this Court in Amalendu Ghosh v. North Eastern Railway [AIR 1960 SC 992], held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in Champaklal Chimanlal Shah v. Union of India [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under : (AIR p. 1862, para 12)

“12. ... There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article [, nor prior to that]. ”

44. In Narayan Dattatraya Ramteerthakhar v. State of Maharashtra [(1997) 1 SCC 299 : 1997 SCC (L&S) 152 : AIR 1997 SC 2148] this Court dealt with the issue and held as under:

“..... a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence. ”

45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.

23. In view of the above principles of law laid down by Hon'ble Supreme Court, this Court holds that the enquiry proceedings conducted against the petitioner pertains to charges punishable with major penalty, stood vitiated and non-est in the eyes of law as no oral evidence was recorded by the Enquiry Officer in support of the charges.

24. The Enquiry Officer, in his enquiry report dated 05.05.1995, has held the second charge not proved, whereas charges Nos.1 and 3 to 7 were partially proved. However, the disciplinary authority, while passing the order of punishment dated 02.08.1995, held charges Nos. 4 to 7 fully proved.

25. Thus, the disciplinary authority differed with the findings of the Enquiry Officer but did not give any opportunity to the petitioner by stating reasons for such disagreement, so as to enable the petitioner/delinquent employee to counter the findings recorded by the disciplinary authority before the passing of the punishment order.

26. The Hon'ble Supreme Court, in the cases of **Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84** and **Lav Nigam v. Chairman & MD, ITI Ltd., (2006) 9 SCC 440**, has held that in the event of a different view taken by the disciplinary authority, than that of Enquiry officer, then in such situations, the disciplinary authority is bound to give a notice stating its tentative conclusions to the delinquent officer so that he may have an opportunity to represent against such findings and persuade the disciplinary authority to accept the favourable conclusions of the Enquiry Officer.

27. This Court is of the view that such an approach adopted by the disciplinary authority/District Magistrate in passing the punishment order dated 02.08.1995, by recording disagreement with the finding of the Enquiry Officer but not putting the delinquent employee on notice stating its tentative conclusion is patently illegal in view of the judgments of the Hon'ble Supreme Court cited hereinabove. Consequently, the punishment order dated 02.08.1995, whereby the petitioner was inflicted with the punishment of removal, is liable to be set aside and is accordingly quashed. Normally, for such procedural defect in disciplinary proceeding, the matter is remitted back to the disciplinary authority for holding fresh proceedings from the stage the defect has crept in. However, in the instant case, the allegations relates to the year 1993-1994 and hence, it would be not viable to remit the matter back for holding fresh enquiry after more than 30 years and as such the matter is not being remitted back for holding fresh enquiry.

28. Since this Court has already quashed the removal order dated 02.08.1995, the order dated 27.11.2023 rejecting the petitioner's representation for re-engagement loses its significance.

29. Keeping in view the fact that the acquittal of the petitioner in the criminal trial vide judgment and order dated 02.03.2002 in Case Crime No. 32 of 1994 under Section 409 I.P.C., Police Station Dhorhara, District Kheri, in Criminal Case No.1803 of 2000, was on the basis of benefit of doubt, it would be proper that the petitioner be allowed arrears of salary to the extent of 25 percent of salary admissible to him. Taking into consideration the fact that the petitioner did not challenge the punishment order dated 02.08.1995 till his exoneration in the criminal trial, which concluded on 02.03.2002, and thereafter challenged the punishment order by filing a writ petition in January, 2004, this Court is of the view that the relief to the petitioner, as a consequence of the quashing of the punishment order dated 02.08.1995, should be confined to arrears of salary from January, 2004, when he challenged the removal order for the first time by filing the writ petition, and not for the earlier period, i.e., from 02.08.1995 till December, 2003.

30. The services of the petitioner shall be treated as continuous, and his entire period from the date of removal till the date of reinstatement shall be treated as qualifying service for pensionary and other benefits. He shall be entitled to all other service benefits, including pay increments, as admissible under the government orders issued from time to time. In case the petitioner has already attained the age of superannuation, he shall be allowed pension along with arrears of salary by treating him to be in continuous service from the date of removal till the date of superannuation. The arrears of salary will be admissible in the manner as indicated in the preceding paragraph.

31. The petitioner shall be granted all the benefits as directed above within a period of three months from the date of production of a certified copy of this order.

32. The writ petition stands **allowed**.

33. No order as to costs.

34. Before parting with, I acknowledge the assistance of Mr. Piyush Sinha, Research Associate, who assisted the Court in research relating to the present case.

(2026) 1 ILRA 1369
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.01.2026

BEFORE

THE HON'BLE PIYUSH AGRAWAL, J.

Writ A No. 15313 of 2025

Kuldeep Kumar

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Whether the claim of the petitioner for compassionate appointment, rejected in the year 2010, could be entertained in a writ petition filed after about 15 years, in absence of satisfactory explanation for delay and on the plea of parity with similarly situated persons.

Headnotes

Service Law — Compassionate appointment — Delay and laches — Inordinate delay — Discretion under Article 226:

Held: The jurisdiction under Article 226 of the Constitution is discretionary and equitable and a litigant must approach the Court with reasonable promptitude — Where the cause of action arose in the year 2010 and the writ petition was filed in 2025 after an unexplained delay of about 15 years, the petitioner was guilty of delay and laches — Such inordinate delay disentitles the petitioner from any relief — The plea of continuing cause of action is misconceived once the order has attained finality. [Para 8]

Service Law — Compassionate appointment — Object — Delay — Effect:

Held: The object of compassionate appointment is to provide immediate financial assistance to the family of the deceased employee — Where a long lapse of time has occurred since the death of the employee and the family has survived, the very basis for grant of compassionate appointment ceases to exist — Delay in approaching the Court militates against such claim. [Paras 9–10]

Service Law — Compassionate appointment — No vested right — Scheme based appointment:

Held: Compassionate appointment is an exception to the general rule of equality in public employment and can be claimed only in accordance with the applicable scheme or rules — There is no vested right to claim such appointment and the claim must fall strictly within the scheme — A minor at the time of death of the employee does not acquire a right to seek appointment upon attaining majority unless permitted by the scheme. [Para 10]

Service Law — Public employment — Article 14 — Exception — Delay:

Held: Appointment on compassionate grounds being an exception to the general rule of recruitment based on equality of opportunity cannot be claimed after long lapse of time — Once it is evident that the family has survived the crisis, there is no justification to deviate from the normal rule of appointment. [Para 11]

Service Law — Writ jurisdiction — Delay — Relief:

Held: In view of inordinate and unexplained delay and settled legal principles governing compassionate appointment, the writ petition was liable to be dismissed without entering into the merits of the claim. [Para 12]

Writ petition dismissed. (E-14)

Case Law Cited

Director of Town Panchayat v. M. Jayabal, SLP (C) Nos. 8780–8783 of 2023 — relied on; Shiv Kumar Dubey v. State of Uttar Pradesh, (2014) 2 ADJ 312 (FB) — relied on; Steel Authority of India Ltd. v. Gouri Devi, Civil Appeal No. 6910 of 2021 — relied on; State of J & K v. Sajad Ahmed Mir, (2006) 5 SCC 766 — relied on.

List of Acts / Statutes

Constitution of India.

List of Keywords

Compassionate appointment; Delay and laches; Inordinate delay; Article 226; No vested right; Public employment; Exception to equality; Continuing cause of action.

Case Arising From

Order dated 27.04.2010 passed by Chief General Manager (Administration) rejecting the petitioner's claim for compassionate appointment.

Appearance for Parties

For the Petitioner: Sri Sushil Kumar Shukla

For the Respondents: Learned C.S.C., Sri Rajni Ojha, Sri Sunil Kumar Misra

(Delivered by Hon'ble Piyush Agrawal, J.)

1. Heard Sri Ayush Mishra holding brief of Sri S.K Mishra, learned counsel for the petitioner and Sri Dilip Kumar Kesarwani, learned counsel for the state.

2. The present writ petition has been filed by the petitioner challenging the order dated 27.04.2010 passed by Chief General Manager (Administration)/respondent no. 2 and further for a mandamus directing the respondent no. 2 to decide the reminder dated 07.05.2010 of the petitioner and provide appointment to the petitioner on compassionate ground.

3. The facts as stated in the petition are that the petitioner's father, Late. Sri Naresh Chand, was appointed as driver in Bhaishali Depo of Meerut Region, Meerut of the corporation and died on 29.04.1997. At the time of death of the father, the petitioner was minor hence, the widow Smt. Chandra Devi (mother of the petitioner) filed a representation dated 25.07.1997 with the prayer to give appointment after the petitioner attained the age of maturity. The petitioner submitted a representation along with all required documents on 16.12.2004 but the respondents could not consider the claim of the petitioner. Therefore, the petitioner filed Writ Petition A. No. 49560 of

2007 (Kuldeep Versus The General Manager), and the Hon'ble High Court, considering the claim of petitioner, disposed of the same vide order dated 21.07.2008 directing the respondents to decide the same. However, the same has not been considered by the respondents. Thereafter, the petitioner filed Contempt Application (Civil) No. 1701 of 2010 which was disposed of vide order dated 09.04.2010 with the observation that opposite party no. 2 shall decide the representation of the applicant and intimate him of the order to the self-addressed within a week thereafter. In compliance of the order dated 09.04.2010, respondent no. 2 (Administration) rejected the claim of the petitioner vide order dated 27.04.2010 with the finding that the petitioner's claim cannot be considered as per government order dated 11.07.2003, the claim of compensate appointment opportunity ended by virtue of U.P. Road Transport Corporation vide impugned order dated 27.04.2010. The petitioner met several times personally to respondent no. 2 and requested to consider his compassionate appointment but the same has neither been denied nor accepted and is making pendency till date. However, after issue of notification of compassionate appointment for the 1165 posts of conductor in respondents' department came to the knowledge of the petitioner, he submitted a representation before the authorities and also to the minister of U.P. State Road Transport. From perusal of the circular order dated 01.05.2025 and consequential order dated 05.05.2025, the petitioner feels aggrieved. Hence, the present writ petition.

4. Learned counsel for the petitioner further submits that the impugned order is arbitrary, illegal and violative of Articles 14, 16 and 21 of the Constitution of India. It is contended that similarly situated employees have been granted the benefits which have been denied to the petitioner.

5. Per Contra, learned counsel for the respondents has vehemently opposed the petition and submits that the present writ petition is liable to be dismissed at the threshold on the account of gross delay and laches alone without going into the merit of the case. He further submits that the impugned order dated 27.04.2010 rejecting the petitioner's claim was passed approximately 15 years ago and the present petition has been filed in the year 2025, showing an inordinate delay to which the petitioner has not provided any satisfactory explanation and chose to remain silent for over 15 years, which clearly demonstrates acquiescence and waiver of his rights. He further submits that entertaining such a belated petition would cause grave prejudice to the respondents as administrative arrangements have been settled over the past 15 years.

6. After hearing learned counsel for the parties, the Court has perused the records.

7. It is not in dispute that the petitioner's mother filed a representation on 25.07.1997 seeking compassionate appointment for the petitioner after he attained majority. Further, the petitioner filed Writ Petition No. 49560 of 2007 which was disposed of on 21.07.2008 directing the respondents to decide the representation after which the petitioner filed Contempt Application No. 1701 of 2010 which was disposed of on 09.04.2010 directing the respondents to decide the representation. However, the respondents passed the impugned order dated 27.04.2010 rejecting the petitioner's claim on the ground of time bar. Also, the petitioner admits that he came to know about the notification for 1165 posts and thereafter, filed the present petition.

8. The jurisdiction under Article 226 of the Constitution of India is discretionary and equitable in nature. A person who invokes such jurisdiction is expected to approach the Court with reasonable promptitude. Delay and laches disentitle a litigant to discretionary relief. In the present case, the cause of action admittedly arose in the year 2010, whereas the petitioner has approached this Court in the year 2025 after an unexplained delay of about 15 years. The explanation offered by the petitioner is wholly unsatisfactory and does not inspire confidence. The plea of continuing cause of action is misconceived. Once an order has been passed and allowed to attain finality, the same cannot be reopened after decades under the garb of a continuing wrong.

9. The Hon'ble Supreme Court in **"The Director of Town Panchayat v. M. Jayabal & S. Veeramani S.L.P. (C) Nos.8780-8783 of 2023"** has exhaustively dealt with the issue of delay and laches in service matters. In paragraph 15 of the judgment, the Hon'ble Supreme Court has held as under:

"15. It is a settled principle of law that delay in filing of writ petition before the High Court is fatal for grant of relief to the party. This principle is more applicable in the cases of compassionate appointments. The idea behind compassionate appointment is to take care of immediate financial crisis in the family of the deceased employee. In such case, the delay would mean that the family could survive even after death of the employee, as they may be having another source of income. In such circumstances, the party approaching the court with a significant delay can be denied the relief."

10. Further, this Court in **"Shiv Kumar Dubey v. State of Uttar Pradesh (2014) 2 ADJ 312 (FB)"** held as under:-

"29) (i) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic object and purpose which is sought to be achieved;

(ii) There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner;

(iv) In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family; its liabilities, the terminal benefits received by the family; the age, dependency and marital status of its members, together with the income from any other sources of employment;

(v) Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out;

.....

(viii) Provisions for the grant of compassionate appointment do not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family.”

11. Similarly, in **Steel Authority of India Limited v. Gouri Devi** by judgment dated **18.11.2021** passed in **Civil Appeal No.6910/2021**, the Hon’ble Supreme Court held that delay in pursuing claim and approaching the court would militate against claim for compassionate appointment as very objective of providing immediate amelioration to family would stand extinguished. In the case of **State of J & K and others Vs. Sajad Ahmed Mir reported in (2006) 5 SCC 766**, the Supreme Court has held that: -

“11. We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought 'compassion', the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the 5 Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution.”

12. In view of the aforesaid discussions and the legal principles applying to the facts of the present case, this Court is of the firm view that the present writ petition is liable to be dismissed on the ground of inordinate and unexplained delay and laches without going into the merits of the case.

13. Accordingly, the writ petition is **dismissed**. No order as to costs.

(2026) 1 ILRA 1373
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.01.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal From Order No. 2491 of 2019

Mohd. Zahir

Chairman U.P.S.R.T.C. Lko

...Appellant

Versus

...Respondent

Issue for Consideration

- (i) Whether the finding of the Tribunal regarding contributory negligence of the scooter driver to the extent of 40% was sustainable;
- (ii) Whether the claimant was entitled to enhancement of compensation, particularly with respect to functional disability, future prospects and non-pecuniary heads.

Headnotes

Motor Vehicles Act, 1988 — Accident — Negligence — Contributory negligence — Burden of proof — Standard of proof:

Held: The claimant is required to establish negligence on the touchstone of preponderance of probabilities and not beyond reasonable doubt — The testimony of injured witness coupled with police papers including charge-sheet is sufficient to establish negligence — In absence of examination of driver of offending vehicle, adverse inference arises — The finding of the Tribunal attributing 40% contributory negligence to the scooter driver was perverse and liable to be set aside — The accident was caused due to sole negligence of the driver of the offending bus. [Paras 27–33]

Motor Vehicles Act, 1988 — Compensation — Permanent disability — Functional disability — Assessment:

Held: The Tribunal is not bound by the percentage of permanent disability mentioned in the disability certificate and must assess functional disability with reference to nature of work of the claimant — Where the claimant, a salesman, suffered amputation of right leg below knee and was rendered incapable of performing duties involving standing and movement, the functional disability is to be treated as 100% — The Tribunal erred in treating disability as 50% for computing compensation. [Paras 35, 41, 45]

Motor Vehicles Act, 1988 — Compensation — Future prospects — Permanent disability — Applicability of Rule 220-A, U.P. Motor Vehicles Rules, 1998:

Held: In cases of permanent disability, compensation towards future prospects is admissible — Where the claimant was below 40 years of age at the time of accident, addition of 50% towards future prospects is warranted — The Tribunal erred in not awarding compensation under this head. [Paras 43–44]

Motor Vehicles Act, 1988 — Compensation — Interest and non-pecuniary heads — Enhancement:

Held: The claimant is entitled to interest at the rate of 7% per annum in terms of Rule 220-A of the Rules, 1998 — The compensation awarded under non-pecuniary heads was inadequate and required enhancement — The total compensation was accordingly re-determined. [Paras 46–48]

Motor Vehicles Act, 1988 — Appeal — Enhancement of compensation — Liability:

Held: The appeal filed by UPSRTC challenging negligence and liability was liable to be dismissed — The appeal filed by the claimant for enhancement deserved to be allowed and the award modified accordingly — The enhanced compensation along with interest was directed to be paid by UPSRTC with adjustment of amount already paid. [Paras 49–52]

Appeal by UPSRTC dismissed; appeal by claimant allowed. (E-14)

Case Law Cited

ICICI Lombard General Insurance Co. Ltd. v. Rajani Sahoo, (2025) 2 SCC 599 — relied on; Ranjeet v. Abdul Kayam Neb, 2025 SCC OnLine SC 497 — relied on; Khenyei v. New India Assurance Co. Ltd., (2015) 9 SCC 273 — relied on; Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 — relied on; Sarnam Singh v. Sriram General Insurance Co. Ltd., (2023) 8 SCC 193 — relied on; Pappu Deo Yadav v. Naresh Kumar, (2022) 13 SCC 790 — relied on; Sidram v. Divisional Manager, United

India Insurance Co. Ltd., (2023) 3 SCC 439 — relied on; FAFO No.2581 of 2011, Sushil Kumar & Another vs. M/S Sampark Lojastic Pvt. Ltd. & Another, decided on 26.04.2017

List of Acts / Statutes

Motor Vehicles Act, 1988; U.P. Motor Vehicles Rules, 1998.

List of Keywords

Motor accident; Negligence; Contributory negligence; Functional disability; Permanent disability; Future prospects; Compensation enhancement; Interest; Sole negligence.

Case Arising From

Judgment and award dated 17.03.2008 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.7, Meerut in Motor Accident Claim Petition No. 682 of 2004.

Appearance for Parties

For Appellant: Smt. Anju Shukla, Sri Nigamendra Shukla

For Respondent: Sri S.K. Misra.

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

1. FAFO. No. 1698 of 2008 has been preferred under Section 173 of the Motor Vehicles Act, 1988 by the owner-UPSRTC of the offending Bus No.UP-21L-0405 against the impugned judgment and award dated 17.03.2008 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.7, Meerut in Motor Accident Claim Petition No. 682 of 2004 (Mohd. Zaheer vs. UPSRTC), whereby, for the injuries suffered by the claimant in a road accident that occurred on 18.12.2003, a compensation of Rs. 1,98,600/- along with interest at the rate of 6% per annum has been awarded to the claimant, which has been ordered to be indemnified by the owner-UPSRTC of the offending Bus No.UP-21L-0405.

2. FAFO No. 2491 of 2019 has also been preferred by the claimant under Section 173 of the Motor Vehicles Act, 1988 for enhancement of compensation, against the impugned judgment and award dated 17.03.2008 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.7, Meerut in Motor Accident Claim Petition No. 682 of 2004 (Mohd. Zaheer vs. UPSRTC), whereby, for the injuries suffered by the claimant in a road accident that occurred on 18.12.2003, a compensation of Rs. 1,98,600/- along with interest at the rate of 6% per annum has been awarded to the claimant, which has been ordered to be indemnified by the owner-UPSRTC of the offending Bus No.UP-21L-0405.

3. Since, both the appeals arise from the same impugned judgment and award, as such, they are being heard and decided together by this common judgment.

4. Learned counsel for the appellant-UPSRTC submitted that the claimant alleged that on the date of the accident, he was travelling as a pillion rider on Scooter No.DL-1-SB-0460, which collided head-on with the offending bus No.UP-21-L-0405, which was wholly improbable.

5. It was submitted that the factum of the accident was wholly doubtful and even if it is assumed that the accident was indeed caused, even then, from the evidence on record, it was proved

that it occurred due to the sole negligence of the scooter driver, who was not made party in the claim petition. It was further submitted that the Tribunal has erroneously concluded that there was only 40% contributory negligence of the scooter driver, whereas, as per the evidence on record, it was 100%.

6. With these submissions, it was prayed that the appeal be allowed and the claim petition be dismissed.

7. Per-contra, learned counsel for the claimant-respondent submitted that from the evidence on record, it was proved that the accident occurred head-on, when claimant was travelling as a pillion rider on the above scooter and at the time of the accident, the offending bus was being driven in a rash and negligent manner.

8. It was further submitted that due to the injuries suffered by the claimant, his right leg below knee was amputated due to which, he has suffered 100% functional disability, because he was unable to work as a salesman in a Saree Shop.

9. It was submitted that prior to the accident, the claimant was working as a salesman in a Saree Shop, but after the accident due to the permanent disability suffered by him, he was unable to do that work, which was also proved from the evidence of his employer PW-2 Sanjay, but still the Tribunal has assessed compensation on the basis that the claimant only suffered 50% functional disability, as was mentioned in the permanent disability certificate, which was erroneous.

10. Learned counsel submitted that the Tribunal was not bound by the percentage of permanent disability mentioned in the disability certificate and should have assessed independently the quantum of functional disability, but it has failed to do so.

11. It was further submitted that the claimant was entitled to compensation towards loss of future prospects due to permanent disability at the rate of 50%, in accordance with Rule 220-A of the U.P. Motor Vehicle Rules, 1998; however, the Tribunal has not awarded any compensation under this head.

12. It was also submitted that the Tribunal has awarded inadequate compensation under the non-pecuniary heads and has granted interest on the compensation at the rate of 6% per annum, whereas, under the aforesaid Rules, the claimant was entitled to interest at the rate of 7% per annum.

13. With these submissions, it was prayed that the appeal preferred by the Insurance Company be dismissed, and the appeal preferred by the claimant for enhancement of compensation, be allowed.

14. I have heard the learned counsel of both the sides and perused the record of the lower court.

15. Before the Tribunal, the claimant examined himself as PW-1, Sanjay as PW-2, Dr. Rajeev Singh as PW-3, Mohd. Usman as PW-4, Dr. Ravindra Singh as PW-5 and Dr. Praveen Jain as PW-6, whereas, no oral evidence was adduced by the UPSRTC.

16. The claimant, Mohd. Zaheer PW-1 deposed that on the day of accident, he was travelling with Yaseen as a pillion rider on scooter from Meerut-Mawana road, then in Chhota Mawana in front of dairy, near a transformer, a roadways bus no.UP-21-L-0405, which was being driven in a rash and negligent manner by its driver, came from the opposite side, and the bus hit his scooter by coming to the wrong side of the road due to which he fell down and suffered grievous injuries, the accident occurred at 3:30 PM. In this accident, his right leg was badly crushed, he got 31 stitches in his body, he was admitted to Divya Jyoti Hospital. He remained admitted for about 15 days in that hospital. He further deposed that due to the injuries suffered in the accident, his right leg was crushed and was amputated below knee.

17. He further deposed that at the time of the accident, the scooter was being driven by Yaseen in a controlled speed towards the left side of the road. He further deposed that prior to the accident, he was working in Bhavik Sari Centre, Mawana and was getting a salary of Rs.3,600/- per month, but due to the permanent disability suffered in the accident, he has been fired from the job and is not able to work anymore. His family was dependent on his income. He has now got no source of income. He further deposed that he has filed his permanent disability certificate, which was obtained from Pyare Lal Sharma Hospital, Meerut. In cross-examination, the claimant deposed that the offending bus came from the front, from the side of Bada Mawana. He was going from Chhota Mawana to Bada Mawana, and after the accident, he became unconscious. He was admitted to Divya Jyoti Nursing Home, Ganganagar, Meerut by the passer-by and he regained consciousness after five days.

18. During cross-examination, he deposed that he can not stand for a long duration and requested the court to permit him to sit down on a chair, and his cross examination was conducted seated on a chair. He further deposed that he has been fired from his job after the accident. He further deposed that as a salesman, he used to sell sarees, ladies suit salwar, pant shirt pieces and his job was to carry the above items, fold them, keep them in the proper place in the shop and also he used to display the above clothes to the proposed buyers, who came to the shop.

19. The employer of the claimant Sanjay was examined as PW-2, who deposed that he owns a shop in the name and style of M/s Bhavik Saree Centre in Mawana, in which the claimant used to work, who was being paid a salary of Rs.3,600/- per month in cash. This witness has proved the salary certificate of the claimant. He further deposed that in the accident, the right leg of the claimant has been amputated below knee, due to which, he is not able to do any job now and for this reason, he has been fired from the job and he has employed another person in claimant's place. In cross-examination, this witness deposed that he has employed a person, namely Aslam in place of the claimant, who was being paid the same salary as was being paid to the claimant. He admitted that he has got no documentary proof of payment of salary to the claimant, but disclosed that he was earning about Rs.20,000/- per month from his shop. He denied the suggestion that the claimant was not employed at his shop, who was not being paid salary of Rs.3,600/- per month.

20. Dr. Rajeev Singh PW-3 deposed that due to the injuries sustained by the claimant in the accident on 18.12.2003, his liver was lacerated and right leg was crushed, which was operated by him and the leg was amputated below knee and the claimant remained admitted in his hospital from 18.12.2003 to 02.01.2004. In cross-examination, he deposed that the claimant's leg was amputated in his nursing home.

21. Mohd. Usman PW-4 deposed that on 18.12.2003 at about 3:30 p.m., on the Meerut-Mawana Road, the claimant was travelling on a scooter belonging to his brother Yaseen, then a roadways bus bearing No. UP-21-L-0405, which was being driven in a rash and negligent manner, came to the wrong side of the road and collided head-on with the scooter, as a result of which the persons travelling on the scooter sustained serious injuries. He further deposed that he and other persons present on the spot, took the injured in a DCM vehicle for treatment to Divya Jyoti Nursing Home, Ganganagar, Meerut, where the claimant was admitted. The driver of the offending bus was apprehended and shortly afterwards, the police also arrived to whom the driver of the offending bus was handed. He further deposed that he got the FIR registered at Police Station Mawana at 5:30 PM, in which the police had inquired from him and the site plan was also prepared at this instance. In the cross examination, this witness deposed that he saw the accident from a distance of about one hundred meter and the scooter was being driven by his brother Mohd. Yaseen. He admitted that he himself did not give any information to the police but some passer-by had informed the police. He also deposed that after the accident, a crowd had gathered on the road, and the traffic was jammed. He further deposed that the driver side of the bus collided with the scooter and with the help of the police, the claimant was admitted to the hospital. He further admitted that he had gone to his house for informing the family members regarding the accident, but he denied the suggestion that he did not saw the accident and was not present at the site of the accident. He denied the suggestion that the accident was caused due to the rash and negligent driving of the scooter driver.

22. PW-5 Dr. Ravindra Singh, Senior Orthopaedic Specialist, District Hospital, Meerut was examined as PW-5, who has proved the disability certificate, issued to the claimant which disclosed that he has suffered permanent disability of 50% due to the amputation of right leg below the knee. He further deposed that due to the disability, the claimant must be having difficulty in doing his daily routine work, and he was further disabled from doing any work, which he was doing prior to the accident. In the cross examination, this witness failed to disclose the functional disability suffered by the claimant due to the permanent disability. He also deposed that the abdomen of the claimant was also operated.

23. It is apparent that the Insurance Company has not cross-examined this witness (PW-5) as to whether the claimant could still work as a salesman at a Saree Shop even after the permanent disability suffered by him in the accident.

24. The claimant also examined Dr. Praveen Jain as PW-6, who deposed that he was a plastic surgeon, who had treated the claimant on 18.12.2003 in Divya Jyoti Speciality Hospital, Ganganagar, Meerut, who had examined the injured right leg of the claimant, which was found badly crushed below knee, in which both the bones were found fractured and there was also compound dislocation of the ankle joint and all muscles were also crushed. He further deposed that

there was no sensation, movement or blood flow in the right leg of the claimant and hence had advised the amputation of right leg below knee. He further deposed that on 18.12. 2003, he along with Dr. Manoj Gupta and Dr. Rajeev Singh had amputated the right leg of the claimant below knee. Dr. Rajeev Singh had operated the abdomen of the claimant, while Dr. A Mukherji was present as anesthetist.

25. The Apex Court in the case of ***ICICI Lombard General Insurance Company Limited vs. Rajani Sahoo and Others (2025) 2 SCC 599***, has held as under:-

"8. As regards the reliability of charge-sheet and other documents collected by the police during the investigation in motor accident cases, this Court in Mangla Ram v. Oriental Insurance Co. Ltd. [(2018) 5 SCC 656 : (2018) 3 SCC (Civ) 335 : (2018) 2 SCC (Cri) 819 : 2018 INSC 311] , held in para 27, thus : (SCC p. 672)

"27. Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 and 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4701 was driven rashly and negligently by Respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet filed by the police, naming Respondent 2. This Court in a recent decision in Dulcina Fernandes [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] , noted that the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge-sheet against Respondent 2 prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal case, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the tribunal."

9. It is true that the Tribunal had looked into the oral and documentary evidence including the FIR, final report and such other documents prepared by the police in connection with the accident in question. The Tribunal had also taken note of the fact that based on the final report, the driver of the offending truck was tried and found guilty for rash and negligent driving. The High Court took note of such aspects and found no illegality in the procedure adopted by the Tribunal and consequently dismissed the appeal.

10. In the contextual situation it is relevant to refer to a decision of this Court in Mathew Alexander v. Mohd. Shafi [(2023) 13 SCC 510 : 2023 INSC 621] , this Court held thus : (SCC p. 514, para 12)

"12. .. A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of

preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in *Dulcina Fernandes v. Joaquim Xavier Cruz* [(2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] which has referred to the aforesaid judgment in *Bimla Devi* [*Bimla Devi v. Himachal RTC*, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101].”

11. Thus, there can be no dispute with respect to the position that the question regarding negligence which is essential for passing an award in a motor vehicle accident claim should be considered based on the evidence available before the Tribunal. If the police records are available before the Tribunal, taking note of the purpose of the Act it cannot be said that looking into such documents for the aforesaid purpose is impermissible or inadmissible.

12. It is also a fact that the appellant had attributed that the respondent claimants connived with police and fraudulently prepared the charge-sheet. The contention is that the vehicle insured with the appellant was not involved in the accident and the accident had occurred solely due to the rash and negligence on the part of the deceased. But the evidence on record would reveal that pursuant to the filing of the final report, cognizance was taken for rash and negligent driving which resulted in the death of Udayanath Sahoo.”

(emphasis supplied)

26. The Apex Court in the case of *Ranjeet and another vs. Abdul Kayam Neb and another* 2025 SCC OnLine SC 497, has held as under:-

"4. It is settled in law that once a charge sheet has been filed and the driver has been held negligent, no further evidence is required to prove that the bus was being negligently driven by the bus driver. Even if the eyewitnesses are not examined, that will not be fatal to prove the death of the deceased due to negligence of the bus driver."

(emphasis supplied)

27. It is apparent from the evidence of claimant PW-1, who is an injured witness, that he was travelling as a pillion rider on scooter no.DL-1-SB-0460 at the time of the accident, then the offending bus came from the opposite side and collided head-on with the scooter, which was not contradicted by the UPSRTC by examining the driver of the offending bus before the Tribunal.

28. It is well settled that in order to contradict the finding of negligence, the offending driver must have been examined by the appellant-UPSRTC before the Tribunal, but no such endeavour was made by it.

on the ground that after the accident he went to his house for informing the family members regarding the accident which was unusual, as such, he cannot be an eyewitness of the accident, which is a perverse finding.

30. It is well settled that the claimants are not supposed to prove the accident and the negligence of the offending bus driver beyond reasonable doubt and only they have to prove it on the preponderance of probabilities, which they have proved.

31. It was further proved from the evidence of the claimant, who was an injured witness and eyewitness PW-4, that at the time of the accident, the scooter was being driven towards the left side of the road, which was hit head-on by the offending bus, as such, there was no occasion for the Tribunal to assume that the scooter driver contributed 40% to the accident.

32. Merely on the basis that right palm of scooter driver and right leg of the claimant came in contact with the body of the bus, it cannot be presumed that if the scooter driver was cautious, then the accident could have been averted. It is apparent that since right leg of the claimant was injured, the tribunal has presumed composite negligence of scooter driver in the accident, which is a perverse finding. It is further apparent that since scooter driver was not party to the claim petition, this finding of composite negligence, could not have been recorded by the tribunal and keeping in view the judgment of the Apex Court in the case of ***Khenyei vs New India Assurance Co. Ltd. and others (2015) 9 SCC 273***, the claimant was entitled to claim compensation from any tortfeasor i.e. either from scooty driver or from the bus driver/owner but the claimant has chosen to claim compensation from the owner of bus, UPSRTC.

33. The above finding of the Tribunal insofar as the contributory negligence of the driver of the scooter is concerned, is liable to be set-aside and is accordingly set-aside and it is held, that the accident occurred due to the sole negligence of the driver of the offending bus no.UP-21-L-0405, which was being driven in a rash and negligent manner at the time of the accident.

34. It is further apparent that in the criminal case after investigation, a charge-sheet has been submitted against the offending bus driver Mohd. Aslam, under Sections 279, 337, 338, 427 IPC, on which cognizance has been taken by the competent criminal court, who has not been examined by the UPSRTC, to prove that he was driving his bus cautiously with controlled speed at the time of the accident and there was no negligence on his part in the accident.

35. From the evidence of PW-3, PW-5 and PW-6, it was proved that due to the injuries suffered by the claimant in the accident, his right leg was badly crushed, which was amputated below knee, due to which he has suffered 50% permanent disability, which was proved by examining PW-5, Dr. Ravindra Singh.

36. The Apex court in the case of ***Raj Kumar vs. Ajay Kumar and Another (2011) 1 SCC 343***, while analysing how to determine compensation in cases of permanent disability, has held as under:-

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the

percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and *Yadava Kumar v. National Insurance Co. Ltd.* [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567])

37. The Apex Court in the case of ***Sarnam Singh vs. Sriram General Insurance Co. Ltd. & Ors. (2023) 8 SCC 193***, while analysing when partial disability will amount to 100% earning capacity loss, held as under:-

10. As to how compensation, in case where permanent disability of an injured affects his functional disability, is to be assessed has been considered by this Court, repeatedly. Reference can be made to the judgment of this Court in *Mohan Soni v. Ram Avtar Tomar* [*Mohan Soni v. Ram Avtar Tomar*, (2012) 2 SCC 267 : (2012) 1 SCC (Civ) 747 : (2012) 1 SCC (Cri) 641] . In the aforesaid case the injured was working as a cart puller. As a result of the accident, his left leg was amputated. His permanent disability was assessed at 60%. The Tribunal assessed the compensation taking the loss of earning at 50% on the theory that he can still do some other work while sitting. The High Court did not disturb the finding regarding loss of income on account of disability. This Court found that the Tribunal was in error in taking the loss of earning at 50% as the injured was 55 years of age and it may be difficult for him to find a job at that stage. In fact, any physical disability resulting from an accident has to be judged with reference to the nature of the work being performed by the person who suffered disability. The same injury suffered by two different persons may affect them in different ways. Loss of leg by a farmer or a rickshaw puller may be end of the road as far as his earning capacity is concerned. Whereas, in case of the persons engaged in some kind of desk work in office, loss of leg may have lesser effect. This Court enhanced the loss of earning capacity from 50% to 90%.

11. Applying the same principle to the case in hand, we find that the appellant herein was working as a gunman with Bharat Hotel Limited. On account of amputation of his right leg above the knee, he was terminated from service w.e.f. 31-5-2015. It is not a matter of dispute that a person with his right leg amputated cannot perform the duty of a gunman. This is his functional

disability. He was 50 years & 5 months old at the time of accident. Considering the aforesaid facts, in our view, the Tribunal was right in assessing the loss of earning capacity of the appellant at 100% and assessing the compensation accordingly. The High Court was in error in reducing the loss of earning capacity to 80%, relying upon the judgment [Shri Ram General Insurance Co. Ltd. v. Sarnam Singh, 2017 SCC OnLine Del 13011] of the High Court, despite there being a judgment of this Court available on the issue.

38. The Apex Court in the case of **Pappu Deo Yadav vs. Naresh Kumar (2022) 13 SCC 790 (By Three Judges)** while considering the issue of awarding compensation for loss of future prospects in cases of permanent disablement from motor accident, held as under:-

7. Two questions arise for consideration : one, whether in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects too; and two, the extent of disability. On the first question, the High Court no doubt, is technically correct in holding that Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] involved assessment of compensation in a case where the victim died. However, it went wrong in saying that later, the three-Judge Bench decision in Jagdish [Jagdish v. Mohan, (2018) 4 SCC 571 : (2018) 3 SCC (Civ) 102 : (2018) 2 SCC (Cri) 572] was not binding, but rather that the subsequent decision in Anant [Anant v. Pratap, (2018) 9 SCC 450 : (2018) 4 SCC (Civ) 378 : (2018) 3 SCC (Cri) 756] to the extent that it did not award compensation for future prospects, was binding. This Court is of the opinion that there was no justification for the High Court to have read the previous rulings of this Court, to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading of Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] is illogical, because it denies altogether the possibility of the living victim progressing further in life in accident cases ? and admits such possibility of future prospects, in case of the victim's death.

39. The Apex Court in the case of **Sidram vs. Divisional Manager, United India Insurance Co. Ltd. & Another (2023) 3 SCC 439**, while directing that in cases of serious permanent disability, compensation for future prospects should also be awarded, held as under:-

31. It is now a well-settled position of law that even in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects as well. We have come across many orders of different tribunals and unfortunately affirmed by different High Courts, taking the view that the claimant is not entitled to compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. That is not a correct position of law. There is no justification to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases-and admits such possibility of future prospects, in case of the victim's death.

40. A Division Bench of this Court in ***FAFO No.2581 of 2011, Sushil Kumar & Another vs. M/S Sampark Lojastic Pvt. Ltd. & Another***, decided on 26.04.2017 has held that even if the accident occurred prior to 26.09.2011, the claimants are entitled to compensation on future prospects as per amended Rule 220-A of the UP Motor Vehicle Rules, 1998, since it is a beneficial legislation.

41. It is well settled that in a case of permanent disability, the Tribunal is not bound by the quantum of permanent disability mentioned in the disability certificate and it has to independently assess the functional disability, keeping in view, the nature of the job, which was being performed by the claimant before the accident. In each case, the Tribunal has to assess whether after the accident, the claimant is in a position to do the same work, which he was doing prior to the accident.

42. From the evidence of Sanjay PW-2, it was proved that the claimant was working as a salesman in a garment shop, in which, Sarees, Suit Salwar, Pant-Shirt was sold and he was paid a salary of Rs.3,600/- per month. Although, the Tribunal has disbelieved the salary certificate issued by the PW-2 and has assessed the monthly income of the claimant at Rs.3000/-, which is perfectly justified, since PW-2 failed to submit any documentary proof of his income from the shop.

43. As per ***Rule 220-A of the UP Motor Vehicle Rules, 1998***, even in cases of permanent disability, the claimant is entitled to get compensation for loss of future income due to the permanent disability at the rate of 50%, if he was below 40 years old at the time of the accident.

44. It is apparent that the Tribunal has not awarded any compensation towards loss of future prospects, due to the disability to the claimant, whereas since he was only 36 year old at the time of the accident, he was entitled to get it at the rate of 50%, in accordance with ***Rule 220-A of the U.P. Motor Vehicle Rules, 1998***.

45. From the evidence of PW-2 it was proved that the claimant was employed as a salesman in his garment shop, who was fired from his job after accident due to the permanent disability suffered by him. It is apparent that, owing to the amputation of his right leg below the knee, the claimant became incapable of sitting cross-legged, standing up frequently, or standing for long durations, which rendered him unfit to perform the duties of a salesman after the accident, and for this reason, he was fired from his job. In view of this, it will be deemed that the claimant has suffered 100% functional disability due to injuries suffered in the accident.

46. As per ***Rule 220-A of the U.P. Motor Vehicle Rules, 1998***, the claimant was entitled to interest at the rate of 7% per annum on the compensation awarded; however, the Tribunal has awarded it @ 6% per annum, which requires enhancement.

47. It is also apparent that the Tribunal has awarded inadequate amount of compensation under non-pecuniary heads, which requires substantial enhancement, keeping in view, the various precedents of the Apex Court.

48. In view of the above statutory law and precedents of the Apex Court, the compensation payable to the claimant is redetermined as under:-

S.No.	Compensation Heads	Amount Awarded(in Rs.)	In Accordance with.
1.	Monthly Income of the claimant	3,000/-	<i>As determined by the tribunal</i>
2.	Annual income of the claimant	3,000X12= 36,000/-	<i>As determined by the tribunal</i>
3.	Add future prospects @50% since claimant was about 36 years old	18,000/-	<i>UP Motor Vehicle Rules,1998, Pappu Deo Yadav(supra) and Sidram(supra)</i>
4.	Total annual loss of future income due to 100% functional disability	36,000+18,000=54,000/-	<i>UP Motor Vehicle Rules,1998, Pappu Deo Yadav(supra) and Sidram(supra)</i>
5.	Multiplier applied since age of claimant was about 36 years	15	<i>Pranay Sethi (supra)</i>
6.	Total future loss of income due to 100% functional disability	54,000X15=8,10,000/-	<i>Pranay Sethi(supra) Raj Kumar(supra) and Sarnam Singh(supra)</i>
7.	Compensation towards pain,suffering and loss of amenities	1,00,000/-	-
8.	Special diet and transportation expenses	25,000/-	-
9.	Treatment expenses	38,000/-	<i>As awarded by the tribunal</i>
10.	Total compensation	9,73,000/-	

49. In this way, the claimant is entitled to total compensation of Rs.9,73,000/- alongwith interest @ 7% per annum from the date of filing of the claim petition till it's actual payment, which is to be indemnified by the owner-UPSRTC of the offending Bus No.UP-21L-0405.

50. Accordingly, FAFO No.1698 of 2008 preferred by the UPSRTC is dismissed.

51. FAFO No.2491 of 2019 preferred by the claimant for enhancement of compensation is allowed. The award of the tribunal dated 17.03.2008 is modified to the above extent.

52. If any amount has been paid by the UPSRTC previously, then it is entitled to adjust the amount accordingly. UPSRTC is directed to deposit the enhanced amount of compensation before the concerned tribunal within two months.

53. Office is directed to remit the statutory deposit made by the appellant UPSRTC in FAFO No.1698 of 2008 to the concerned tribunal, forthwith.

54. Interim order, if any, in FAFO No. 1698 of 2008, stands vacated.

(2026) 1 ILRA 1386
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.01.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

FAFO No. 1282 of 2017

Laxman Prasad Mishra & Anr.

...Appellants

Versus

National Insurance Company Ltd. & Ors. ...Respondents

Issue for Consideration

Whether the compensation awarded by the Tribunal required enhancement with respect to (i) computation of income of the deceased, (ii) grant of future prospects, (iii) application of correct multiplier, and (iv) non-pecuniary heads.

Headnotes

Motor Vehicles Act, 1988 — Compensation — Determination of income — Gross salary — Allowances — Deduction of income tax:

Held: The gross salary of the deceased including allowances such as house rent allowance and family planning allowance is to be considered for computation of compensation — Deduction of such allowances by the Tribunal was erroneous — Only statutory deductions such as income tax are permissible — The Tribunal further erred in deducting excess amount towards income tax instead of actual tax payable after permissible rebate. [Paras 16–20]

Motor Vehicles Act, 1988 — Compensation — Future prospects — Relevance of pension and compassionate appointment:

Held: Family pension received by the spouse and compassionate appointment granted to a dependent are not relevant factors for denying compensation towards future prospects — Such benefits are independent and cannot be treated as pecuniary advantage deductible from compensation — The claimants were entitled to

addition of 20% towards future prospects in terms of Rule 220-A of the U.P. Motor Vehicles Rules, 1998 — The Tribunal erred in denying the same. [Paras 26–28]

Motor Vehicles Act, 1988 — Compensation — Non-pecuniary heads — Enhancement:

Held: The amount awarded by the Tribunal under non-pecuniary heads such as consortium, loss of estate and funeral expenses was inadequate and required enhancement in light of settled principles laid down by the Supreme Court. [Para 22]

Motor Vehicles Act, 1988 — Appeal — Enhancement of compensation — Re-determination:

Held: Upon proper computation of income, addition of future prospects, application of correct multiplier and enhancement under non-pecuniary heads, the compensation payable to the claimants was liable to be substantially enhanced — The award of the Tribunal was modified accordingly and the insurer directed to pay the enhanced compensation with interest. [Paras 29–31]

Appeal allowed. (E-14)

Case Law Cited

**National Insurance Co. Ltd. v. Indira Srivastava, (2008) 2 SCC 763 — relied on; Shyamwati Sharma v. Karam Singh, (2010) 12 SCC 378 — relied on; Manasvi Jain v. Delhi Transport Corporation Ltd., (2014) 13 SCC 22 — relied on; Sebastiani Lakra v. National Insurance Co. Ltd., (2019) 17 SCC 465 — relied on; Hanumantharaju B. v. M. Akram Pasha, 2025 SCC OnLine SC 1106 —
relied on;
National Insurance Co. Ltd. v. Rekhaben, (2017) 13 SCC 547 — relied on;**

List of Acts / Statutes

Motor Vehicles Act, 1988; U.P. Motor Vehicles Rules, 1998 (Rule 220-A); Income Tax Act, 1961 (Section 80-C);

List of Keywords

Motor accident; Compensation; Gross salary; Allowances; Income tax deduction; Multiplier; Future prospects; Pension; Compassionate appointment; Non-pecuniary damages; Enhancement.

Case Arising From

Judgment and award dated 31.01.2017 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.1, Gorakhpur in MACP No. 322 of 2013.

Appearance for Parties

For the Appellants: Sri Amit Kumar Sinha, Smt. Deepali Srivastava Sinha
For the Respondents: Sri Rajesh Kumar.

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

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 for enhancement of compensation has been preferred by the claimants against the impugned judgment and award dated 31.01.2017 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.1, Gorakhpur, in MACP No. 322 of 2013 (Laxman Prasad Mishra and another vs. Brijesh Singh and others), whereby, for the untimely death of Smt. Kusumlata Mishra in a motor accident that occurred on 02.05.2013, a compensation of Rs.11,93,204/- along with interest at the rate of 7% per annum has been awarded to the claimants, which has been ordered to be indemnified by the insurer of the offending Bus No.UP53-BT-7702.

2. Since no cross appeal has been filed by the owner, driver and insurer of the offending vehicle, as such, the factum of accident and negligence of the offending driver is not disputed by the respondents.

3. Learned counsel for the claimants-appellants submitted that Kusumlata Mishra (deceased) was employed as a supervisor with the Department of Women and Child Welfare in Hata, District Kushinagar and was getting a gross salary of Rs.40,156/- per month, which was also proved by PW-3 Vijay Laxmi Ojha.

4. It was further submitted that the deceased was about 58 years old at the time of the accident, but no compensation towards future prospects of the deceased was granted by the Tribunal, whereas the claimants were entitled to get it at the rate of 20%, as per ***Rule 220-A of the U.P. Motor Vehicle Rules, 1998.***

5. It was further submitted that the Tribunal has illegally not considered the house rent allowance and family planning allowance paid to the deceased for assessing compensation, whereas the gross salary being paid to the deceased should have been considered for assessing the compensation.

6. It was further submitted that on the gross salary of the deceased, which was Rs.4,81,872/- per annum, after claiming rebate of Rs.1,00,000/-, towards Section 80-C of the Income Tax Act, 1961, an income tax of Rs.18,800/- was payable, which should have been deducted by the Tribunal for assessing compensation, but the Tribunal has deducted an amount of Rs.21,543/- towards income tax payable by the deceased, which was excessive.

7. It was further submitted that keeping in view the age of the deceased, which was about 58 years at the time of the accident, a multiplier of 9 was to be applied for assessing compensation, but the Tribunal has applied a multiplier of only 4, which requires enhancement.

8. It was further submitted that the Tribunal has awarded inadequate amount of compensation under non-pecuniary heads, which requires substantial enhancement.

9. With these submissions, it was prayed that the appeal preferred by the appellants be allowed and enhanced compensation be paid to them.

10. Per-contra, learned counsel for the respondent-Insurance Company submitted that the Tribunal has considered the aspect of grant of compensation for future prospects to the claimants, but has concluded that since the husband of the deceased was getting family pension of Rs.23,632/- per month and the son of the deceased was also offered compassionate appointment, as such, on this ground, the Tribunal refused to award any compensation towards future prospects of the deceased, which was perfectly justified and requires no interference from this Court in exercise of its appellate jurisdiction.

11. It was further submitted that in the facts and circumstances of the case, the Tribunal has awarded the right amount of compensation to the claimants, which does not warrant any enhancement from this Court in exercise of its appellate jurisdiction.

12. With these submissions, it was prayed that the appeal preferred by the claimants be dismissed.

13. I have heard the learned counsel of both the parties and perused the impugned judgment and documents submitted with the appeal.

14. The Apex Court in the case of *National Insurance Company Ltd vs Indira Srivastava & Ors (2008) 2 SCC 763* has held that the amount paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit and from the said amount of income, the statutory amount of tax payable thereupon must be deducted. It was further held that net income would ordinarily mean gross income minus the statutory deductions.

15. The Apex Court in the case of *Shyamwati Sharma & Ors vs Karam Singh & Ors (2010) 12 SCC 378 and Manasvi Jain Vs. Delhi Transport Corporation Ltd. & Ors. (2014) 13 SCC 22 (By 3 Judges)* has held that while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased.

16. In view of the above law laid down by the Apex Court, it is clear that all the allowances being paid to the deceased by his employer should be considered while assessing the compensation in a claim case and only the amount deducted towards income tax and surcharge should be considered to arrive at the net income of the deceased.

17. It is well settled that the gross salary of the deceased-employee is to be considered for assessing the compensation in a claim case, as such, the amount deducted by the Tribunal towards house rent allowance and family planning allowance being paid to the deceased, is erroneous.

18. It is apparent that the gross monthly salary of the deceased was Rs. 40,156/- which amounts to Rs.4,81,872/- per annum, which was duly proved by PW-3, Vijay Laxmi Ojha, and was also accepted by the Tribunal. However, the Tribunal deducted a sum of Rs. 11,040/- towards house rent allowance and Rs. 5,400/- towards family planning allowance and thereafter, assessed the annual income of the deceased as Rs. 4,65,432/-. From the said amount, a further sum of Rs. 21,543/- was deducted towards income tax, and the Tribunal consequently assessed the compensation on the basis of the net annual income of Rs. 4,43,889/-, which is erroneous.

19. It is apparent that no amount being paid to the deceased towards house rent allowance and family planning allowance could have been deducted while assessing the compensation.

20. It is further apparent that after claiming rebate under Section 80-C of the Income Tax Act, 1961, only an amount of Rs.18,800/- was payable by the deceased towards income tax, which should have been deducted from the gross annual salary of the deceased, which was Rs.4,81,872/-, but the Tribunal has deducted an amount of Rs.21,543/-, which was excessive. If an amount of Rs.18,800/- payable towards income tax is deducted from the gross salary of the deceased, which was Rs.4,81,872/- per annum, then the net annual salary of the deceased comes to Rs.4,63,072/-, on the basis, of which, compensation should have been calculated by the Tribunal, but the Tribunal has calculated the compensation by taking the net salary of the deceased at only Rs.4,43,889/-, which requires enhancement.

21. It is further apparent that as per the date of birth 10.12.1954 recorded in the service book of the deceased, she was about 58 years old at the time of the accident and a multiplier of 9 was to be applied for assessing the compensation, as per the decision of the Apex Court in *Pranay Sethi* (supra), but the Tribunal has assessed the compensation by applying multiplier of 4, which requires enhancement.

22. It was further apparent that the Tribunal has awarded inadequate amount of compensation towards non pecuniary heads, which deserves substantial enhancement, keeping in view, the judgment of the Apex Court in *Pranay Sethi* (supra), **Magma General Insurance Company Ltd. (supra)** and **Rahul Ganpatrao Sable (supra)**.

23. The Apex Court in the case of *Sebastiani Lakra and others vs. National Insurance Company Limited* and another, (2019) 17 SCC 465, (By 3 Judges), while discussing the amount which are to be deducted for assessment of compensation has held as under:

12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependants or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependants are entitled to just compensation under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependants as a result of some contract or act which the deceased performed in his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependants only after his death.

13. As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependants is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, share,

debentures, etc. The tortfeasor cannot take advantage of the foresight and wise financial investments made by the deceased.

14. As far as the amounts of pension and gratuity are concerned, these are paid on account of the service rendered by the deceased to his employer. It is now an established principle of service jurisprudence that pension and gratuity are the property of the deceased. They are more in the nature of deferred wages. The deceased employee works throughout his life expecting that on his retirement he will get substantial amount as pension and gratuity. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted.

15. As held by the House of Lords in *Parry v. Cleaver* [*Parry v. Cleaver*, 1970 AC 1 : (1969) 2 WLR 821 : 1969 ACJ 363 (HL)] the insurance amount is the fruit of premium paid in the past, pension is the fruit of services already rendered and the wrongdoer should not be given benefit of the same by deducting it from the damages assessed.

16. Deduction can be ordered only where the tortfeasor satisfies the court that the amount has accrued to the claimants only on account of death of the deceased in a motor vehicle accident.

24. The Apex Court in the case of ***Hanumantharaju B. through LR vs. M. Akram Pasha and another, 2025 SCC Online SC 1106***, while discussing whether the pension payable to the claimant can be deducted for computing his income, has held as under:
19. It is also now well settled that the amount of compensation is to be calculated on the basis of last drawn salary of the injured/deceased in respect of salaried persons and pension and such retirement benefits enjoyed cannot be deducted for computing the income, these being statutory rights receivable by the employee or his legal heirs irrespective of any unforeseen incident of accidents, fatal injuries etc. and such pensionary benefit is not directly relatable to the motor accident. Hence, pensionary benefit could not have been treated as ?pecuniary advantage? liable to be deducted for the purpose of computation of compensation within the scope of Motor Vehicles Act, 1988.

For this proposition of law, we may refer to the decision in *Vimal Kanwar v. Kishore Dan* (2013) 7 SCC 476, wherein this Court, by referring to the earlier decision in *Helen C. Rebello v. Maharashtra SRTC* (1999) 1 SCC 90, held as follows:?

“19. The aforesaid issue fell for consideration before this Court in *Helen C. Rebello v. Maharashtra SRTC* [(1999) 1 SCC 90 : 1999 SCC (Cri) 197]. In the said case, this Court held that provident fund, pension, insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a ?pecuniary advantage? receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as ?pecuniary advantage? liable for deduction. The following was the observation and finding of this Court : (SCC pp. 111-12, para 35)

“35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz. accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly, any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as pecuniary advantage? liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any co-relation. The insured (the deceased) contributes his own money for which he receives the amount which has no co-relation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual.”

Thus, this Court has categorically held that any amount receivable on account of PF, pension or insurance cannot be deducted from the salary of the victim for the purpose of determining the income or loss of earning for calculating compensation. This principle was reiterated in *Reliance General Insurance Co. Ltd. v. Shashi Sharma* (2016) 9 SCC 627 and *National Insurance Company Ltd. v. Birender* (2020) 11 SCC 356.

25. The Apex Court in the case of **National Insurance Co. Ltd. vs Rekhaben & Ors. (2017) 13 SCC 547** held as under:-

22. In the present cases, the claimants were offered compassionate employment. The claimants were not offered any sum of money equal to the income of the deceased. In fact, they were not offered any sum of money at all. They were offered employment and the money they

receive in the form of their salary, would be earned from such employment. The loss of income in such cases cannot be said to be set off because the claimants would be earning their living. Therefore, we are of the view that the amount earned by the claimants from compassionate appointments cannot be deducted from the quantum of compensation receivable by them under the Act.

23. In the cases before us, compensation is claimed from the owner of the offending vehicle who is different from the employer who has offered employment on compassionate grounds to the dependants of the deceased/injured. The source from which compensation on account of the accident is claimed and the source from which the compassionate employment is offered, are completely separate and there is no co-relation between these two sources. Since the tortfeasor has not offered the compassionate appointment, we are of the view that an amount which a claimant earns by his labour or by offering his services, whether by reason of compassionate appointment or otherwise is not liable to be deducted from the compensation which the claimant is entitled to receive from a tortfeasor under the Act. In such a situation, we are of the view that the financial benefit of the compassionate employment is not liable to be deducted at all from the compensation amount which is liable to be paid either by the owner/the driver of the offending vehicle or the insurer.

26. It is further apparent that the Tribunal has not awarded any compensation towards future prospects of the deceased on the ground that the husband of the deceased was getting a family pension of Rs.23,632/- per month and the son of the deceased has been given compassionate appointment in place of the deceased, which is erroneous, because the above factors were not at all relevant for considering compensation in this case.

27. It is apparent from the above law laid down by the Apex Court that the family pension being paid to the husband of the deceased and the fact of compassionate appointment of the son is not at all relevant for assessing compensation in a claim case and on this basis, the claimants should not have been denied compensation towards future prospects of the deceased.

28. It is apparent that, as per **Rule 220-A of the U.P. Motor Vehicle Rules, 1998**, the claimants were entitled to get compensation towards future prospects of the deceased at the rate of 20% of his income, which has not been awarded by the Tribunal.

29. In view of the above statutory law and precedents of the Apex Court, the compensation payable to the claimants is redetermined as under:-

S.No.	Compensation Heads	Amount Awarded (in Rs.)	In Accordance with.
1.	Gross annual salary of the deceased	4,81,872/-	Salary Certificate of the deceased
2.	Less income tax payable on this salary	18,800/-	Salary Certificate of the deceased

S.No.	Compensation Heads	Amount Awarded (in Rs.)	In Accordance with.
3.	Net annual salary of the deceased	4,63,072	Salary Certificate of the deceased
4.	Less 1/3rd deduction towards self expenses of the deceased (2 dependents)	1,54,357/-	Pranay Sethi (supra)
5.	Net annual income on which claimants were dependent	3,08,715/-	Pranay Sethi (supra)
6.	Add future prospects @20% since deceased was aged about 58 years	61,743/-	Rule 220-A of UP Motor Vehicle Rules, 1998
7.	Total annual dependency of claimants on deceased	3,70,458/-	Pranay Sethi (supra)
8.	Multiplier applied since age of deceased was about 58 years at the time of the accident	9	Pranay Sethi (supra)
9.	Total loss of dependency to the claimants	3,70,458X9=33,34,122/-	Pranay Sethi (supra)
10.	Loss of consortium @Rs.40,000/- each, increased by 10% after every 3 years (2 claimants)	48,400X2=96,800/-	Pranay Sethi (supra), Magma General Insurance Co. Ltd. (supra) and Rahul Ganpatrao Sable (supra)
11.	Loss of estate @ Rs.15,000/- increased by 10% after every 3 years.	18,150/-	Pranay Sethi (supra)
12.	Funeral Expenses @ Rs.15,000/- increased by 10% after every 3 years.	18,150/-	Pranay Sethi (supra)
13.	Total compensation	34,67,222/-	

30. In this way, the claimants are entitled to total compensation of Rs.34,67,222/- alongwith interest @ 7% per annum from the date of filing of the claim petition till it's actual payment, which is to be indemnified by the insurer of the offending Bus No.UP53-BT-7702.

31. Accordingly, the appeal is allowed. The award of the tribunal is modified to the above extent.

32. If any amount has been paid by the insurance company previously, then the insurance company is entitled to adjust it accordingly. The insurance company is directed to deposit the enhanced amount of compensation before the concerned tribunal within two months. The tribunal will be at liberty to proportionally award the enhanced amount of compensation to the claimants keeping in view their age and dependency.

(2026) 1 ILRA 1395
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.01.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

FAFO No. 2841 of 2016

Smt. Kashmiri & Ors.

...Appellants

Versus

U.P.S.R.T.C. & Anr.

...Respondents

Issue for Consideration

Whether the compensation awarded by the Tribunal required enhancement with respect to (i) determination of income of the deceased in absence of documentary proof, (ii) grant of future prospects, (iii) deduction towards personal expenses, (iv) application of correct multiplier, and (v) non-pecuniary heads.

Headnotes

Motor Vehicles Act, 1988 — Compensation — Determination of income — Absence of documentary proof — Minimum wages:

Held: Where no documentary evidence of income is produced, the Tribunal is required to assess income on the basis of minimum wages of an unskilled worker prevailing at the relevant time — Assessment of notional income at Rs.15,000/- per annum was grossly inadequate — The income of the deceased was liable to be determined on the basis of minimum wages applicable in the State. [Paras 12–14]

Motor Vehicles Act, 1988 — Compensation — Future prospects — Deceased below 40 years:

Held: In terms of Rule 220-A of the U.P. Motor Vehicles Rules, 1998, where the deceased was below 40 years of age, addition of 50% towards future prospects is mandatory — The Tribunal erred in not awarding any compensation under this head. [Paras 15, 19]

Motor Vehicles Act, 1988 — Compensation — Deduction towards personal expenses — Bachelor — Large dependent family:

Held: Although ordinarily 50% deduction is made in case of a bachelor, where the deceased was the sole bread-earner of a large dependent family, deduction towards personal expenses may be restricted to one-third — The remaining two-third income is to be treated as contribution to the family. [Paras 21–23]

Motor Vehicles Act, 1988 — Compensation — Multiplier — Age of deceased:

Held: The deceased being about 22 years of age at the time of accident, the appropriate multiplier applicable was 18 — The Tribunal erred in applying multiplier of 16, resulting in under-assessment of compensation. [Para 19]

Motor Vehicles Act, 1988 — Compensation — Non-pecuniary heads — Consortium — Enhancement:

Held: The claimants are entitled to compensation under conventional heads including consortium, loss of estate and funeral expenses in accordance with settled principles laid down by the Supreme Court — The

amount awarded by the Tribunal under these heads was inadequate and required enhancement. [Paras 16–20]

Motor Vehicles Act, 1988 — Appeal — Enhancement of compensation — Re-determination:
Held: Upon proper determination of income, addition of future prospects, appropriate deduction towards personal expenses, application of correct multiplier and enhancement under non-pecuniary heads, the compensation payable to the claimants was liable to be substantially enhanced — The award of the Tribunal was modified accordingly. [Paras 24–26]

Appeal allowed. (E-14)

Case Law Cited

Gurpreet Kaur v. United India Insurance Co. Ltd., 2022 SCC OnLine SC 1778 — relied on; Jitendra v. Sadiya, 2025 SCC OnLine SC 261 — relied on; National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 — relied on; Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130 — relied on; Rahul Ganpatrao Sable v. Laxman Maruti Jadhav, (2023) 13 SCC 334 — relied on; Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121 — relied on

List of Acts / Statutes

Motor Vehicles Act, 1988; U.P. Motor Vehicles Rules, 1998 (Rule 220-A)

List of Keywords

Motor accident; Compensation; Minimum wages; Notional income; Future prospects; Bachelor; Personal expenses; Multiplier; Consortium; Enhancement.

Case Arising From

Judgment and award dated 30.04.2016 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.7, Bulandshahr in MACP No. 266 of 2014.

Appearance for Parties

For the Appellants: Sri Nigamendra Shukla

For the Respondents: Sri Sanjeev Kumar Yadav.

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

1. Heard Sri Nigamendra Shukla, learned counsel for the appellants and Sri Sanjeev Kumar Yadav, learned counsel for the respondents.

2. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 for enhancement of compensation has been preferred by the claimants against the impugned judgment and award dated 30.04.2016 passed by Shri. Sunil Kumar, the Motor Accident Claims Tribunal/Additional District Judge, court no.7, Bulandshahr, in MACP No.266 of 2014 (Smt. Kashmiri Devi and others vs. U.P.S.R.T.C. and another), whereby, for the untimely death of Ankit in a road accident which occurred on 10.06.2014, a compensation of Rs.2,60,000/- along with interest at the rate of 7% per annum has been awarded to the claimants(mother,sister and brothers), which has been ordered to be indemnified by the owner U.P.S.R.T.C. of the offending Bus No. UP-15AT-4097.

3. Since no cross appeal has been filed by the owner and driver of the offending vehicle, as such, the factum of accident and negligence of offending driver is not disputed by the respondents.

4. Learned counsel for the claimants-appellants submitted that deceased Ankit was a bachelor aged about 22 years at the time of accident, who was a labourer earning about Rs.9,000/- per month on which claimants were dependent, but the tribunal has assessed the notional income of the deceased @ Rs.15,000/- per annum, which is grossly inadequate. It was further submitted that claimants were also entitled to get compensation for future prospects of the deceased @50%, but the tribunal has not awarded any compensation on this account, which is erroneous. It was further submitted that the tribunal has awarded inadequate compensation under non pecuniary heads. It was further submitted that keeping in view the age of the deceased, a multiplier of 18 was to be applied for assessing the compensation but the tribunal has applied a multiplier of 16, which requires enhancement.

5. It was further submitted that since the father of the deceased had already died before the accident, the claimants were entirely dependent on the deceased, as such, only 1/3rd amount should be deducted towards the personal expenses of the deceased.

6. With these submissions it was prayed that appeal be allowed and enhanced compensation be paid to the claimants.

7. Per contra, learned counsel for the respondent-U.P.S.R.T.C. submitted that since no documentary proof of occupation and income of the deceased was submitted by the claimants, the tribunal has rightly assessed the compensation by taking the notional income of the deceased into consideration. It was further submitted that the deceased was studying in class 12 at the time of accident, who was not earning anything, hence, the tribunal has awarded the right amount of compensation which warrants no enhancement from this Court in exercise of its appellate jurisdiction.

8. With these submissions, it was prayed that claimants appeal be dismissed.

9. I have heard the learned counsel of both the sides, perused the impugned judgment and documents submitted with the appeal

10. The Apex Court in the case of **Gurpreet Kaur and Others vs. United India Insurance Company Ltd. and Others 2022 SCC OnLine SC 1778**, held as under:-

“8. Though, there is no evidence on record regarding the income of deceased Pyara Singh, however, from the testimony of P.W.4 - Amar Kumar, Assistant Manager, Kotak Mahindra Bank Limited, it is clear that the deceased - Pyara Singh was regularly making the payment of Rs. 11,550/- as instalment to discharge his loan liability towards the tractor. At this rate, the entire loan was paid back within a year or so. That clearly establishes the earning capacity of the deceased. It is also the case of the appellants-claimants that the deceased was working as a contractor and was earning Rs. 50,000/- per month. The Tribunal adopted a balanced approach and keeping in view factors like : (i) the payment of monthly instalment of Rs. 11,550/- towards loan of the tractor; (ii) Maintaining a family comprising of wife, two minor children and parents; (iii) Affording tractor and motorcycle; (iv) that the deceased was working as a contractor; assessed his income at Rs. 25,000/- per month.

9. In our considered view, the Tribunal's approach is quite justified in law as well as on facts. In the summary proceedings where the approach of the Tribunal's determination must be in conformity with the object of the welfare legislation, it was rightly held that the monthly income of the deceased could not be less than Rs. 25,000/-. The reason assigned by the High Court to reduce the monthly income of the deceased is totally cryptic and has no rationale. **The Notification of Minimum Wages Act can be a guiding factor only in a case where there is no clue available to evaluate monthly income of the deceased.** Where positive evidence has been led, no reliance on the Notification could be placed, particularly when it was nobody's case that the deceased was a labourer as presumed by the High Court.”

(emphasis supplied)

11. The Apex Court in the case of **Jitendra vs. Sadiya & Others 2025 SCC OnLine SC 261**, held as under:-

“10. We have heard the learned counsel for the Appellant. We are unable to agree with the view taken by the Tribunal and High Court on the income of the Appellant and the functional disability suffered by him. At the outset, we must refer to the exposition of this Court in *Gurpreet Kaur v. United India Insurance Company Ltd.* 2022 SCC OnLine SC 1778., wherein it was stated the notifications under the Minimum Wages Act can be a guiding factor in cases where there is no evidence available to evaluate monthly income.”

12. The claimants claimed that the deceased was a labourer who was earning about Rs.9,000/- per month, which was also proved from the evidence of the mother of the deceased Smt. Kashmiri Devi PW-1, who also admitted that deceased was studying in class 12 at the time of accident. Merely because the deceased was studying in Class 12, it cannot be presumed that he was not earning anything. It is apparent that claimants failed to submit any documentary proof of income and occupation of the deceased, as such, the tribunal has assessed the compensation on the basis of notional income of the deceased by presuming that he was earning Rs.15,000 per annum, which is grossly inadequate.

13. It is well settled that in the absence of documentary proof of income and occupation of the deceased, the tribunal was supposed to assess the compensation by treating the deceased to be an unskilled workman and was required to assess the compensation on the basis of minimum wages of an unskilled workman prevailing in the State of Uttar Pradesh at the time of accident, which was Rs.6,362/- per month.

14. In view of this, the claimants are entitled to get compensation on the basis that the deceased was earning Rs.6,362/- per month.

15. **Rule 220-A of the UP Motor Vehicle Rules, 1998** w.e.f. 26.09.2011, mandates that when the deceased was aged below 40 years on the date of accident, the claimants are also entitled to compensation on future prospects @50% of his income.

16. The Constitutional Bench of the Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi & Ors. (2017) 16 SCC 680** has awarded loss of consortium of Rs.40,000/- and Rs.15,000/- each towards loss of estate and funeral expenses, which is to be enhanced at the rate of 10% after every three years.

17. The Apex Court in the case of ***Magma General Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram & others, (2018) 18 SCC 130***, has awarded Rs.40,000/- each towards spousal consortium, parental consortium and filial consortium.

18. Further, the Apex Court in the case of ***Rahul Ganpatrao Sable vs Laxman Maruti Jadhav (Dead) through LRS and Others (2023) 13 SCC 334***, held as under:-

32. In the present case, MACT had granted a meagre amount of Rs 5000 towards loss of consortium. However, the High Court granted a total amount of Rs 70,000 as consolidated amount under all conventional heads, which included loss of consortium, loss of estate and funeral expenses. ***In Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205], the Constitution Bench of this Court had provided that all dependents should be separately awarded towards loss of consortium and had actually awarded Rs 40,000 to each of the dependents. Considering the same, an amount of Rs 40,000 each is awarded to each of the four dependents towards loss of consortium.***

(emphasis supplied)

19. It is evident that as per ***Rule 220-A of the UP Motor Vehicle Rules, 1998***, the claimants were entitled to get compensation on future prospects of the deceased at the rate 50% of his income, but the tribunal has not awarded any compensation on this account, which is erroneous. It is further evident that as per the judgment of the Apex Court in ***Pranay Sethi*** (supra), since the deceased was about 22 years old at the time of accident, a multiplier of 18 was required to be applied for assessing the compensation, but the tribunal has applied a multiplier of 16, which requires enhancement.

20. Further, in the light of the judgment of the Apex Court in the case of ***Pranay Sethi*** (supra), ***Magma General Insurance Co. Ltd.*** (supra) and ***Rahul Ganpatrao Sable*** (supra), the claimants are entitled to get enhanced compensation under non pecuniary heads.

21. It is apparent that father of the deceased had already died before the accident and as such, the claimants were wholly dependent on the income of the deceased, who was supporting his family consisting of his mother, 2 unmarried brother and one unmarried sister.

22. The Apex Court in the case of ***Sarla Verma (Smt) and others vs. Delhi Transport Corporation and another (2009) 6 SCC 121*** as approved by the Apex Court in ***Pranay Sethi*** (supra), while discussing the situation where the deceased was bachelor and was supporting his large family of dependents, has held as under:-

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

23. In view of this, even though the deceased was bachelor but since he was the sole bread earner of his family, keeping in view the judgment of the Apex Court in the case of *Sarla Verma* (supra), it will be appropriate that only 1/3rd amount of the income of the deceased is deducted towards his personal expenses and on the remaining 2/3rd income, it is held that the claimants were dependent.

24. In view of the above statutory law and precedents of the Apex Court, the compensation payable to the claimants is redetermined as under:-

S.No.	Compensation Heads	Amount Awarded (in Rs.)	In Accordance with
1.	Monthly income of deceased	6,362/-	<i>Gurpreet Kaur</i> (supra) and <i>Jitendra</i> (supra)
2.	Annual Income of deceased	6,362 X 12 = 76,344/-	<i>Gurpreet Kaur</i> (supra) and <i>Jitendra</i> (supra)
3.	Less 1/3th deduction towards self expenses (since deceased was bachelor and was having large family)	25,448/-	<i>Sarla Verma</i> (supra)
4.	Net annual income on which claimants were dependent	50,896/-	<i>Pranay Sethi</i> (supra)
5.	Add future prospects @50% since deceased was about 22 years at the time of accident	25,448/-	<i>UP Motor Vehicle Rules, 1998</i>
6.	Total annual dependency of claimants on deceased	76,344/-	<i>UP Motor Vehicle Rules, 1998</i>
7.	Multiplier applied since age of deceased was about 22 years old at the time of accident	18	<i>Pranay Sethi</i> (supra)
8.	Total loss of dependency to the claimants	76,344 X 18 = 13,74,192/-	<i>Pranay Sethi</i> (supra)
9.	Loss of consortium @Rs.40,000/- each, increased by 10% after every 3 years (4 claimants)	48,400 X 4 = 1,93,600/-	<i>Pranay Sethi</i> (supra), <i>Magma General Insurance Co. Ltd.</i> (supra) and <i>Rahul Ganpatrao Sable</i> (supra)
10.	Loss of estate @ Rs.15,000/- increased by 10% after every 3 years	18,150/-	<i>Pranay Sethi</i> (supra)
11.	Funeral Expenses @ Rs.15,000/- increased by 10% after every 3 years	18,150/-	<i>Pranay Sethi</i> (supra)
12.	Total compensation	16,04,092/-	-

25. In this way, the claimants are entitled to total compensation of Rs.16,04,092/- alongwith interest @ 7% per annum (as awarded by the tribunal) from the date of filing of the claim petition till it's actual payment, which is to be indemnified by the owner U.P.S.R.T.C. of the offending Bus No.

UP-15AT-4097.

26. Accordingly, the appeal is allowed. The impugned award of the tribunal dated 30.04.2016 is modified to the above extent.

27. If any amount has been paid by U.P.S.R.T.C. previously, then it is entitled to adjust the amount accordingly. U.P.S.R.T.C. is directed to deposit the enhanced amount of compensation before the concerned tribunal within two months. The tribunal will be at liberty to proportionally award the enhanced amount of compensation to the claimants keeping in view their age and dependency.

(2026) 1 ILRA 1401
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.01.2026

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE INDRAJEET SHUKLA, J.

Special Appeal No. 646 of 2025

Anita Rani

...Appellant
Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Whether the appointment of the appellant on the post of Assistant Teacher, found to be void-ab-initio on account of being over-age under the U.P. Basic Education (Teachers) Service Rules, 1981, could be interfered with and protected on equitable considerations in absence of fraud or misrepresentation and after long continuance in service.

Headnotes

Service Law — Appointment — Assistant Teacher — Age limit — U.P. Basic Education (Teachers) Service Rules, 1981 — Over-age candidate — Validity of appointment:

Held: The appellant was over-age on the relevant dates, namely completion of training, submission of application and appointment and, therefore, ineligible under Rule 6 of the Rules, 1981 — The benefit of relaxation under the third proviso was not available since the outer age limit had already been crossed — Consequently, the appointment was void-ab-initio. [Paras 9–12]

Service Law — Irregular appointment — No fraud or misrepresentation — Equity — Long continuance in service:

Held: The appellant had disclosed her correct date of birth and had neither practised fraud nor misrepresentation and the error in permitting her participation and appointment was attributable to the authorities — The appellant having continued in service for about seven years, equitable considerations arose in her favour — In such circumstances, following the principles laid down by the Supreme Court in cases of irregular appointments not tainted by fraud, limited protection was warranted. [Paras 13–17]

Service Law — Relief — Balancing of equities — Continuance in service — Denial of back wages:

Held: While setting aside the impugned orders, it was directed that the appellant shall be permitted to continue in service, but shall not be entitled to salary for the period she had not worked, so as to balance equities between the parties. [Para 18]

Appeal partly allowed. (E-14)

Case Law Cited

Radhey Shyam Yadav v. State of U.P. and others, (2024) 11 SCC 770 — relied on; Vikas Pratap Singh and others v. State of Chhattisgarh and others, (2013) 14 SCC 494 — relied on.

List of Acts / Statutes

U.P. Basic Education (Teachers) Service Rules, 1981; Government Order dated 29.10.2015.

List of Keywords

Age limit; Over-age appointment; Void-ab-initio appointment; Equity; No fraud; Long service; Irregular appointment; Protection of service; Assistant Teacher.

Case Arising From

Judgment and order dated 08.05.2025 passed by the learned Single Judge in Writ-A No. 19644 of 2023, affirming order dated 28.10.2023 passed by District Basic Education Officer, Moradabad cancelling the appellant's appointment.

Appearance for Parties

**For the Appellant: Sri Siddharth Khare, Senior Advocate, assisted by Sri Umang Srivastava
For the Respondents: Smt. Akanksha Sharma, C.S.C.; Sri Ankit Gaur, Standing Counsel**

(Delivered by Hon'ble Indrajeet Shukla, J.)

1. Heard Mr. Ashok Khare, learned Senior Counsel assisted by Mr. Umang Srivastava, learned counsel for the appellant; Ms. Akanksha Sharma, learned counsel for respondent nos.3 & 4 and, Mr. Ankit Gaur, learned Standing Counsel for the State.

2. Present intra-Court appeal has arisen against the order of learned Single Judge dated 08.05.2025 in Anita Rani versus State of U.P. and 4 others, Neutral Citation:-2025:AHC:74204 whereby the learned Single Judge dismissed the writ petition, observing as follows:-

“11. In view of above, the relevant dates are (I) date of completion of Special BTC Course, (ii) date of submission of form for recruitment process and (iii) date of appointment.

12. In present case, petitioner has completed Special BTC Training course on 12.06.2012 and advertisement was issued on 19.12.2014 i.e. after 2 years and 6 months and 7 days. The petitioner was a Scheduled Caste candidate, therefore, a relaxation of 5 years was granted in maximum age limit i.e. 45 years and she can apply after adding 2 years 6 months and 7 days i.e. up to 47 years 6 months 21 days as on cut off date i.e. 01.07.2014 taking into consideration that course was concluded on 12.06.2012 and application was submitted on 01.07.2014, but she was about 48 years 2 months, therefore, she was not entitled to apply as well as she was granted appointment on 02.07.2016, when she has crossed maximum age of 50 years, therefore, her appointment was void-ab-initio.

13. In aforesaid circumstances, since above referred facts are undisputed, therefore, in terms of G.O. dated 29.10.2015, the petitioner was not eligible to participate in the recruitment process itself and therefore, illegally appointed, therefore, there is no ground to cause interference in impugned order whereby her appointment was declared void-ab-initio.”

3. Facts, which reflect from the record, are that the appellant was selected for Special Basic Training Certificate in the year 2008, however, she could complete said training on 05.06.2012. Subsequently, she passed her U.P.T.E.T. Examination on 24.05.2014. No recruitment process of Special BTC Trained Candidates for appointment to the post of Assistant Teachers was immediately commenced.

4. It is on 09.12.2014, State of U.P. issued a notification for recruitment of 15000 Assistant Teachers from Special BTC Trained candidates wherein the appellant applied and got appointment on 02.07.2016, however, on 20.12.2017, a notice was issued to the appellant requiring her to explain that as the appellant had completed the age of more than fifty years on the date of appointment, i.e., 02.07.2016, her appointment was liable to be cancelled. A reply to the said notice was filed, however, vide order dated 28.10.2023 passed by District Basic Education Officer, Moradabad, the appointment of the appellant was declared void-ab-initio.

5. Feeling aggrieved, appellant preferred Writ-A No. 19644 of 2023, which has been dismissed by learned Single Judge vide order impugned herein.

6. The record transpires that as per the notification/advertisement dated 09.12.2014 issued for the post in question, the last date for submission of the application form was 10.02.2015 and in pursuance to aforesaid notification, the petitioner applied for the post in question on 05.01.2015. The age of the original petitioner/appellant herein was 48 years 8 months 4 days on the date of submission of application form. The case of the appellant is that she is entitled for age relaxation of 2 years six months 21 days in terms of Third Proviso appended to Rule 6 contained in Part IV of the U.P. Basic Education (Teachers) Service Rules, 1981 (For sake of brevity hereinafter shall be referred as "Rules of 1981").

7. For ready reference relevant portion of Rules of 1981 are extracted as under:-

Part IV - Qualification

6. आयु नियम 5 के खण्ड (क) या खण्ड (ख) के उपखण्ड (तीन) और (चार) या नियम 5 के खण्ड (ख) के परन्तुक में निर्दिष्ट किसी पद पर भर्ती के लिए अभ्यर्थी की आयु उस वर्ष के जिस वर्ष सीधी भर्ती के लिए रिक्ति विज्ञापि की जाये, अनुवर्ती वर्ष की प्रथम जुलाई को 21 वर्ष की होनी चाहिए और 40 वर्ष से अधिक नहीं होनी चाहिए :

परन्तु यह कि अनुसूचित जातियों, अनुसूचित जनजातियों तथा अन्य पिछड़े वर्गों के अभ्यर्थियों के मामले में उच्चतर आयु सीमा 5 वर्ष या उतने वर्ष अधिक होगी जितनी राज्य सरकार द्वारा समय-समय पर उपबन्धित की जाये :

परन्तु यह और कि उच्चतर आयु सीमा किसी अभ्यर्थी के मामले में जो भूतपूर्व सैनिक है तीन वर्ष से अधिक या जैसे कि समय-समय पर सरकार द्वारा उपबन्धित की जाये, होगी :

परन्तु यह भी कि विकलांग अभ्यर्थी के मामले में उच्चतर आयु सीमा

15 वर्ष अधिक होगी :

परन्तु यह भी कि जहां बेसिक स्कूलों के अध्यापकों के लिए विहित प्रशिक्षण पाठ्यक्रम को सफलतापूर्वक पूरा करने के पश्चात् किसी अभ्यर्थी को जिले में रिक्ति उपलब्ध न होने के कारण नियुक्ति न मिल सकी हो वहां उसकी आयु की संगणना के लिए उतनी अवधि को जब तक उसे नियुक्ति न मिली हो, नहीं गिना जायेगा, यदि नियुक्ति के दिनांक को उसने 50 वर्ष से अधिक आयु प्राप्त न की हो :

परन्तु यह और भी कि उच्चतर आयु सीमा बी.एड./ एल.टी./बी.पी.एड./ सी.पी.एड. या डी.पी.एड. प्रशिक्षित अभ्यर्थियों के मामले में जिन्होंने वर्ष 1999 में विशेष बी.टी.सी. प्रशिक्षण

पाठ्यक्रम पूरा कर लिया हो, लागू नहीं होगी :

परन्तु यह भी कि उर्दू में प्रवीणता रखने वाले और द्विवर्षीय बी.टी.सी. उर्दू के विशेष प्रशिक्षण

पाठ्यक्रम पूर्ण कर लेने वाले या विशिष्ट या विशेष बी.टी.सी. प्रशिक्षण पाठ्यक्रम पूर्ण कर लेने वाले किसी अभ्यर्थी के मामले में उच्चतर आयु सीमा ऐसी होगी जैसा कि सरकार द्वारा समय-समय पर अवधारित किया जाये :

परन्तु यह और भी कि मोअल्लिम-ए-उर्दू उपाधि धारकों के मामले में, जिन्होंने दिनांक 11 अगस्त,

1997 से पहले ऐसी उपाधि प्राप्त कर ली हो, उच्चतर आयु सीमा अधिवर्षिता की आयु से अधिक नहीं होगी:

परन्तु यह और भी कि प्रशिक्षु शिक्षक के रूप में, अभ्यर्थियों के चयन के लिए उच्चतर आयु

सीमा, ऐसी होगी, जैसी कि सरकार द्वारा समय-समय पर अवधारित की जाये :

परन्तु यह और भी कि शिक्षामित्र के मामले में अधिकतम आयु सीमा 60 वर्ष तक होगी। ”

8. The advertisement in question was issued on 09.12.2014 and the appellant could complete the requisite training on 05.06.2012, thus, she claims benefit of 2 years 6 months 2 days relaxation in terms of 3rd Proviso of Rule 6 of the 1981 Rules.

9. It is not in dispute that on the date of completion of training of B.T.C. Course i.e. 5th June, 2012, the appellant was 46 years 1 month 4 days old, thus at the time of completion of Special B.T.C. Course itself she had crossed 45 years of age. In such factual position, the relaxation contained in 3rd Proviso appended to Rule 6 of 1981 Rules is of no assistance for her, as neither on the date of completion of B.T.C. Course nor on the date of publication of advertisement, the appellant having more than 45 years of age was eligible, having crossed outer age limit fixed by the statutory rules.

10. The perusal of advertisement/notification dated 09.12.2014 brought on record exhibits upper age limit for the post in question is not prescribed/mentioned in the notification but even in such a situation the relevant rules i.e. ‘Rules of 1981’ as indicated in notification itself, would govern and operate the field of eligibility/prescribing outer age limit.

11. The case of the respondents is that apart from B.T.C. course the appellant was also required to pass T.E.T. examination for applying the post in question. The B.T.C. course was

completed by the appellant on 05.06.2012, whereas she passed the T.E.T. examination on 24.05.2014 as such on both the dates, appellant-writ petitioner crossed the outer age limit prescribed for the post in question in terms of conjoint reading of Rules of 1981 and notification dated 09.12.2014 and even on the date of appointment i.e. on 02.07.2016, she was above 50 years, which is again in the teeth of 'Rule 6 of 1981 Rules' as well as Circular dated 29.10.2015 contained as Annexure C.A.3 to the counter affidavit.

12. Submission advanced on behalf of the appellant-writ petitioner is that the appellant is a reserved category candidate (Scheduled Caste) and for her, there is a relaxation of 5 years in upper age limit. Thus, she could apply for the post in question till she attained the age of 45 years. If relaxation of further 2 years 6 months 21 days by virtue of 3rd Proviso of Rule 6 of 1981 Rules is extended, even then the maximum permissible age limit would be 47 years 6 months 21 days, whereas the appellant was of 48 years 7 months and 8 days on the date of submission of her application form. Thus, the appellant-writ petitioner was over the age limit on the date of submission of her application, making her ineligible to apply for the post in question, nonetheless, it is abundantly clear as day light that the respondent authorities accepted the application form and offered appointment with open eyes.

13. Further submission is, attempt to file an application for securing job cannot be termed as to be any fraudulent act as admittedly correct date of birth was mentioned in the application form and nothing was concealed at the end of the appellant. It was the authorities, who ought to have been remained vigilant, which they utterly failed. In response to application form tendered, not only the registration was accepted, but the e-Chalan was also generated permitting the appellant to deposit requisite examination fee. Thereafter, an appointment was offered to the appellant, despite the appellant having crossed the maximum age limit at the time of submitting the application form as well as on the date of completion of B.T.C. Training Course.

14. Learned Senior Counsel strenuously urged that the respondents cannot be permitted to annul the appointment at a belated stage, i.e. after lapse of more than 7 years as the appointment was made on 2nd July, 2016 and the order of termination has been passed on 28.10.2023.

15. The counsel for the appellant in order to get the appointment saved has specifically relied upon paragraph nos.26 & 27 of the judgement of Hon'ble Supreme Court rendered in case of **Radhey Shyam Yadav Versus State of U.P. and others** reported in (2024) 11 SCC 770 wherein the appointment of appellant therein having served 6 years was saved as same was not result of fraud and misrepresentation. For ready reference paragraph nos. 26 & 27 of the judgement of Hon'ble Supreme Court in **Radhey Shyam Yadav** (supra) are extracted as under:-

*“26. In **Vikas Pratap Singh** (supra), this Court, while protecting the selection of the appellants, had the following to say:-*

“27. Admittedly, in the instant case the error committed by the respondent board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result

contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service."

27. **Vikas Pratap Singh (supra)** was followed in **Anmol Kumar Tiwari and Others vs. State of Jharkhand and Others, (2021) 5 SCC 424**. This Court, in para 11, held as follows:-

*"11. Two issues arise for our consideration. The first relates to the correctness of the direction given by the High Court to reinstate the writ petitioners. The High Court directed reinstatement of the writ petitioners after taking into account the fact that they were beneficiaries of the select list that was prepared in an irregular manner. However, the High Court found that the writ petitioners were not responsible for the irregularities committed by the authorities in preparation of the select list. Moreover, the writ petitioners were appointed after completion of training and worked for some time. The High Court was of the opinion that the writ petitioners ought to be considered for reinstatement without affecting the rights of other candidates who were already selected. A similar situation arose in **Vikas Pratap Singh** case where this Court considered that the appellants therein were appointed due to an error committed by the respondents in the matter of valuation of answer scripts. As there was no allegation of fraud or misrepresentation committed by the appellants therein, the termination of their services was set aside as it would adversely affect their careers. That the appellants therein had successfully undergone training and were serving the State for more than 3 years was another reason that was given by this Court for setting aside the orders passed by the High Court. As the writ petitioners are similarly situated to the appellants in **Vikas Pratap Singh** case, we are in agreement with the High Court that the writ petitioners are entitled to the relief granted. Moreover, though on pain of contempt, the writ petitioners have been reinstated and are working at present."*

16. We are persuaded to grant limited indulgence in view of the Judgment of Hon'ble Supreme Court in the Case of **Vikas Pratap Singh and others vs. State of Chhatisgarh and others, 2013 (14) SCC 494**. Paragraph-22 of **Vikas Pratap Singh (supra)** is extracted hereunder:-

*"The pristine maxim of *fraus et jus nunquam cohabitant* (fraud and justice never dwell together) has never lost its temper over the centuries and it continues to dwell in spirit and body of service law jurisprudence. It is settled law that no legal right in respect of appointment to a said post vests in a candidate who has obtained the employment by fraud, mischief, misrepresentation or malafide. (See: **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another v. M. Tripura Sundari Devi, (1990) 3 SCC 655, P. Chengalvaraya Naidu v. Jagannath and others, (1994) 1 SCC 1 and Union of India and others v. M. Bhaskaran, 1995 Suppl. (4) SCC 100**). It is also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardizing the interests of the meritorious and worthy candidates. However, in cases where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity the appointee is terminated, this Court has taken a sympathetic view in the light of various factors including bonafide of the candidate in such appointment and length of service of the candidate after such appointment (See: **Vinodan T. and Ors. v. University of Calicut and Ors., (2002) 4 SCC 726; State of U.P. v. Neeraj Awasthi and Ors. (2006) 1 SCC 667**). "*

17. Therefore, in view of facts of this case as noted above, viz. continuance of appellant-writ petitioner for considerable period of 7 years coupled with the fact that the respondent authority could not lay any foundation of fraud and manipulation practised by appellant-writ petitioner to secure the appointment and further error of **judgement** if any (in computing the correct age of the petitioner) was of the respondents, that aspect may have escaped the attention of the learned Single Judge. To the extent, an error on principle may have been caused in the order of the learned Single Judge, thus, the instant Special Appeal as well as Writ Petition deserve to be **partly allowed**. The order dated 08.05.2025 passed by Writ Court, which is impugned herein as well as the order dated 28.10.2023 passed by respondent no.3, Basic Shiksha Adhikari, Moradabad are set-aside.

18. In order to balance equities in facts of this case, we direct that the appellant shall be permitted to continue to hold the post in question, but she shall not be entitled to the payment of salary for the period she has not performed her duties/ remained out of service.

19. A copy of this order may also be kept with the record of the writ petition.

20. No order as to costs.

(2026) 1 ILRA 1407
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.01.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal from Order No. 103 of 2026

United India Insurance Co. Ltd.	...Appellant
	Versus
Sonu Kumar & Ors.	...Respondents

Issue for Consideration

- (i) Whether the finding of contributory negligence recorded by the Tribunal required interference on the basis of site plan and material on record;
- (ii) Whether the amount reimbursed to the claimant under a mediclaim policy was liable to be deducted from the compensation awarded under the Motor Vehicles Act, 1988.

Headnotes

Motor Vehicles Act, 1988 — Accident — Negligence — Contributory negligence — Evidentiary value of site plan:

Held: The question of negligence is to be determined on the basis of evidence adduced before the Tribunal and not merely on the basis of site plan prepared in criminal proceedings — Mere reliance on site plan to infer manner of accident or negligence is impermissible — Even if the claimant was overtaking from the left side, it cannot by itself establish contributory negligence — In absence of cogent evidence, contributory negligence cannot be enhanced — The finding of the Tribunal on contributory negligence was not liable to be interfered with in absence of cross appeal by the claimant. [Paras 14–15]

Motor Vehicles Act, 1988 — Compensation — Medical expenses — Mediclaim policy — Deduction — Permissibility:

Held: Amount received by the claimant under a mediclaim policy is not liable to be deducted from the compensation awarded under the Motor Vehicles Act — Such amount is received under a contract of insurance for which premium has been paid and has no nexus with statutory compensation payable by the tortfeasor — It cannot be treated as pecuniary advantage for the purpose of deduction — The Tribunal rightly refused to deduct the reimbursed amount from compensation. [Paras 23–24]

Motor Vehicles Act, 1988 — Compensation — Reimbursement — Double benefit:

Held: Where only part of the treatment expenses has been reimbursed under mediclaim policy and original bills are produced before the Tribunal, there is no question of double reimbursement — The claimant cannot be denied compensation on the ground of partial reimbursement under a separate contract of insurance. [Para 22]

Motor Vehicles Act, 1988 — Appeal — Interference — Scope:

Held: In absence of any illegality or perversity in the findings of the Tribunal and no other issue having been pressed, the appeal preferred by the Insurance Company was devoid of merit and liable to be dismissed at the admission stage. [Paras 25–27]

Appeal dismissed. (E-14)

Case Law Cited

National Insurance Co. Ltd. v. Akber Badsha, 2016 (1) TAC 305 (Ker) — referred to; ICICI Lombard General Insurance Co. Ltd. v. Rajani Sahoo, (2025) 2 SCC 599 — relied on; Ranjeet v. Abdul Kayam Neb, 2025 SCC OnLine SC 497 — relied on; Jiju Kuruvila v. Kunjamma Mohan, (2013) 9 SCC 166 — relied on; Prabhavati v. Managing Director, BMT, 2025 SCC OnLine SC 455 — relied on; Prem Lal Anand v. Narendra Kumar, (2024) 9 SCC 441 — relied on; New India Assurance Co. Ltd. v. Dolly Satish Gandhi, 2025 SCC OnLine Bom 752 — relied on.

List of Acts / Statutes

Motor Vehicles Act, 1988; Indian Penal Code, 1860

List of Keywords

Motor accident; Contributory negligence; Site plan; Evidence; Mediclaim policy; Medical expenses; Deduction; Pecuniary advantage; Compensation.

Case Arising From

Judgment and award dated 08.10.2025 passed by the Motor Accident Claims Tribunal, Ghaziabad in M.A.C.P. No. 108 of 2018 (Sonu Kumar vs. Sachin Joshi and others).

Appearance for Parties

For the Appellant: Sri Sushil Kumar Mehrotra

For the Respondents: —.

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

1. The instant appeal has been filed by the insurer of the offending Fortuner vehicle No.DL-1-N-8711 under Section 173 of the Motor Vehicles Act, 1988 against the impugned judgment and award dated 08.10.2025 passed by the Motor Accident Claims Tribunal, Ghaziabad in M.A.C.P. No.108 of 2018 (Sonu Kumar vs. Sachin Joshi and others), whereby for the injuries sustained by

the claimant in a road accident that occurred on 04.12.2017, a compensation of Rs.5,20,100/- along with interest @ 7.5% per annum has been awarded to the claimant, which has been ordered to be indemnified by the insurer of the above offending vehicle No.DL-1-N-8711.

2. Learned counsel for the appellant-Insurance Company submitted that the claimant was driving his motorcycle No.UP-14-BP-4276 in a rash and negligent manner at the time of the accident, who tried to overtake the offending Fortuner vehicle from the left side, which was impermissible. Learned counsel submitted that the accident occurred due to the sole negligence of the claimant, but the Tribunal has concluded that the claimant was having only 30% contributory negligence in the accident, which was erroneous. Learned counsel submitted that in the facts and circumstances and keeping in view the site plan prepared in the criminal case as well as the oral evidence on record, it was proved that the accident occurred due to the sole negligence of the claimant. It was further submitted that the claimant was reimbursed for the expenses of treatment, since he was having a mediclaim policy, but the Tribunal has ignored this fact and has held that the reimbursement made to the claimant in pursuance of his mediclaim policy was not liable to be deducted from the compensation payable to the claimant, which is erroneous. Learned counsel in support of his submission relied upon the case law of ***National Insurance Company Limited vs. Akber Badsha, 2016 (1) T.A.C. 305 (D.B. Kerala)***. It was further submitted that since the claimant has already been reimbursed the medical expenses, since he was having a mediclaim policy, as such, if again, he is reimbursed the expenses of medical treatment, then it will amount to bonanza, which is impermissible. With these submissions, it was prayed that the appeal be admitted for hearing.

3. I have heard learned counsel for the appellant and perused the impugned judgment and documents submitted with the appeal.

4. The claimant Sonu Kumar examined himself as PW-1 and Vinod Kumar as PW-2, whereas the claim petition was not contested by the owner and driver of the offending vehicle and it was decided ex-parte against them. Further, the Insurance Company has not led any oral evidence.

5. PW-1 deposed that on 04.12.2017 at about 12:30 p.m., he was driving his motorcycle No. UP-14-BP-4276 from Pari Chowk, Noida to Jewar. When he reached ahead of Kheda Bridge and was crossing the canal bridge, his motorcycle was hit from behind by vehicle No. DL-1-N-8711, which was being driven in a rash and negligent manner, as a result of which he suffered grievous injuries. He was taken, with the help of other persons and the police, to Kailash Hospital, Jewar for treatment. He further deposed that an F.I.R. regarding the accident was registered at Police Station Rabupura, District Gautambuddhnagar, being Case Crime No. 283 of 2017, under Sections 279, 337, 338, and 427 I.P.C.

6. In his cross-examination, he deposed that he was hit by the offending vehicle from behind, that he was driving his motorcycle on his left side of the road, and that the offending vehicle did not blow the horn. He further deposed that after the accident he became unconscious, and while in an unconscious state, he was admitted to Kailash Hospital, Jewar, from where he was referred to Kailash Hospital, Sector-27, Noida. He further deposed that the F.I.R. was lodged by his brother on 04.12.2017.

7. PW-2 Vinod Kumar is the person, who registered the F.I.R. regarding the accident, who is the brother of the claimant, who admitted in cross-examination that he was not an eye witness of the accident and had merely registered the F.I.R. on the basis of what was told to him by the claimant.

8. It is apparent that the owner and driver of the offending vehicle have not contested the claim petition, which has been decided ex-parte against them and further they have not appeared in the witness box to contradict the claim. It is further evident that even the insurer has not led any independent evidence to contradict the claim and after investigation in the criminal case, a charge sheet has been submitted against the offending driver Sachin Joshi, under Sections 279, 337, 338 and 427 I.P.C. on which cognizance has been taken by a competent criminal court.

9. The Apex Court in the case of **ICICI Lombard General Insurance Company Limited vs. Rajani Sahoo and Others (2025) 2 SCC 599**, has held as under:-

"8. As regards the reliability of charge-sheet and other documents collected by the police during the investigation in motor accident cases, this Court in Mangla Ram v. Oriental Insurance Co. Ltd. [(2018) 5 SCC 656 : (2018) 3 SCC (Civ) 335 : (2018) 2 SCC (Cri) 819 : 2018 INSC 311] , held in para 27, thus : (SCC p. 672)

"27. Another reason which weighed with the High Court to interfere in the first appeal filed by Respondents 2 and 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4701 was driven rashly and negligently by Respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet filed by the police, naming Respondent 2. This Court in a recent decision in Dulcina Fernandes [Dulcina Fernandes v. Joaquim Xavier Cruz, (2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] , noted that the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge-sheet against Respondent 2 prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal case, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the tribunal."

9. It is true that the Tribunal had looked into the oral and documentary evidence including the FIR, final report and such other documents prepared by the police in connection with the accident in question. The Tribunal had also taken note of the fact that based on the final report, the driver of the offending truck was tried and found guilty for rash and negligent driving. The High Court took note of such aspects and found no illegality in the procedure adopted by the Tribunal and consequently dismissed the appeal.

10. In the contextual situation it is relevant to refer to a decision of this Court in Mathew Alexander v. Mohd. Shaif [(2023) 13 SCC 510 : 2023 INSC 621] , this Court held thus : (SCC p. 514, para 12)

"12. ? A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in *Dulcina Fernandes v. Joaquim Xavier Cruz* [(2013) 10 SCC 646 : (2014) 1 SCC (Civ) 73 : (2014) 1 SCC (Cri) 13] which has referred to the aforesaid judgment in *Bimla Devi [Bimla Devi v. Himachal RTC, (2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101]* .?"

11. Thus, there can be no dispute with respect to the position that the question regarding negligence which is essential for passing an award in a motor vehicle accident claim should be considered based on the evidence available before the Tribunal. If the police records are available before the Tribunal, taking note of the purpose of the Act it cannot be said that looking into such documents for the aforesaid purpose is impermissible or inadmissible.

12. It is also a fact that the appellant had attributed that the respondent claimants connived with police and fraudulently prepared the charge-sheet. The contention is that the vehicle insured with the appellant was not involved in the accident and the accident had occurred solely due to the rash and negligence on the part of the deceased. But the evidence on record would reveal that pursuant to the filing of the final report, cognizance was taken for rash and negligent driving which resulted in the death of Udayanath Sahoo."

(emphasis supplied)

10. The Apex Court in the case of *Ranjeet and another vs. Abdul Kayam Neb and another* 2025 SCC OnLine SC 497, has held as under:-

"4. It is settled in law that once a charge sheet has been filed and the driver has been held negligent, no further evidence is required to prove that the bus was being negligently driven by the bus driver. Even if the eyewitnesses are not examined, that will not be fatal to prove the death of the deceased due to negligence of the bus driver."

(emphasis supplied)

11. The Apex Court in the case of *Jiju Kuruvila & Ors. vs. Kunjamma Mohan & Ors.* (2013) 9 SCC 166, held as under:-

"20.5. The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.

20.6. The post-mortem report, Ext. A-5 shows the condition of the deceased at the time of death. The said report reflects that the deceased had already taken meal as his stomach was half-

full and contained rice, vegetables and meat pieces in a fluid with strong smell of spirit. The aforesaid evidence, Ext. A-5 clearly suggests that the deceased had taken liquor but on the basis of the same, no definite finding can be given that the deceased was driving the car rashly and negligently at the time of accident. The mere suspicion based on Ext. B-2 ?scene mahazar? and Ext. A-5 post-mortem report cannot take the place of evidence, particularly, when the direct evidence like PW 3 (independent eyewitness), Ext. A-1 (FIR), Ext. A-4 (charge-sheet) and Ext. B-1 (FI statement) are on record.”

12. The Apex Court in the case of ***Prabhavati & Ors. vs. Managing Director, Bangalore Metropolitan, Transport Corporation 2025 SCC OnLine SC 455***, held as under:-

“10. We are unable to agree with the view taken by the High Court on the 25% contributory negligence of the deceased and 75% upon the driver of the bus. We find ourselves to agree with the view taken by the Tribunal on this issue. The Tribunal rightly, after considering the evidence on record and on perusal of the Ex. P3 Spot Mahazar, came to the conclusion that there wasn't any sufficient evidence on record, indicating that the accident occurred due to negligent driving on the part of the deceased, and after considering the oral evidence of P.W.1, held the cause of the accident to be rash and negligent on the part only of the offending vehicle.

11. Thus, in our considered view, the contributory negligence taken by the High Court at 25% of the deceased is erroneous. We advert to the principles laid down in Jiju Kuruvila v. Kunjuamma(supra) where it was held that in the absence of any direct or corroborative evidence on record, it cannot be assumed that the accident occurred due to the rash and negligent driving of both the vehicles. This exposition came to be followed in Kumari Kiran v. Sajjan Singh (2015) 1 SCC 539. In the present case, therefore, on an allegation simpliciter, it cannot be presumed that the accident occurred due to rash and negligent driving of both vehicles, for having driven at high speed.”

13. The Apex Court in the case of ***Prem Lal Anand & Ors. vs Narendra Kumar & Ors. (2024) 9 SCC 441***, held as under:-

13. In the attending facts and circumstances, merely because a person was attempting to overtake a vehicle, cannot be said to be an act of rashness or negligence with nothing to the contrary suggested from the record. Further, it is the appellant claimants who lost a member of their family. Not only was the appellant-claimant, Prem Lal Anand doing an act which is an everyday occurrence on the road that is overtaking a vehicle, but resultantly suffered extensive injuries himself. That apart, it has also been proved that the offending vehicle was driven rashly and negligently. These two factors taken together lead us to the conclusion that the finding of contributory negligence against Appellant 1 was erroneous and unjustified. Consequently, compensation awarded on this count has to be revised.

(emphasis supplied)

14. It is apparent from the impugned judgment that the Tribunal has considered the site plan prepared in the criminal case, which disclosed that the accident occurred on Yamuna Expressway, when the claimant was trying to overtake the offending vehicle from the left side. The Tribunal concluded that from the technical inspection report of the Fortuner vehicle, it was evident that its

left side rear light, rear bumper, rear side and rear wind glass was damaged whereas, the front mudguard, headlight, both indicator and both side mirror of the motorcycle was damaged in the accident and on this basis, the Tribunal concluded that the accident occurred when the claimant was trying to overtake the Fortuner from the left side and it collided from the rear side of the offending vehicle. In these circumstances, the Tribunal concluded that there was contributory negligence in the ratio of 30:70 of the claimant and the driver of the Fortuner, which is an erroneous finding because the Tribunal was not supposed to decide the factum of contributory negligence on the basis of site plan prepared in the criminal case.

15. It is well settled that merely on the basis of site plan, it cannot be inferred how an accident occurred and what was the negligence of a particular driver in the accident. It is well settled that the claim petition is to be decided on the basis of evidence adduced before the Tribunal, but the Tribunal has been unnecessarily influenced in this case from the site plan. Even if, it is assumed that the site plan was disclosing the correct factual position, even then, judicial notice of this fact can be taken that accident occurred on Yamuna Expressway on which it is permissible for the vehicles to overtake from the left side of another vehicle, as such, merely on this ground that the claimant was trying to overtake the Fortuner vehicle from left, it cannot be inferred that there was contributory negligence on the part of the claimant, who was driving his motorcycle at the time of the accident. On Expressway, the drivers are supposed to remain vigilant and a vehicle can overtake from both the left and right side, as such, the driver of the Fortuner vehicle should have been vigilant when the claimant was trying to overtake his vehicle from the left and should not have swerved his vehicle towards the left, which caused the accident and had the Fortuner driver kept his vehicle straight, the accident may not have occurred. Be that as it may, since the claimant has not filed any cross appeal to challenge the conclusion of contributory negligence on his part, as such, merely on the basis of site plan, the quantum of contributory negligence attributed to the claimant, cannot be increased any further.

16. It is further evident that the claimant claimed that he has spent an amount of Rs.6,47,572/- in his treatment, for which he remained admitted in Kailash Hospital, Noida. The claimant in his cross-examination deposed that he has spent about Rs.15 lacs on his treatment and also admitted that an amount upwards of Rs.4,00,000/- has been reimbursed to him because he was having a mediclaim policy with an Insurance Company. It is pertinent to mention here that the claimant has neither filed any disability certificate nor Tribunal has awarded any compensation towards it.

17. Before the Tribunal also it was submitted on behalf of the learned counsel for the Insurance Company that since a payment of about Rs.4,00,000/- has been made to the claimant on account of having a mediclaim policy, as such, he was not entitled to get this amount but this contention of the Insurance Company was rejected by the Tribunal on the ground that since the claimant paid premium towards the mediclaim policy under a contract, as such, the amount reimbursed to him on account of that policy cannot be adjusted from the compensation payable to it by the Insurance Company.

18. This Court is required to examine whether the above reasoning of the Tribunal is correct or not?

19. The Division Bench of the Kerala High Court in ***National Insurance Company Limited vs. Akber Badsha*** (supra) has considered the issue of reimbursement of medical expenses made to the claimant and has concluded that if a party has obtained only a lesser amount under a mediclaim policy taken by him by paying premium separately, then the balance amount, if any, can be claimed in a claim petition to be preferred before the Tribunal with reference to the statutory coverage. It was held by the Division Bench that if a portion of the sum assured under the mediclaim policy had already been satisfied, the claimant will be entitled to coverage only in respect of the balance sum assured during the remaining period/tenure of the policy. It was further held that if the claimant meets with any other accident or suffers from any other disease, in the meanwhile, he cannot aspire anything more.

20. In the above referred case, both the policies i.e. the insurance of the offending vehicle and the mediclaim policy were issued by one and the same Insurance Company and since the Insurance Company had already made a payment of Rs.78,418/- towards the treatment expenses, as claimed under the mediclaim policy, it was pleaded by the Insurance Company that it was not required to pay the above amount twice and it should be set off. It is further evident that the claimant failed to submit original bills before the tribunal, since they were already submitted to the insurance company in the mediclaim.

21. A Full Bench of the High Court of Bombay in ***New India Assurance Company Limited vs. Dolly Satish Gandhi and another, 2025 SCC Online Bom 752***, has considered whether the amount received by a claimant under a mediclaim policy or under a medical insurance policy is liable to be deducted from the amount of compensation payable to a claimant under the head medical expenses in proceedings under Section 166 of the Motor Vehicles Act, 1988 and has come to the following conclusion:

10. In Helen C. Rebello [(1999) 1 SCC 90], a Bench of two learned Judges of the Supreme Court considered the question as to whether the life insurance money received on account of a demise of the insured was liable to be deducted from the amount of compensation that the claimants - family members were entitled to receive under the Act of 1939. After referring to various decisions including the decision in Bradburn (supra), it was held that the amount of insurance is payable only on the contingency referred to in the contract and if the contingency of injury or death does not happen, the insured is the gainer as it receives more under premium than to pay on maturity of the policy. In case the contingency occurs, the claimant is the gainer as he receives the amount even before paying the full premium and the gain is to the proportion of the balance unpaid premium, whether on account of injury or death. In paragraph 35 of the said decision, it has been observed as under:-

"35.....Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account

of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

11. In *Patricia Jean Mahajan* [(2002) 6 SCC 281], after referring to the decision in *Helen C. Rebello* (supra), it was held that the amount received on account of social security must have a nexus or relation with the accidental injury or death, for being deductible from the amount of compensation. The amount received on account of an insurance policy of the deceased cannot be deducted from the amount of compensation though a receipt of the insurance amount was accelerated due to premature death of the insured. This decision was also rendered by a Bench of two learned Judges.

12. In *Sebastiani Lakra* [(2019) 17 SCC 465], the aforesaid two decisions were considered by a Bench comprising of three learned Judges. After considering the provisions of Section 168 of the M.V. Act which required payment of "just compensation" to the claimants, it was held in paragraphs 12 and 13 as under:-

"12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled to 'just compensation' under the Motor Vehicles Act for death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his lifetime cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.

13. As far as any amount paid under any insurance policy is concerned, whatever is added to the estate of the deceased or his dependents is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank deposits, shares, debentures, etc. The tortfeasor cannot take advantage of the foresight and wise financial investments made by the deceased."

From the aforesaid decisions, it is now clear that the amount received on account of insurance is due to the contractual obligations entered into by the insured with others. Having paid premium it was clear that the beneficial amount would accrue to the share of the deceased either on maturity of the policy or on death, whatever be the manner of death. The tortfeasor cannot take advantage of the foresight and wise financial investments made by the deceased. This is the settled position of law.

13. In *Dineshchandra Shantilal Shah (supra)*, the learned Single Judge was considering an appeal filed by the New India Assurance Company wherein the award passed by the Tribunal was under challenge. Before the Tribunal it was noted that an amount of Rs. 5,14,286/- towards compensation included the amount of reimbursement that was granted under a mediclaim policy of the claimant. It was urged by the insurer that the amount received under the mediclaim policy was liable to be deducted from the total amount of compensation as the claimant had already been reimbursed the said amount. After referring to the judgment of the Delhi High Court in *National Insurance Company Ltd. v. R.K. Jain*, 2012 SCC OnLine Del 3303 (MSE Appeal No. 346/2010 decided on 2nd July 2012) and on the basis of ratio of the decisions of the Supreme Court in *Helen C. Rebello and Patricia Jean Mahajan (supra)*, it was held that the amount received by the claimant under the mediclaim policy was liable to be deducted from the total amount of compensation.

In our considered opinion, a deduction of the amount received under a mediclaim policy by the claimant could not be directed to be so deducted in the light of the law laid down in Sebastiani Lakra (supra) after considering the ratio of the decisions in Helen C. Rebello and Patricia Jean Mahajan (supra). As held therein, the amount under a mediclaim policy is received in view of a contract entered into by the claimant with the insurance company and the same is received in view of the terms of the contract. It is thus clear that the ratio of the decision in Dineshchandra Shantilal Shah (supra) does not indicate the correct legal position.

14. We may note that the Karnataka High Court in *Manish Gupta (2013 ACJ 2478)* considered a reference made to the Division Bench as to whether the amount received under a mediclaim policy could be deducted from the total amount of compensation awarded under Section 168 of the M.V. Act. It was held that the amount received by a claimant under a mediclaim policy was required to be deducted from the total amount of compensation received by the claimant under the head 'medical expenses'. It was further held that if no amount was received under the mediclaim policy, the Tribunal was then required to assess the amount spent by the claimant towards medical expenses and grant such amount with respect to the bills produced. Similarly if the amount awarded under a mediclaim policy was less than the actual amount spent by the claimant towards medical expenses, the shortfall or the balance was required to be made good by the tortfeasor.

15. The Division Bench of the Kerala High Court in *Akber Badsha (supra)* also considered a similar reference made to the Division Bench as regards permissibility of deduction of the amount received by the claimant under a mediclaim policy. After referring to various decisions including the judgment of the Karnataka High Court in *Manish Gupta (supra)*, a similar view was taken that such deduction of the amount received under a mediclaim policy from the total amount of compensation was permissible.

In our view, in the light of the decision in Sebastiani Lakra (supra), the deduction of any amount received by a claimant under a mediclaim policy would not be permissible. We are

therefore not in a position to agree with the view taken by the Karnataka High Court and the Kerala High Court in the aforesaid two decisions.

16. Various learned Single Judges have taken the view that any amount received under a medicalim policy is not liable to be deducted from the amount of compensation awarded under the head “medical expenses”. Such view as taken in Vrajesh Navnitlal Desai, Ajit Chandrakant Rakvi, Anjana Nileshekumar Parmar, Vaswati Samiran Ganguly, Suryakant Uttam Gaude and Aman Sanjay Tak (supra) is consistent with the view taken by the Supreme Court in Sebastiani Lakra (supra) that no such deduction of the amount of mediclaim from the amount of compensation awarded is permissible. It is not necessary for us to refer to various other decisions rendered by learned Single Judges that have consistently taken the view that the amount received under a mediclaim policy is not liable to be deducted from the amount of compensation awarded under Section 168 of the M.V. Act. In our view, the legal position has been correctly laid down in the aforesaid decisions of this Court.

17. We may also refer to the judgment of the Division Bench of the Calcutta High Court in New India Assurance Company Ltd. v. Bimal Kumar Shah, 2019 ACJ 1532 in this regard. Dipankar Datta, J. (as His Lordship then was) in his concurring opinion held that what a victim gets from his mediclaim policy is the return for making payment of premiums. It is the hard-earned money that he puts in towards premium which is thereafter returned to him upon happening of an accident. The return that a victim receives from his insurer on a claim arising out of a mediclaim policy in the circumstances is consolation money. To consider such benefit as a benefit received from other sources while determining the amount of compensation would be a narrow minded approach, not intended in the best interest of the victim. He therefore observed that the money received by an accident victim as return for money invested by him ought not to be comprehended as a benefit received and therefore the question of the victim being doubly benefited did not and could not arise. We are in respectful agreement with the aforesaid view as taken after referring to the decisions in Helen C. Rebello and Patricia Jean Mahajan (supra).

18. In the light of the foregoing discussion, we are of the considered opinion that the question as framed ought to be answered in the negative. Thus, any amount received by a claimant under a mediclaim policy or under a medical insurance policy is not liable to be deducted from the amount of compensation payable to a claimant under the head “medical expenses” in proceedings under Section 166 of the M.V. Act.

22. It is further evident that the claimant deposed in his cross-examination that about Rs.15 lacs was incurred by him on his treatment, but only Rs.4 lacs was reimbursed to him under the mediclaim policy. It is apparent that there is a shortfall of about Rs.11 lacs in the treatment expenses reimbursed to him. It is further evident that the claimant has submitted original bills before the tribunal, which itself proves that they were not submitted previously in the mediclaim. For claiming reimbursement in mediclaim, original bills are required and once they are submitted in the mediclaim, they cannot be submitted again before the tribunal. From these facts, it is apparent that the claimant was not going to be reimbursed twice, in any manner whatsoever.

23. It is apparent there there was a contract of insurance between the claimant and the Insurance Company regarding mediclaim policy for which a premium was paid by the claimant and in pursuance of that contract of insurance, the claimant was indemnified in respect of the expenses incurred by him on his treatment, which was not at all relevant for assessment of compensation in a

claim case, which is based on statutory liability. From the above decisions of the Apex Court and different High Courts, it is evident that any amount reimbursed to the claimant on account of insurance due to the contractual obligations entered into with others, having paid premium, it was not liable to be deducted from the statutory compensation payable under the Motor Vehicles Act, 1988 because it cannot be termed to be a pecuniary advantage.

24. In view of above precedents and facts, the Tribunal has not erred in not deducting the reimbursement of medical expenses made to the claimant under a separate mediclaim policy and accordingly, the contention contrary to it advanced by the learned counsel for the appellant-Insurance Company is rejected.

25. No other issue was pressed by the learned counsel for the appellant.

26. In view of the aforesaid facts, this appeal has got no merit and is liable to be dismissed at the admission stage.

27. Accordingly, this appeal is dismissed at the admission stage.

28. Office is directed to remit back the statutory deposit made by the appellant at the time of filing of the appeal to the concerned Tribunal, forthwith.
