



THE INDIAN LAW REPORTS

M.P. SERIES

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THE HIGH COURT OF MADHYA PRADESH

Year-9

Vol. 3



JULY 2017

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July 2017

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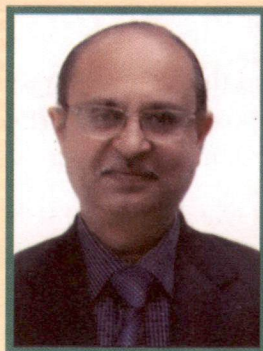
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**THE INDIAN LAW REPORTS M.P. SERIES, 2017
(VOL-3)**

JOURNAL SECTION

FAREWELL



HON'BLE MR. JUSTICE NARESH KUMAR GUPTA

Born on July 1, 1955. Father Shri M.L. Gupta was a Judicial Officer who retired as a District Judge in the year 1976. Passed LL.B. (Hons.) degree from Indore University in the year 1977 and secured 2nd position in the University. Started practice in civil side with late Shri B.K. Samadani, Advocate at Indore. Was selected in P.S.C. examination and joined as Civil Judge Class-II on 10.8.1979. Was promoted as Additional District and Sessions Judge in the year 1991. Worked as Additional Registrar, Administration & Vigilance at main seat of M.P. High Court at Jabalpur, Special Judge (SC/ST Prevention of Atrocities) Ujjain, Addl. Secretary (Law) at Bhopal and President, Consumer Forum at Hoshangabad. As Addl. Secretary in Law Department, also held additional charge of Director, Public Prosecution. In November 2003 joined as District and Sessions Judge, Datia. Worked as District Judge (Vigilance) Gwalior and Registrar, Gwalior Bench for few months. Was appointed District Judge, Gwalior. In July, 2007, worked as Principal Secretary (Law Department) and Legal Remembrancer to the Govt. of M.P.. Also shared experiences with junior officers regarding judgment writing by writing a book namely "*Niyamanukul Nirnaya*" on the subject.

Elevated as Additional Judge of the High Court of Madhya Pradesh on 03.05.2010. Appointed as permanent Judge on 24.09.2011 and demitted office on 30.06.2017.

We, on behalf of The Indian Law Reports (M.P. Series) wish His Lordship a healthy, happy and prosperous life.

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FAREWELL OVATION TO HON'BLE MR. JUSTICE N.K. GUPTA, GIVEN ON 30.06.2017, AT THE HIGH COURT OF M.P., BENCH GWALIOR.

Hon'ble Mr. Justice Hemant Gupta, Chief Justice, bids farewell to the demitting Judge :-

We have assembled this afternoon to bid an endearing farewell to Shri Justice N.K. Gupta, who is demitting office today on attaining the age of superannuation after successful judicial service of about 38 years.

Shri Justice Gupta was born on 1st July, 1955. Shri Justice Gupta started law practice at Indore on civil side after obtaining degree in LL.B. (Hons.) in 1977. The knowledge of law comes naturally to him as his father was also a judicial officer. Shri Justice Gupta joined as Civil Judge, Class-II on 10.08.1979. Brother Gupta was promoted as Additional District and Sessions Judge in 1991. Justice Gupta worked for almost 31 years in the subordinate judiciary on various posts and has accepted challenge in discharging duties, it may be academic field; administrative duty or the core Judicial work. He worked as Additional Director of the Judicial Academy (JOTRI) at Jabalpur to train young judicial officers; discharged duties of Additional Registrar (Administration) and (Vigilance) at the Main Seat of High Court of Madhya Pradesh at Jabalpur. He had the the opportunity to work as Additional Secretary in Law Department, and in the office of Director, Public Prosecution. From July, 2007, he worked as Principal Secretary (Law) and Legal Remembrancer to the Government of Madhya Pradesh as well. Shri Justice Gupta held the posts of District Judge (Vigilance), Gwalior and Registrar, Gwalior Bench as well. He discharged duties as Special Judge (SC/ST Prevention of Atrocities), Ujjain, and President, Consumer Forum at Hoshangabad. He was perfectly at ease in discharging duties beyond core judicial work.

The rich experience gained by Justice Gupta practically on all branches of law came handy for him when he penned his experience regarding manner and method of judgment writing by writing and publishing a book "*Niyamanukul Nirnaya*". The second Edition has been released this afternoon. The book is of practical use to the Judicial Officers young and old alike giving tips as to how to write a good judgment. The fact that the second edition has been released shows the acceptance of the book by the person, for whom, it is meant.

Considering the vast experience gained by Shri Justice Gupta in the District Judiciary, he was elevated as Additional Judge of this High Court on 03.05.2010 and thereafter as Permanent Judge on 24.09.2011. Justice Gupta's contribution on Judicial and Administrative side has been very illustrative. In a span of about seven years as member of the Bench, he has the distinction of deciding more than 48,000 cases including sitting in DB. He has decided almost three hundred Division Bench criminal appeals from 1.1.2016. He is known for his soft and polite behavior and pleasant mannerism.

Justice Gupta is an embodiment of the most desirable qualities expected of a Judge and indeed of a noble human being. I met him for the first time on March 17, 2017, a day before my swearing in Chief Justice of this Court. My first and the lasting impression is that he is multifaceted talented personality, having good intention to do, be fair and judicious.

I, on my behalf and on behalf of my esteemed brother Judges and the Registry of the High Court, wish Shri Justice Gupta, Smt. Gupta and his family members a very happy, prosperous and glorious second inning of life ahead.

Shri Purushaindra Kaurav, Advocate General, M.P., bids farewell :-

Today Hon'ble Justice Shri Naresh Kumar Gupta demits his office as Judge of this Hon'ble High Court after a successful tenure of more than 7 years. Hon'ble Justice Shri N.K. Gupta was born on 1st July 1955. After completing the Studies (M.Sc. LL.B.), your Lordship was selected in the MP Judicial Services and was appointed as a Civil Judge Class II on 10.08.1979. He also served as Principal Secretary, Department of Law and Legislative Affairs in the Government of Madhya Pradesh and was appointed as an Additional Judge of this Hon'ble High Court on 3.5.2010 and as permanent Judge on 24th September 2011. My Lord, has not only graced the Principal Seat Jabalpur but also has served at Bench at Gwalior. Your Lordship has decided more than 48000 cases in his tenure.

Unbiased, fair and proficient are some of the qualities that best describe Your Lordship. I think everyone present here today will agree that Your Lordship has greatly contributed to this institution by deciding cases in a speedy and just manner and thereby reducing the number of pending cases. Due to my Lord's vast knowledge of law and rapid grasp of facts, it was always a

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pleasure for advocates to argue before Your Lordship and one could always be sure that after arguments were concluded, a well reasoned judgment would always be pronounced. Your Lordship encouraged the younger members of the Bar to prepare and argue matters while at the same time granting due respect to the senior members of the Bar. It is this view of hearing and deciding matters head on, which instills great confidence in the public of our great institution.

My first interaction with Hon'ble Justice N.K. Gupta happened when My Lord was working on the post of Principal Secretary, Department of Law and Legislative Affairs, Government of MP. At that time I experienced that My Lord was also an extremely skillful administrator.

When Your Lordship was appointed as an Additional Judge of this High Court; I had the privilege of arguing some cases before your Lordship. One particular case that stands out is the judgment passed by My Lord in the case of State of M.P. v. Fazal & Others. In that case, the State had moved an application under Section 407/482 of the Cr.P.C relating to transfer of 18 criminal trials of members of a banned organization pending before various courts in the State of MP to Sessions Court, Bhopal. My Lord while directing that the cases be transferred to Sessions Court, Bhopal directed that all accused persons who were on bail shall be granted TA/DA for each day of attendance. This is a perfect example of how Your Lordship balanced the need for speedy justice while keeping the interest of the affected parties intact.

It is not possible to mention the long list of landmark judgments pronounced by your Lordship, but what can be said is that due to My Lord's capacity to hear and decide large number of cases each day, the pendency of cases before the Hon'ble Court has reduced. I categorically remember that there was a time when the then Chief Justice realizing that a particular category of cases had huge pendency, requested your Lordship to take up the Roster and when that happened, the pendency of cases of that category were significantly reduced.

I am happy to inform that Your Lordship and your better half Smt. Manisha Gupta have written a book titled as "Judge Your Judgments" which has been released today by My Lord Hon'ble the Chief Justice. This is also one of the spectrums of Your Lordship's experience and contribution to the judiciary. I believe that the book which is written in Hindi will be useful to all concerned.

It can be said without a doubt that Your Lordship would be missed by one and all. We extend our best wishes for your Lordship's future endeavors. I am sure that Your Lordship would be very happy to be able to spend more time with his family.

I, on behalf of the State Government, all the Law officers of the State and on my own behalf wish a long, happy and fulfilling life beyond the bench.

Shri Anil Mishra, President, M.P. High Court Bar Association, Gwalior bids farewell :-

We have all gathered here to bid farewell to our beloved Judge and the head of the judicial family in Gwalior Hon'ble Justice N.K. Gupta ji.

It has been quite some time that Justice Shri N.K. Gupta has been with us in Gwalior in the short span of time through his simplicity he has endeared all of us. Many milestones have been achieved by this Court under his able leadership and guidance.

Hon'ble Justice N.K. Gupta after brilliant career joined the M.P. Judicial Services. Hon'ble Justice Gupta ji born on 1st July, 1955. Hon'ble Justice Shri Naresh Kumar Gupta had a background of judiciary as his father Late Shri M.L. Gupta ji was also Judicial Officer.

Hon'ble Justice Shri Gupta ji got the degree of LL.B. (Hons.) from Indore University in the year of 1977, and secured 2nd position. After getting the degree of LL.B., he has joined the office of Sr. Advocate Late Shri B.K. Samadhani Advocate at Indore. Thereafter, he has appeared in the P.S.C. examination and accordingly selected on the post of Civil Judge Class II and joined the Judicial Service on 10.08.1979. In the year 1991 he was promoted as Addl. District and Session Judge for some time he was posted at Gwalior District and Session Court as an Addl. District and Session Judge.

He worked as Addl. Registrar, Administration and Vigilance at the main seat of M.P. High Court at Jabalpur, Special Judge (SC/ST Prevention of Atrocities), Ujjain, Addl. Secretary (Law) at Bhopal and President, Consumer Forum at Hoshangabad. As Principal Secretary in Law Department he also held additional charge of Director, Public Prosecution. In November, 2003 he joined District and Session Judge, Datia.

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For a brief period he held the posts of District Judge (Vigilance), Gwalior and Registrar, Gwalior Bench. In July, 2007 he was appointed as Principal Secretary (Law Department and Legal Remembrancer) to the Govt. of M.P.. He has authored a book "*Niyamanukul Nirnaya*".

The family members of Hon'ble Justice N.K. Gupta ji includes his wife Smt. Manisha Gupta; practicing at Hon'ble Supreme Court of India, elder son Dr. Yash Gupta is Scientist in Biotechnology and younger son Shri Harshwardhan Gupta, Software Engineer working at Hyderabad.

Hon'ble Justice Gupta has many qualities and amongst what has impressed me the most is his rock solid self belief and forthrightness. His Lordship has always remained calm through adversity and has been a source of strength for all of us, actually his Lordship has been a source of great encouragement in dispensing justice and performing administrative functions as administrative Judge.

I bid His Lordship a farewell on behalf of the Bar with wishes and a very bright future ahead, in the end I am quoting...

Richer Bach an American writer.....

"Don't be dismayed at good-byes. A farewell is necessary before you can meet again. And meeting again, after moments or lifetimes is certain for those who are friends."

I, on behalf of the High Court Bar Association, Gwalior, wish you a bright future ahead, a good health.

Shri Jitendra Sharma, Treasurer, M.P. State Bar Council, bids farewell:-

Today we have assembled here to bid farewell to Hon'ble Justice Shri N.K. Gupta who is demitting office of this Hon'ble High Court w.e.f. 30.06.2017 i.e. today after rendering distinguished seven years of service as Judge in this august institution.

Hon'ble Justice Shri Naresh Kumar Gupta was born on 1st July, 1955 and after completing primary, middle and higher education, your Lordship completed LL.B. degree (Hons.) from Indore University in the year 1977 and secured IInd position and after getting enrolment in the roll of advocates

in the State Bar Council of Madhya Pradesh, your Lordship started legal practice in civil side in the able guidance of Shri B.K. Samadani, Advocate at Indore. Thereafter, your Lordship appeared in the competitive examination of Civil Judge class II conducted by the Public Service Commission and selected in the same and thereafter your Lordship started his journey as civil judge class II w.e.f. 10.08.1979. Your Lordship promoted as Additional District and Session Judge and worked as Addl. Registrar, Administration and Vigilance at main seat of M.P. High Court at Jabalpur, Special Judge (SC/ST Prevention of Atrocities) Ujjain, Addl. Secretary (Law) at Bhopal, President, Consumer Forum at Hoshangabad, as Principal Secretary in Law Department. Your Lordship also held the additional charge of Director, Public Prosecution. In November, 2003 your Lordship joined as District and Session Judge, Datia for a brief period he held the post of District Judge (Vigilance) Gwalior and Registrar of Gwalior bench. In July, 2007 your Lordship was appointed as Principal Secretary (Law Department and Legal Remembrancer) to the Govt. of M.P. and after elevation your Lordship took oath as Judge of this Hon'ble High Court on 3rd May, 2010. In the year 2016 Your Lordship became Administrative Judge of Gwalior Bench.

During this long journey, your Lordship has not only contributed to the legal fraternity by efficient working in various capacities but Your Lordship has also made a lot of valuable contribution in the larger interest of society. In various academic programs, your Lordship have delivered law lectures on various important subjects and guided the Bar members by method of cross examination in criminal trial etc.. Members of Bar have been benefited by such lectures organized from time to time. The behaviour of Your Lordship has always remained co-operative with Bar members and your Lordship always maintained good and cordial relations with the Bar and Bench. While delivering the judgments, your Lordship have always worked without fear and favour and it will be no exaggeration to say that he possesses all qualities of a good Judge. While on board your Lordship's behaviour was impartial with all concerned. The judgments rendered by your Lordship were always balanced. On all the subjects, the concept of your Lordship were very clear and this quality always impressed the Bar members. During the tenure as Judge your Lordship have delivered several landmark judgments on various issues which will enlighten the legal fraternity and without any hesitation it can be safely said that with the retirement of your Lordship, the Bench and the Bar both are losing a brilliant and illustrious Judge.

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For a lot of people law is by chance, but for your Lordship it was by choice, as he was inspired by the work done by his father Shri Manmohan Lal Gupta who was also a judicial officer and retired from the post of District and Session Judge.

We hope that even after demitting office your Lordship may be retired but not tired and will continue to serve in the larger interest of society. Fortunately, there is no age of retirement for members of the Bar and hence we welcome your lordship to join the Bar.

At this occasion when your Lordship is going to complete wonderful journey in this esteem organization, I would like to quote these lines :-

“उजाला अपनी यादों का हमारे साथ रहने दो, ना जाने किस गली में जिंदगी की शाम हो जाये ”

On behalf of the State Bar Council of Madhya Pradesh and on my behalf, I take this opportunity to extend my gratitude to Justice N.K. Gupta for his distinguished contribution to justice delivery system which will be remembered forever and convey our best wishes for your continued good health, a long life and fulfillment of occupations in the future as well. May the choicest blessing of the almighty be showered on him and all his family members for more happy, healthy and prosperous years to come.

Shri K.B. Chaturvedi, Representative of Senior Advocates, bids farewell :-

We have assembled here for ovation of Hon'ble Justice Shri N.K. Gupta, who is demitting the prestigious office of this Court on completing his tenure.

Hon'ble Shri Justice N.K. Gupta was born on 1st July, 1955. He is an eminent son of Shri M.L. Gupta who was a Judicial Officer and retired as District Judge in the year 1976. My Lord took LL.B. Hons. degree from Indore University in the year 1977 and secured 2nd position in the university. My Lord started practice in civil side with Late Shri V.K. Samadani, Advocate at Indore. After passing PSC examination My Lord joined as Civil Judge Class-II on 10.08.79. In 1991, my Lord was promoted as Additional District and Session Judge. He worked as Additional Registrar, Administration and Vigilance at the main seat of M.P. High Court at Jabalpur. My Lord worked

as Additional Secretary (Law) at Bhopal and President, Consumer Forum at Hoshangabad. My Lord was appointed Principal Secretary in Law Department of M.P. He also held additional charge of Director, Public Prosecution. In November, 2003 my Lord joined as District and Session Judge in Datia. In July, 2007 he was appointed as Principal Secretary, Law Department and Legal Remembrancer to the Govt. of M.P.. My Lord also worked as Registrar, M.P. High Court Bench at Gwalior. He has authored a book "*Niyamanukul Nirnaya*".

Recognizing his judicial contribution in judicial work, My Lord was elevated as Judge of this Hon'ble High Court on 03.05.2010. My Lord is very simple, given patience hearing to the advocates and the decisions published in law journals will guide the legal fraternity as precedent.

His legal acumen was observed by all of us, his sharp understanding is based on the principle laid down by Apex Court. He was always firm on the principles and adhered to them by dispensation of justice. My Lord have never taken care the number of cases listed before him. Hardly few minutes were enough to my Lord to understand the crux of the matter and My Lord decided effectively those cases within the four corners of law.

Hon'ble Justice Shri N.K. Gupta rarely got annoyed on Board. His behavior with lawyers was always congenial and maintained healthy atmosphere. My Lord always tried to improve and maintain the decorum of the court and always guide the young lawyers to prepare and argue the case instead of asking adjournments. My Lord is kind enough to have such deep concern towards the Bar. The Bar of this Bench will always remember My Lord for his excellent personality, great command on law and gentle behavior.

I, myself and on behalf of Senior Advocates pray to God for my Lord to achieve the highest goal in judicial fraternity in future and also pray for healthy life.

Farewell speech delivered by Hon'ble Mr. Justice N.K. Gupta :-

The majority of faiths the world over have a great tradition where we believe that the sum total of a life gets evaluated at its end and that leads to either heaven or purgatory depending on how one lived his/her life. A professional's career too emulates this principle to some extent and my faith

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enables me to look forward to how my superiors, associates, contemporaries and collaborators would sum up my professional life's work.

All of the speakers today have been very kind in their words for me and I'm humbled by the affection they have shown.

I am also deeply grateful to Hon'ble the Chief Justice Shri Hemant Gupta for taking the trouble to travel to Gwalior and preside over today's event. I esteem his guidance and his kind words.

The members of legal fraternity are the best Judges of Judges. It's an extraordinary feeling to find that one's work was revered and that his legacy would endure.

But, one need not wait for retirement to evaluate his career. Fortunately, we can scrutinize our work closely while doing it and constantly strive to do better. It is my privilege today to share with you the principles and lessons in life that I've found to be most valuable.

My father *Lt. Shri Manmohan Lal Gupta*, himself a revered member of the Judiciary, shared the substance of his entire experience which is the most formative advice that has guided my judicial career for all of the 38 years. He called it the *TNT* rule. In the field of chemistry, *TNT* or *Tri-Nitro Toluene* is the chemical name of an explosive. With regards to his approach, my father's rule translates to *Then-N-There*. In very simple terms it means: *do not leave your work incomplete if doing it right away has real value*. Extending this to the Judicial profession, it states: *do not leave a case pending if you can conclude it quickly thereby providing the innocent the deserved relief and ensuring that no one needs to wait for Justice*.

When I began my career in the lower court, my first regular posting was as a Civil Judge Class II with my first District Judge as late Shri B. N. Saxena, father of Justice Rakesh Saxena. Shri Saxena gave me a key piece of advice. He said that if you work sincerely between 11 am to 5 pm in the court and thereafter in chambers, the quality of your work and the disposal rates will never be an issue.

Later Hon'ble Justice Shri V.K. Agrawal taught me another valuable lesson. He said "Be decisive and quick. But you cannot be either if your command over the subject is not sound. And, under no circumstances can there be any compromise on quality." It was through Hon'ble Justice Agrawal

that I first learnt the sanguine words of Hon'ble Justice Balkrishna Eradi, a great judge. I quote:-

"the essence of all judicial pronouncements is not only imparting of justice, but, showing that it was consciously imparted. The judgment must show on the face of it that the matter has been handled justly, honestly and fairly. You can not and must not do anything arbitrarily. Nobody in the world has the power to act arbitrarily, much less the judiciary."

(I unquote)

I have always found these lessons most valuable and till date, the quality of my work and my disposal rates have never slipped. Every case demanded the detailed elaboration of facts and circumstances to meet the ultimate ends of justice. Beginning my career at the grass root level of Indian Judiciary, I had the opportunity to develop the necessary command over the subject that has enabled me to be decisive and quick, dispense Justice Then-N-There and achieve it every day between 10:30 am to 04:30 pm.

From the date I took the oath as a Judge of the High Court on May 3rd, 2010, I have been able to decide over 48,000 cases. This means 6,400 cases per year or about 550 cases per month.

Today, as I stand here, I can look back into the past and feel a sense of genuine pride in what we've all accomplished together. This milestone would have been impossible without the continued support and dedication showed by the Hon'ble members of the High Court Bar Association at Jabalpur and Gwalior who have been most co-operative and affectionate.

At every stage, I've found the help of my brother and sister Judges to be invaluable. To name a few would be a grand disservice to the rest since no contribution was ever small and no help was ever insignificant. I've always appreciated the timely advice and guidance that my seniors gave me and the respect and affection my juniors have shown me.

A Judge cannot be efficient at his work without the support of the Registry, the secretarial staff and the Readers. I give sincere thanks to all the Registry officers at Jabalpur and Gwalior, especially to Mr. A.M. Saxena, Mr. G.S. Dubey and Mr. Navin Saxena who assisted me at Gwalior.

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I would be remiss to not mention my secretarial staff for their service and dedication. Ms. Bina Banerjee, Mr. Manzoor Ahmed, Mr. Pushpendra Patel and others at Jabalpur and Mr. Pawan Dharkar, Mr. M.K. Barik, Mr. Aashish Pawar and Mr. Abhishek Chaturvedi at Gwalior. I also thank my Readers at Jabalpur and Gwalior Mr. Anil Gujrati and Mr. Sunil Moghe. I owe my gratitude to each and everyone of you for the simple joy in a job well done.

It would be appropriate to quote that Dr. R.K. Chaturvedi and Dr. R.K. Sharma have rendered their medical services to me and my family satisfactorily and I am thankful to both of them.

The protocol officers of Jabalpur and Gwalior have done a lot for me and my family. I sincerely thank Mr. Saha (Retd.) and Mr. Ajay Pawar, Chief Protocol Officers at Jabalpur. I thank the Protocol Officers at Gwalior i.e. Mr. Abhishek Bhargava, Mr. Deepak Mishra, Mr. Monoj Sharma and Mr. Harendra Savita. I also thank Mr. Deshmukh, APO at Indore.

My family is always in my thoughts and the sheer pride and joy I see in their eyes today has made my zeal towards my work worthwhile.

My purpose here today is neither to summarise my career, nor to preach the respected advocates, rather, I wish to celebrate the journey we've taken together. I have spent my life living my ideals and achieving them with varying measure of success in different phases. I ought to be emotional today, for there is so much more I could have given to this profession and so much more I can still find the energy to achieve. On the contrary, I feel a profound sense of accomplishment and satisfaction in the work that I have been able to deliver during the past 38 years in the service of my fellow men.

I leave today with no regrets, rather a sense of boundless joy and contentment on what I could give to this institution and that I leave it better than I found it.

Thank you all once again.

NOTES OF CASES SECTION

Short Note

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Before Mr. Justice S.K. Palo

M.Cr.C. No. 17940/2016 (Jabalpur) decided on 9 March, 2017

ARCHANA BAGLA

...Applicant

Vs.

M/S BETUL OIL LIMITED

...Non-applicant

Negotiable Instruments Act (26 of 1881), Section 138 & 141 - Quashment - Director of Company - Respondent filed a complaint case whereby offence u/S 138 of the Act of 1881 was registered against petitioner and her husband, both being Director of a company - Held - Nothing has been averred against the petitioner except that she is the wife of accused and is a Director of the Company - Husband who was the director of the company made all the transactions and was responsible for it - Earlier also cheques were issued by the husband which were dishonoured and subsequently letter of apology was also written by husband and further eight cheques were signed and issued by the husband - Petitioner was a dormant partner/Director of the company, not having any active role in transactions of the company - Under these circumstances, summoning the accused/petitioner by trial Court seems to be not justified - Order passed by trial Court against the petitioner is set aside - Petition allowed.

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 व 141 - अभिखंडन - कम्पनी का निदेशक - प्रत्यर्थी ने एक परिवाद प्रस्तुत किया जिससे याची तथा उसके पति, दोनों को कम्पनी के निदेशक होने के नाते उनके विरुद्ध 1881 के अधिनियम की धारा 138 के अंतर्गत अपराध पंजीबद्ध किया गया था - अभिनिर्धारित - याची के विरुद्ध कुछ प्रकथित नहीं किया गया सिवाय इसके कि वह अभियुक्त की पत्नी है तथा कम्पनी की निदेशक है - पति जो कि कम्पनी का निदेशक था, ने सभी संव्यवहार किये तथा उसके लिये उत्तरदायी था - पति द्वारा पूर्व में भी चेक जारी किये गये थे जो कि अनादृत हुये थे एवं तत्पश्चात् पति द्वारा क्षमा याचना का पत्र भी लिखा गया था तथा आगे पति द्वारा 8 चेक पर हस्ताक्षर किये गये एवं जारी किये गये थे - याची कम्पनी की एक निष्क्रिय भागीदार/निदेशक थी, जिसकी कम्पनी के संव्यवहारों में कोई सक्रिय भूमिका नहीं रही - इन परिस्थितियों में, विचारण न्यायालय द्वारा अभियुक्त/याची को समन किया जाना न्यायोचित प्रतीत नहीं होता - विचारण न्यायालय द्वारा याची के विरुद्ध पारित किया गया आदेश अपास्त - याचिका मंजूर।

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Cases referred :

2011 (4) MPLJ 706, (2013) 8 SCC 71, (2007) 5 SCC 103, (2016) 6 SCC 62, (2010) 3 SCC 330.

Aditya Adhikar with *A. Bhowmik*, for the applicant.

Abhijeet Awasthy, for the non-applicant.

Short Note

*(87)

Before Mr. Justice Subodh Abhyankar

: W.P. No. 728/2017 (Jabalpur) decided on 7 April, 2017

BHAGWANDAS YADAV

...Petitioner

Vs.

STATE OF M.P. & ors.

... Respondents

Service Law - Termination - Character Verification - Suppression of Fact - Petty Offence - Petitioner, presently 46 yrs old was initially appointed as daily wager in 1989 and in the year 2015 he was regularized - Subsequently his service was terminated on the ground that he suppressed his criminal antecedents in character verification form, which has rendered him unfit for government employment - Challenge to - Held - Petitioner was charged for offence u/S 147, 148, 294, 323, 506 and 324 IPC in 1999 which was a family dispute and was later compromised in 2000 - He stood acquitted around 15 years back before his verification - Offences are petty in nature and incident took place when he was 28 yrs old - It cannot be said that petitioner was involved in any case of moral turpitude - Discretion exercised is not just and proper and was exercised in a mechanical manner - Impugned order quashed - Petition allowed.

सेवा विधि - सेवा समाप्ति - चरित्र सत्यापन - तथ्य का छिपाव - मामूली अपराध - याची, वर्तमान में 46 वर्ष की आयु, को 1989 में दैनिक वेतनभोगी के रूप में आंशिक रूप से नियुक्त किया गया था तथा वर्ष 2015 में उसे नियमित किया गया था - तत्पश्चात् उसकी सेवा इस आधार पर समाप्त कर दी गई थी कि उसने चरित्र सत्यापन प्रारूप में अपने आपराधिक पूर्ववृत्त को छिपाया जिसने उसे शासकीय नियोजन हेतु अयोग्य बना दिया - को चुनौती - अभिनिर्धारित - याची को 1999 में धारा 147, 148, 294, 323, 506 व 324 भा.दं.सं. के अंतर्गत अपराध हेतु आक्षेपित

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किया गया था जो कि एक पारिवारिक विवाद था और बाद में 2000 में समझौता हुआ था - उसके सत्यापन के लगभग 15 वर्ष पूर्व वह दोषमुक्त हो गया था - अपराध मामूली प्रकृति के हैं तथा घटना तब घटी थी जब वह 28 वर्ष की आयु का था - यह नहीं कहा जा सकता कि याची नैतिक अधमता के किसी प्रकरण में शामिल था - प्रयोग किया गया विवेकाधिकार न्याय संगत एवं उचित नहीं तथा यांत्रिक ढंग से प्रयोग किया गया था - आक्षेपित आदेश अभिखंडित - याचिका मंजूर।

Cases referred :

W.P. No. 424/2014 decided on 9.12.2014, 2010 (12) MPLJ 291, 2016 (8) SCC 471.

Dharmendra Kumar Pandey, for the petitioner.

Anubhav Jain, P.L. for the respondents/State.

Ashok Chourasiya, for the respondent No.7.

Short Note

***(88)**

Before Ms. Justice Vandana Kasrekar

W.P. No.17786/2016 (Jabalpur) decided on 28 February, 2017

CHINDA BAI @ BAKU BAI

...Petitioner

Vs.

GOVINDRAO & ors.

...Respondents

Civil Procedure Code (5 of 1908), Section 10 and Land Revenue Code, M.P. (20 of 1959), Section 178 - Stay of Suit - Scope - Suit filed by respondents/Plaintiffs for declaration of title and possession against petitioner/defendant No.1 and prior to filing of civil suit, an application for partition was filed by petitioner before Tehsildar - Respondent No.1/ Plaintiff filed an application u/S 10 of the C.P.C. seeking stay of the proceedings before Tehsildar which was allowed by Trial Court - Challenge to - Held - Section 10 is applicable to suits and not to the proceedings and application u/S 178 of the Code of 1959 before Tehsildar comes under the definition of Proceedings - Suit means a process instituted in the Court of justice whereas proceedings means a legal action or process - Further held - As per section 10 C.P.C., subsequent suit is to be stayed where as in the present case, application filed prior to the filing of said civil suit - Order passed by Trial Court is contrary to law and section 10 C.P.C. - Impugned order is set aside -

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Application filed u/S 10 C.P.C. is rejected - Petition allowed.

सिविल प्रक्रिया संहिता (1908 का 5), धारा 10 एवं नू राजस्व संहिता, म.प्र. (1959 का 20), धारा 178 - वाद पर रोक - विस्तार - प्रत्यर्थागण/वादीगण द्वारा याची/प्रतिवादी क्र.1 के विरुद्ध स्वत्व की घोषणा एवं कब्जा हेतु वाद प्रस्तुत किया गया तथा सिविल वाद प्रस्तुत किये जाने से पूर्व, याची द्वारा तहसीलदार के समक्ष विभाजन हेतु एक आवेदन प्रस्तुत किया गया था - प्रत्यर्था क्र.1/वादी ने सिविल प्रक्रिया संहिता की धारा 10 के अंतर्गत तहसीलदार के समक्ष कार्यवाहियों पर रोक चाहते हुये आवेदन प्रस्तुत किया जो कि विचारण न्यायालय द्वारा मंजूर किया गया था - को चुनौती - अभिनिर्धारित - धारा 10 वाद पर लागू है न कि कार्यवाहियों पर तथा 1959 की संहिता की धारा 178 के अंतर्गत आवेदन कार्यवाहियों की परिभाषा के अंतर्गत आता है - वाद का अर्थ न्यायालय में संस्थित की गई प्रक्रिया से है जबकि कार्यवाहियों का अर्थ विधिक कार्रवाई या प्रक्रिया से है - आगे अभिनिर्धारित - सिविल प्रक्रिया संहिता की धारा 10 के अनुसार, पश्चात्पूर्ति वाद रोका जाना चाहिए जबकि वर्तमान प्रकरण में उक्त सिविल वाद आवेदन के प्रस्तुतीकरण से पूर्व प्रस्तुत किया गया था - विचारण न्यायालय द्वारा पारित आदेश विधि एवं सिविल प्रक्रिया संहिता की धारा 10 के विपरीत है - आक्षेपित आदेश अपास्त - सिविल प्रक्रिया संहिता की धारा 10 के अंतर्गत प्रस्तुत आवेदन अस्वीकार किया गया - याचिका मंजूर।

Jaideep Sirpurkar, for the petitioner.

Mohan Sausarkar, for the respondents No.1 & 6.

Short Note

*(89)

Before Mr. Justice Vijay Kumar Shukla

W.P. No. 10834/2016 (Jabalpur) decided on 1 March, 2017

CHOTI PATEL (SMT.)

...Petitioner

Vs.

STATE OF M.P.

... Respondent

Constitution - Article 226/227 - Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 39 - Suspension of Sarpanch - Ground - Sarpanch was suspended on production of challan in a criminal case - Challenge to - Held - As per Section 39 of the Adhiniyam of 1993, suspension of an office bearer can be passed after framing of charge in criminal cases - In criminal trial, stage of filing of challan is different than the stage of framing charge - Charge is framed after application of mind by the Court of law - In the present case,

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when suspension order was passed, on that date, no charge was framed in the criminal case against the petitioner - Order of suspension is contrary to Section 39 of the Adhiniyam - Impugned order quashed - Petition allowed.

संविधान - अनुच्छेद 226/227 - पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 39 - सरपंच का निलंबन - आधार - सरपंच को दाण्डिक प्रकरण में चालान प्रस्तुत होने पर निलंबित किया गया था - को चुनौती - अभिनिर्धारित - 1993 के अधिनियम की धारा 39 के अनुसार, दाण्डिक प्रकरण में आरोप विरचित किये जाने के पश्चात् पदाधिकांरी का निलंबन पारित किया जा सकता है - दाण्डिक विचारण में, चालान प्रस्तुत करने का प्रक्रम, आरोप विरचित किये जाने के प्रक्रम से भिन्न है - न्यायालय द्वारा मस्तिष्क का प्रयोग करने के पश्चात् आरोप विरचित किया जाता है - वर्तमान प्रकरण में, जब निलंबन आदेश पारित किया गया था, उस तिथि को याची के विरुद्ध दाण्डिक प्रकरण में कोई आरोप विरचित नहीं था - निलंबन का आदेश, अधिनियम की धारा 39 के विपरीत है - आक्षेपित आदेश अभिखंडित - याचिका मंजूर।

Case referred :

2007 (II) MPWN 86.

S.M. Guru, for the petitioner.

Punit Shrotri, P.L. for the respondent/State.

Short Note

*(90)

Before Mr. Justice Sanjay Yadav

M.A. No. 433/2016 (Gwalior) decided on 12 July, 2017

EXECUTIVE ENGINEER (CITY DIVISION NORTH)

...Appellant

M.P.M.K.V.V.C.L. ROSHNIGHAR, GWALIOR

Vs.

KISHORILAL & ors.

...Respondents

Workmen's Compensation Act (8 of 1923), Section 30 - Compensation - Quantum - Interest on Compensation - Respondent while carrying out repairing and maintenance of electric line got electric shock from High Tension Line and died - In claim case, Commissioner under the Act of 1923 awarded a compensation of Rs. 3,78,575 alongwith interest @ 12% from the date of accident - Challenge to - Held - Appellant contended that respondent was not their employee but was

NOTES OF CASES SECTION

the employee of the contractor who was contracted for maintenance work - In written statements, appellant stated the place of work as Transport Nagar whereas Contractor stated the place of work as Kishanbagh - Appellant and Contractor could not establish their respective contention - Further, appellant miserably failed to establish the shift duty allocated to workers whose names were found in attendance sheet - Oral and documentary evidence shows that findings recorded by Commissioner cannot be faulted with - Further held - Supreme Court held that interest on compensation should be paid from date of accident - In the present case, award of interest from date of accident, also cannot be faulted with - Appeal dismissed.

कर्मकार प्रतिकर अधिनियम, (1923 का 8), धारा 30 - प्रतिकर - मात्रा - प्रतिकर पर ब्याज - प्रत्यर्थी को विद्युत लाइन की मरम्मत एवं रखरखाव करते समय हाइटेशन लाइन से विद्युत का झटका लगा और उसकी मृत्यु हो गई - दावा के प्रकरण में, 1923 के अधिनियम के अंतर्गत आयुक्त ने दुर्घटना की तिथि से 12% ब्याज की दर के साथ 3,78,575 रु./- का प्रतिकर अधिनिर्णीत किया - को चुनौती - अभिनिर्धारित - अपीलार्थी ने यह तर्क दिया कि प्रत्यर्थी उनका कर्मचारी नहीं था बल्कि उस ठेकेदार का कर्मचारी था जिससे रखरखाव के कार्य हेतु संविदा की गई थी - लिखित कथनों में, अपीलार्थी ने कार्य का स्थल ट्रांसपोर्ट नगर बताया है जबकि ठेकेदार ने कार्य का स्थल किशनबाग बताया है - अपीलार्थी और ठेकेदार अपने संबंधित तर्क स्थापित नहीं कर सके - आगे, अपीलार्थी उन कर्मकारों की आबंटित शिफ्ट ड्यूटी स्थापित करने में बुरी तरह विफल रहा जिनके नाम उपस्थिति पत्रक में पाये गये थे - मौखिक एवं दस्तावेजी साक्ष्य यह दर्शाते हैं कि आयुक्त द्वारा अभिलिखित किये गये निष्कर्षों में कोई त्रुटि नहीं निकाली जा सकती - आगे अभिनिर्धारित - उच्चतम न्यायालय ने अभिनिर्धारित किया है कि प्रतिकर पर ब्याज का भुगतान दुर्घटना की तिथि से किया जायेगा - वर्तमान प्रकरण में, दुर्घटना की तिथि से ब्याज अधिनिर्णीत किये जाने में भी कोई त्रुटि नहीं निकाली जा सकती - अपील खारिज।

Cases referred :

2009 LLR 350, (2007) 1 SCC (L&S) 643, (2014) 2 SCC 298.

Ravi Jain, for the appellant.

G.P. Mishra, for the respondents No.1 & 2.

NOTES OF CASES SECTION

Short Note

*(91)

Before Mr. Justice S.K. Awasthi

M.A. No. 830/2005 (Gwalior) decided on 7 March, 2017

GAJENDRA SINGH

...Appellant

Vs.

S.G. MOTORS

...Respondent

Workmen's Compensation Act (8 of 1923) - Section 2(1)(n) - Definition of "Workmen" - Appellant filed a claim case for compensation on account of accidental death of his son while on duty during the course of employment under the respondent - Claim case was dismissed - Challenge to - Held - It is clear from the facts that death of employee has occurred during the course of employment but Section 2(1)(n) shows that the Workmen's Compensation Act excludes the employees doing clerical or supervisory work - In the present case, deceased was employed as a clerk and was thus not a "Workman" within the ambit of the provisions of the Act - Impugned order is just and proper - Appeal dismissed.

कर्मकार प्रतिकर अधिनियम, (1923 का 8) - धारा 2(1)(एन) - "कर्मकार" की परिभाषा - अपीलार्थी ने अपने पुत्र की दुर्घटनापूर्ण मृत्यु, प्रत्यर्थी के अधीन नियोजन के दौरान कर्तव्य पर रहने के दौरान हो जाने के कारण प्रतिकर हेतु दावा प्रकरण प्रस्तुत किया - दावा प्रकरण खारिज किया गया था - को चुनौती - अभिनिर्धारित - तथ्यों से यह स्पष्ट है कि कर्मचारी की मृत्यु नियोजन के दौरान हुई है परंतु धारा 2(1)(एन) दर्शाती है कि कर्मकार प्रतिकर अधिनियम, लिपिकीय या पर्यवेक्षण कार्य करने वाले कर्मचारियों को अपवर्जित करती है - वर्तमान प्रकरण में, मृतक एक लिपिक के रूप में नियोजित था और इसलिए अधिनियम के उपबंधों की परिधि के भीतर "कर्मकार" नहीं था - आक्षेपित आदेश न्यायपूर्ण एवं उचित है - अपील खारिज।

Cases referred :

2001 ACJ 647, 2004 ACJ 1639, 2012 ACJ 2072 (MP).

O.P. Singhal, for the appellant.

None, for the respondent.

NOTES OF CASES SECTION

Short Note

*(92)

Before Mr. Justice Alok Verma

Cr.R. No. 793/2016 (Indore) decided on 15 March, 2017

INDRASINGH

...Applicant

Vs:

STATE OF M.P.

...Non-applicant

Juvenile Justice (Care and Protection of Children) Act (56 of 2000) (now Repealed), Section 7-A and Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Section 94 & 111 - Determination of Age - Procedure - In the trial Court, Special Judge got conducted ossification test and held that age of accused on the date of occurrence was above 18 years and thus trial would be held under provisions of Cr.P.C. - Challenge to - Held - Impugned order was passed in March 2016 whereas new Act came into force in January 2016 - According to Section 94 of new Act of 2015, Court of Sessions had no power to determine the age of accused and this power is granted only to the Juvenile Board constituted under the Act - It was incumbent for Special Judge to follow provisions of Section 94 of the new Act - Impugned order not in accordance with new Act and is set aside - Application allowed.

किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम (2000 का 56) (अब निरसित), धारा 7-ए एवं किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 (2016 का 2), धारा 94 व 111 - आयु का निर्धारण - प्रक्रिया - विचारण न्यायालय में, विशेष न्यायाधीश ने अस्थि विकास परीक्षण संचालित किया तथा अभिनिर्धारित किया कि घटना दिनांक को अभियुक्त की आयु 18 वर्ष से अधिक थी तथा इसलिए विचारण दण्ड प्रक्रिया संहिता के उपबंधों के अन्तर्गत अभिनिर्धारित किया जाएगा - को चुनौती - अभिनिर्धारित - मार्च, 2016 में आक्षेपित आदेश पारित किया गया था जबकि नया अधिनियम जनवरी, 2016 को प्रभाव में आया - 2015 के नये अधिनियम की धारा 94 के अनुसार, सत्र न्यायालय को अभियुक्त की आयु का निर्धारण करने की कोई शक्ति नहीं थी तथा यह शक्ति केवल अधिनियम के अन्तर्गत गठित की गई किशोर बोर्ड को प्रदान की गई है - नये अधिनियम की धारा 94 के उपबंधों का पालन करना विशेष न्यायाधीश के लिए अनिवार्य था - आक्षेपित आदेश नये अधिनियम के अनुसार नहीं तथा इसलिए अपास्त - आवेदन मंजूर।

NOTES OF CASES SECTION

Cases referred ;

2012 (9) SCC 750, 2015 (1) MPWN 42, 2015 (4) CDFC 1859 (M.P.).

Anil Ojha, for the applicant.

Prasanna Bhatnagar, for the non-applicant/State.

Short Note

**(93)(DB)*

Before Mr. Justice N.K. Gupta & Mr. Justice S.K. Awasthi

Cr.A. No. 79/2007 (Gwalior) decided on 25 May, 2017

JITENDRA @ JEETU

...Appellant

Vs.

STATE OF M.P.

...Respondent

A. Penal Code (45 of 1860), Section 302 & 384, Dakaiti Aur Vyapharan Prabhavit Ksheshtra Adhiniyam, M.P. (36 of 1981), Section 13 and Evidence Act (1 of 1872), Section 27 - Robbery and Murder - Conviction - Confessional Statement - Chain of Circumstantial Evidence - Test Identification Parade - Last Seen - A person booked a taxi disclosing his name to be Ajay and subsequently dead body of taxi driver was found - Later, it was revealed that actual name of Ajay was Jitendra/Appellant - On interrogation, appellant gave a confessional statement u/S 27 of Evidence Act - Key of car (taxi) and its registration papers were recovered from appellant - Appellant did not produce any defence witnesses - Held - There is no Ocular Evidence and case depends upon various circumstances - Prosecution witness Rakesh stated that he met appellant with deceased but he did not identify the appellant when he was present in Court - No identification parade was conducted by Police - Factor of "last seen" is not proved beyond doubt - There is uncorroborated testimony of prosecution witnesses - Independent witnesses had turned hostile - No fair investigation was done by Police - Confessional Statement of accused, recovery and seizure of key and documents of car is not proved beyond doubt - Chain of circumstances is not complete - Since prosecution could not prove all the circumstantial evidence beyond doubt, the false defence taken by appellant cannot be used as an additional link - Trial

NOTES OF CASES SECTION

Court committed gross error in convicting appellant without any substantive evidence - Appellant acquitted - Appeal allowed.

क. दण्ड संहिता (1860 का 45), धारा 302 व 384, डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र. (1981 का 36), धारा 13 एवं साक्ष्य अधिनियम (1872 का 1), धारा 27 - लूट एवं हत्या - दोषसिद्धि - संस्वीकृति कथन - परिस्थितिजन्य साक्ष्य की श्रृंखला - पहचान परेड - अंतिम बार देखा जाना - एक व्यक्ति ने अपना नाम अजय बताते हुए एक टैक्सी बुक की एवं तत्पश्चात् टैक्सी चालक का शव पाया गया था - बाद में, यह प्रकट हुआ कि अजय का वास्तविक नाम जितेन्द्र / अपीलार्थी था - पूछताछ में, अपीलार्थी ने साक्ष्य अधिनियम की धारा 27 के अंतर्गत संस्वीकृति कथन दिये - कार (टैक्सी) की चाबी तथा उसके रजिस्ट्रीकरण कागजात, अपीलार्थी से बरामद किये गये थे - अपीलार्थी ने कोई बचाव साक्षीगण प्रस्तुत नहीं किये - अभिनिर्धारित - कोई चाक्षुष साक्ष्य नहीं है तथा प्रकरण विभिन्न परिस्थितियों पर निर्भर करता है - अभियोजन साक्षी राकेश ने कथन किया कि वह मृतक के साथ अपीलार्थी से मिला था परंतु वह अपीलार्थी को नहीं पहचान पाया जब वह न्यायालय में उपस्थित था - पुलिस द्वारा कोई पहचान परेड संचालित नहीं की गई थी - "अंतिम बार देखे जाना" का कारक संदेह से परे साबित नहीं हुआ है - अभियोजन साक्षीगण के असंपुष्ट परिसाक्ष्य हैं - स्वतंत्र साक्षीगण पक्षद्रोही हो गये थे - पुलिस द्वारा कोई निष्पक्ष अन्वेषण नहीं किया गया था - अभियुक्त के संस्वीकृति कथन, कार की चाबी एवं दस्तावेजों की बरामदगी एवं जब्ती संदेह से परे साबित नहीं हुई है - परिस्थितियों की श्रृंखला पूर्ण नहीं है - चूंकि अभियोजन सभी परिस्थितिजन्य साक्ष्य को संदेह से परे साबित नहीं कर सका, अपीलार्थी द्वारा लिये गये मिथ्या बचाव को अतिरिक्त कड़ी के रूप में उपयोग नहीं किया जा सकता - विचारण न्यायालय ने बिना किसी सारमूल साक्ष्य के अपीलार्थी को दोषसिद्ध करने में घोर त्रुटि की है - अपीलार्थी दोषमुक्त - अपील मंजूर।

B. Criminal Trial - Practice - Held - If any documentary evidence is available which is not produced then oral evidence shall be discarded.

ख. आपराधिक विचारण - पद्धति - अभिनिर्धारित - यदि कोई दस्तावेजी साक्ष्य उपलब्ध है जो कि प्रस्तुत नहीं किया गया है तो मौखिक साक्ष्य अस्वीकार कर दिया जाएगा।

The judgment of the Court was delivered by : N.K. GUPTA, J.

Cases referred:

AIR 1983 SC 446, AIR 1963 SC 1113, (1984) 4 SCC 116:

NOTES OF CASES SECTION

A.K. Jain, for the appellant.

J.M. Sahni, P.L. for the respondent/State.

Short Note

*(94)(DB)

Before Mr. Justice Sheel Nagu & Mr. Justice S.A. Dharmadhikari

W.A. No. 119/2017 (Gwalior) decided on 8 March, 2017

JITENDRA SINGH NARWARIYA

...Appellant

Vs.

STATE OF M.P. & ors.

...Respondents

Penal Code (45 of 1860), Section 376 & 506 - Free and Fair Investigation - Source of Information/Material - Offence u/S 376 and 506 IPC registered against appellant - Accused/appellant seeking to produce certain photographs, compact Disc (C.D.) and other cogent material before investigation agency to establish his innocence - Held - Investigating agency should not feel diffident or shy of allowing accused to furnish or disclose material/information which may help investigation to discover truth which is the prime object behind every process of crime investigation - Cr.P.C. or M.P. Police Manual do not restrict or prohibit the investigating agency from accepting relevant material/information during process of investigation - Investigating agency should be receptive to all possible sources or material/information which may assist the agency to conclude the truth - One of the sources can also be the accused - Investigating Authority is directed to allow appellant to submit all such relevant information which if done shall be considered objectively without discarding it merely because of being furnished by accused - Writ Appeal disposed.

दण्ड संहिता (1860 का 45), धारा 376 एवं 506 - स्वतंत्र एवं निष्पक्ष अन्वेषण - जानकारी/सामग्री का स्रोत - अपीलार्थी के विरुद्ध भारतीय दण्ड संहिता की धारा 376 एवं 506 के अन्तर्गत अपराध पंजीबद्ध किया गया - अभियुक्त/अपीलार्थी का अपनी निर्दोषिता सिद्ध करने के लिए अन्वेषण एजेंसी के समक्ष कुछ तस्वीरें, कॉम्पैक्ट डिस्क (सी.डी.) तथा अन्य प्रबल सामग्री की प्रस्तुति चाहा जाना - अभिनिर्धारित - अन्वेषण एजेंसी को अभियुक्त को सामग्री/जानकारी प्रस्तुत करने/प्रकट करने की मंजूरी देने में संकोच या शर्म महसूस नहीं करना चाहिए जो सत्य खोजने हेतु अन्वेषण में सहायता कर सकता है जो कि अपराध अन्वेषण की प्रत्येक प्रक्रिया के पीछे मुख्य उद्देश्य है - दण्ड प्रक्रिया संहिता या

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एम.पी. पुलिस निर्देशिका, अन्वेषण एजेन्सी को अन्वेषण प्रक्रिया के दौरान सुसंगत सामग्री/जानकारी स्वीकार करने से निर्बंधित या प्रतिबंधित नहीं करती - अन्वेषण एजेन्सी को सभी संभावित स्रोतों या सामग्री/जानकारी के लिए ग्रहणशील होना चाहिए जो कि एजेन्सी को सत्य निष्कर्षित करने में सहायता कर सकते हैं - इसमें एक स्रोत अभियुक्त भी हो सकता है - अन्वेषण प्राधिकारी को अपीलार्थी को ऐसी सभी सुसंगत जानकारी प्रस्तुत करने की मंजूरी देने हेतु निदेशित किया गया जो यदि किया जाता है तो उसे मात्र अभियुक्त द्वारा प्रस्तुत किये जाने के कारण अस्वीकार किये बिना निष्पक्षता से विचार में लिया जायेगा - रिट अपील निराकृत।

The order of the Court was delivered by : SHEEL NAGU, J.

Case referred :

(2016) 3 SCC 135.

A.S. Bhadoriya, for the appellant.

N.S. Kirar, P.L. for the respondents/State.

Short Note

**(95)*

Before Mr. Justice Ashok Kumar Joshi

C.R. No. 40/2015 (Jabalpur) decided on 17 January, 2017

MAHESH CHANDRA GIROTI

...Applicant

Vs.

RAHUL DEV CHOURASIA & ors.

...Non-applicants

Civil Procedure Code (5 of 1908), Order 7 Rule 11 - Question of Limitation - Revision against the dismissal of application filed by Petitioner/ defendant under Order 7 Rule 11 C.P.C. - Held - Suit was filed on 20.11.12 and it has been specifically pleaded that cause of action arose on 06.10.12 - Question of limitation is a mixed question of facts and law and truthfulness or otherwise can be decided only after recording of evidence - Whether any party was having knowledge of any particular fact at a particular time or not, could not be decided without recording evidence of parties - Supreme Court has held, that while exercising powers under Order 7 Rule 11 C.P.C., only averments of plaint has to be read as a whole and at that stage stand of defendants in written statement or in application for rejection of plaint is immaterial - Trial Court rightly dismissed the application - Revision dismissed.

NOTES OF CASES SECTION

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – परिसीमा का प्रश्न – याची/प्रतिवादी द्वारा आदेश 7 नियम 11 सि.प्र.सं. के अंतर्गत प्रस्तुत आवेदन की खारिजी के विरुद्ध पुनरीक्षण – अभिनिर्धारित – वाद, 20-11-12 को प्रस्तुत किया गया था और यह विनिर्दिष्ट रूप से अभिवाक् किया गया है कि वाद कारण, 6-10-12 को उत्पन्न हुआ था – परिसीमा का प्रश्न तथ्यों एवं विधि का एक मिश्रित प्रश्न है तथा सत्यता अथवा अन्यथा का विनिश्चय केवल साक्ष्य अभिलिखित करने के पश्चात् ही किया जा सकता है – क्या किसी पक्षकार को किसी विशिष्ट समय किसी विशिष्ट तथ्य की जानकारी थी अथवा नहीं इसका विनिश्चय पक्षकारों के साक्ष्य अभिलिखित किये बिना नहीं किया जा सकता – उच्चतम न्यायालय ने अभिनिर्धारित किया है कि आदेश 7 नियम 11 सि.प्र.सं. के अंतर्गत शक्तियों का प्रयोग करते समय केवल वादपत्र के प्रकथनों को संपूर्णता में पढ़ा जाना चाहिए और उस प्रक्रम पर लिखित कथन में या वादपत्र की खारिजी हेतु आवेदन में प्रतिवादीगण का पक्ष पूर्णतः महत्वहीन है – विचारण न्यायालय ने आवेदन को उचित रूप से खारिज किया – पुनरीक्षण खारिज।

Cases referred :

2015 (1) M.P.L.J. 376, 2015 (1) M.P.L.J. 385, (2015) 8 SCC 331.

R.K. Verma with Saurabh Shrivastava, for the applicant.

R.K. Sanghi, for the non-applicant No.1/plaintiff.

Shobhna Sharma, P.L. for the non-applicant No.3/State.

Short Note

*(96)

Before Mr. Justice Rajendra Mahajan

M.Cr.C. No. 1194/2017 (Jabalpur) decided on 17 February, 2017

MANOJ AHIRWAR

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 164 & 439, Penal Code (45 of 1860), Section 363, 366, 376/34 and Protection of Children from Sexual Offences Act, (32 of 2012), Section 3 & 4 - Bail - Grounds - In the trial Court, Special Judge rejected the bail application of the applicant - Held - Prosecutrix's statement recorded u/S 164 shows that she stated her age to be 19 years, she married with applicant with her consent and thereafter started living in Delhi as husband and wife and applicant had sexual intercourse with her upon her will and consent

NOTES OF CASES SECTION

- She also stated that she wants to remain in company of applicant as his wife - While rejecting the bail application, Special Judge has not assigned any reason as to why he has not placed reliance upon and disbelieved the statement of prosecutrix recorded u/S 164 Cr.P.C. - Order of rejection of bail smacks of arbitrariness and willfulness on the part of Special Judge and such approach is strongly disapproved by this Court - It is a fit case for grant of bail - Bail granted to applicant/accused - Application allowed.

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 164 व 439, दण्ड संहिता (1860 का 45), धारा 363, 366, 376/34 व लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 3 व 4 - जमानत - आधार - विचारण न्यायालय में, विशेष न्यायाधीश ने आवेदक का जमानत आवेदन नामंजूर किया - अभिनिर्धारित - धारा 164 के अंतर्गत अभिलिखित किये गये अभियोक्त्री के कथन यह दर्शाते हैं कि उसने अपनी आयु 19 वर्ष होने का कथन किया, उसने अपनी सहमति से आवेदक के साथ विवाह किया एवं तत्पश्चात् पति और पत्नी के रूप में दिल्ली में रहने लगे तथा आवेदक ने उसकी स्वेच्छा और सहमति पर उसके साथ लैंगिक संभोग किया था - उसने यह भी कथन किया कि वह आवेदक के साथ उसकी पत्नी के रूप में रहना चाहती है - जमानत आवेदन नामंजूर करते समय, विशेष न्यायाधीश ने कोई कारण नहीं दिये कि क्यों उन्होंने दण्ड प्रक्रिया संहिता की धारा 164 के अंतर्गत अभिलिखित किये गये अभियोक्त्री के कथन पर भरोसा नहीं किया तथा अविश्वास किया - जमानत नामंजूरी के आदेश में विशेष न्यायाधीश की ओर से मनमानापन एवं दुराग्रह झलकता है तथा इस तरह के दृष्टिकोण को इस न्यायालय द्वारा दृढ़ता से अननुमोदित किया गया है - जमानत प्रदान करने के लिए यह एक उचित प्रकरण है - आवेदक/अभियुक्त को जमानत प्रदान की गई - आवेदन मंजूर।

Anoop Saxena, for the applicant.

Shahin Fatima, G.A. for the non-applicant/State.

Short Note

*(97)

Before Mr. Justice C.V. Sirpurkar

M.Cr.C. No. 16651/2015 (Jabalpur) decided on 6 February, 2017

MOHIT JAIN & ors.

...Applicants

Vs.

STATE OF M.P. & anr.

...Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code (45 of 1860), Section 498-A & 506 r/w Section 34 and Dowry

NOTES OF CASES SECTION

Prohibition Act (28 of 1961), Section 3 & 4 - Quashment of FIR - On a complaint by wife, offence u/S 498-A & 506 r/w Section 34 IPC and u/S 3/4 of the Act of 1961 was registered against husband, mother-in-law, father-in-law and brother-in-law - Challenge to - Held - Earlier also wife has lodged a report before Mahila Thana Bhopal where averments relating to dowry demands or harassment in relation thereto was not made - No explanation as to why such averment was not made in first report - It is clear that since police did not registered offence on her first report and when the conciliation proceedings failed, she again filed a report concocting events and introducing ingredients of Section 498-A IPC so as to ensure that Court at Bhopal gets territorial Jurisdiction - Proceeding is manifestly initiated with malafide and maliciously instituted with ulterior motive for wreaking vengeance on husband and his family members - Fit case for interference - FIR quashed.

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता (1860 का 45), धारा 498-ए व 506 सहपठित धारा 34 एवं दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3 व 4 - प्रथम सूचना प्रतिवेदन का अभिखंडन - पत्नी द्वारा परिवाद पर, पति, सास, ससुर तथा पति के माई के विरुद्ध भारतीय दण्ड संहिता की धारा 498-ए एवं 506 सहपठित धारा 34 तथा 1961 के अधिनियम की धारा 3/4 के अंतर्गत अपराध पंजीबद्ध किया गया था - को चुनौती - अभिनिर्धारित - पूर्व में भी पत्नी ने महिला थाना भोपाल में प्रतिवेदन दर्ज किया गया है जहां दहेज की मांगों या उससे संबंधित उत्पीड़न के संबंध में प्रकथन नहीं किये गये थे - इस बारे में कोई स्पष्टीकरण नहीं है कि इस तरह के प्रकथन प्रथम प्रतिवेदन में क्यों नहीं किये गये थे - यह स्पष्ट है कि चूंकि पुलिस ने उसके प्रथम प्रतिवेदन पर अपराध पंजीबद्ध नहीं किया तथा जब सुलह कार्यवाहियां विफल हुई, तो उसने पुनः घटनाएँ गढ़ी तथा भारतीय दण्ड संहिता की धारा 498-ए के घटकों को पहली बार पेश करते हुये, प्रतिवेदन दर्ज किया ताकि यह सुनिश्चित किया जा सके कि भोपाल के न्यायालय को क्षेत्रीय अधिकारिता प्राप्त हो सके - कार्यवाही दुराशय के साथ आरंभ की गई है तथा पति एवं उसके परिवार के सदस्यों से बदला लेने के लिए, अंतरस्थ हेतु के साथ द्वेषपूर्ण रूप से संस्थित की गई है - हस्तक्षेप के लिए उचित प्रकरण - प्रथम सूचना प्रतिवेदन अभिखंडित।

Cases referred :

AIR 2013 SC 506, AIR 2011 SC 1090, 2005 (1) SCC 568, AIR 2009 SC 1013, AIR 2013 SC (supp.) 1056, AIR 1992 SC 604, 2014 (8) SCC 273.

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Applicant No. 1 & 4 present in person and on behalf of applicant nos. 2 & 3.

S.P. Chadar, P.L. for the non-applicant No.1/State.

Saurabh Parmar, for the non-applicant No.2.

Short Note

**(98)(DB)*

Before Mr. Justice S.C. Sharma & Mr. Justice Rajeev Kumar Dubey

W.P. No. 9200/2014 (Indore) decided on 23 January, 2017

PATEL MOTORS (M/S)

...Petitioner

Vs.

STATE OF M.P. & ors.

..Respondents

(Alongwith W.P. 6293/2015)

Entry Tax Act, M.P. (52 of 1976), Section 2 & 3(1) - Entry Tax on Second Hand Vehicles - Petitioner company engaged in business of purchase/exchange of old/used vehicles by brand name of Maruti True Value - Taxation department imposed entry tax on second hand vehicles purchased/sold within the local area of Madhya Pradesh - Challenge to - Held - Petitioner is already paying entry tax on vehicles brought from outside the State, in respect of which no entry tax has been paid at all - Respondents cannot charge entry tax on those vehicle which are sold within the local area of State and which have already entered the local area and for which entry tax has already been paid - In such cases, there is only change of ownership - Entry tax assessed is bad in law - Impugned order of assessment quashed - Respondents directed to refund the amount recovered - Petition allowed.

प्रवेश कर अधिनियम, म.प्र. (1976 का 52), धारा 2 व 3(1) - सेकेंड हैंड वाहनों पर प्रवेश कर - मारुति ट्रू वैल्यू के ब्रांड नाम से याची, कम्पनी के पुराने/उपयोग किये हुए वाहनों का क्रय/अदला बदली के कारोबार में लगी हुई है - कर विभाग ने म.प्र. के स्थानीय क्षेत्र के भीतर क्रय/विक्रय किये जाने वाले सेकंड हैंड वाहनों पर प्रवेश कर अधिरोपित किया - को चुनौती - अभिनिर्धारित - याची, राज्य के बाहर से लाये जा रहे वाहनों पर पहले से प्रवेश कर अदा कर रहा है जिसके संबंध में किसी प्रवेश कर का भुगतान किया ही नहीं गया है - प्रत्यर्थीगण उन वाहनों पर प्रवेश कर नहीं लगा सकते जिन्हें राज्य के स्थानीय क्षेत्र के भीतर विक्रय किया जा रहा है एवं जो स्थानीय क्षेत्र में पहले ही प्रविष्ट हो चुके हैं और जिनके लिए प्रवेश कर पहले ही अदा किया जा चुका

NOTES OF CASES SECTION

है - ऐसे प्रकरणों में, केवल स्वामित्व का परिवर्तन है - निर्धारण किया गया प्रवेश कर विधि में अनुचित है - निर्धारण का आक्षेपित आदेश अभिखंडित किया गया - प्रत्यर्थागण को वसूली गयी राशि का प्रतिदाय करने हेतु निदेशित किया गया - याचिका मंजूर।

The order of the Court was delivered by : S.C. SHARMA, J.

Parties through their counsel.

Short Note

*(99)

Before Mr. Justice Sujoy Paul

W.P. No. 108/2017 (Jabalpur) decided on 31 January, 2017

PUSHKAR GUPTA (Dr.)

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

A. Service Law - Removal of Employee - College Code, Clause 28 - Procedure - Petitioner, a professor in a private unaided educational institution, was abruptly restrained by respondent institution to put his signature in attendance register and was deprived to perform his lawful duties - Institution neither conducted any disciplinary proceedings nor placed him under suspension - Challenge to - Held - It is admitted fact that service conditions of teachers of even an unaided institution admitted to the privileges of University are governed by College Code - Petitioner can be deprived from his right to perform his duties only as per the procedure laid down in College Code - No material/Order on record to show that any lawful order was passed in respect of petitioner - Action taken by institution/employer against petitioner is disapproved - Respondents directed to permit petitioner to perform his lawful duties forthwith, however Institute will be free to take action against petitioner in accordance with law - Petition allowed.

क. सेवा विधि - कर्मचारी को हटाया जाना - महाविद्यालय संहिता, खंड 28 - प्रक्रिया - याची, एक निजी गैर-सहायता प्राप्त शैक्षणिक संस्था में प्राध्यापक को, प्रत्यर्थी संस्था द्वारा उपस्थिति रजिस्टर में अपने हस्ताक्षर करने से अचानक अवरोध किया गया था तथा उसके विधिपूर्ण कर्तव्यों का पालन करने से वंचित किया गया था - संस्था ने न तो कोई अनशासनात्मक कार्यवाहियों का

NOTES OF CASES SECTION

संचालन किया न ही उसे निलंबित रखा - को चुनौती - अभिनिर्धारित - यह स्वीकृत तथ्य है कि गैर सहायता प्राप्त संस्था जो कि विश्वविद्यालय जन्य विशेषाधिकार हेतु स्वीकृत है, के भी शिक्षकों की सेवा शर्तें महाविद्यालय संहिता द्वारा ही शासित होती है - याची को केवल महाविद्यालय संहिता में प्रतिपादित प्रक्रिया के अनुसार अपने कर्तव्यों का पालन करने के उसके अधिकार से वंचित किया जा सकता है - यह दर्शाने हेतु अभिलेख पर कोई सामग्री/आदेश नहीं कि याची के संबंध में कोई विधिपूर्ण आदेश पारित हुआ था - संस्था/नियोक्ता द्वारा याची के विरुद्ध की गई कार्रवाई अननुमोदित - प्रत्यर्थीगण को, याची को तत्काल अपने विधिपूर्ण कर्तव्यों का पालन करने की अनुमति देने हेतु निदेशित किया गया, तथापि संस्था विधि के अनुसार याची के विरुद्ध कार्रवाई करने के लिए स्वतंत्र होगी - याचिका मंजूर।

B. Constitution - Article 226 - Unaided Private Institution - Scope and Jurisdiction - Maintainability of Petition - Held - Supreme Court urged that respondent Institutions are imparting education to students at large and are exercising public functions and thus amenable to writ jurisdiction - Writ Petition is maintainable.

ख. संविधान - अनुच्छेद 226 - गैर-सहायता प्राप्त संस्था - विस्तार एवं अधिकारिता - याचिका की पोषणीयता - अभिनिर्धारित - उच्चतम न्यायालय ने बताया कि प्रत्यर्थी संस्थाएँ बड़े पैमाने पर छात्रों को शिक्षा प्रदान कर रही हैं तथा इस प्रकार रिट अधिकारिता के अध्याधीन हैं - याचिका पोषणीय है।

Cases referred :

(2015) 16 SCC 530, (1989) 2 SCC 691, (2015) 4 SCC 670, (2003) 10 SCC 733, 2008 (4) MPLJ 611, 2010 SCC Online MP 659, (2012) 12 SCC 331, (2005) 4 SCC 649, AIR 1959 SC 93, (2001) 4 SCC 9, 2011 (2) MPLJ 690.

Short Note

***(100)**

Before Mr. Justice Atul Sreedharan

M.Cr.C. No. 4417/2017 (Jabalpur) decided on 21 March, 2017

SACHIN GUPTA

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 70(2) -

NOTES OF CASES SECTION

Cancellation of Warrant - Personal Appearance of Accused - Trial Court, on absence of petitioner/accused on date of hearing, cancelled the bail bonds and issued non-bailable warrant - Counsel for petitioner filed application u/S 70(2) Cr.P.C. showing cause of absence and praying for cancellation of non-bailable warrant - Trial Court was satisfied with reason of absence but dismissed the application on the ground that accused was not personally present before the Court which is essential for exercising jurisdiction u/S 70(2) Cr.P.C. - Challenge to - Held - Trial Court is well within its rights to issue a non-bailable warrant which cannot be faulted, however, it is advisable that said power be not exercised in a routine or mechanical manner - It will be in the larger interest of justice to examine if presence of accused could be secured for next date by way of a bailable warrant instead, at the first instance - Application for cancellation of warrant cannot be dismissed only on the ground that physical presence of accused is essential as the same is not necessary u/S 70(2) Cr.P.C. - Further, petitioner remained absent only on one date of hearing - Impugned order set aside - Bail bond and sureties restored - Petition allowed.

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 70(2) — वारंट को रद्द किया जाना — अभियुक्त की व्यक्तिगत उपस्थिति — विचारण न्यायालय ने, सुनवाई की तिथि को याची/अभियुक्त की अनुपस्थिति पर, जमानतपत्रों को रद्द कर दिया तथा गैर-जमानतीय वारंट जारी किया — याची के अधिवक्ता ने अनुपस्थिति का कारण दर्शाते हुये दण्ड प्रक्रिया संहिता की धारा 70(2) के अंतर्गत आवेदन प्रस्तुत किया तथा गैर-जमानतीय वारंट के रद्द किये जाने हेतु प्रार्थना कर रहा है — विचारण न्यायालय अनुपस्थिति के कारण से संतुष्ट था परन्तु इस आधार पर आवेदन खारिज कर दिया कि अभियुक्त न्यायालय के समक्ष व्यक्तिगत रूप से उपस्थित नहीं हुआ था जो कि दण्ड प्रक्रिया संहिता की धारा 70(2) के अंतर्गत अधिकारिता का प्रयोग करने हेतु आवश्यक है — को चुनौती — अभिनिर्धारित — विचारण न्यायालय गैर-जमानतीय वारंट जारी करने के लिए भली भांति अपने अधिकारों के भीतर है जो दोषयुक्त नहीं हो सकता, तथापि, यह सलाह योग्य है कि कथित शक्ति का प्रयोग नैतिक एवं यांत्रिक ढंग से नहीं किया जाना चाहिए — यह परीक्षण करना बड़े पैमाने पर न्यायहित में होगा यदि प्रथम बार के बजाय, जमानतीय वारंट के जरिये, अगली तिथि हेतु अभियुक्त की उपस्थिति सुनिश्चित की जा सकती है — वारंट रद्द किये जाने हेतु आवेदन केवल इस आधार पर खारिज नहीं किया जा सकता कि अभियुक्त की व्यक्तिगत उपस्थिति आवश्यक है क्योंकि

NOTES OF CASES SECTION

उक्त दण्ड प्रक्रिया संहिता की धारा 70(2) के अंतर्गत आवश्यक नहीं है – आगे, याची केवल सुनवाई की दिनांक को अनुपस्थित रहा – आक्षेपित आदेश अपास्त – जमानतपत्र तथा प्रतिभूतियां पुनः स्थापित – याचिका मंजूर।

Case referred :

2006 Cr.L.J. 2053 (Mad).

Manish Datt with Yogesh Soni, for the applicant.

Siddharth Singh Chouhan, G.A. for the non-applicant/State.

I.L.R. [2017] M.P., 1547

SUPREME COURT OF INDIA

*Before Mr. Justice Jagdish Singh Khehar, Chief Justice of India,**Mr. Justice Kurian Joseph & Mr. Justice Arun Mishra*

C.A. No. 1727/2016 decided on 13 February, 2017

NIDHI KAIM & anr.

...Appellants

Vs.

STATE OF M.P. & ors.

...Respondents

(Alongwith C.A. Nos. 1720-1724/2016, 1726/2016, 1728/2016, 1729/2016, 1733/2016, 1734-1741/2016, 1742-1749/2016, 1750-1751/2016, 1752/2016, 1753-1758/2016, 1759-1764/2016, 1765/2016, 1766/2016, 1767-1768/2016, 1769-1774/2016, 1776-1787/2016, 1788/2016, 1789-1791/2016, 1792-1794/2016, 1795-1798/2016, 1799-1805/2016, 1806-1808/2016, 1809/2016, 1810-1811/2016, 1812/2016, 1813-1814/2016, 1815/2016, 1816-1817/2016, 1818-1819/2016, 1820/2016, 1822-1824/2016, 1825/2016, 1826/2016, 1827/2016, 1828/2016, 1830/2016, 1831-1832/2016, 1833/2016, 1834/2016, 1835/2016, 1836-1837/2016, 1838/2016, 1839/2016, 1840/2016, 1841/2016, 1842/2016, 1843/2016, 1844/2016, 1845/2016, 1846/2016, 1847-1852/2016, 2503-2504/2017 & 2505/2017)

Constitution – Article 142 – Madhya Pradesh Professional Examination Board (Vyapam) – Pre-Medical Test for Admission in M.B.B.S. Course – Cancellation of Results – Unfair Means – Board cancelled the results of the appellants for using unfair means during Pre-Medical Test conducted in the 2008 to 2012 – Appellants filed writ petitions before the High Court whereby the same were dismissed – Challenge to – Held – None of the appellants would have been admitted, as their merit position in the examination was not because of their own efforts but was based on extraneous assistance – The deception and deceit adopted by the appellants cannot be termed as simple affair which can be overlooked, in fact it was the outcome of well orchestrated strategy based on an established fraud and manipulation – It is not possible to accept that, involvement of appellants was not serious in fact it was indeed the most grave and extreme – Earlier also this Court has held that such admission of the candidates to M.B.B.S. course was vitiated and this view of the court has attained finality – Appellants

herein are the beneficiaries of such vitiated process – Nothing obtained by fraud can be sustained; as fraud unravels everything – Jurisdiction under Article 142 of the Constitution cannot be invoked in such cases which would not serve the “larger interest of justice”, on the contrary, would cause manifest injustice – Scope and jurisdiction of Article 142 of Constitution discussed – Order passed by Vyapam upheld – Appeals dismissed.
(Paras 64, 65 & 67)

संविधान – अनुच्छेद 142 – मध्य प्रदेश व्यावसायिक परीक्षा बोर्ड (व्यापम) – एम.बी.बी.एस. पाठ्यक्रम में प्रवेश हेतु प्री-मेडिकल टेस्ट – परिणामों का रद्दकरण – अनुचित साधन – बोर्ड ने, वर्ष 2008 से 2012 में संचालित किये गये प्री-मेडिकल टेस्ट के दौरान अनुचित साधनों का प्रयोग करने के लिए अपीलार्थीगण के परिणामों को रद्द कर दिया – अपीलार्थीगण ने उच्च न्यायालय के समक्ष रिट याचिकाएं प्रस्तुत की जिसमें उक्त को खारिज किया गया था – को चुनौती – अभिनिर्धारित – अपीलार्थीगण में से किसी को भी प्रवेश नहीं दिया गया, क्योंकि परीक्षा में उनका मैरिट स्थान उनके स्वयं के प्रयासों के कारण नहीं था बल्कि बाहरी सहायता पर आधारित था – अपीलार्थीगण द्वारा अपनाई गई प्रवचना और छल को साधारण मामला नहीं कहा जा सकता है जिसे अनदेखा किया जा सके, वास्तव में यह स्थापित कपट तथा छल साधन पर आधारित गुप्त रूप से आयोजित रणनीति का परिणाम था – यह स्वीकार करना संभव नहीं है कि अपीलार्थीगण की सहभागिता गंभीर नहीं थी, वास्तव में यह वाकई अति गंभीर और घोर थी – पूर्व में भी इस न्यायालय ने यह अभिनिर्धारित किया है कि एम.बी.बी.एस. पाठ्यक्रम में अम्यर्थियों का इस तरह का प्रवेश दूषित था तथा न्यायालय के इस दृष्टिकोण ने अंतिमता प्राप्त कर ली है – इसमें अपीलार्थीगण ऐसी दूषित प्रक्रिया के हिताधिकारी हैं – कपट द्वारा अभिप्राप्त कुछ भी कायम नहीं रखा जा सकता क्योंकि कपट सब कुछ विफल कर देता है संविधान के अनुच्छेद 142 के अन्तर्गत अधिकारिता का अवलम्ब ऐसे प्रकरणों में नहीं लिया जा सकता जिनसे “बड़े पैमाने में न्यायहित” की पूर्ति नहीं होगी, इसके विपरीत, प्रकट रूप से अन्याय कारित होगा – संविधान के अनुच्छेद 142 के विस्तार एवं अधिकारिता की विवेचना की गई है – व्यापम द्वारा पारित आदेश कायम रखा गया – अपीलें खारिज।

Cases referred :

(1998) 4 SCC 270, (1991) 4 SCC 584, (2012) 8 SCC 450, (2015) 10 SCC 359, (2012) 7 SCC 433, (2011) 8 SCC 274, (2010) 2 SCC 27, (2011) 10 SCC 643, (2014) 8 SCC 883, ILR (1881) 3 All 776, (2015) 11 SCC 502, (2005) 2 SCC 65, 1995 Supp (1) SCC 188, (2015) 6 SCC 573, (2011) 6 SCC 145, (2009) 1 SCC 59, (2006) 13 SCC 619, (1970) 2 SCC 325, (2005) 5 SCC 363, (1956) 1 All E.R. 341, (1998) 4 SCC 409.

J U D G M E N T

The Judgment of the Court was delivered by :
JAGDISH SINGH KHEHAR, CJI. :- Leave granted in the special leave petitions.

2. Orders were passed by the Madhya Pradesh Professional Examination Board (hereinafter referred to as, 'Vyapam'), cancelling the results of the appellants, of their professional MBBS course, on the ground that the appellants had gained admission to the course, by resorting to unfair means, during the Pre-Medical Test. These orders were passed, with reference to candidates, who had been admitted to the above course, during the years 2008 to 2012. A challenge to the orders of cancellation, was raised by the appellants, by invoking the jurisdiction of the High Court of Madhya Pradesh (hereinafter referred to as, 'the High Court') under Article 226 of the Constitution. All writ petitions raising the above challenge were dismissed. Resultantly, the appellants approached this Court. The orders of the High Court were affirmed by a Division Bench (hereinafter referred to as, the 'former Division Bench'), on 12.05.2016. However, in exercise of jurisdiction vested in this Court, under Article 142 of the Constitution, J. Chelameswar, J. (the Hon'ble Presiding Judge, of the 'former Division Bench') expressed the view, that complete justice in the matter would be rendered, if the qualifications successfully acquired by the appellants were not annulled, and the knowledge gained by them, was not wasted. This, for the simple reason, that knowledge could not be transferred to those, who had been wrongfully deprived of admission, and cancellation of the results of the appellants, would not serve any purpose. Abhay Manohar Sapre, J. (the Hon'ble Companion Judge – in the 'former Division Bench') expressed his disinclination for invoking jurisdiction under Article 142, to sustain the benefit of education acquired by the appellants, through a separate order of the same date – 12.5.2016. This, for the simple reason, that those who had adopted unfair means, could not be extended any indulgence.

3. On account of the divergence of opinion expressed by the 'former Division Bench', through their separate orders (dated 12.5.2016) referred to above, Hon'ble the Chief Justice of India, constituted this larger Division Bench, to deal with the matter. During the course of hearing, Mr. Shyam Divan, learned senior counsel submitted, that this Court had granted leave, in the petition filed by his client (and many others, similarly situated) on 24.2.2016. It was pointed out, that all these appeals had remained pending before this

Court, wherein the correctness of the impugned judgment(s) rendered by the High Court, was under consideration. It was submitted, that leave having been granted, the principle underlying the doctrine of merger would entail, that the judgments rendered by the High Court would eventually merge in the final or operative determination of this Court. It was also pointed out, that in terms of Article 145(5) of the Constitution, no judgment could be delivered by this Court, save with the concurrence of majority of Judges, present and hearing the case. It was submitted, that there was no majority judgment on 12.5.2016, when the two Hon'ble Judges constituting the 'former Division Bench', passed separate orders. According to learned counsel, in the absence of merger, all the civil appeals in hand, must be deemed to have remained on the docket of this Court, awaiting decision by an appropriate bench. It was contended, that the correct course to be followed, where there is a divergence of opinion between the two Hon'ble Judges was, a rehearing of the entire matter by a larger Bench. The above determination, according to learned counsel, emerges from the legal position expressed by this Court in *Gaurav Jain v. Union of India*, (1998) 4 SCC 270. It was submitted, that in the absence of a majority judgment, in terms of Article 145(5), and consequently in the absence of an effective judgment of this Court (despite the two separate orders passed by the 'former Division Bench' on 12.05.2016), there existed no judgment in the eyes of law. It was accordingly submitted, that the present Division Bench (of three-Judges) by a mandate of law, was required to adjudicate upon the civil appeals fully, on all issues. It is therefore, that this Bench passed the following order on 28.7.2016:

"After hearing had gone on for sometime, wherein the limited issue canvassed was, whether this Court was justified in exercising jurisdiction under Article 142 of the Constitution of India, our attention was invited to the mandate contained in Article 145(5) of the Constitution, so as to suggest, that the entire controversy needed to be heard afresh, in view of the following order passed by the Bench on 12th May, 2016:

"In view of the divergence of opinion in terms of separate judgments pronounced by us in these appeals today, the Registry is directed to place the papers before Hon'ble the Chief Justice of India for appropriate further orders."

We are of the view that the instant issue can be resolved by

referring the matter back to the Bench, for a clarification, of the order dated 12th May, 2016, whether the reference required re-hearing of the entire matter, and if not, the limited issue referred for consideration.

We have chosen to adopt the above course, so as to save precious time of the Court. In the above view of the matter, the Registry is directed to place the files of this case, before Hon'ble the Chief Justice of India, for seeking clarification of the Division Bench which passed the order dated 12th May, 2016.

Post the matters for hearing, after clarification.”

4. On 30.8.2016, the ‘former Division Bench’ passed another order, in furtherance of the order extracted above. Relevant extract of the same is reproduced below:

“Pursuant to the Order dated 28th July, 2016 of the larger Bench, the matter was placed before this Bench.

Heard the learned counsel.

It appears from the above-mentioned order that, it was argued before the larger Bench that by the Order of this Bench dated 12th May, 2016, a Reference was made to a larger Bench. The submission is factually incorrect.

It is clear from the Order dated 12th May, 2016 that there was a disagreement between both of us regarding the final order to be passed in the appeals before us. Both of us recorded a concurrent opinion that the examination process in issue in these appeals, conducted by Vyapam for the years 2008 to 2012 was vitiated with reference to the appellants before this Court and few others. We also agreed upon the conclusion that the appellants herein are the beneficiaries of such vitiated process.

The only point of divergence between both of us is that whether the appellants should be disentitled to retain the benefits of the training in medical course which they secured by virtue of

their being beneficiaries of a tainted examination process conducted for the purpose of admitting them for training in medical colleges.

While one of us (Justice Abhay Manohar Sapre) is clearly of the opinion that the case of the appellants deserves no further consideration, the moment we concluded that they are the beneficiaries of such tainted examination process, the other (Justice J. Chelameswar) opined for the reasons recorded that their cases deserve some consideration and also opined that the appellants should be permitted to pursue their medical course and complete the same subject to certain conditions indicated in the order.

We completely fail to understand the reference made to Article 145(5) of the Constitution in the Order dated 28th July, 2016. We are of the opinion that neither the Constitution of India nor any other law of this country provides an intra-court appeal insofar as the Supreme Court is concerned. A re-hearing of the entire matter as apparently suggested to the larger Bench, in our opinion, would amount to an intra-court appeal. If the larger Bench of this Court wishes to create such an intra-court appeal, we obviously are powerless to stop it. We can only record our understanding of the law on the question and it is as recorded above.

Ordered accordingly.”

In view of the order extracted above, it is apparent that, we are only dealing with the issue, whether the jurisdiction vested in this Court under Article 142 of the Constitution, should be invoked in favour of the appellants, in order to render complete justice in the matter.

5. According to Mr. R. Venkataramani, learned senior counsel appearing for the appellants in Civil Appeal Nos. 1727, 1720-1724, 1726, 1728, 1776-1787 and 1846 of 2016, the invocation of Article 142 in favour of the appellants was a just and rightful determination, inasmuch as, complete justice was sought to be rendered without adversely affecting or impinging upon the rights of any other party. It was submitted, that there is a distinction between “inherent jurisdiction” and “inherent power”. Likewise, there is a distinction between

ensuring, that the ends of justice are met – as against, rendering of complete justice. It was pointed out, that Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as, ‘the CPC’) and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as, ‘the CrPC’) provide for situations, wherein a Court can exercise inherent powers. It was submitted, that inherent powers as contemplated under Section 151 of the CPC, and Section 482 of the CrPC, are controlled, and had limitations. It was asserted, that the power conferred on the Supreme Court under Article 142 of the Constitution, was aimed at allowing this Court to do complete justice, in any cause or matter. The instant power vested in this Court, it was submitted, is unlimited. It was pointed out, that the expanse of Article 142, was clearly distinct from the inherent power contemplated under the two procedural enactments, referred to above. In order to substantiate his contention, learned counsel placed reliance on a treatise by Roscoe Pound – An Introduction to the Philosophy of Law, (Sixth Indian Reprint - 2012, published by the Universal Law Publishing Co. Pvt. Ltd.). Learned counsel invited the Court’s attention to the following opinion expressed by the author:

“If we look back at the means of individualizing the application of law which have developed in our legal system, it will be seen that almost without exception they have to do with cases involving the moral quality of individual conduct or of the conduct of enterprises, as distinguished from matters of property and of commercial law. Equity uses its powers of individualizing to the best advantage in connection with the conduct of those in whom trust and confidence has been reposed. Jury lawlessness is an agency of justice chiefly in connection with the moral quality of conduct where the special circumstances exclude that “intelligence without passion” which, according to Aristotle, characterizes the law. It is significant that in England today the civil jury is substantially confined to cases of fraud, defamation, malicious prosecution, assault and battery, and breach of promise of marriage. Judicial individualization through choice of a rule is most noticeable in the law of torts, in the law of domestic relations, and in passing upon the conduct of enterprises.

The Application of Law

The elaborate system of individualization in criminal procedure has to do wholly with individual human conduct. The informal methods of petty courts are meant for tribunals which pass upon conduct in the crowd and hurry of our large cities. The administrative tribunals, which are setting up on every hand, are most called for and prove most effective as means of regulating the conduct of enterprises.

A like conclusion is suggested when we look into the related controversy as to the respective provinces of common law and of legislation. Inheritance and succession, definition of interests in property and the conveyance thereof, matters of commercial law and the creation, incidents, and transfer of obligations have proved a fruitful field for legislation. In these cases the social interest in the general security is the controlling element. But where the questions are not of interests of substance but of the weighing of human conduct and passing upon its moral aspects, legislation has accomplished little. No codification of the law of torts has done more than provide a few significantly broad generalizations. On the other hand, succession to property is everywhere a matter of stature law, and commercial law is codified or codifying throughout the world. Moreover the common law insists upon its doctrine of stare decisis chiefly in the two cases of property and commercial law. Where legislation is effective, there also mechanical application is effective and desirable. Where legislation is ineffective, the same difficulties that prevent its satisfactory operation require us to leave a wide margin of discretion in application, as in the standard of the reasonable man in our law of negligence and the standard of the upright and diligent head of a family applied by the Roman law, and especially by the modern Roman law, to so many questions of fault, where the question is really one of good faith. All attempts to cut down this margin have proved futile. May we not conclude that in the part of the law which has to do immediately with conduct complete justice is not to be attained by the mechanical application of fixed rules? Is it not clear that in this part of the administration of justice the trained intuition and disciplined

judgment of the judge must be our assurance that causes will be decided on principles of reason and not according to the chance dictates of caprice, and that a due balance will be maintained between the general security and the individual human life?"

Based on the aforesaid, it was submitted, that matters involving individual conduct, or conduct of enterprises, need to be distinguished from matters of property and commercial law. It was pointed out, that the rule of equity, in dealing with individual conduct or conduct of enterprises, was a tool adopted to the best advantage of the parties concerned, especially when, the controversy did not relate to property matters or commercial law. Referring to the law of inheritance and succession, which had a direct nexus to interest in property (and conveyance), it was submitted, that there was a feeling, that social interest was generally the controlling element, in such matters. However, where the question was not of substance, but of human conduct (or the moral aspect thereof), legislation could not be depended upon, to furnish any answer. According to learned counsel, on the subject being dealt with, there is no express legislation. Therefore, it is necessary to keep in mind, that the controversy in hand, is not one which would return a finding of breach of any existing legislative enactment. It was submitted, that if there had been any such legislation, on the issue being dealt with, the matter would have to be examined differently. However, in the absence of legislation, or in situations where legislation is ill-effective, Courts had a wide margin of discretion. For such situations, determination has to be made, on the touchstone of reasonableness founded on good faith. It was submitted, that in the facts and circumstances of the present controversy, a trained intuition and disciplined judgment of the adjudicator, would have to be invoked. Because, the cause would have to be adjudicated on the principle of prudence and rationality. Herein, according to learned counsel, the remedy provided would have to be handcrafted, rather than the routine – mechanical exercise of enforcing legislative intent. Herein, the events would have to be evaluated, keeping in mind the special circumstances – and their significance, in order to render complete justice.

6. It was submitted, that in exercise of judicial intuition and judicial discretion, J. Chelameswar, J. had categorized the controversy as one where the appellants had acquired “knowledge”. The cancellation of their admission

would not be of any advantage to the more meritorious candidates, who were deprived of admission, as it is not possible to transfer the “knowledge” acquired by the appellants. In the present situation, it was submitted, that it was not possible to restore *status quo ante*. The instant controversy, it was pointed out, could not be dealt with like a dispute concerning immovable property, wherein, on the culmination of the *lis*, the property can be restored to the rightful owner. Herein, the meritorious candidates, who ought to have been admitted in place of the appellants, cannot have the advantage of transfer of “knowledge” acquired by the appellants. It was submitted, that to deal with the acquired “knowledge”, J. Chelameswar, J., had taken recourse to Article 142, to legitimize only the “knowledge” acquired by the appellants, and not their actions or conduct. This determination, was also considered to be, of societal advantage. It would take five years (- the duration of medical course) of national resources, to acquire what had been annulled by Vyapam. Invalidation of the fruits of gained “education” was considered by the Hon’ble Presiding Judge of the ‘former Division Bench’, as an inappropriate means, to deal with the situation. It was submitted, that this advantage was far superior to the individual gains which would accrue to the appellants, or the individual loss which may have been suffered by the meritorious candidates deprived of admission. It was also asserted, that while invoking Article 142 to the advantage of the appellants, the situations wherein the jurisdiction could not be invoked, were dealt with in detail. Only after arriving at the conclusion, that the situation in hand, would not trample upon the determined legal position, the Hon’ble Presiding Judge had chosen to exercise its discretion, to do complete justice in the matter. It was submitted, that in the absence of, violation of any laid down parameters, it would be unjust, if this Court was to set at naught, long years of educational endeavour, successfully undertaken by the appellants, which had resulted in acquisition of “knowledge” – an ability, which would enable the appellants to render valuable service to the society – and thereby serve the citizens of this country.

7. It was also the contention of learned counsel, that at the time of their admission, most of the appellants (-if not all) were juvenile, and as such, could not be blamed of the irregularity and/or illegality in the procurement of admission to the MBBS course. It was submitted, that this Court must also take into consideration, the fact that the impugned orders set at naught, admissions gained by the appellants to the MBBS course, during the years 2008 to 2012, and as such, may be well beyond the purview of consideration, under the law

of limitation, even for examining their culpability/criminality.

8. As a special emphasis, learned counsel invoked the conscience of this Court, by reiterating that the “knowledge” acquired by the appellants, could not be described as tainted, even though the means of acquiring the “knowledge”, may have been tainted. As such, it was submitted, that the purity of “knowledge”, acquired by the appellants, consequent upon their admission to the professional institutions, needed to be preserved, through the invocation of Article 142 – to do complete justice.

9. Based on an analysis of the judgments rendered by this Court, it was submitted, that in the judgments of this Court wherein Article 142 had been invoked, would demonstrate, that whenever the law applicable to, and governing a particular cause, was found to be inadequate, or whenever the law applicable did not provide means for a complete resolution of the dispute, the endeavour of a Court ought to be, to discover and to address the manner of doing complete justice. It was submitted, that even though the law provided for the situation obtaining in a particular cause, and there was scope for a better and more fulfilling outcome, this Court should search for the same, and give effect to it. It was contended, that this Court had found good reason to invoke the power vested in it, to do complete justice between the parties (- through the reasoned order, of the Hon’ble Presiding Judge, of the ‘former Division Bench’). It was submitted, that whenever legal resources and materials were found to be in a state of indeterminacy, calling for articulation of new principles, and fashioning new remedies, this Court would reach out to a just cause, by invoking Article 142, by filling up the lacuna. It was pointed out, that indeterminacy or lack of completeness of law and legal resources, in a given case, was the foundation for invocation of Article 142. Learned counsel ventured to clarify, that in doing complete justice, whilst a Court would not act in disregard to binding provisions of law, the said restraint was applicable only with reference to an available statutory regime/scheme. Thus viewed, whenever there was an available statutory scheme, Courts would not ordinarily take recourse to Article 142, but in the absence thereof, the field would always remain wide open, for this Court to intervene, and render complete justice. It was pleaded, that there could not been a better case, than the one in hand, to invoke such power.

10. It was also submitted, that the power conferred on this Court through Article 142, could not be put in a straightjacket. Being constitutional in

conferment, this Court whenever persuaded for a just cause, would step in to render complete justice, by exercising its inherent power. This exercise of inherent power, according to learned counsel, was free from any fetters. And for exercise of such power, this Court ought never and never, close the doors for creative engagement. Whenever a situation for exercise of such power is triggered by its conscience, this Court should not be lax, in providing the desired relief. It was submitted, that the present controversy exhibited an important perception for doing justice. Based on an exploration of a relevant legal principle, the Hon'ble Presiding Judge of the 'former Division Bench', had invoked the inherent power to render complete justice. According to learned counsel, the Hon'ble Presiding Judge, had balanced the cause of justice, by extending societal benefits to the citizens of the country, and at the same time, provided for measures to be taken against the appellants, and also made sure, that there was sufficient deterrence. It was submitted, that the course adopted for the invocation of Article 142, had successfully preserved the "knowledge" acquired by the appellants, which constituted a national resource. It was contended, that by requiring the appellants to render service in the field of medicine, on the payment of nominal charges, would result in a win-win situation, for all concerned. It was asserted, that trained minds should not be lost, merely because the appellants had gained admission, to the MBBS course by foul means. Service by the appellants, to the nation, for a period of 5 years (postulated in the order passed by the Hon'ble Presiding Judge), according to learned counsel, was an apt balancing factor, which would also act as a deterrent to others in future.

11. It was also submitted, that on a composite understanding of various facts and circumstances of the case, it was clear, that the view taken by the Hon'ble Presiding Judge (of the 'former Division Bench'), cannot be described outlandish. Nor could it be considered, as being violative of any accepted principle of law, and not even in contravention of any statutory scheme. It was submitted, that the exercise of jurisdiction under Article 142, by one of the Hon'ble Judges of the 'former Division Bench', could be termed as an act of rendering corrective justice. Justice which was particularly invoked, to ameliorate the ruinous effect, which the appellants would have to suffer, consequent to the cancellation of their admission to the MBBS course.

12. It was submitted, that in ordinary circumstances of wrongful gain, principles of law can be invoked to legitimately require the beneficiary to

surrender the fruits of his gains. Such wrongful fruits of gain, would then be transferred to the rightful beneficiary. Referring to the present controversy, it was submitted, that the alleged wrong committed by the appellants in the present case, had resulted in the acquisition of "knowledge". It was submitted, that the appellants were beneficiaries of intellectual property. Such intellectual property, cannot be withdrawn from the appellants, and transferred to those who ought to have been granted admission (in place of the appellants). Since the "knowledge" wrongfully gained by the appellants, was not transferable, according to learned counsel, the principles ordinarily invoked, whereby gains are transferred to the rightful beneficiary, cannot be implemented, in this case. It was pointed out, that the State and the students have invested considerable resources, both monetary and human, ever since the appellants had been admitted to the MBBS course. Based whereon, the appellants had pursued their academic careers, and thereby, gained knowledge in the field of medicine. By any order, cancelling the appellants' admission to the MBBS course - the institutions would lose, the State would lose, and the appellants would also lose. It needed to be kept in mind, that such cancellation would not result in a reciprocal gain, for those who had been deprived of admission. And as such, this Court should affirm the invocation of Article 142 in the manner expressed by the Hon'ble Presiding Judge (of the 'former Division Bench'), so that, all is not lost.

13. It was also the submission of learned counsel, that the prosecution(s) which had been initiated, and were pending against some of the appellants, or which may be launched against them, should not restrain this Court from taking such action, as it considers just and proper. Alternatively, it was submitted, that if the appellants were to be acquitted, none of these adverse or impinging consequences would flow. It was submitted, that while examining the controversy in hand, the criminality of the charges which the appellants may be blamed of, should be kept apart, as the relevant statutory provisions provide for appropriate measures of punishment. Insofar as the civil aspect of the matter is concerned, namely, the validity of the "knowledge" acquired by the appellants, in pursuit of their academic qualifications -should not be jeopardized. Rather, according to learned counsel, the way forward, suggested by the Hon'ble Presiding Judge (of the "former Division Bench"), was the most appropriate course, for dealing with the controversy, as it rendered complete justice in the matter. The course adopted, according to learned

counsel, while benefiting the appellants, would also benefit the citizens of this country, and would not result in any consequential loss.

14. It was pointed out, that the proceedings which the appellants have pursued, whilst challenging the cancellation of their admission, through the current litigation(s), and the proceedings which the appellants might have to suffer, consequent upon the criminal cases which have been commenced - or which may be instituted against them, would result in an unfathomable amount of strain and suffering, which will always remain with them, for the rest of their lives, as an inseparable shadow. According to learned counsel, this pain and sorrow, would serve the purpose of justice, in the facts and circumstances of this case. In this behalf, it was also submitted, that the diminished respect of the appellants, in the eyes of the general public (which the public would perceive, because of the wrongful admission of the appellants), should also weigh with the Court, as a relevant consideration for the invocation of Article 142. It was submitted, that the conclusions drawn, on relevant and acceptable parameters, in favour of the appellants, (by the Hon'ble Presiding Judge, of the 'former Division Bench'), should not be negated, so as to deny to the appellants, the right of utilization of the "knowledge" acquired by them.

15. On the issue in hand, learned counsel placed reliance on *Union Carbide Corporation v. Union of India*, (1991) 4 SCC 584, and referred to contentions (A) and (B) delineated in paragraph 55 thereof, which are being extracted hereinbelow:

"Contention (A)

The proceedings before this Court were merely in the nature of appeals against an interlocutory order pertaining to the interim-compensation. Consistent with the limited scope and subject-matter of the appeals, the main suits themselves could not be finally disposed of by the settlement. The jurisdiction of this Court to withdraw or transfer a suit or proceeding to itself is exhausted by Article 139-A of the Constitution. Such transfer implicit in the final disposal of the suits having been impermissible suits were not before the Court so as to be amenable to final disposal by recording a settlement. The settlement is, therefore, without jurisdiction.

Contention (B)

Likewise the pending criminal prosecution was a separate and distinct proceeding unconnected with the suit from the interlocutory order in which the appeals before this Court arose. The criminal proceedings were not under or relatable to the 'Act'. The Court had no power to withdraw to itself those criminal proceedings and quash them. The orders of the Court dated February 14 and 15, 1989, in so far as they pertain to the quashing of criminal proceedings are without jurisdiction."

In order to invite our attention to the conclusions recorded by this Court, with reference to the above two contentions, learned counsel pointed out to the following paragraphs of the above judgment:

"62. The purposed constitutional plenitude of the powers of the Apex Court to ensure due and proper administration of justice is intended to be co-extensive in each case with the needs of justice of a given case and to meeting any exigency. Indeed, in *Harbans Singh v. State of U.P.*, (1982) 2 SCC 101, the Court said: (SCC pp. 107-08, para 20)

"Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Arts. 32 and 136 of the Constitution I am of the opinion that this Court retains and must retain, an inherent power and jurisdiction for dealing with any extra-ordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice. Having regard to the facts and circumstances of this case, I am of the opinion that this is a fit case where this Court should entertain the present petition of Harbans Singh and this Court should interfere."

63. We find absolutely no merit in this hypertechnical submission of the petitioners' learned counsel. We reject the argument as unsound."

Based on the aforesaid conclusions, it was submitted, that a similar approach

should be adopted in this matter also, as it was rightful to preserve the “knowledge” acquired by the appellants, to enable them to use the same, to the best advantage of the society, and the citizens of the country.

16. In his endeavour to persuade this Court, that the exercise of jurisdiction under Article 142, had rightly been invoked in favour of the appellants (by the Hon’ble Presiding Judge, of the ‘former Division Bench’), our attention was drawn, to a treatise by Fali S. Nariman – India’s Legal System: Can it be saved?, published by Penguin Books India Pvt. Ltd., wherein the author also expressed his views, with reference to the exercise of jurisdiction by this Court, under Article 142. Relevant extract of the opinion, is reproduced below:

“If the framers of the Constitution had contemplated an era when judicial power (not prompted by any legal provision) would be exercised in the vacuum created by governmental or state inaction, they may have been a little surprised; but then (I like to believe) they may have felt the compulsion to remove the fetter of Article 37, making the Directive Principles of State Policy directly enforceable by the courts!

Individual notions of justice according to individual judges, unguided by law, sometimes known as ‘palm-tree justices’ or ‘Cadi justice’ appear to be excluded under our Constitution. As if to emphasize this, the oath required to be taken by all judges of the higher judiciary significantly omit any reference to ‘justice’. Every judge of a high court or Supreme Court takes an oath to perform the duties of his or her office without fear or favour, without affection or ill will, and to ‘uphold the Constitution and the law’.

But some judges are more equal than others, and in our three-tier system of court administration, judges of the Supreme Court are constitutionally placed in a class apart.

Under Article 136 of the Constitution, ‘the Supreme Court may in its discretion grant special leave to appeal from any judgment, appeal, determination, sentence or order, in any cause or matter passed or made by any court or tribunal in the territory of India’. The governing words are ‘in its discretion’. And there is a plethora of case law to support the proposition

that even where a court or tribunal below the Supreme Court has transgressed the law, the Supreme Court is not bound to interfere, and will not interfere and set it aside under its extraordinary jurisdiction under Article 136, if it is satisfied that the interests of justice have been served. There is no compulsion for the highest court to set aside even incorrect or illegal decisions of lower courts, high courts or tribunals, if the overriding considerations of justice do not so warrant. Even after special leave is granted under Article 136, and an appeal gets admitted, the appellant must show that exceptional and special circumstances do exist, and that if there is no interference by the highest court, substantial and grave injustice would result.

Under our Constitution, judges of the Supreme Court have been conferred a special and unique power, not conferred on judges of high courts or judges of any other courts in the country. Article 142(1) provides that the Supreme Court, in the exercise of its jurisdiction, may pass such decree or make such order as is necessary 'for doing complete justice in any cause or matter pending before it', and any decree so passed, or order so made, is enforceable throughout the territory of India. Judges of the highest court, conferred with this extraordinary power, are apparently empowered to disregard statutory prohibitions—'apparently' because there has been a flip-flop in the approach of the court—judges speaking in different voices at different times.

In 1991, reading Article 142, a Constitution Bench of the Court said that any prohibition, stipulation or restriction contained in ordinary law could not act as a limitation on its constitutional powers under Article 142. But seven years later, another Constitution Bench of five Justices read Article 142(1) as not empowering the Supreme Court to bypass or override a specific statutory provision. The latter was an instance of a hard case making bad law. For the shocking behavior in Court of an advocate (always an officer of the Court), the advocate was not only punished (by a Bench of three Justices of the

Supreme Court) for contempt of court, but he was also suspended from practice for a period of three years. Since the power of suspension was statutorily vested only in the Bar Council of India, and could be reviewed by the highest court only on an appeal from a decision of the Bar Council to it, a Bench of five Justices set aside the earlier order of suspension, holding that the Bench of three Justices ought not to have overlooked an express statutory provision.

In my view, the apex court has virtually denuded itself of its constitutional power to do 'complete justice'. To be at all meaningful, the words 'complete justice' must comprehend a power to disregard statutory provisions in exceptional circumstances, unless the provisions are themselves based on some fundamental principles of public policy.

When declining to exercise its extraordinary jurisdiction under Article 136 of the Constitution, the Supreme Court may (and often does) refuse to correct orders and decisions passed by high courts and other courts and tribunals even where they are illegal and contrary to law, i.e., where the justice of the case calls for no-interference. Yet under the law as now declared by the Constitution Bench, the highest court whilst deciding a particular case before it cannot consciously overlook or bypass enacted law when exercising its wide powers under Article 142. An obvious inconsistency in approach. If the Supreme Court can be trusted under Article 136 to cock a blind eye at a decision of a high court which is contrary to law (but which is otherwise 'just'), the highest court must be likewise trusted when it deliberately ignores the law in the overriding interest of doing complete justice in a particular case before it under Article 142."

17. Learned counsel, then drew our attention to the decision in *State v. Sanjeev Nanda*, (2012) 8 SCC 450, and pointed out to the following observations recorded therein:

"122. Convicts in various countries, now, voluntarily come forward to serve the community, especially in crimes relating

to motor vehicles. Graver the crime greater the sentence. But, serving the society actually is not a punishment in the real sense where the convicts pay back to the community what they owe. Conduct of the convicts will not only be appreciated by the community, it will also give a lot of solace to him, especially in a case where because of one's action and inaction, human lives have been lost."

Based on the above, it was the contention of learned counsel for the appellants, that Courts can consider, whether it was necessary to travel one extra mile, to do complete justice. It was submitted, that the question whether this Court should travel an extra mile, in the facts of this case, is not difficult to answer. It was submitted, that this Court must travel the extra mile, to preserve the "knowledge" acquired by the appellants, which would enable them to give effect to the same, by effectively utilizing it for the welfare of the nation. According to learned counsel, in his opinion, the case in hand, did not present a situation, where anyone could have a second thought, simply because, there would be no one adversely affected, by adoption of such a course.

18. Learned counsel also placed reliance on *Sushil Ansal v. State*, (2015) 10 SCC 359, and highlighted the position expressed in paragraph 11, which is extracted below:

"11. In view of the aforestated undisputed facts, the issue with regard to imposition of sentence upon the appellants is to be decided by us. We are concerned with imposition of sentence in a criminal case and not with awarding damages in a civil case. Principles for deciding both are different."

It was submitted, that on the basis of the aforesaid determination, cumulative benefit of the society, in receiving service rendered by professionals (like the appellants), should also be taken into consideration.

19. Last of all, reliance was placed on *Priya Gupta v. State of Chhattisgarh*, (2012) 7 SCC 433, wherein also, illegal admissions were dealt with. In the above judgment, this Court held as under:

"71. In the present case, we have no doubt in our mind that the fault is attributed to all the stakeholders involved in the process of admission, i.e., the Ministry concerned of the Union

of India, the Directorate of Medical Education in the State of Chhattisgarh, the Dean of Jagdalpur College and all the three members of the Committee which granted admission to both the appellants on 30-9-2006. But the students are also not innocent. They have certainly taken advantage of being persons of influence. The father of Appellant 2 Akansha Adile was the Director of Medical Education, State of Chhattisgarh at the relevant time and as noticed above, the entire process of admission was handled through the Directorate. The students well knew that the admissions can only be given on the basis of merit in the entrance test and they had not ranked so high that they were entitled to the admission on that basis alone. In fact, they were also aware of the fact that no other candidate had been informed and that no one was present due to non-intimation. Out of favouritism and arbitrariness, they had been given admission by completing the entire admission process within a few hours on 30-9-2006.

73. In the present case, we are informed that the students have already sat for their final examination and are about to complete their courses. Even if we have to protect their admissions on the ground of equity, they cannot be granted such relief except on appropriate terms. By their admissions, firstly, other candidates of higher merit have been denied admission in the MBBS course. Secondly, they have taken advantage of a very low professional college fee, as in private or colleges other than the government colleges, the fee payable would be Rs. 1,95,000/- per year for general admission and for management quota, the fee payable would be Rs. 4,00,000/- per year, but in government colleges, it is Rs. 4,000/- per year. So, they have taken a double advantage. As per their merit, they obviously would not have got admission into the Jagdalpur College and would have been given admission in private colleges. The ranks that they obtained in the competitive examination clearly depict this possibility, because there were only 50 seats in Jagdalpur College and there are hundreds of

candidates above the appellants in the order of merit. They have also, arbitrarily and unfairly, benefited from lower fees charged in Jagdalpur College.

74. On the peculiar facts and circumstances of the case, though we find no legal or other infirmity in the judgment under appeal, but to do complete justice between the parties within the ambit of Article 142 of the Constitution of India, we would permit the appellants to complete their professional courses, subject to the condition that each one of them pay a sum of Rs. 5 lakhs to Jagdalpur College, which amount shall be utilized for developing the infrastructure in Jagdalpur College.”

20. In order to further illustrate the scope of the exercise of jurisdiction, vested in this Court under Article 142, learned counsel placed reliance on *Academy of Nutrition Improvement v. Union of India*, (2011) 8 SCC 274. It was submitted, that in the above case, the controversy related to a ban on non-iodized salt. The said ban was unsustainable in law. Be that as it may, the Court in exercise of its jurisdiction under Article 142, invoked the ground of public health, to continue the existing position, till such time as remedial action was taken by Parliament. In this behalf, our attention was drawn to the following observations of this Court:

“What Relief?

68. We have already noticed that as at present there is no material to show that universal salt iodisation will be injurious to public health (that is to the majority of populace who do not suffer from iodine deficiency). But we are constrained to hold that Rule 44-I is ultra vires the Act and therefore, not valid. The result would be that the ban on sale of non-iodised salt for human consumption will be raised, which may not be in the interest of public health. We are therefore, of the view that the Central Government should have at least six months’ time to thoroughly review the compulsory iodisation policy (universal salt iodisation for human consumption) with reference to latest inputs and research data and if after such review, is of the view that universal iodisation scheme requires to be continued, bring appropriate legislation or other measures in

accordance with law to continue the compulsory iodisation programme.

69. The question is having held that Rule 44-I to be invalid, whether we can permit the continuation of the ban on sale of non-iodised salt for human consumption for any period. Article 142 of the Constitution vests unfettered independent jurisdiction to pass any order in public interest to do complete justice, if exercise of such jurisdiction is not be contrary to any express provision of law.

70. In *Supreme Court Bar Assn. v. Union of India*, (1998) 4 SCC 409, this Court observed: (SCC p. 432, para 48)

“48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice ‘between the parties in any cause or matter pending before it’. The very nature of the power must lead the court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by ‘ironing out the creases’ in a cause or matter before it. Indeed this Court is not a court of restricted jurisdiction of only dispute settling. It is well recognised and established that this Court has always been a law maker and its role travels beyond merely dispute settling. It is a ‘problem solver in the nebulous areas’ (see. *K. Veeraswami v. Union of India*, (1991) 3 SCC 655) but the substantive statutory provisions dealing with the subject-matter of a given case, cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in statute dealing expressly with the subject.”

71. In *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2005) 3 SCC 284, this Court after reiterating that this Court in exercise of its jurisdiction under Article 142 of the Constitution would not pass any order which would amount to supplanting substantive law applicable to the case or ignoring express statutory provisions dealing with the subject, observed as follows: (SCC p. 294, para 27)

“27. It may therefore be understood that the plenary powers of this Court under Article 142 of the Constitution are inherent in the court and are complementary to those powers which are specifically conferred on the court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties...and are in the nature of supplementary powers...(and) may be put on a different and perhaps even wider footing than ordinary inherent powers of a court to prevent injustice. The advantage that is derived from a constitutional provision couched in such a wide compass is that it prevents 'clogging or obstruction of the stream of justice'. (See: Supreme Court Bar Assn. (supra))”.

72. In view of the above and to do complete justice between the parties in the interest of public health, in exercise of our jurisdiction under Article 142 of the Constitution, we direct the continuation of the ban contained in Rule 44-I for a period of six months. The Central Government may within that period review the compulsory iodisation programme and if it decides to continue, may introduce appropriate legislative or other measures. It is needless to say that if it fails to take any action within the expiry of six months from today, Rule 44-I shall cease to operate.”

Based on the conclusions drawn in the above judgments, it was submitted, that in the same manner in which judicial notice was taken by this Court, on the ground of “public health”, this Court needed to take into consideration, the “knowledge” component (acquired by the appellants), and the impossibility of transferability of the intellectual property, to invoke Article 142 of the

Constitution, to legitimize the curriculum successfully completed by the appellants. As such, it was pointed out, that the present consideration also falls within the permissible constitutional parameters. It was accordingly pleaded, that the view expressed by the Hon'ble Presiding Judge (of the 'former Division Bench'), should be affirmed.

21. Having adverted to the situations wherein this Court has positively exercised power under Article 142, to provide relief to the concerned parties, learned counsel also placed for our consideration, two judgments rendered by this Court, wherein the Court had declined to exercise the power vested in it under Article 142. First of all, reference was made to *Priyanka Estates International Private Limited v. State of Assam*, (2010) 2 SCC 27, wherein this Court held as under:

"58. In the case in hand, it is noted that a number of occupiers were put in possession of the respective flats by the builder/ developer constructed unauthorisedly in violation of the laws. Thus, looking to the matter from all angles it cannot be disputed that ultimately the flat owners are going to be the greater sufferers rather than builder who has already pocketed the price of the flat.

59. It is a sound policy to punish the wrong-doer and it is in that spirit that the courts have moulded the reliefs of granting compensation to the victims in exercise of the powers conferred on it. In doing so, the courts are required to take into account not only the interest of the petitioners and the respondents but also the interest of public as a whole with a view that public bodies or officials or builders do not act unlawfully and do perform their duties properly.

60. In the case in hand, admittedly, at no point of time Appellant 1, M/s. Priyanka Estates International (P) Ltd. was able to show to its prospective purchasers the Occupancy Certificate or Completion Certificate issued by the authorities concerned. The same could not even be shown to us and without it, Appellant 1 could not have embarked into sale of flats as it was mandatorily required.

61. The instant case is not a case of breach of contract. It is a

clear case of breach of the obligation undertaken to erect the building in accordance with building regulations and failure to truthfully inform the warranty of title and other allied circumstances.

62. Even though at the first instance, we thought of invoking this Court's jurisdiction conferred under Article 142 of the Constitution of India so as to do complete justice between the parties and to direct awarding of reasonable/suitable compensation/interest to the flat owners, whose flats are ultimately going to be demolished, but, with a heavy heart, we have restrained ourselves from doing so, for variety of reasons and on account of various disputed questions that may be posed in the matter. However, we grant liberty to those, whose flats are ultimately going to be demolished, to exhaust the remedy that may be available to them in accordance with law."

It was submitted, that the aforesaid judgment pertained to violations of building norms, and the Court considered it inappropriate, to provide relief to the persons who had purchased flats, despite their vehement contention, that they were not guilty of violating the building regulations (as the builders who had sold the flats to them, had raised constructions in violation of the building norms). Additionally, reference was made to *Uttar Pradesh Avas Evam Vikas Parishad v. Uttar Pradesh Power Corporation Limited*, (2011) 10 SCC 643, wherein our attention was invited to the following observations:

"29. Mr. Pallav Shishodia, learned Senior Counsel also urged that the appellants are migrants from Gujarat. They have settled in Chidambaram about thirty years back and the livelihood of the entire family of the appellants which comprised of about 40 members is dependant on the saw mill existing on the subject land. Having regard to these facts, he would submit that we invoke our jurisdiction under Article 142 of the Constitution and declare the acquisition of the appellants' land bad in law to do complete justice.

30. There is no doubt that by compulsory acquisition of their land, the appellants have been put to hardship. As a matter of fact, the RDO was alive to this problem. In his report dated

14-9-1989, the RDO did observe that the landowners have spent considerable money to raise the level of the land for constructing compound wall and running saw mill. He was, however, of the opinion that the appellants' land was very suitable for the expansion of the depot and that suitable compensation can be paid to the landowners to enable them to purchase an alternative land. The appellants, however, proceeded to challenge the acquisition. The litigation has traversed upto this Court and taken about 22 years. The public purpose has been stalled for more than two decades.

31. Being the highest court, an extraordinary power has been conferred on this Court under Article 142 to pass any decree, order or direction in the matter to do complete justice between the parties. The power is plenary in nature and not inhibited by constraints or limitations. However, the power under Article 142 is not exercised routinely. It is rather exercised sparingly and very rarely. In the name of justice to the appellants, under Article 142, nothing should be done that would result in frustrating the acquisition of land which has been completed long back by following the procedure under the Act and after giving full opportunity to the appellants under Section 5-A. The possession of the land has also been taken as far back as on 25-7-2001."

It was submitted, that the contours and parameters of the consideration recorded in the two cases referred to by him, could not be extended to the case of the appellants, which is unique and distinguishable from the cited cases, for reasons already expressed above.

22. Our attention was also drawn to the judgment rendered in *State of Punjab v. Rafiq Masih* (Whitewasher), (2014) 8 SCC 883, wherein this Court recorded the distinction between the exercise of jurisdiction vested in this Court under Article 136 as against Article 142. The relevant determination was expressed in the following paragraphs:

"8. In our view, the law laid down in *Chandi Prasad Uniyal* case, no way conflicts with the observations made by this Court in the other two cases. In those decisions, directions were

issued in exercise of the powers of this Court under Article 142 of the Constitution, but in the subsequent decision this Court under Article 136 of the Constitution, in laying down the law had dismissed the petition of the employee. This Court in a number of cases had battled with tracing the contours of the provision in Articles 136 and 142 of the Constitution of India. Distinctively, although the words employed under the two aforesaid provisions speak of the powers of this Court, the former vest a plenary jurisdiction in the Supreme Court in the matter of entertaining and hearing of appeals by granting special leave against any judgment or order made by a Court or Tribunal in any cause or matter. The powers are plenary to the extent that they are paramount to the limitations under the specific provisions for appeal contained in the Constitution or other laws. Article 142 of the Constitution of India, on the other hand is a step ahead of the powers envisaged Under Article 136 of the Constitution of India. It is the exercise of jurisdiction to pass such enforceable decree or order as is necessary for doing 'complete justice' in any cause or matter.

12. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. The directions issued by the court can normally be categorized into one, in the nature of moulding of relief and the other, as the declaration of law. "Declaration of law" as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the highest court of the land. This Court in the case of *Indian Bank v. ABS Marine Products (P) Ltd.*, (2006) 5 SCC 72, *Ram Pravesh Singh v. State of Bihar*, (2006) 8 SCC 381 and in *State of U.P. v. Neeraj Awasthi*, (2006) 1 SCC 667, has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the

directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court has compartmentalized and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared: The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case.”

Based on the above distinction between the exercise of jurisdiction under Articles 136 and 142 of the Constitution, it was submitted, that the power to do complete justice under Article 142, was far-far beyond the power vested in this Court under Article 136. It was therefore, the submission of learned counsel, that this Court should not refrain from extending complete justice to the appellants, in the manner expressed by the Hon’ble Presiding Judge (of the ‘former Division Bench’).

23. Mr. Shyam Divan, learned senior counsel, entered appearance on behalf of an appellant (in C.A. No.1752 of 2016). Some of the submissions advanced by learned counsel, were the same as were canvassed by Mr. R. Venkataramani. Rather than repeating the same, we have incorporated the said submissions, along with the contentions advanced by Mr. R. Venkataramani. Mr. Shyam Divan during the course of advancing his submissions, pointed out, that even though the appellant represented by him, was admitted to the MBBS course in 2008, he had not yet qualified all the professional examinations of the course. It was submitted, that the cancellation order in case of the appellant, was passed after 6 years of his admission (- in April 2014). Referring to the factual position noticed in the impugned judgment, dated 7.10.2014 (rendered by

the High Court of Madhya Pradesh), it was submitted, that in the Pre-Medical Test conducted for admissions in the year 2008, the candidatures of 42 students were cancelled, on account of discovery of tampering in their roll numbers. It

was highlighted, that only 10 of the above 42 candidates, whose roll numbers were discovered to have been tampered, had actually taken admission to the MBBS course. And 32 of the said candidates, who could have been admitted, did not even come forward to enrol themselves for the course. This, according to learned counsel, is a vital factor which needs to be taken into consideration. In addition, learned counsel invited the Court's attention to certain observations made by the Hon'ble Presiding Judge, which are extracted hereunder:

"7. The enquiry was conducted. The pattern of the enquiry is similar to the one conducted concerning PMT 2013. Based on the enquiry reports, the Board came to two conclusions: (i) there was a tampering with the examination process in each one of the abovementioned five years; and (ii) the appellants as well as some others students resorted to unfair means at the said examinations. They were beneficiaries of such tampered examination process. The BOARD, therefore, cancelled the admissions of the appellants and some others."

"12. Admittedly, there was no show cause notice to any one of the students before cancelling their admissions. No speaking order indicating the reasons which formed the basis for the cancellation of the admissions was either passed or served on any one of the appellants. Reasons were spelt out for the first time in the High Court. It appears from the impugned judgment and the submissions made before us that respondents relied upon circumstantial evidence to reach the two conclusions referred to in para 7 (supra)."

"36. There is nothing inherently irrational or perverse in the BOARD's conclusions (i) that the examination process was

tampered with; and (ii) that all the appellants herein who are identified to be members of the 'pairs' (referred to earlier) are beneficiaries of such manipulated examination process, relying upon the circumstances (mentioned in Footnote 7 supra) if they are unimpeachable. Each one of the circumstances is an inference which flows from certain basic facts which either individually or in combination with some other facts constituted the circumstance. One or more of such facts (constituting circumstances mentioned in (iii) to (vi) of Footnote 7 supra) are demonstrated to be not true (with reference to some of the appellants)."

Footnote 7, referred to in paragraph 36 extracted above, is reproduced below:

"7. The Circumstances are:-

(i) with respect to each of the five years in question, a definite pattern was followed by the BOARD in allotment of Roll numbers as well as examination centres. But, it is detected on enquiry that allotment of both the Roll number and the examination centre with respect to some of the students was in deviation from the pattern adopted for the year;

(ii) Such deviations with reference to several centres occurred in pairs. The logical pattern employed for the generation of Roll numbers was broken with respect to some pairs of students. They were allotted sequential Roll numbers, though they could not have been allotted those numbers if the logical pattern were followed. Further, such pairs of students were allotted examination Centres which they could not have been allotted having regard to Roll numbers allotted to them, and the pattern of the Roll numbers allotted to the particular examination Centre.

(iii) in such pairs, once again there is a pattern i.e. the more accomplished student is made to sit in front of the other of the pair (referred to in the impugned judgment as "Scorer" and "beneficiary" respectively). Such an arrangement was made in order to enable the "beneficiary" to copy from the "scorer";

(iv) with reference to most of the identified pairs, the candidates not only got substantially similar (if not identical) marks, but also their answers, both correct and incorrect, with reference to each one of the

questions answered by them matched to a substantial extent.

(v) in most of the cases of the identified pairs, the 'scorer' did not belong to Madhya Pradesh.

(vi) Such 'scorers' in most of the cases though secured sufficiently high marks in the PMT, did not take admission in any one of the medical colleges of Madhya Pradesh. The respondents, therefore, believe that the 'scorers' were not genuinely interested in securing admission in any medical college of MP and they appeared in the examination only to facilitate the 'beneficiary' to obtain good marks to enable the beneficiary to secure admission."

Based on the aforesaid observations, learned counsel was emphatic in highlighting, that even the Hon'ble Presiding Judge (of the 'former Division Bench'), was conscious of the fact, that some of the findings recorded with reference to some of the appellants, were not correct, in respect of the parameters adopted. Stated differently, it was submitted, that the Hon'ble Presiding Judge had a lurking feeling, that some of the appellants were innocent. It was submitted, that this was one of the considerations, which must have weighed with the Hon'ble Presiding Judge, to invoke Article 142, to render complete justice in the matter.

24. In continuation of the above submission, learned counsel invited our attention to the principles culled out by the Bench for, recording its conclusions, based on the analysis of the judgments relied upon by learned counsel for the rival parties, which are extracted hereunder:

"34. From an analysis of the above decisions, the following principles emerge:-

1. Normally, the rule of audi alteram partem must be scrupulously followed in the cases of the cancellation of the examinations of students on the ground that they had resorted to unfair means (copying) at the examinations.
2. But the abovementioned principle is not applicable to the cases where unfair means were adopted by a relatively large number of students and also to certain other situations where either the examination process is vitiated or for reasons beyond the control of both students and the examining body, it would be unfair or

impracticable to continue the examination process to insist upon the compliance with audi alteram partem rule.

3. The fact that unfair means were adopted by students at an examination could be established by circumstantial evidence.
4. The scope of judicial review of the decision of an examining body is very limited. If there is some reasonable material before the body to come to the conclusion that unfair means were adopted by the students on a large scale, neither such conclusion nor the evidence forming the basis thereof could be subjected to scrutiny on the principles governing the assessment of evidence in a criminal court.

Cases such as the one on hand where there are allegations of criminal conspiracies resulting in the tampering with the examination process for the benefit of a large number of students would be certainly one of the exceptional circumstances indicated in Sinha's case provided there is some justifiable material to support the conclusion that the examination process had been tampered with.

In the light of the principles of law emerging from scrutiny of the abovementioned judgments, we are of the opinion that case on hand can fall within the category of exceptions to the rule of audi alteram partem if there is reliable material to come to the conclusion that the examination process is vitiated.

That leads me to the next question – whether the material relied upon by the BOARD for reaching the conclusion that the examination process was contaminated insofar as the appellants (and also some more students) are concerned and the appellants are the beneficiaries of such contaminated process, is tenable?"

Based on the principles culled out, the Hon'ble Presiding Judge, recorded the following conclusion in paragraph 38:

"38. The other submission of the appellants in this regard is that if there is a deviation from the general pattern with regard to the allotment of Roll Numbers and the examination Centres, the appellants could not be blamed or 'penalised' because the entire process of the allotment was done by the BOARD and its officials. In my opinion, the question

of either 'blame' or 'penalty' does not arise in the context. If tampering with the examination process took place, whether all or some of the appellants are culpable is a matter for a criminal court to examine as and when any of the appellants is sought to be prosecuted.

But the fact that the examination process was tampered with is relevant for administrative action such as the one impugned herein. The said fact formed the foundation for the further enquiry for identifying the beneficiaries of such contaminated process. Having regard to the circumstances relied upon, I do not see anything illogical or untenable in the conclusions drawn by the expert committee which formed the basis for the impugned action of the BOARD. It is argued that the formula adopted by the BOARD to record the conclusion that the members of the identified pairs resorted to unfair means at the examination is without any scientific basis. I do not see any irrationality either in the formula or the decision of the BOARD to assign greater weightage to the incorrect matching answers. There is nothing inherently suspicious about two candidates sitting in close proximity in an examination and giving the same correct answer to a question because there can only one correct answer to a question. On the other hand, if they give the same wrong answer to a given question and if the number of such wrong answers is high, it can certainly generate a doubt and is a strong circumstance indicating the occurrence of some malpractice. Such a test was approved by this Court in *Bagleshwar Prasad's case*.

Even otherwise, in my opinion, it would be futile to pursue the inquiry in this regard. Assuming for the sake of argument that the submission of the appellants is right and there are some cases (of appellants) where the appellants can demonstrate (if an opportunity is given to them) that the circumstantial evidence is not foolproof and therefore the impugned order must be set aside on the ground of failure of natural justice, the BOARD would still be entitled (in fact it would be obliged in view of the allegation of systematic tampering with the examination process year after year) in law to conduct afresh enquiry after giving notice to each of the appellants. That would mean spending enormous time both by the BOARD and by the appellants for the enquiry and the consequential (inevitable) litigation regarding the correctness of the eventual decision of the BOARD.

For the abovementioned reasons, I do not propose to interfere with the impugned judgment on the count that the rule of *audi alteram partem* was not complied with by the respondents before cancelling the admissions of the appellants herein."

A perusal of the aforesaid consideration, according to learned counsel, leads to the inevitable impression, that the Hon'ble Presiding Judge (of the 'former Division Bench') was of the view, that the question of holding an inquiry in the matter was futile, even if the contention advanced at the hands of the appellants was correct (namely, that the appellants could demonstrate, that the material relied upon by the authorities would not have the effect of being absolutely conclusive). It was accordingly submitted, that it was apparent from the order itself, that the Hon'ble Presiding Judge, did not allow the appellants an opportunity to substantiate their claim(s) of innocence before the authorities, as that would take "enormous time". Be that as it may, it was the submission of learned counsel, that the conclusions recorded by the Hon'ble Presiding Judge (in paragraph 38, extracted above), reveal a lurking impression in the Court's mind, that some of the appellants may not have been blameworthy, of what they were being accused of.

25. Likewise, for the same purpose, learned counsel placed reliance on the observations recorded by the Hon'ble Presiding Judge (of the 'former Division Bench'):

39. The next question that requires examination is the legality of the action of the respondents after a lapse of considerable time. It varies between one to five years with reference to each of the appellants. The decision of the respondents necessarily led to litigation which consumed another three years. The net result is that appellants, who belong to 2012 batch, spent four years undergoing the training in medical course; others progressively longer periods extending up to eight years but could not acquire their degrees because of the impugned action and the pendency of this litigation. Most of the appellants would have acquired their degree in medicine by now if they had been successful at the examinations."

Relying on the above observations, it was submitted, that the lapse of considerable time, also weighed heavily in the mind of the Hon'ble Presiding Judge, for not interfering with the determination rendered by Vyapam. It was

therefore, that the Hon'ble Presiding Judge expressed the view, that adoption of the aforesaid course, would prolong the process of litigation for another three years, which in turn would result in the prolongation of the period required by the appellants, to clear their professional examinations (by a further period of three years). It was therefore submitted, that the decision rendered by the Hon'ble Presiding Judge, by taking recourse to Article 142, was aimed at putting a quietus to the judicial process, and thereby, alleviating young fertile minds from the rigors of any strict interpretation of law.

26. For the same purpose, as has been recorded hereinabove, learned counsel for the appellants, placed reliance on paragraph 46 of the judgment dated 12.5.2016. The same is reproduced below:

“46. Coming to the case in hand, the number of students involved is relatively huge. (They are the beneficiaries of a tampered examination process. The tampering took place systematically and repeatedly for a number of years virtually destroying the credibility of the examination process. It deprived a number of other more deserving students from securing admissions to the medical colleges). In view of the conclusion recorded by me earlier that neither the procedure adopted by the respondents nor the evidence relied upon by the respondents for taking impugned action against the appellants could be characterised as illegal, is it permissible for this Court to interfere with the impugned action of the respondents either on the ground that there is a considerable time lapse or that such action would have ruinous effect on the lives and careers of the appellants? and therefore, inequitable, is a troubling question.”

It was submitted, on the basis of the observations extracted above, that the Hon'ble Presiding Judge (of the 'former Division Bench'), was conscious of the ruinous effect on the lives and careers of the appellants, and therefore, felt the necessity of rendering justice to the appellants, by taking recourse to the power vested in this Court, under Article 142 of the Constitution.

27. Last of all, it was the submission of learned counsel for the appellants, that the Hon'ble Presiding Judge, in his order dated 12.5.2016, was also conscious of the fact, that most of the appellants may well have been juvenile, and as such, could not have been blamed for the role attributed to them, in the process of having gained wrongful admission, to the MBBS course. This aspect

of the matter was noticed in paragraph 55 of the judgment dated 12.5.2016, wherein the Hon'ble Presiding Judge observed as under:

"55. Another important consideration in the context is that most of (if not all) the appellants, whatever be their respective role, if any, in the tampering of the examination process, must have been 'juveniles' as defined under the Juvenile Justice Act. They cannot be subjected to any 'punishment' prescribed under the criminal law even if they are not only the beneficiaries of the tampered examination process but also the perpetrators of the various acts which constitute offences contaminating the examination process."

Taking note of the observations extracted above, according to learned counsel, it would not be incorrect to suggest, that the Hon'ble Presiding Judge, felt the necessity of taking recourse to Article 142, and thereby, the compulsion to render complete justice to the appellants.

28. Mr. Shyam Divan, learned senior counsel canvassed, that it was essential for us, to take into consideration all the aspects, referred to above. It was submitted, that each one of the aforesaid aspects, must be deemed to have been consciously taken into consideration, by the Hon'ble Presiding Judge (of the 'former Division Bench'), for eventually taking recourse to Article 142 of the Constitution, to render complete justice to the appellants. These reasons, according to learned counsel, should be read in conjunction with the submissions advanced at the hands of Mr. R. Venkataramani, Senior Advocate, wherein the emphasis laid on was, that the appellants had gained "knowledge", which could not be transferred/transposed to those who may have been better claimants for admission, to the MBBS course, than the appellants.

29. All put together, learned counsel for the appellants, endeavoured to demonstrate an absolute justification for the exercise of jurisdiction at the hands of the Hon'ble Presiding Judge, vested in this Court under Article 142 of the Constitution. Learned counsel accordingly beseeched this Court repeatedly, to give expression to each and every facet of the understanding of the proposition, at the hands of the Hon'ble Presiding Judge (of the 'former Division Bench'), and to uphold the order passed by him, in favour of the appellants.

30. Mr. Sidharth Luthra, Senior Advocate, represented the appellants in Civil Appeal Nos. 1729, 1761-1768, 1813-1814 and 1838 of 2016. At the

outset, it was submitted, that the appellants in the above mentioned civil appeals, were seeking directions in terms of Article 142 of the Constitution, which provides plenary powers to this Court, whereby, this Court can pass such orders, as may be necessary for doing complete justice. It was submitted, that in the instant case, the instant prayer was also being made by keeping the larger public interest in mind. Learned counsel, adverted to the divergent views expressed by the members of the 'former Division Bench' (through their respective orders, dated 12.5.2016) with respect to the exercise of the above power. Referring to the order-passed by the Hon'ble Presiding Judge (of the 'former Division Bench'), our attention was drawn to the following view expressed by him:

"Society must receive some compensation from the wrongdoers. Compensation need not be monetary and in the instant case it should not be. In my view, it would serve the larger public interests, by making the appellants serve the nation for a period of five years as and when they become qualified doctors, without any regular salary and attendant benefits of service under the State, nor any claim for absorption into the service of the State subject of course to the payment of some allowance (either in cash or kind) for their survival. I would prefer them serving the Indian Armed Forces subject to such conditions and disciplines to which the armed forces normally subject their regular medical corps. I would prefer that the appellants be handed over the certificates of their medical degrees only after they complete the abovementioned five years. The abovementioned exercise would require the ascertainment of the views of Ministry of Defence, Government of India, and passing of further appropriate orders by this Court thereafter. In view of the disagreement of views in this regard, I am not proposing such an exercise."

Thereupon, our attention was drawn to the order of the Hon'ble Companion Judge (of the 'former Division Bench'), who expressed his views as under:

"123. Applying the aforesaid law to the facts of the case at hand, I find that the appellants are not entitled to claim any equitable relief on the ground that they have almost completed their course during the interregnum period and hence no action on the basis of their PMT Examination results is called for."

126. In these circumstances, the State may consider permitting the appellants and other candidates alike the appellants to appear in the competitive examination whenever it is held and consider granting age relaxation to those candidates who have crossed the age-limit, if prescribed. Such liberty, if granted, would not cause any prejudice to any one and at the same time would do substantial justice to all such candidates as was done in *Bihar School Examination* (supra). Beyond this, in my view, the appellants are not entitled to claim any indulgence.”

31. Learned counsel, to support the cause of the appellants, drew our attention to the year of admission and status of the appellants. It was submitted, that the appellant in Civil Appeal No.1729 of 2016 had completed her medical courses by clearing all four professional examinations, while the appellants in Civil Appeal Nos. 1767-1768 of 2016, 1813-1814 and 1838 of 2016 had cleared the second/third professional examinations, under orders of the High Court and/or this Court. Their academic record in school (class X and XII results), was also highlighted to demonstrate, that they were meritorious students. It was also pointed out, that none of these appellants were named in any First Information Report, nor were they ever subjected to any criminal investigation/prosecution, as on date. It was further pointed out, that their admissions were cancelled, not on finding of any overt act being proved on their part, but based on conclusions recorded by the Expert Computer Committee constituted by Vypam, which had evolved a formula to examine, whether the candidates sitting in pairs, had adopted unfair means, during their Pre-Medical Test. It was submitted, that the conclusions drawn against the appellants, was based on a general analysis, and not, on any individual determination of guilt.

32. Learned counsel pointed out, that in a report prepared by the Ministry of Health and Family Welfare, Government of India, it had been concluded, that there was an acute shortage of medical professionals (medical doctors) in India, specially at the primary care level, both in the government and the private sector, as a consequence of which, citizens were deprived of basic health care, including preventive care. It was also highlighted, that the rural health statistics compiled by the Ministry of Health and Family Welfare, Government of India, affirm for the year 2015, that the State of Madhya Pradesh had

vacancies of 659 doctors in Primary Health Centres alone. According to data compiled by the WHO for 2015, India had one doctor per 1681 people. It was contended, that although the number of health facilities had risen in the past decade, workforce shortages were substantial. Replying on statistics of March 31, 2015, it was submitted, that more than 8% of the 25,300 primary health centres in the country were without a doctor, 38% were without a laboratory technician, and 22% had no pharmacist. And, nearly 50% of posts of female health assistants, and 61% of male health assistants, were vacant. In community health centres, it was submitted, the shortage was huge – surgeons were short by 83% - and pediatricians by 82%. Even in health facilities where doctors, specialists, and paramedical staff were posted, their availability remained in question, because of a high rate of absenteeism (for the above data, reliance was placed on an article titled “India still struggles with rural doctor shortages”, - www.thelancet.com, of December 12, 2015).

33. Keeping in view the factual position stated above, it was prayed, that the appellants be granted such relief, as would enable them, to serve society and humanity. This, according to learned counsel, can be achieved by allowing the appellants to put their medical education to use – by allowing them to serve the needs of society. It was contended, that an element of sympathetic consideration towards the appellants, was called for.

34. It was submitted, that many of the appellants may have crossed the maximum age limit for entry to any other graduate course, and may not be able to undertake another course of education. To permit them, as proposed by the Hon’ble Companion Judge, to retake the examination, after having completed years of medical education, would put them at an extremely disadvantageous position. It was submitted, that such action, would not further public interest. Even though it was acknowledged, that the same would act as a deterrent, on account of years of academic career lost. Learned counsel also highlighted, that most of the appellants were juvenile, at the relevant time. It was submitted, that the utilitarian principle, commended the use of the appellants’ education and training, for the public policy of promoting healthcare. It was submitted, that the principle that “fraud vitiates everything”, should not be allowed to trounce, the cause of public good. Further, if the undertaking as given was considered, and accepted, that itself would act as a deterrent, for other students in future. The undertakings given by these appellants is extracted below:

“The Appellants would serve in Government Hospitals/Government Health Centers on an undertaking or on a bond for 10 years period or any higher period as may be directed by this Court.

And/Or

The Appellants would serve in rural areas and rural health centers on an undertaking or on a bond for 10 years period or any higher period as may be directed by this Court.

And/Or

The Appellants would serve in medical centers of National Rural Health Mission for 10 years period or any higher period as may be directed by this Court.

Note I: Based on the directions as may be issued, the Appellants could undertake to serve in Madhya Pradesh or such other place as may be directed by this Court.

Note II: The effect of directing the Appellants to serve in Government hospitals for the rest of their professional career would have the effect of entitling the Appellants to be considered as Government Servants and would entitle them to dues payable to government servants including protection accorded to government servants and hence they could be put to bonds for the period specified.

B. Alternatively, the Appellants can do community service for a 2 year period under the aegis of the State Social Welfare Department followed by medical service as per Para A above.

C. The Appellants can teach at Government Schools for a 2 year period followed by medical service as per Para A above.

D. Quantum of compensation per candidate may be fixed at Rs.10 lakhs or as directed to be deposited in the Chief Minister's Welfare Fund or State Treasury within a prescribed time period [Refer *State v. Sanjeev Nanda* (2012) 8 SCC 450].

E. Additionally, a percentage of the yearly income of the Appellants could be deposited in the Chief Minister's Welfare Fund or State Treasury for such period as may be prescribed by this Court.”

In this behalf, reliance was placed on the *Rafiq Masih* case (supra), wherein the scope of Article 142 of the Constitution and the nature of the power vested in this Court under the above provisions, was considered. In the above judgment, it was pointed out, that it was held as under:

“12. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. The directions issued by the Court can normally be categorised into one, in the nature of moulding of relief and the other, as the declaration of law. “Declaration of law” as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the highest court of the land. This Court in *Indian Bank v. ABS Marine Products (P) Ltd.* (2006) 5 SCC 72, *Ram Pravesh Singh v. State of Bihar* (2006) 8 SCC 381 and in *State of U.P. v. Neeraj Awasthi* (2006) 1 SCC 667, has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court has compartmentalised and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case.”

35. Even in criminal law, it was pointed out, that a distinction was made between acts having the same consequences, but done with differing intent,

and different level of culpability. In *Empress v. Idu Beg* ILR (1881) 3 All 776, the Allahabad High Court, it was pointed out, had explained the varying degrees of culpability in cases of murder, rash and negligent acts, and culpable homicide, whereupon it was held as under:

“... The category of intentional acts of killing, or of acts of killing committed with the knowledge that death, or injury likely to cause death, will be the most probable result, or with the knowledge that death will be a likely result, is contained in the provisions of ss. 299 and 300 of the Penal Code. S. 304 creates no offence, but provides the punishment for culpable homicide not amounting to murder, and draws a distinction in the penalty to be inflicted, where, an intention to kill being present, the act would have amounted to murder but for its having fallen within one of the Exceptions to s. 300, and those cases in which the crime is culpable homicide not amounting to murder, that is to say, where there is knowledge that death will be a likely result, but intention to cause death or bodily injury likely to cause death is absent. Putting it shortly, all acts of killing done with the intention to kill, or to inflict bodily injury likely to cause death, or with knowledge, that death must be the most probable result, are prima facie murder, while those committed with the knowledge that death will be a likely result are culpable homicide not amounting to murder. Now it is to be observed that s. 304A, is directed at offences outside the range of ss.299 and 300, and obviously contemplates those cases into which neither intention nor knowledge of the kind already mentioned enters. For the rash or negligent act which is declared to be a crime is one “not amounting to culpable homicide,” and it must therefore be taken that intentionally or knowingly inflicted violence, directly and willfully caused, is excluded. S. 304A does not say every unjustifiable or inexcusable act of killing not hereinbefore mentioned shall be punishable under the provisions of this section, but it specifically and in terms limits itself to those rash or negligent acts which cause death but fall short of culpable homicide of either description.”

36. Mr. Raju Ramachandran, learned senior counsel, appearing for the appellants in Civil Appeal Nos. 1795-1798 of 2016, canvassed their claim, from a completely different angle. He acknowledged, that there was unanimity in the Courts, which had adjudicated upon the controversy (first the High

Court, and thereafter, this Court), that the appellants were party to a tainted admission process. They were admittedly, beneficiaries of such process. Even though the appellants were not issued notices, and therefore, were not afforded an opportunity to tender any explanation in their defence, it was acknowledged, that the formula adopted by Vyapam, for cancelling the results of the appellants, was found to be fair, by all Courts. The determination rendered by Vyapam, was accordingly upheld. It was contended, that the submissions advanced by him, were despite the aforestated acknowledged factual (- and legal) position.

37. It was asserted by learned counsel, that admissions to academic institutions of higher learning, involved a cut-throat competition. The admission-competition, according to learned counsel, was maximum in the case of medical institutions. It was submitted, that in the above competitive environment, children of tender years, find themselves pressurized on account of the availability of limited seats. Not only that, it was pointed out, that pressure in the matter of admissions, as stated above, was also fuelled by parents. It was pointed out, that parents on their own part, felt a sense of personal failure, in case their children were not successful in gaining admission to prestigious courses (-or, in acclaimed institutions). And therefore it was highlighted, that parents also derived great pleasure and satisfaction, when their wards gained admission to important courses, and/or in prestigious institutions. Children as also parents, therefore, strive for societal recognition, when they compete for admission to professional courses. It was therefore submitted, that the actions of the appellants in the present controversy, required to be viewed, by keeping all the above factors in mind.

38. Learned counsel also submitted, that the overwhelming desire of candidates, as well as, the expectation of their parents, had created inroads, into the system of admission to professional courses, and the admission system had become rotten. It was acknowledged, that this has not been the position only in the recent past, but had been ongoing for many years. In the present case, in the first instance, admissions of the year 2013, were annulled. Based on the manner in which wrongful admissions were made, during the year 2013, an inquiry was conducted for the preceding years, as well. This led to the cancellation of the admission of the appellants (and others, similarly situated as them), in respect of admissions during 2008 to 2012. It was submitted, that the present controversy, should be viewed from the aforestated background (and perspective).

39. It was emphasized, by learned counsel, that the appellants were not perpetrators of a fraud. It was an ongoing fraud, which had been in existence for many years. The appellants were merely a willing party to the existing fraud. Their willingness to seek benefit thereof, was based on a compelling atmosphere, including their own ambition. It was submitted, that the appellants should not be dealt with by using a common brush, which would wipe out their career(s), on the ground that they were party to a fraud. It was reiterated, that the appellants were innocent. The appellants, it was pointed out, were not mature enough, to debate within their minds, the cause and effect of their actions. It was submitted, that all the appellants (or at least, most of them were) were juvenile, when they had appeared for the Pre-Medical Test, and even for this reason, they could not be held responsible for any wrong doing, whether it emanated from a misrepresentation-simpliciter, or misrepresentation – having the trappings of fraud.

40. It was submitted, that the Hon'ble Presiding Judge (of the 'former Division Bench'), had approached the issue in the right perspective. It was pointed out, that the Hon'ble Presiding Judge, not only approved the formula adopted for short-listing the candidates, who had obtained admissions by manipulating the process of admission, but had also upheld the orders passed by Vyapam, cancelling the admission of the appellants, to the MBBS course. And yet, for societal benefit, and certainly not for the benefit of the appellants, invoked Article 142, to uphold the validity of the academic course (or part thereof) successfully completed by them. This invocation of Article 142 of the Constitution, by the Hon'ble Presiding Judge, it was submitted, not only took away the trauma from the minds of the young appellants, who had undoubtedly committed a serious mistake, but had also taken care of a societal need, in the field of professional medicine. The route adopted by the Hon'ble Presiding Judge, in preserving the academic career(s) successfully completed by the appellants, according to learned counsel, was founded on a regime of penance, to be served by the appellants.

41. Learned counsel repeatedly emphasized, that his solitary contention was, that societal benefit was of much greater significance, as compared to individual punishment. It was submitted, that in the manner in which Article 142 has been interpreted by this Court, the determination rendered by the Hon'ble Presiding Judge, should be endorsed by the instant Division Bench, also. In order to persuade us to adopt the aforesaid course, reliance was

placed on the *Sanjeev Nanda* case, (supra), and our attention was drawn to the following:

“Community service for avoiding jail sentence 122. Convicts in various countries, now, voluntarily come forward to serve the community, especially in crimes relating to motor vehicles. Graver the crime, greater the sentence. But, serving the society actually is not a punishment in the real sense where the convicts pay back to the community what they owe. Conduct of the convicts will not only be appreciated by the community, it will also give a lot of solace to them, especially in a case where because of one’s action and inaction, human lives have been lost.

123. In the facts and circumstances of the case, where six human lives were lost, we feel, to adopt this method would be good for the society rather than incarcerating the convict further in jail. Further sentence of fine also would compensate at least some of the victims of such road accidents who have died, especially in hit-and-run cases where the owner or driver cannot be traced. We, therefore, order as follows:

(1) The accused has to pay an amount of Rs 50 lakhs (Rupees fifty lakhs) to the Union of India within six months, which will be utilised for providing compensation to the victims of motor accidents, where the vehicle owner, driver, etc. could not be traced, like victims of hit-and-run cases. On default, he will have to undergo simple imprisonment for one year. This amount be kept under a different head to be used for the aforesaid purpose only.

(2) The accused would do community service for two years which will be arranged by the Ministry of Social Justice and Empowerment within two months. On default, he will have to undergo simple imprisonment for two years.”

Learned counsel whilst placing reliance on the observations in the *Sanjiv Nanda* case (supra) submitted, that personal ambition, parental pressure, a corrupted system which had built inroads over the years (for gaining admission, through administrative assistance), the juvenility of the appellants, and the societal benefit, should be assessed wholesomely by this Court, before recording its final conclusions.

42. Ms. Indu Malhotra, learned senior counsel, representing some of the appellants, adopted the submissions advanced by her learned colleagues. In addition, learned counsel illustratively explained, by inviting the Court's attention to the factual position relating to some of the individual appellants, that the parameters adopted by Vyapam, to determine the culpability of the concerned students, could not conclusively justify the guilt of some of the appellants.

43. It was submitted, that some of the appellants had a commendable academic record, during their school education. And therefore, it would not be right, to assume that the appellants would not have been in a position, on their own merit, to gain admission to the MBBS course. It was emphatically highlighted, that the conclusion drawn by Vyapam, against the appellants, was based on a generalized formula, which could not be assumed to be correct, with reference to all the appellants. But then, it was also contended, that even if the formula was assumed to be correct, the findings recorded by Vyapam, were clearly incorrect in respect of some of the parameters (incorporated in the formula), with reference to some of the appellants. In this behalf, it may be acknowledged, that learned counsel was at pains to highlight, some illustrative instances, with reference to some of those whose admissions were cancelled by Vyapam.

44. We find no reason or cause, to delineate the facts relating to some of the individual appellants, brought to our notice. This, because the 'former Division Bench', through their separate orders dated 12.5.2016, and their subsequent order dated 30.8.2016, affirmed the recording of a concurrent opinion, that the examination process for the years 2008 to 2012, was vitiated with reference to the appellants, and others. Both Hon'ble Judges comprising of the 'former Division Bench' held, that the appellants herein were beneficiaries of a vitiated process. In the above view of the matter, we would restrain ourselves, from a re-appreciation of a finding concurrently recorded by the 'former Division Bench', despite the submissions, emphatically advanced. We have placed on record (in paragraph 4 hereinabove), the observations recorded by the 'former Division Bench' in its order dated 30.8.2016. We record our concurrence, with the said observations. Needless to mention, that by passing our order dated 28.7.2016, seeking a clarification from the 'former Division Bench', we were successful in saving a number of days of precious time of the Court, which would have otherwise been utilized, in hearing and determining, the submission canvassed on behalf of the

appellants, founded on Article 145(5) of the Constitution. In fact, that was the precise reason (recorded in our order, dated 28.7.2016), for which the clarification was sought.

45. Mr. Purushaindra Kaurav, learned counsel appearing for the M.P. Professional Examination Board (Vyapam), drew our attention to the sequence of facts which eventually culminated in the cancellation of the results of the appellants (to the professional MBBS course). It was pointed out, that on 6.7.2013, the Crime Branch of Indore, received information, that around twenty students from outside States (outside the State of Madhya Pradesh) like U.P., Bihar etc., had appeared in the Pre-Medical Test, with a fake identity, just to facilitate other students (as the appellants herein), to gain higher marks. It was submitted, that these outside students, were not themselves desirous, of gaining admission to the MBBS course. Their object was only to help the appellants, and others similarly situated. Based on the above information, the Crime Branch, Indore, conducted a raid. During the course of the raid, 20 students with suspicious identity were detected. Crime Case No.539/2013 was accordingly registered on 7.7.2013, at Rajendra Nagar Police Station, Indore.

46. Arrests of the accused in Crime No.539/2013 were made on 7.7.2013 itself. Based on the information furnished by those arrested, it emerged that a racket/scam supported by private doctors (as well as, other individuals), was operating. The main accused were identified as Sanjiv Shipkar, Jagdish Sagar, Tarang Sharma, Bharat Mishra, etc.. After the arrest of the above persons, it became known, that Vyapam's officials were also involved. The names of Vyapam officials involved were – Pankaj Trivedi (Controller/Director), Nitin Mohindra, (Principal System Analyst), Ajay Kumar Sen (Senior System Analyst), Chandrakant Mishra (Assistant Programmer) etc.. All the aforesaid Vyapam officials were also arrested, between July and September 2013.

47. It was submitted, that the investigation of Crime Case No.539/2013 was handed over to a Special Task Force, which recovered incriminating data, from a computer hard disc. The information derived from the hard disc, led to the registration of other crime cases, pertaining to the examinations conducted by Vyapam, for admission to academic courses. Seeing the gravity and extent of the criminality, and the highly placed persons involved, the investigation came to be entrusted to the Central Bureau of Investigation (CBI).

48. It was pointed out, that after conducting a detailed inquiry, in the Pre-Medical Examination 2013, Vyapam cancelled the results of 415, candidates. This was done through two orders, dated 9.10.2013 and 6.12.2013 (345 candidates by the former, and 70 candidates by the latter). The aforesaid orders cancelling the results of 415 candidates, were assailed by the aggrieved candidates, through Writ Petition No. 20342/2013 (*Pratibha Singh v. State of Madhya Pradesh*), and other connected matters. All the writ petitions were dismissed by the High Court, on 11.4.2014. The High Court upheld the orders dated 9.10.2013 and 6.12.2013 (cancelling the candidature of 415 candidates). It was pointed out, that the order passed by the High Court on 11.4.2014, was assailed before this Court, through SLP(C) Nos. 13629-13630 of 2014 (*Pooja Yadav v. State of M.P.*), and 16257 of 2014 (*Sumit Sinha v. State of M.P.*). This Court dismissed the former special leave petitions on 19.5.2014, and the latter on 8.8.2014. It was therefore contended, that on a controversy identical to the one in hand, this Court has already concluded the matter, against the appellants.

49. Having carried out a similar exercise, it was pointed out, with reference to admissions to the MBBS course, during the years 2008 to 2012, Vyapam had passed similar orders (cancelling the candidature of students), on 15.4.2014 and 9.5.2014. Writ Petition No.1918 of 2014 (*Nitu Singh Markam v. State of M.P.*) and connected matters, were yet again, dismissed by the High Court of Madhya Pradesh, on 24.9.2014. It is therefore apparent, according to learned counsel, that the challenge raised by the candidates who had gained admission during the period 2008 to 2012, was not accepted by the High Court, for exactly the same reasons, as were recorded by the High Court, for upholding the cancellation orders pertaining to admissions made during 2013.

50. The above order dated 24.9.2014 was assailed by the appellants herein, wherein the members of the 'former Division Bench', passed separate orders on 12.5.2016, details whereof have already been recorded hereinabove.

51. For the reason, that the appellants had not gained admission to the MBBS course, on their own merit, it was contended by learned counsel, that they would not enjoy the trust of the society, as they would always carry a stigma of having obtained their qualifications by deceit and fraud. It was pointedly asserted, that on account of the trust deficit between the appellants, and their likely patients, a feeling of faith and confidence would never be entertained by their patients, however brilliant or outstanding the appellants

may actually be. It was submitted, that the candidature of 634 students, admitted to the MBBS course during the years 2008 to 2012, had been cancelled. Out of the students whose candidature was cancelled, the appellants before this Court numbered only 139. It was clarified, that out of the 634 students, whose candidatures were cancelled, only 268 candidates had actually taken admission to the MBBS course. Based on the aforesaid data, it was submitted, that a large number of students, whose admission to the MBBS course had been cancelled, had already accepted the decision of Vyapam and/or of the High Court, gracefully. It was pointed out, that for the few appellants who have been agitating their claim before this Court, it would be unjust and improper to invoke the jurisdiction vested with this Court, under Article 142 of the Constitution.

52. Premised on the factual position narrated above, it was submitted, that all kinds of manipulation and fraud were adopted by the appellants, to gain admission to the MBBS course. It was asserted, that this was not a simple case of mass copying. It was submitted, that the instant case constituted a deep rooted conspiracy involving parents, students, government officials, racketeers and various middle-men. The instant scam, it was pointed out, was going on for years together, which had resulted in tarnishing the good name and veracity of Vyapam. It was submitted, that the need of the hour was, to assuage the reputation of Vyapam, by dealing with those involved, and the beneficiaries, with a strong hand. It was pleaded, that Article 142 of the Constitution, needed to be invoked, towards that end.

53. Learned counsel representing Vyapam, highlighted, persons similarly situated as the appellants, who were admitted to the MBBS course during the year 2013, were not allowed any equitable relief, as is presently claimed by the appellants. After the dismissal of the challenge raised by them, by the High Court, this Court also unequivocally rejected their claims (on 19.5.2015 and 8.8.2014). It was submitted, that it was not open to the appellants, to seek a relief, which was not granted to others, similarly situated.

54. It was also pointed out, by learned counsel representing Vyapam, that criminal cases had also been initiated against a number of appellants, for having adopted fraudulent means, to gain admission to the MBBS course. It was submitted, that as against the remaining appellants, investigation was ongoing, and as soon as the same would be completed, criminal proceedings would be initiated against them, as well. It was asserted, that the actions of the appellants,

and of those with whose connivance they gained entry into the MBBS course, constituted a scam. In such circumstances, there could be no question of considering, any contention advanced on behalf of the appellants, which would validate any acquisition based on fraud and deceit. This, according to learned counsel, would amount to giving premium to the appellants, for their wrongful actions.

55. It was also submitted by learned counsel representing Vyapam, that such an attempt at the hands of this Court, would demoralise meritorious candidates. Such relief to the appellants, as has been accorded by the Hon'ble Presiding Judge (of the 'former Division Bench'), would encourage all and sundry, to gain admission in future as well, by adopting malpractice of all kinds. In the instant view of the matter, it was submitted, that benevolence shown to the appellants, would not be in the larger public interest.

56. On behalf of Vyapam, it was also asserted, that the appellants were mostly juvenile at the time when they gained entry into the MBBS course. As such, it was pointed out, that they were still young and could turn a fresh leaf in their life by working hard, so as to re-achieve the benefits of their individual merit. It was submitted, that such of the appellants who had faith in themselves, would not lag behind. It was pointed out, that the appellants and others similarly situated, may well be granted the relief of competing in the Pre-Medical Test, by relaxation of their age and qualification, in exercise of the power vested in this Court under Article 142. It was submitted, that the appellants deserved no more.

57. It was also asserted, on behalf of Vyapam, that the fact that the appellants had undergone the entire MBBS course, or a substantial part thereof, should not weigh with this Court, as a determinative factor whether or not the appellants, were entitled to any sympathetic consideration. It was submitted, that the delayed action against the appellants was based on the fact, that the instant scam remained a guarded secret, which came out for the first time, on account of the information received by the Crime Branch of Indore, on 6.7.2013. As already noticed hereinabove, in the first instance, investigations were limited to the admission to the MBBS course, on the basis of the Pre-Medical Test, conducted in the year 2013. Only when it was realized, that there had been an ongoing racket, for admission to the MBBS course, the investigating agency widened the scope of inquiry, leading to the discovery of adoption of similar unfair means, in the matter of admissions, even during the

years 2008 to 20012 (sic:2012). As a matter of overall consideration, it was submitted, that keeping in mind the maxim “fraud vitiates everything”, no benefit could be claimed by the appellants, on the basis of any statutory rights, including the law of limitation. It was therefore asserted, that it would not be proper, in the facts and circumstances of the instant case, to exercise the jurisdiction vested in this Court under Article 142 of the Constitution, to extend any benefit to the appellants.

58 (i). Learned counsel representing Vyapam placed reliance on *Vinod Bhandari v. State of Madhya Pradesh*, (2015) 11 SCC 502. The instant judgment pertained to an application filed by an accused in the Vyapam scam, seeking bail. Bail having been declined to him by the High Court, he approached this Court. This Court noticing the fact, that the appellant was the Managing Director of Shri Aurobindo Institute of Medical Sciences, Indore, and that, crores of rupees were collected, to help undeserving students to pass the entrance examination to the MBBS course, arrived at the conclusion, that an offence of a high magnitude, leading to illegal admissions to large number of undeserving candidates, by corrupt means, undermined the trust of the people, and the integrity of the medical profession itself. In the aforesaid view of the matter, this Court also declined the prayer for bail.

(ii). Reliance was also placed on *Mridul Dhar v. Union of India*, (2005) 2 SCC 65. The instant case also related to admission to the MBBS course. The seriousness of the process of admission was noticed by this Court in paragraph 7 of the above judgment, which is extracted below:

“7. It is a matter of anguish that despite various decisions of this Court and laying down of a time schedule for completion of admission process, the time schedule has not been adhered to at various stages by various authorities resulting in otherwise avoidable discontentment and hardship to the candidates. The observance of the time schedule is paramount for effective utilisation to all-India quota of medical and dental seats. The denial of a seat in the college of choice on the basis of one’s merit position leads to frustration and results in injustice to the young students. The admission to a professional course based on merit position is paramount for the career of a student. The omission and commission in respect of admissions this year, as is evident from the orders aforesaid, adversely affected the career of meritorious students in their not getting admission in the college of their choice.

Any frustration and feeling of injustice at an impressionable age at which the students compete in all-India competition is neither desirable from the point of view of either the young students nor for the country's future. We are concerned with the career of those bright candidates who compete in a tough all-India competition. In this background, it is necessary to examine the acts of omission and commission at various levels, the suggestions that have been made and submissions put forth, to consider the issuance of directions for streamlining admissions from the next academic year in MBBS/BDS courses.”

Based on the aforesaid observations, it was contended, that unlike the submissions advanced at the behest of the appellants, it was also necessary to keep in mind, the effect of regularization of a tainted admission process, on those who had been deprived of admission, despite their merit.

(iii) Reliance was also placed on *Gurdeep Singh v. State of J&K*, 1995 Supp (1) SCC 188. The instant case, also pertained to admission to MBBS course, wherein this Court observed, as under:

“11. In the result, we find that the denial of the seat to the appellant in the sports category, cannot be justified. As Respondent 6 was not eligible, there was no question of a tie. Appellant should now be given the seat. By an earlier interlocutory order, a seat had been directed to be kept vacant for appellant's benefit in the event of his success. We direct the authorities to admit appellant to the course within two weeks from today. We therefore, allow this appeal, set aside the order dated August 10, 1992 of the High Court and grant the reliefs claimed in the writ petition.

12. What remains to be considered is whether the selection of Respondent 6 should be quashed. We are afraid, unduly lenient view of the courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process

itself; engender cynical disrespect towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the court. Such instances reduce the jurisdiction and discretion of courts into private benevolence. This tendency should be stopped. The selection of Respondent 6 in the sports category was, on the material placed before us, thoroughly unjustified. He was not eligible in the sports category. He would not be entitled on the basis of his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion, is misuse of power. While we have sympathy for the predicament of Respondent 6, it should not lose sight of the fact that the situation is the result of his own making. We think in order to uphold the purity of academic processes, we should quash the selection and admission of Respondent 6. We do so, though, however, reluctantly.”

Based on the aforesaid observations, it was contended, that this Court clearly and unequivocally arrived at the conclusion, that there should be no judicial sympathy, to the advantage of persons, who secured admission by stratagem and trickery. It was accordingly submitted, that any act of bestowing legality on admissions acquired through such a selection process, would constitute a misuse of power vested in this Court under Article 142 of the Constitution.

(iv) Reliance was also placed on *Tanvi Sarwal v. Central Board of Secondary Education*, (2015) 6 SCC 573. This case also pertained to admission, to the MBBS course. Herein, question papers were leaked and large scale cheating and malpractices were adopted. Such fraudulent admissions, were aided by an organised gang, for monetary consideration. Learned counsel for Vyapam therefore asserted, that the conclusions drawn in the cited case were of extreme relevance, to the present controversy, herein also, similar allegations had been established. From the above judgment, learned counsel, placed reliance on the following observations:

“18. As has been noticed hereinabove, the disclosures in the investigation suggest that the benefit of answer key has been availed by several candidates taking the examination, by illegal means. Though as on date, 44 such candidates have been identified, having regard to the modus operandi put in place, the numbers of cellphones and other

devices used, it is not unlikely that many more candidates have availed such undue advantage, being a part of the overall design and in the process have been unduly benefited qua the other students who had made sincere and genuine endeavours to solve the answer paper on the basis of their devoted preparation and hard labour. In view of the widespread network, that has operated, as the status reports disclose and the admission of the persons arrested including some beneficiary candidates, we are of the opinion, in view of the strong possibilities of identification of other candidates as well involved in such malpractices, that the examination has become a suspect. As it is, the system of examination pursued over the decades, has been accepted by all who are rational, responsible and sensible, to be an accredited one, for comparative evaluation of the merit and worth of candidates vying for higher academic pursuits. It is thus necessary, for all the role players in the process, to secure and sustain the confidence of the public in general and the student fraternity in particular in the system by its unquestionable trustworthiness. Such a system is endorsed because of its credibility informed with guarantee of fairness, transparency, authenticity and sanctity. There cannot be any compromise with these imperatives at any cost.

19. Segregation only of the already 44 identified candidates stated to be the beneficiaries of the unprincipled manoeuvre by withholding their results for the time being, in our comprehension cannot be the solution to the problem that confronts all of us. Not only thereby, if the process is allowed to advance, it would be pushed to a vortex of litigation pertaining thereto in the foreseeable future, the prospects of the candidates would not only remain uncertain and tentative, they would also remain plagued with the prolonged anguish and anxiety if involved in the ordeal of court cases. Acting on this option, would in our estimate, amount to driving knowingly the students, who are not at fault, to an uncertain future with their academic career in jeopardy on many counts. Further, there would also be a lurking possibility of unidentified beneficiary candidates stealing a march over them, on the basis of the advantages availed by them through the underhand dealings as revealed. Having regard to the fact, that the course involved with time would yield the future generations of doctors of the country, who would be in charge of public health, their inherent merit to qualify for taking the

course can by no means be compromised.”

Based on the above observations, it was submitted, that in matters pertaining to fraudulent admissions, the consistent course adopted by this Court has been, to ensure the purity of the process, and not to extend any benefit to undeserving candidates.

(v) Reliance was then placed on *Abhyudya Sanstha v. Union of India*, (2011) 6 SCC 145. This case also pertained to adoption of a tainted process of admission to educational courses, wherein the institute (and not the students), had approached this Court. Learned counsel, drew the Court's attention, to the following observations:

“22. The question which remains to be considered is whether the Court should direct regularisation of the admission of the students, who were allotted to the appellants by the State Government, etc. pursuant to the directions given by this Court. Although, in the absence of cogent material, it is not possible to record a finding that the students were party to the patently wrong and misleading statement made by the appellants, the Court cannot overlook the fact that none of the appellants has been granted recognition by WRC, Bhopal and in view of the prohibition contained in Section 17-A of the Act read with Regulation 8(12), the appellants could not have admitted any student. However, with a view to make business and earn profit in the name of education, the appellants successfully manipulated the judicial process for allocation of the students. Therefore, there is no valid ground much less justification to confer legitimacy upon the admission made by the appellants in a clandestine manner. Any such order by the Court will be detrimental to the national interest. The students who may have taken admission and completed the course from an institution, which had not been granted recognition, will not be able to impart value based education to the future generation of the country. Rather, they may train young minds as to how one can succeed in life by manipulations. Therefore, we do not consider it proper to issue direction for regularising the admissions made by the appellants on the strength of the interim orders passed by this Court.

23. In the result, the appeals are dismissed. Each of the appellants is saddled with costs of Rs. 2 lakhs, which shall be deposited with the

Maharashtra State Legal Services Authority within a period of three months. If the needful is not done, the Secretary, Maharashtra State Legal Services Authority shall be entitled to recover the amount of cost as arrears of land revenue.

24. We also declare that none of the students, who had taken admission on the basis of allotment made by the State Government, etc. shall be eligible for the award of degree, etc. by the affiliating body. If the degree has already been awarded to any such student, the same shall not be treated valid for any purpose whatsoever. WRC, Bhopal shall publish a list of the students, who were admitted by the appellants pursuant to the interim orders passed by this Court and forward the same to the Education Department of the Government of Maharashtra, which shall circulate the same to all government and aided institutions so that they may not employ the holders of such degrees.”

Based on the aforesaid observations, it was submitted, that this Court in the above judgment consciously refused to regularize the admission of students. Not only that, this Court declared that the students admitted to the course by manipulation, would not be entitled to be awarded degrees, etc. by the affiliating body. Even if such a degree had already been awarded, the same was to be treated as invalid for all purposes.

(vi) Learned counsel briefly invited our attention to *Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition and Catering Technology, Chandigarh v. Vaibhav Singh Chauhan* (2009) 1 SCC 59, and highlighted the following observations recorded therein:

“12. The learned Single Judge in the interim order has then emphasised on the fact that the respondent had apologised and had confessed to the possession of the chit. In our opinion this again is a misplaced sympathy. We are of the firm opinion that in academic matters there should be strict discipline and malpractices should be severely punished. If our country is to progress we must maintain high educational standards, and this is only possible if malpractices in examinations in educational institutions are curbed with an iron hand.”

Learned counsel having referred to the above observations, emphasized, that there could be no leniency for manipulations in dealing with the matter of admissions.

(vii) Last of all, learned counsel placed reliance on *Kerala Solvent Extractions Ltd. v. A. Unnikrishnan*, (2006) 13 SCC 619, so as to emphasise on the words of caution, expressed by a three-Judge Division Bench of this Court, wherein it observed as under:

“9. Shri Vaidyanathan, learned Senior Counsel for the appellant, submitted, in our opinion not without justification, that the Labour Court’s reasoning bordered on perversity and such unreasoned, undue liberalism and misplaced sympathy would subvert all discipline in the administration. He stated that the management will have no answer to the claims of similarly disqualified candidates which might have come to be rejected. Those who stated the truth would be said to be at a disadvantage and those who suppressed it stood to gain. He further submitted that this laxity of judicial reasoning will imperceptibly introduce slackness and unpredictability in the legal process and, in the final analysis, corrode legitimacy of the judicial process.

10. We are inclined to agree with these submissions. In recent times, there is an increasing evidence of this, perhaps well meant but wholly unsustainable tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.”

Relying on the above observations, it was contended, that legitimizing “knowledge”, which had been obtained by unfair means, would be perceived as an exercise of sympathy towards actions of fraud, and would have the effect of eroding the integrity of the judicial process.

59. We have given our thoughtful consideration, to the submissions

advanced on behalf of the rival parties. Before we deal with the contentions, we may record, that there is logic and legitimacy, in the submissions advanced, on both sides. But only one out of them, can be accepted. The one which has to be accepted, should be based on legality, supported by reasons. Our consideration and reasons, are as follows.

60. During the course of hearing, learned counsel were asked to assist this Court, on the likely public perception, in case this Court decided to exercise its jurisdiction, in favour of the appellants, under Article 142. In response, it was pointed out, that public perception could never be homogenous. It was submitted, that public perception had inevitably to be heterogeneous, as the society itself was heterogeneous. According to learned counsel, perception of the public, would depend on the section of the society, to which the query was addressed. Each section of the public, could have a different view, on the matter. This assertion made by learned counsel, was sought to be substantiated, by placing reliance on *E.M. Sankaran Namboodripad v. T. Narayanan Nambiar*, (1970) 2 SCC 325, and *People's Union for Civil Liberties v. Union of India*, (2005) 5 SCC 363.

61. In view of the position expressed by this Court, in the above judgments, it was submitted, that public perception should not be allowed to weigh so heavy, in the mind of a Court, as would prevent it, from rendering complete justice. According to learned counsel, taking into consideration public perception, would render effectuating justice, extremely difficult. It was pointed out, that by sheer experience gained by Judges, they were fully equipped, to determine at their own, whether or not, the facts of a case, required to be dealt with differently, under Article 142 – so as to render complete justice.

62. It was also the contention of learned counsel, that public perception, was usually not based, on a complete data, of the dispute. And, unless the public was provided with the complete facts, and was required to consciously take a call on the matter, the perception entertained by the public, would be fanciful and imaginative, and it would be full of deficiencies and inadequacies, and it may also be, an opinion based on lack of rightful understanding.

63. We are of the view, that public perception, despite being of utmost significance, cannot be sought, except after an onerous exercise. And that, any opinion, without the benefit of the entire sequence of facts, may not be a dependable hypothesis. It is also true, that disseminating full facts, for seeking

public opinion, would be an immeasurably daunting task. An endeavour, which was unlikely to yield any reasoned response, based on logic and rationale. We are accordingly of the view, that the suggestion of learned counsel, needs to be respected, and we should attempt a consideration, at our own, based on our experience and training, in adjudicating disputes of unlimited variety ... and of inestimable proportions. Our determination, is as follows.

64. During the course of hearing, it could not be seriously disputed at the hands of learned counsel for the appellants, that the appellants' admission to the MBBS course, was based on established deception and manipulation. All the same, we will expressly deal with the instant aspect of the matter, and the extent of the appellants' involvement, in the following paragraph. It was also not disputed at the hands of learned counsel, that the cause and effect of fraud, was determined by the Court of Appeal, in *Lazarus Estates, Ltd. v. Beasley*, (1956) 1 All E.R.341. The consequences of fraud, as determined by the Court of Appeal (in the above judgment), have been repeatedly approved, by this Court. In the above judgment Denning, L.J., had observed as under:

"We are in this case concerned only with this point: Can the declaration be challenged on the ground that it was false and fraudulent? It can clearly be challenged in the criminal courts. The landlord can be taken before the magistrate and fined £30 (see Sch. 2, para. 6) or he can be prosecuted on indictment, and (if he is an individual) sent to prison (see s. 5 of the Perjury Act, 1911). The landlords argued before us that the declaration could not be challenged in the civil courts at all, even though it was false and fraudulent, and that the landlords can recover and keep the increased rent even though it was obtained by fraud. If this argument is correct, the landlords would profit greatly from their fraud. The increase in rent would pay the fine many times over. I cannot accede to this argument for a moment. No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever; see, as to deeds, *Collins v. Blanton* (2) (1767) (2 Wils. K.B. 342), as to judgments, *Duchess of Kingston's Case* (3) (1776) (1 Leach 146), and, as to contracts,

Master v. Miller (4) (1791) (4 Term Rep. 320). So here I am of opinion that, if this declaration is proved to have been false and fraudulent, it is a nullity and void and the landlords cannot recover any increase of rent by virtue of it."

We need to say no more, in the manner how fraud has to be dealt with, whenever it is established. However, stated simply, nothing ... nothing ... and nothing, obtained by fraud, can be sustained, as fraud unravels everything. The question which arises for consideration is, whether the consequence of established fraud, as repeatedly declared by this Court, can be ignored, to do complete justice in a matter, in exercise of jurisdiction vested in this Court, under Article 142 of the Constitution. And also, whether the consequences of fraud, can be overlooked in the facts and circumstances of this case, in order to render complete justice to the appellants.

65(i). Learned counsel for the appellants, attempted to persuade us very strongly, to overcome the law declared by this Court, on the issue of established fraud. Is it possible to accept such a contention? If the appellants' involvement is not serious, it may well be possible to accept the contention. Therefore, before we deal with the submissions canvassed, it is important to understand, the extent and proportion of the shenanigans of the appellants. It is not in dispute, that none of the appellants would have been admitted to the MBBS course, as their merit position in the Pre-Medical Test, was not as a result of their own efforts, but was based on extraneous assistance. The appellants were helped in answering the questions in the Pre-Medical Test, by meritorious candidates. The manipulation by which the appellants obtained admission involved, not only a breach in the computer system, whereby roll numbers were allotted to the appellants, to effectuate their plans. It also involved the procurement of meritorious candidates/persons, who would assist them, in answering the questions (in the Pre-Medical Test). The appellants' position, next to the concerned helper, at the examination, was also based on further computer interpolations. Not only were the seating plans distorted for achieving the purpose, even the institutions where the appellants were to take the Pre-Medical Test, were arranged in a manner, as would suit the appellants, again by a similar process of computer falsification. This could only be effectuated, by a corrupted administrative machinery. Whether, the nefarious and crooked administrative involvement, was an inside activity, or an outside pursuit, is inconsequential. All in all, the entire scheme of events, can well be described

as a scam ... a racket of sorts. The appellants or their parents, would obviously have had to pay large amounts of money, to the Vyapam authorities. The appellants' admission to the MBBS course, was therefore clearly based on a well orchestrated plan, which we can safely conclude, as based on established fraud.

(ii). The challenge raised by the appellants, had failed before the High Court, because the High Court had arrived at the conclusion, that the appellants' admission to the MBBS course was vitiated. The order of the High Court was assailed before this Court. Both Hon'ble Judges, of the 'former Division Bench'; wrote separate orders. Both affirmed the conclusion drawn by the High Court, through their separate orders dated 12.5.2016. On a reference by us, the 'former Division Bench', passed a common order on 30.8.2016, affirming, "... Both of us recorded a concurrent opinion that the examination process in issue in these appeals, conducted by Vyapam for the years 2008 to 2012 was vitiated with reference to the appellants before this Court and few others. We also agreed upon the conclusion that the appellants herein are the beneficiaries of such vitiated process..." The fact that the appellants had gained admission to the MBBS course, through a vitiated process has attained finality.

(iii). The controversy in the present case, does not relate to a singular academic session. Whether or not, this vitiated process of obtaining admission to the MBBS course, was adopted during the year 2007, and prior thereto, is not known. Because, MBBS admissions prior to 2008, were not investigated. Investigation was initiated in the first instance, with reference to admissions, for the year 2013. Thereafter, investigation was extended to those, who had gained admission to the MBBS course during the years 2008 to 2012. Investigation revealed, a well thought out, unethical plan, involving administrative support, during six consecutive academic sessions ... from 2008 to 2013. Vyapam was certain, about the system having been manipulated, at the hands of at least 634 candidates (during the years 2008 to 2012 itself). There may well have been others, but no action was taken against them, as their cases fell beyond the realm of suspicion (on the parameters approved and adopted by Vyapam).

(iv). This Court, while dealing with admissions during the years 2008 to 2012, followed the earlier judgment, wherein admissions to the MBBS course during the year 2013, were annulled. The High Court in all the matters,

consistently upheld, the cancellation orders passed by Vyapam. This Court also reiterated, the validity of the orders passed by the High Court, and thereby, upheld the Vyapam orders. In the above view of the matter, the factual and the legal position, with reference to the admission of the appellants, to the MBBS course being vitiated, has attained finality. The fact that the appellants, had gained admission to the MBBS course, by established fraud, does not (as it indeed, cannot) require any further consideration.

(v). In view of the sequence of facts narrated above, it is not possible for us to accept, that the deception and deceit, adopted by the appellants, was a simple affair, which can be overlooked. In fact, admission of the appellants to the MBBS course, was the outcome of a well orchestrated strategy of deceit and deception. And therefore, it is not possible to accept, that the involvement of the appellants was not serious. In fact, it was indeed the most grave and extreme, as discussed above.

(vi). In the above view of the matter, it is not possible for us, to overlook the consequences of the declared legal position, with reference to the consequence of fraud, on the ground that the involvement of the appellants in the acts of fraud, was not serious.

66. We shall now examine the other submissions advanced on behalf of the appellants, to determine whether or not, the jurisdiction vested in this Court, under Article 142, can be invoked, in this matter. Our instant consideration, i.e., whether to invoke (in the appellants' favour) Article 142 of the Constitution, or not, must obviously proceed on the position expressed by the two Hon'ble Judges (of the 'former Division Bench'), through their separate orders dated 12.5.2016, and by their common order dated 30.8.2016, that the admission of the appellants to the MBBS course, had been gained, through a vitiated process. And also, on the basis of the conclusions recorded by us in paragraph 65, hereinabove.

67. We may first examine, whether the appellants can seek relief, from this Court, under Article 142 of the Constitution, as the provision is generally perceived. In the *Union Carbide* case (supra), while dealing with the scope of Article 142 of the Constitution, this Court felt, that the jurisdiction of this Court under the above provision, extended inter alia to deal "... with any extraordinary situation in the larger interest of administration of justice and from preventing manifest injustice being done ...". The two important

parameters for consideration are, “larger interest of administration of justice”, and “preventing manifest injustice”. The facts and circumstances of the present case, as have been debated and discussed at great length, do not reveal the existence, of either of the aforesaid factors. With Vyapam having cancelled the appellants’ admission to the MBBS course, and with the above orders having been upheld by the High Court, as well as, by this Court, can it be said that the cancellation orders were unjust? No, not at all. If the admission of the appellants to the MBBS course, was improper, the cancellation orders, were obviously proper. If we restore the academic benefits of the appellants, arising out of their admission – cancelled by Vyapam, the cancellation orders would be set at naught. That, would undo, the Vyapam orders, upheld by the High Court and this Court. And this, we are satisfied, would not serve the “larger interest of administration of justice”. On the contrary, such an initiative would cause “manifest injustice”. It is therefore not possible for us to accept, that it is possible in the facts of the present case, to invoke Article 142 of the Constitution – in the larger interest of the administration of justice. It is also not possible for us to accept, that any manifest injustice would be done to the appellants, if their admissions are cancelled. In our considered view, to do justice in the matter, the order passed by Vyapam must be upheld, without any further modification or alteration. Needless to mention, that the instant consideration, does not take into account, the different submissions advanced on behalf of the appellants. We will now endeavour to deal with the remaining submissions, which according to learned counsel, would persuade this Court, to override the straitjacket examination of the matter, dealt with in the manner, recorded hereinabove.

68. We shall now consider the submission, founded on the interpretation placed by Mr. Fali S. Nariman (see paragraph 16, and onwards), on Article 142 of the Constitution. If the instant contention is acceptable, then surely, according to learned counsel, it would be possible to overlook the consequences of fraud (refer to, paragraph 64, hereinabove), in case sufficient justification was shown, for taking a different course, for doing complete justice. Mr. Nariman’s suggestion, that the Supreme Court must be “trusted”, and that, this Court can even ignore statutory law, in the overriding interest of doing complete justice, under Article 142 of the Constitution, has been put forth for our consideration. The said view, was sought to be extended, by learned counsel, even to a declared pronouncement of law under Article 141 of the Constitution (in addition to statutory law). Accepting the proposition

canvassed, we are sure, would substantially enhance the authority of this Court. And for that reason, the hypothesis of Mr. Nariman is extremely attractive. It is, however, not possible for us to ignore the decision of a Constitution Bench of this Court, in *Supreme Court Bar Association v. Union of India*, (1998) 4 SCC 409. The projection of Mr. Fali S. Nariman, that this Court had virtually denuded itself of its constitutional power, to do complete justice, through the above judgment, is an expression of his opinion, which we respect. We are indeed bound, by the declaration of the Constitution Bench. In terms of the above judgment, with which we express our unequivocal concurrence, it is not possible to accept, that the words “complete justice” used in Article 142 of the Constitution, would include the power, to disregard even statutory provisions, and/or a declared pronouncement of law under Article 141 of the Constitution, even in exceptional circumstances. Undoubtedly, the proposition can certainly be acceptable to a very limited extent, – to the extent of self-aggrandizement. The “trust” Mr. Nariman reposes in this Court, is indeed heartening and reassuring. But then, Mr. Nariman, and a number of other outstanding legal practitioners like him, undeniably have the brilliance to mould the best of minds. And thereby, to persuade a Court, to accept their sense of reasoning, so as to override statutory law and/or a declared pronouncement of law. It is this, which every Court, should consciously keep out of its reach. In our considered view, the hypothesis - that the Supreme Court can do justice as it perceives, even when contrary to statute (and, declared pronouncement of law), should never as a rule, be entertained by any Court/Judge, however high or noble. Can it be overlooked, that legislation is enacted, only with the object of societal good, and only in support of societal causes? Legislation, always flows from reason and logic. Debates and deliberations in Parliament, leading to a valid legislation, represent the will of the majority. That will and determination, must be equally “trusted”, as much as the “trust” which is reposed in a Court. Any legislation, which does not satisfy the above parameters, would *per se* be arbitrary, and would be open to being declared as constitutionally invalid. In such a situation, the legislation itself would be struck down. It is difficult, to visualize a situation, wherein a valid legislation, would render injustice to the parties, or would lead to a situation of incomplete justice – for one or the other party. Imagination, perception and comprehension, of future events, have inherent limitations. We would therefore refrain ourselves, from saying anything beyond what we have. At the cost of repetition, we would reiterate, that such a situation, as is contemplated by Mr. Nariman,

does not seem to be possible. We would however not like to close the window, for such thought and consideration. We would rather leave it to the conscience of the concerned Court, to deal with such an exceptional situation, if it ever arises. In our view, in the facts and circumstances of the present case, the cause of the appellants, is not furthered, even by the approach suggested by relying on the hypothesis of Mr. Nariman. We can only conclude by observing, that keeping in mind the conscious involvement of the appellants in gaining admission to the MBBS course, by means of a fraudulent stratagem of trickery, it is not possible for us to ignore or overlook, the declaration of law with reference to fraud. Nothing obtained by fraud, can be sustained. This declared proposition of law, must apply to the case of the appellants, as well. This is the outcome of the "trust" reposed in this Court, as being fully equipped, to determine at its own, when Article 142 of the Constitution can be invoked to render complete justice, and when it cannot be so invoked.

69. One of the contentions advanced by learned counsel for the appellants also was, that the appellants had acquired "knowledge" while pursuing the MBBS course. It was pointed out, that even in the present age of scientific development, it was not possible to transfer "knowledge" (intellectual property) acquired by the appellants, to those who may have been the rightful beneficiaries thereof. It was submitted, that besides the individual loss, which the appellants would suffer, the nation would suffer a societal and monetary loss, if their admission to the MBBS course, was not preserved. A detailed reference, in this behalf, was made to the vacancies of medical doctors in the State of Madhya Pradesh, at all levels of health care. To demonstrate authenticity, findings recorded by the World Health Organisation, were also brought to our notice (see paragraph 32 hereinabove). Based on the above factual position, it was submitted, that in extending relief to the appellants, this Court would be extending relief to the society, and would be allowing the appellants to serve humanity. It was submitted, that in case this Court exercised its jurisdiction in favour of the appellants (under Article 142 of the Constitution), there would be societal gains, as the appellants would apply their "knowledge", to serve humanity. It was therefore pleaded, that the facts and circumstances of the present case, constituted a good ground, to preserve the "knowledge", acquired by the appellants. It was also pointed out, that if the suggested course was adopted, no one would suffer any loss. Having given our thoughtful consideration to the above submission, we are of the considered view, that conferring rights or benefits on the appellants, who had consciously participated

in a well thought of, and meticulously orchestrated plan, to circumvent well laid down norms, for gaining admission to the MBBS course, would amount to espousing the cause of 'the unfair'. It would seem like, allowing a thief to retain the stolen property. It would seem as if, the Court was not supportive of the cause of those who had adopted and followed rightful means. Such a course, would cause people to question the credibility, of the justice delivery system itself. The exercise of jurisdiction in the manner suggested on behalf of the appellants, would surely depict, the Court's support in favour of the sacrilegious. It would also compromise the integrity of the academic community. We are of the view, that in the name of doing complete justice, it is not possible for this Court to support the vitiated actions of the appellants, through which they gained admission to the MBBS course.

70. Irrespective of what has been debated and concluded hereinabove, we are of the view, that there cannot be any defined parameters, within the framework whereof, this Court would exercise jurisdiction under Article 142 of the Constitution. The complexity of administration, and of human affairs, would give room for the exercise of the power vested in this Court under Article 142, in a situation where clear injustice appears to have been caused, to any party to a *lis*. In the absence of any legislation to the contrary, it would be open to this Court, to remedy the situation. The appellants submitted, that they fell in this category, namely, that there was no legislative provision, to deal with admissions to academic institutions, involving juveniles, who had innocently breached legal norms, and had strayed into forbidden territory. The appellants urged, that they should not be identified, as a part of the syndicate, engaged in manipulating their admissions, even though they were the beneficiaries thereof. It was submitted, that the appellants were young, and not mature enough to understand the consequences of their actions. It was pointed out, that the appellants were students engaged in the pursuit of education. The appellants asserted, on the basis of their past academic record, and on the strength of their performance in the MBBS course itself, that they could very well have been successful in gaining entry into the MBBS course, on their own merit, had they not chosen to seek the assistance of the syndicate. That, they had done so, because of their lack of understanding, of the ways of the world, should not be overlooked, while dealing with the relief being sought. It was submitted, that the consequence of affirmation of the Vyapam order(s) and its implications, would expose them to such hardship, as they did not deserve. It was pointed out, that having gained entry into medical institutions,

they had spent a number of years of their lives, in academic pursuit. They had also spent their parents', hard earned money. It was submitted, that all that the appellants had achieved, should not be allowed to go waste. Specially because, there would be no gainer. It was contended, that it needed to be seriously considered, whether or not, they were entitled to retain and use the "knowledge" acquired by them, for their own benefit, and for the benefit of the society at large. During the course of hearing, learned counsel for the appellants pleaded for differential action. It was submitted, that all the appellants, were at a very important crossroad of life, and were under immense pressure, both parental and societal, at the relevant time, when they strayed into forbidden territory. In these circumstances, it was contended, that they may not be dealt with so harshly, as would scar their fragile minds. Or, would leave them with no future.

71. Having given our thoughtful consideration to the issues canvassed on behalf of the appellants, as has been narrated in the foregoing paragraph, we have no hesitation to state, that all these submissions deserve an outright rejection. Even in situations where a juvenile indulges in crime, he has to face trial, and is subjected to the postulated statutory consequences. Law, has consequences. And the consequences of law brook no exception. The appellants in this case, irrespective of their age, were conscious of the regular process of admission. They breached the same by devious means. They must therefore, suffer the consequences of their actions. It is not the first time, that admissions obtained by deceitful means, would be cancelled. This Court has consistently annulled, academic gains, arising out of wrongful admissions. Acceptance of the prayer made by the appellants on the parameter suggested by them, would result in overlooking the large number of judgments, on the point. Adoption of a different course, for the appellants, would trivialize the declared legal position. Reference in this behalf, may be made to the judgments relied upon by learned counsel representing Vyapam.

72. It is also not possible for us to accept the contention under consideration, and vehemently canvassed on behalf of the appellants (recorded in paragraph 70 above), for yet another reason. Because, it is not possible for us to accept, either that the appellants were innocent, or that they were immature in understanding the consequences of their actions. Each one of the appellants, was aware of the fact, that their admission to the MBBS course, would be determined on the basis of their performance in the Pre-Medical Test. Rather

than appearing in the qualifying test on their own, they chose to seek assistance of meritorious students, to garner higher marks. We may not be completely wrong in our understanding, if we conclude, that the appellants were quite sure, that they would not be able to gain admission to the MBBS course, on their own merit. That is why, they had to strategize their admission to the MBBS course. We therefore, reject the contention advanced on behalf of the appellants, that the appellants were meritorious students, and as such, their admission to the MBBS course, deserved to be preserved. If this is where the truth lies (which we are sure, it does), namely, that the appellants were quite sure that they would not be able to gain admission to the MBBS course on their own merit, surely the appellants are not entitled to any equitable consideration. And, in that view of the matter, it would not be proper to extend to the appellants, relief under Article 142 of the Constitution.

73. We wish to attempt, to examine the matter from another perspective. Even a child, in the very first year of entering primary school, is aware of the consequences of copying, during an examination. Teachers supervise examinations, to make sure, that students do not copy. Children caught copying, are dealt with severely. Every child observes this process, year after year. Can the appellants, who had completed school education, and are on the verge of entering a professional course, be treated as novices – unaware of the consequence of copying? In our considered view, certainly not. It is therefore not possible for us, to extend any benefit to the appellants, either on account of their juvenility, or on account of their alleged lack of understanding of the consequences of their actions. In our considered view, the appellants had consciously sought the assistance of a syndicate, engaged in manipulating admissions to medical institutions. They were beneficiaries of acts of deceit and deception. In the above view of the matter, the case of the appellants does not commend to us, as a matter deserving of any sympathetic consideration. In our considered view, the admission of the appellants to the MBBS course, cannot be legalized (or legitimized), in the name of justice.

74. We may examine the controversy, from yet another perspective. Let us presume, that the position is equally balanced for the two sides. Let us attempt to apply the test of a Court's conscience, to a situation where on principle, a Court is not in a position to decide, whether it should, or it should not, exercise its discretion in favour of a party to a *lis*. A situation, wherein the Court's conscience commends to it (in a matter, as the one in hand), to exercise its discretion under Article 142, to preserve the benefit of the appellants'

admission to the MBBS course; and at the same time, equally commends to it, not to so exercise its jurisdiction (i.e., not to preserve to the appellants, the benefit of their admission to the MBBS course), in favour of the appellant. How should this Court deal with such a situation? We are of the considered view, that where two options are open to a Court, and both are equally beckoning, it would be most prudent to choose the one, which is founded on truth and honesty, and the one which is founded on fair play and legitimacy. Siding with the option founded on the deceit or fraud, or on favour as opposed to merit, or by avoiding the postulated due process, would be imprudent. Judicial conscience must only support the righteous cause. If, despite its being righteous, a decision is seen as causing manifest injustice, the exercise of the power under Article 142 of the Constitution, would be prudent. In such situations, an onerous duty is cast on the Court, to step in, to render complete justice. This is the manner that we commend, judicial exercise of discretion, under Article 142 of the Constitution. By adopting the above course, a Court would feel satisfied, in having exercised its discretion, on the touchstone of justice – the concept which triggers the invocation of Article 142 of the Constitution. In the facts and circumstances of the present case, there seems to be absolutely no cause for us to, legitimize the admissions of the appellants to the MBBS course, since the same clearly fall in the imprudent category.

75. It was the repeated submission of learned counsel representing the appellants, that there would be significant societal benefit, if the academic pursuit of the appellants is legitimized. During the course of hearing, learned counsel even went to the extent of suggesting, that individual benefits, that may be drawn by the appellants, may be drastically curtailed, and their academic pursuit be regularised, for societal benefit. The submission is attractive. It needs a considered response. We are of the considered view, no matter how extensive the societal gains may be, the jurisdiction conceived of under Article 142 of the Constitution, to do complete justice in a matter, cannot be invoked, in a situation as the one in hand. Even the trivialist act of wrong doing, based on a singular act of fraud, cannot be countenanced, in the name of justice. The present case, unfolds a mass fraud. The course suggested, if accepted, would not only be imprudent, but would also be irresponsible. It would encourage others, to follow the same course. We must compliment, all the learned counsel appearing for the appellants, in projecting the claim(s) of the appellants, from all conceivable angles. We are however not persuaded to accept the legitimacy of the same. Truthful conduct, must always remain

the hallmark of the rule of law. No matter the gains, or the losses. The jurisdiction exercisable by this Court under Article 142, cannot ever be invoked, to salvage, and legitimize acts of fraudulent character. Fraud, cannot be allowed to trounce, on the stratagem of public good.

76. Besides, the consideration recorded by us, in the foregoing paragraphs, we may confess, that we felt persuaded for taking the view that we have, for a very important reason – national character. There is a saying – when wealth is lost, nothing is lost; when health is lost, something is lost; but when character is lost, everything is lost. This is attributed to Billy Graham, an American clergyman, born on 7.1.1918. One cannot be certain, about the above attribution, because the same lesson has been taught in India, since time immemorial, by parents and teachers. The issue in hand, has an infinitely vast dimension. If we were to keep in mind immediate social or societal gains, the perspective of consideration would be different. The submission canvassed, needs to be considered in the proper perspective. We shall venture to derive home the point by an illustration. We may well not have won our freedom, if freedom fighters had not languished in jails ... and if valuable lives had not been sacrificed. Depending on the situation, even civil liberty or life itself, may be too trivial a sacrifice, when national interest is involved. It all depends on the desired goal. The preamble of the Indian Constitution rests on the foundation of governance, on the touchstone of justice. The basic fundamental right, of equality before law and equal protection of the laws, is extended to citizens and non-citizens alike, through Article 14 of the Constitution, on the fountainhead of fairness. The actions of the appellants, are founded on unacceptable behaviour, and in complete breach of the rule of law. Their actions, constitute acts of deceit, invading into a righteous social order. National character, in our considered view, cannot be sacrificed for benefits – individual or societal. If, we desire to build a nation, on the touchstone of ethics and character, and if our determined goal is to build a nation where only the rule of law prevails, then we cannot accept the claim of the appellants, for the suggested societal gains. Viewed in the aforesaid perspective, we have no difficulty whatsoever, in concluding, in favour of the rule of law. Such being the position, it is not possible for us to extend to the appellants, any benefit under Article 142 of the Constitution.

77(i). We shall now, last of all, deal with a common submission, advanced at the hands of most of the learned counsel, representing the appellants. Actually, the instant submission, is of no serious consequence, because of the conclusions

already recorded by us, in the preceding paragraphs. But then, all submissions must be considered, and answered. The instant last submission, was based on the judgment of this Court, in the *Priya Gupta* case (supra). It is necessary to emphasise, that learned counsel had placed reliance on the above judgment to contend, that the instant controversy should not be considered as the first occasion, for this Court to have exercised its jurisdiction under Article 142, to legitimise admissions to the MBBS course. It was pointed out, that the facts of the *Priya Gupta* case would disclose, that admission in the above case, had also not been obtained by rightful means. In the *Priya Gupta* case, admissions were gained by the appellants, through acts of conscious manipulation. And yet, this Court had sustained the same, and had legitimized the admission of the appellants. The appellants herein, seek a similar treatment.

(ii) In the case relied upon, the parents of the appellants were persons wielding authority. They exercised their influence, whereby, their wards gained admission to the MBBS course. To achieve their objective, intimation of the unfilled seats, was not published. Resultantly, students with higher merit, came to be overlooked, as they were unaware of the vacancies, and therefore could not apply for the same. Wards, having support of officialdom, who could exercise influence, were successful in gaining admission, surreptitiously. It was therefore pointed out by learned counsel, that even in the *Priya Gupta* case, the action of gaining admission, was based on manipulation through fraud and deception. And since the position of the case in hand, was similar, the appellants herein, were also entitled to a similar relief.

(iii) The facts of the cited case (as canvassed, on behalf of the appellants) reveal, that the appellants in the *Priya Gupta* case, had occupied free seats, in a government institution. After their admission, the appellants had already taken their final examination (of the MBBS course), and had therefore, almost completed the MBBS curriculum. By the time this Court heard the matter, the appellants were through with the course. In the above background, it was contended, that this Court considered it just, to legitimize the admission of the appellants, to the MBBS course. However, while doing so, the appellants were required to reimburse the financial benefits gained by them. In this behalf, it is necessary to record, that the appellants paid a highly subsidized fee at the government college, wherein they had manipulated their admission. If they had been admitted to a private college, they would have had to pay a much higher fee - approximately one hundred times more. It was submitted, that the appellants were willing to pay whatever costs this Court may impose, and

also willing to suffer any additional public/social service, as this Court would consider appropriate.

(iv) Based on the factual position noticed above, it was simply contended, that the appellants having already completed the MBBS course (or in any case – a substantial part thereof) successfully, they should be protected in the same manner, as the appellants in the *Priya Gupta* case. It was pleaded, that the course of studies, successfully completed by the appellants, should be legitimized.

78(i). We have given our thoughtful consideration, to the submission advanced on behalf of the appellants, by placing reliance on the judgment rendered by this Court, in the *Priya Gupta* case (supra). In examining the instant contention, we shall proceed on the assumption, that the admission of the appellants in the cited case, had not been obtained by rightful means, but had been gained by conscious manipulations.

(ii) It is important to highlight, that in the adjudication of the *Priya Gupta* case (supra), this Court was conscious of the fact, that the appellants would have, in any case, obtained admission to the same course, on their own merit – but in a private college. The admission of the appellants in the cited case, to the MBBS course, was therefore rightful. Their admission to the MBBS course, could not have been interfered with, and was accordingly, not interfered with. The wrong committed by their manipulation was; that they moved from a costly seat in a private college, to a cheaper option in a government college.

(iii) To do complete justice between the parties, within the ambit of Article 142, this Court in the *Priya Gupta* case, permitted the appellants, to complete their professional courses, in the institutions where they had gained admission “... subject to the condition each one of them pay a sum of Rs. 5 lakhs to the Jagdalpur College, which amount shall be utilized for developing the infrastructure in the Jagdalpur College ...”. The instant course was adopted, because that would negate the wrongful gain acquired by the appellants (in the cited case), through their acts of conscious manipulation. The appellants would have had to pay a much higher fee, if they had taken admission in a private college, in terms of their merit position. They were beneficiaries (on the basis of their manipulations), only to the extent, that they had paid a much lower fee, by gaining admission to a government college.

(iv) Having had an insight to the factual position noticed above, it is not

possible for us to accept; that the ground on the basis of which this Court preserved the admission of the appellants, in the *Priya Gupta* case (supra), can be extended to the appellants herein. In the *Priya Gupta* case, the appellants would have got admission to the MBBS course, on the basis of their own merit position, in any case. The instant distinguishing feature, sets the two matters apart. Actually, we have by our determination, fully adopted the position expressed in the *Priya Gupta* case, inasmuch as, we have also not allowed the appellants to retain the benefit of, whatever was obtained by their interpolations, and was not their legitimate due. That is exactly what this Court had done, in the *Priya Gupta* case.

79. For the reasons recorded hereinabove, we respectfully concur with the judgment dated 12.5.2016, rendered by the Hon'ble Companion Judge (of the 'former Division Bench'). In the facts and circumstances of the case in hand, it would not be proper to legitimize the admission of the appellants, to the MBBS course, in exercise of the jurisdiction vested in this Court under Article 142 of the Constitution. We therefore, hereby, decline the above prayer made, on behalf of the appellants.

Order accordingly.

I.L.R. [2017] M.P., 1619

SUPREME COURT OF INDIA

Before Mr. Justice Jagdish Singh Khehar, Chief Justice of India,

Mr. Justice N.V. Ramana & Mr. Justice Dr. D.Y. Chandrachud

C.A. No. 3764/2017 decided on 15 February, 2017

LAL SINGH MARABI

...Appellant

Vs.

NATIONAL INSURANCE COMPANY LTD. & ors.

...Respondents

Motor Vehicles Act (59 of 1988), Section 166 & 173 – Disability – Compensation – Quantum – In an accident, appellant was severely injured and during treatment, his left leg was amputated from thigh portion – As per doctor certificate, he sustained 90% permanent disability – MACT recorded 60% permanent disability and holding his income to be Rs. 15,000 p.a. and applying multiplier of 18, awarded total amount of Rs. 2,75,000 where Rs. 60,000 was awarded for artificial limb – In appeal, the High Court holding his income to be Rs. 24,000 p.a. and applying the multiplier of 17, enhanced the total amount to

Rs. 3,57,800 – Challenge to – Held – Appellant was 29 years old at the time of accident and after suffering this major injury in accident, with the amputated leg, he cannot pursue his livelihood as a driver (*as he used to be*) or daily wage labourer and further taking into account doctor's certificate showing 90% permanent disability, holding his income to be Rs.24,000 p.a. and applying multiplier of 17, the compensation amount is enhanced to Rs. 5,20,000 which includes Rs. 1,00,000 for cost of artificial limb instead of Rs. 60,000 as awarded earlier – Appellant also entitled for interest @ 6% p.a. from date of claim till realization of amount – Appeal allowed. (Paras 9, 10 & 11)

*मोटर यान अधिनियम (1988 का 59), धारा 166 व 173 – निःशक्तता – प्रतिकर – मात्रा – एक दुर्घटना में, अपीलार्थी गंभीर रूप से घायल हुआ एवं उपचार के दौरान उसके बायें पैर का जांघ के हिस्से से अंगविच्छेद किया गया – चिकित्सक के प्रमाणपत्र के अनुसार, उसने 90% स्थाई निःशक्तता सहन की – मोटर दुर्घटना दावा अधिकरण ने 60% स्थाई निःशक्तता अभिलिखित की तथा रु. 15000 प्रति वर्ष उसकी आय अभिनिर्धारित की एवं 18 का गुणक लागू करते हुए कुल रु. 2,75,000 की राशि अवार्ड की, जहां रु. 60,000 कृत्रिम पैर हेतु अवार्ड किया गया था – अपील में, उच्च न्यायालय ने उसकी आय रु. 24,000 प्रति वर्ष अभिनिर्धारित की और 17 का गुणक लागू करते हुए कुल राशि बढ़ाकर रु. 3,57,800 की – को चुनौती – अभिनिर्धारित – अपीलार्थी, दुर्घटना के समय 29 वर्ष की आयु का था और दुर्घटना में यह मुख्य चोट सहन करने के पश्चात्, अंगविच्छेदित पैर के साथ वह वाहन चालक (*जो कि वह हुआ करता था*) या दैनिक वेतन के श्रमिक के रूप में अपनी जीविका जारी नहीं रख सकता और इसके अतिरिक्त 90% स्थाई निःशक्तता दर्शाते हुए चिकित्सक का प्रमाणपत्र विचार में लेते हुए, उसकी आय रु. 24,000 प्रति वर्ष ठहराते हुए एवं 17 का गुणक लागू करते हुए प्रतिकर की राशि बढ़ाकर रु. 5,20,000 की गई जिसमें कृत्रिम पैर हेतु पूर्व में अवार्ड किये गये रु. 60,000 की बजाए रु. 1,00,000 शामिल है – अपीलार्थी, दावे की दिनांक से राशि की वसूली तक 6% प्रतिवर्ष की दर से ब्याज का भी हकदार – अपील मंजूर।*

Case referred :

(2004) 3 SCC 297

ORDER

The Order of the Court was delivered by :
N.V. RAMANA, J. :- Delay condoned. Leave granted.

2. The appellant, who was severely injured in a motor accident, has preferred this appeal aggrieved by the quantum of compensation awarded by

the Principal Bench of the High Court of Madhya Pradesh at Jabalpur by its judgment and order dated 4th April, 2013.

3. Briefly stated the undisputed facts are that on 13th April, 2004 when the appellant was travelling in a mini bus from Mandla to Bamhni, being driven by Respondent No. 1, suddenly it turned turtle at a place called Kishanpuri Ghat, resulting in grievous injuries to his left leg. He was rushed to the Medical Hospital at Jabalpur where he underwent treatment till 19th April, 2004. As his condition was deteriorating, he was referred to Victoria Hospital at Jabalpur where in order to save his life his left leg had to be amputated from the thigh portion and he remained there as an indoor patient till 5th June, 2004.

4. Owing to the permanent disability caused on account of the amputation of his leg, the appellant filed a claim petition before the Motor Vehicle Accident Claims Tribunal seeking compensation of Rs.10,10,000/-. The driver and owner of the bus were made parties along with the insurance company. For claiming the said amount, the appellant took a plea that he was a professional driver with a monthly earning of Rs.4,000/- which he lost due to the 90% disability sustained over the accident.

5. The Tribunal decided the claim petition observing that (i) the driver (Respondent No. 2 herein) drove the vehicle negligently which caused the accident; (ii) the claimant (appellant) suffered serious injuries due to the accident and consequently his left leg has been severed from the upper portion of thigh, causing permanent disability; and (iii) that on the date and at the time of the accident, the driver of the bus—Respondent No. 2 herein, did not possess a valid license for driving the vehicle. The Tribunal observed that the claimant—appellant could not prove the fact of his earning Rs.4,000/- p.m. by doing the driving job as he did not produce any driving license or authentic evidence to establish his monthly earnings. The Tribunal came to the conclusion that the annual income of the appellant would have been Rs.15,000/- and the accident caused a 60% decrease in his work efficiency. The Tribunal, therefore, fixed Rs.1,62,000/- for physical and mental pain and compensation for the future by applying a multiplier of '18' in view of the appellant's age being 29 at the time of the accident, besides Rs.60,000/- for an artificial limb, Rs.40,000/- for medical expenses and Rs.13,000/- towards expenses incurred for food, travelling etc.. The Tribunal thereby directed a total compensation of Rs.2,75,000/- payable by the driver and owner of the bus severally and jointly together with interest @ 6% p.a. and exempted the insurance company from liability.

6. Aggrieved by the quantum of compensation ordered by the Tribunal exempting the liability of the insurance company, the appellant approached the High Court by way of a Miscellaneous Appeal. The High Court, upon deeming the annual income of the appellant to be Rs.24,000/- enhanced the compensation amount to Rs.2,44,800/- under the head 'permanent disability' and awarded the total amount of Rs.3,57,800/-, after applying a multiplier of '17'. Though the High Court agreed with the Tribunal that the insurance company is not liable to bear the burden of the awarded sum, in view of decision of this Court in *National Insurance Co. Ltd. Vs. Swaran Singh & Ors.* (2004) 3 SCC 297, it directed National Insurance Company to pay the awarded sum to the appellant first and recover the same from the driver and owner of the bus.

7. We have heard learned counsel for the parties. It is the contention of the appellant that the Courts below have committed a grave error in not considering the monthly income of the appellant at par even with an unskilled worker whose minimum wage in the State of Madhya Pradesh is about Rs.4,000/- p.m.. The appellant was the only earning member of the family, who lost his livelihood due to the accident that resulted in amputation of his leg resulting in a 90% permanent disability and requiring him to spend about Rs.2.5 lakhs for fixing an artificial limb. Learned counsel further argued that while calculating the compensation amount the Courts below did not correctly appreciate the loss of expectation of life, loss of impairment of physiological functions, medical expenses, pain and mental suffering of the appellant.

8. Learned counsel appearing for the insurance company pleaded that the present appeal is filed belatedly that at the instance of owner of the bus against whom Respondent No. 1 has got recovery rights. It was urged that only with an ulterior motive to prevent the insurance company from proceeding with recovery, the owner of the bus got this appeal filed with the connivance of the appellant.

9. Having heard learned counsel on either side, this Court is of the opinion that there is no denial of the fact that the appellant had suffered a major injury in the accident and sustained a permanent disability by the amputation of his left leg. Consequently, the appellant, who was only 29 years old at the time of accident, has undergone agony, both physically and mentally besides spending money on his treatment and for the artificial limb. It is clear from the medical certificate issued by Dr. Naveen Kothari (PW-2) that due to the amputation of his leg, the appellant sustained a permanent disability of 90%. We find from the impugned judgment that the Courts below have reduced the permanent

disability factor from 90% to 60%. We are not satisfied with the reasoning of the Courts below for reducing the permanent disability determined by the Doctor to 60% on the ground that despite the amputation of his left leg, the remaining body of the appellant is healthy. Upon appreciating the factual matrix of the case including the fact that with the amputated leg the appellant cannot pursue his livelihood as a driver or daily wage labourer and taking into account the Doctor's Certificate, we are of the considered opinion that the appellant has sustained a 90% permanent disability due to the accident.

10. Thus, considering the appellant's annual income as Rs.24,000/- p.a., 90% of it would come to Rs.21,600/- and applying the multiplier 17, he would be entitled under the head of 'permanent disability' to compensation computed at Rs. 3,67,200/- (i.e. Rs.21,600 multiplied by 17). In our view, the appellant is also entitled to get Rs.1,00,000/- instead of Rs.60,000/- as awarded by the High Court towards the cost of the artificial limb.

11. Taking into account the aforesaid figures, the total quantum of compensation amount would stand enhanced from Rs. 3,57,800/- as awarded by the High Court, to Rs. 5,20,200/- and we order accordingly. Needless to say that the appellant is also entitled to receive interest at the rate of 6% p.a. from the date of filing of the claim petition till realization of the amount. The insurer, Respondent No.1 shall pay the awarded amount of Rs.5,20,000/- plus interest accrued thereon to the appellant within six weeks from today, and recover the same from Respondent Nos. 2 & 3 severally and jointly.

12. The appeal stands allowed accordingly with no order as to costs.

Appeal allowed.

I.L.R. [2017] M.P., 1623

WRIT APPEAL

***Before Mr. Justice Hemant Gupta, Chief Justice &
Mr. Justice Vijay Kumar Shukla***

W.A. No. 474/2017 (Jabalpur) decided on 5 July, 2017

ARVIND KUMAR JAIN & ors.

...Appellants

Vs.

STATE OF M.P. & ors.

...Respondents

***A. Town Improvement Trust Act, (M.P.) 1960 (14 of 1961),
Section 71(1) and Nagar Sudhar Nyas (Nirsan) Adhiniyam (22 of 1994)***

- Acquisition of Land - Use of Land - Right of Trust - Land of appellants were acquired vide notification u/S 71(1) of the Act of 1960 - Land was not used by the Trust as for the purpose, it was acquired - Appellant filed a writ petition which was dismissed - Challenge to - Held - Once a notification has been published u/S 71(1) of the Act of 1960, the land owned by appellants vest in the Trust absolutely free from all encumbrance and Trust can utilize the acquired land for any other purpose which it deems appropriate - Trust, using the acquired land by carving out residential plots cannot be said to be illegal - No merit in appeal and is dismissed. (Para 8 & 9)

क. नगर सुधार न्यास अधिनियम, (म.प्र.) 1960 (1961 का 14), धारा 71(1) एवं नगर सुधार न्यास (निरसन) अधिनियम (1994 का 22) - भूमि का अर्जन - भूमि का उपयोग - न्यास के अधिकार - 1960 के अधिनियम की धारा 71(1) के अंतर्गत अधिसूचना द्वारा अपीलार्थीगण की भूमि अर्जित की गई थी - न्यास द्वारा भूमि का उपयोग नहीं किया गया था, जिस प्रयोजन हेतु वह अर्जित की गई थी - अपीलार्थी ने रिट याचिका प्रस्तुत की जो कि खारिज की गई थी - को चुनौती - अभिनिर्धारित - 1960 के अधिनियम की धारा 71(1) के अंतर्गत एक बार अधिसूचना प्रकाशित किये जाने पर, अपीलार्थीगण के स्वामित्व की भूमि समस्त भारों से मुक्त आत्यंतिक रूप से न्यास में निहित हो जाती है तथा न्यास अर्जित भूमि का किसी अन्य प्रयोजन के लिए उपयोग कर सकता है, जिसे वह उचित मानता हो - न्यास द्वारा आवासीय मूखंडों को बनाकर अर्जित भूमि का उपयोग किया जाना अवैध नहीं कहा जा सकता - अपील में कोई गुणदोष नहीं एवं खारिज।

B. Town Improvement Trust Act, (M.P.) 1960 (14 of 1961), Section 72(2), Nagar Sudhar Nyas (Nirsan) Adhiniyam (22 of 1994), Section 3 and Land Acquisition Act (1 of 1894), Section 18 - Compensation - Agreement - Jurisdiction of Court - In the instant case, no proceedings were initiated for determination of amount of compensation by an agreement in terms of Section 72(2) of the Act of 1960 nor the matter was referred to the Tribunal - Act of 1960 was repealed by the Act of 1994 where Section 3 of the Act of 1994 shows that pending proceedings before the Tribunal will continue as if Municipality was a party and if proceedings are filed after the repealed Act, it shall be disposed of by the Court of District Judge of the concerned district as if reference made to that Court u/S 18 of the Land Acquisition Act, 1894 - Appellant permitted to invoke jurisdiction of filing proceeding before the District Judge within 90 days from today. (Para 13 & 15)

ख. नगर सुधार न्यास अधिनियम, (म.प्र.) 1960 (1961 का 14), धारा 72(2) एवं नगर सुधार न्यास (निरसन) अधिनियम (1994 का 22), धारा 3 एवं भूमि अर्जन अधिनियम (1894 का 1), धारा 18 – प्रतिकर – करार – न्यायालय की अधिकारिता – वर्तमान प्रकरण में, 1960 के अधिनियम की धारा 72(2) के निबंधनों के अनुसार करार द्वारा प्रतिकर की राशि के निर्धारण के लिए कोई कार्यवाही आरंभ नहीं की गई थी और न ही मामला अधिकरण को निर्देशित किया गया था – 1960 के अधिनियम को 1994 के अधिनियम द्वारा निरसित किया गया था जहां 1994 के अधिनियम की धारा 3 यह दर्शाती है कि अधिकरण के समक्ष लंबित कार्यवाहियाँ जारी रहेंगी जैसे कि नगरपालिका एक पक्षकार थी तथा यदि कार्यवाहियाँ निरसित अधिनियम के पश्चात् प्रस्तुत की जाती हैं, इन्हें संबंधित जिले के जिला न्यायाधीश के न्यायालय द्वारा निराकृत किया जायेगा जैसे कि भूमि अर्जन अधिनियम, 1894 की धारा 18 के अंतर्गत उस न्यायालय को निर्देश हेतु भेजा गया हो – अपीलार्थी को आज से 90 दिनों की अवधि के भीतर जिला न्यायाधीश के समक्ष कार्यवाही प्रस्तुत करने की अधिकारिता का अवलंब लेने की अनुमति दी गई।

Cases referred :

(2015) 8 SCC 345, (2003) 1 SCC 335, (2005) 1 SCC 558.

R.P. Agarwal with Sanjay Agarwal and Ekansh Dhingra, for the appellants.

V.S. Shroti with Saurabh Soni, for the respondents.

A.P. Singh, G.A. for the respondents/State.

J U D G M E N T

The Judgment of the Court was delivered by :
HEMANT GUPTA, C.J. :- The challenge in the present appeal is to an order passed by the learned Single Bench on 17.2.2017 whereby the writ petition challenging an order dated 4.3.2006 Annexure P/14 to declare the scheme as having been lapsed and abandoned was dismissed but with a direction to the respondents to determine and pay the adequate amount of compensation within 90 days from the date of communication of the copy of the order.

2. On 11th March, 1983, a notification Annexure P/1 was published in respect of acquisition of land measuring 36.60 hectares in terms of Section 71(1) of the M.P. Town Improvement Trust Act, 1960 (for short 'the Act'). The scheme was in two phases. The first phase of the scheme was in respect of 35.56 hectares of land whereas, phase II was in respect of 55.03 acres of the land. The land of the appellants fall in phase II of the scheme of the land

said to be acquired in terms of Section 71 of the Act.

3. The grievance of the appellants is that most of the land comprising in phase II has extensive constructions which hampered the development of land for the purpose of scheme and therefore, a letter was written by the Improvement Trust to the State Government to modify the said scheme to reduce the same to 23.67 hectares. Such communication has been appended with the writ petition as Annexure P/8. Admittedly, such recommendation was not accepted by the State Government as is required in terms of Section 50 of the Act to modify the scheme. Later, the appellants requested for permission to construct Jain Temple on the land which once form part of the scheme. Such request was declined on 4th March, 2006 vide Annexure P/14. The challenge to the said order remains unsuccessful before the learned Single Bench.

4. Before this Court, the argument of learned counsel for the appellants is that since the scheme as framed is incapable of execution, therefore, the same is either deemed to be lapsed or abandoned. Therefore, the land owned by the appellants cannot be utilized for the purpose of scheme. It is contended that land is not being utilized for the purpose of scheme but for selling plots on profit. Therefore, such action of sale of plots is not permissible. The reliance is placed upon Supreme Court judgment reported as (2015) 8 SCC 345 (*Mohan Singh Gill and Others vs. State of Punjab and others*), wherein, it has been held that the purpose of acquisition cannot be changed.

5. It is also contended that the appellants have not been paid compensation whereas, the Act stands repealed vide Madhya Pradesh Nagar Sudhar Nyas (Nirsan) Adhiniyam, 1994, w.e.f. 1.8.1994 (for short "the Repeal Act"). There is a provision of continuation of proceeding pending before the Tribunal before the appointed day but there is no provision for institution of fresh proceeding. Therefore, by necessary implication in the absence of payment of compensation, the land cannot be utilized for the purpose of Trust.

6. We have heard learned counsel for the appellants and find no merit in the present appeal.

7. Before we consider the respective arguments of the appellants, certain statutory provisions need to be extracted:-

"50. Abandonment of Improvement Scheme or

application to State Government to sanction it. - (1) After the expiry of the periods respectively prescribed under clause (a) of sub section (2) of Section 46, by Section 47, and by clause (b) of sub section (2) of Section 48, in respect of any improvement scheme, the Trust shall consider any objection, representation or statement of dissent received thereunder, and after giving reasonable opportunity of being heard to all persons making any objection, representation or dissent, who may desire to be heard, the Trust may either abandon the scheme or apply to the State Government to sanction the scheme with such modification, if any, as the Trust may consider necessary.

71. Notification of acquisition and vesting of land in Trust— (1) After the acquisition of land is sanctioned by the State Government under Section 70 the Trust may acquire such land by publishing in the Gazette a notice stating that it had decided to acquire the land and has obtained the sanction of the State Government for the acquisition thereof.

(2) When a notice under sub-section (1) is published in the Gazette the land shall, on and from the date of such publication, vest absolutely in the Trust free from all encumbrance.

72. Compensation for compulsory acquisition of land-

(1) Where any land is acquired by the Trust under this Act, the Trust shall pay for such acquisition, compensation the amount of which shall be determined in accordance with provisions hereinafter contained.

(2) Where the amount of compensation in respect of any land can be determined by agreement between the Trust and the person or persons interested therein, it shall be determined in accordance with such agreement which shall be in writing.

(3) Where no such agreement can be reached, the Trust shall refer the case to the Tribunal for determination of the amount of compensation as also the person or persons to

whom such compensation shall be paid.

73. Constitution of Tribunal – (1) A Tribunal shall be constituted as provided hereinafter in this section for the purpose of determining the amount of compensation to be paid for acquisition of land for the purposes of this Act as also the person or persons to whom such compensation shall be paid.

(2) The Tribunal shall consist of a President and two assessors.

***"

8. A perusal of the above provision shows that the land, on publication of a notification under Section 71 (1) of the Act, vest in the Trust absolutely free from all encumbrance. The compensation is to be paid as per the agreement, if any such agreement is reached or by reference to the Tribunal who shall settle the amount of compensation or the person to whom such compensation shall be paid. Therefore, once a notification dated 11th March, 1983 has been published, the land owned by the appellants vest absolutely free from all encumbrance with the Trust.

9. The argument that the Trust is utilizing the land by sale of plots diverting from original purpose of the scheme is again not tenable. Once the land vests free from all encumbrance with the Trust, the Trust can utilize for any other purpose. As the owner, the Trust is free to utilize the land for the purpose, which it deems appropriate. Reference shall be made to the decisions of the Supreme Court reported as (2003) 1 SCC 335 (*Northern Indian Glass Industries v. Jaswant Singh and others*) and (2005) 1 SCC 558 (*Govt. of A.P. and another v. Syed Akbar*). Therefore, mere fact that the land is being used for carving out of residential plots cannot be said to be illegal as Trust is competent to use for any purpose.

10. In *Northern Indian Glass Industries* (supra) while examining the provisions of Land Acquisition Act, 1894, it was held that after passing the award and taking possession of the land under Section 16 of the said Act, the land vests with the Government free from all encumbrances. Therefore, even if the land is not used for the purpose for which it is acquired, the land owner does not get any right to ask for re-vesting of land to him and to ask for its restitution. The said principle was reiterated by the Supreme Court in *Syed Akbar's* case (supra) and it was held as under:

"11. In that case, an extent of 1.94 acres of land was acquired in 1952 for construction of National Highway and the construction was completed in 1955 in 80 cents of land and the balance of land remained unused. The remaining land was sought to be sold to the land owner at the same rate at which the compensation was awarded under Section 11. This again was challenged in the writ petitions. The Government tried to sustain the action on the basis of the executive order issued by the Government for permission for alienation of the land. On these facts, the position of law was made clear in para 4 extracted above. Thus, it is clear that under Section 16 of the Land Acquisition Act, the acquired land should vest in the State free from all encumbrances and that *any executive order inconsistent with the provisions of the Land Acquisition Act was invalid*. Further that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In our view, this decision supports the case of the appellants fully.

12. In the case *Chandragauda Ramgonda Patil and Another v. State of Maharashtra and others* (1996) 6 SCC 405, claim of the petitioner for restitution of the possession of the land acquired pursuant to the resolution of the State Government was rejected. In para 2, this Court observed thus: (SCC p. 406)

"2. We do not think that this Court would be justified in making direction for restitution of the land to the erstwhile owners when the land was taken away back and vested in the Municipality free from all encumbrances. We are not concerned with the validity of the notification in either of the writ petitions. It is axiomatic that the land acquired for a public purpose would be utilized for any other public purpose, though use of it was intended for the original public purpose. It is not intended that any land which remained unutilized, should be restituted to the erstwhile owner

to whom adequate compensation was paid according to the market value as on the date of the notification. Under these circumstances, the High Court was well justified in refusing to grant relief in both the writ petitions."

14. From the position of law made clear in the aforementioned decisions, it follows that (1) under Section 16 of the Land Acquisition Act, the land acquired vests in the Government absolutely free from all encumbrances; (2) the land acquired for a public purpose could be utilized for any other public purpose; and (3) the acquired land which is vested in the Government free from all encumbrances cannot be re-assigned or re-conveyed to the original owner merely on the basis of an executive order."

11. Thus, the judgment of the Supreme Court rendered in *Mohan Singh Gill* (supra) referred to by the learned counsel for the appellants is not applicable to the facts of the present case inasmuch as in the reported judgment, the land was acquired for missing link of a road but apart from providing for road, additional land was acquired intending to use the same for commercial purposes without giving any such indication in the Notification under Section 4 of the Land Acquisition Act. It was, in these circumstances, the Court held that since from the very beginning the land was intended for commercial purposes but without declaring the same in the Notification, that part of the Notification is not legally tenable. The relevant extract from the said judgment, reads as under:-

"30. Mr. Khanna had cited certain judgments in support of his submission that even if the land is acquired for one particular purpose, the authorities are empowered to utilise the same for another public purpose. However, it is permissible in those circumstances where the original purpose for which the land was acquired had to be changed for some valid reasons. Even that is not the case herein. From the very beginning, the authorities had in mind to use the extra chunk of land for commercial purpose but the same was not even stated in the Notifications issued under Sections 4 or 6 of the Act. It is stated at the cost of the repetition that insofar as Notifications

are concerned, purpose mentioned is construction of Missing Link-II, and in this scenario, the authorities cannot acquire more land than what is required for construction of Missing Link-II. The Notifications to the extent they acquire land over and above which is needed for construction of Missing Link-II are, thus, held to be bad in law and set aside.”

12. Admittedly, no proceedings were initiated for determination of amount of compensation by an agreement in terms of sub-section (2) of Section 72 of the Act. It is on failure to arrive at an agreement, the matter was required to be referred to the Tribunal for determination of the amount of compensation but the fact remains that neither proceeding were initiated for determining the compensation by an agreement or by Tribunal. In the meantime, the Act itself has been repealed. The provision from the Repealing Act read as under:-

“3. Repeal and Savings :- (1) On the appointed day the Madhya Pradesh Town Improvement Trusts Act, 1960 (No. 14 of 1961) shall stand repealed and all the Town Improvement Trusts shall stand dissolved.

(2) All assets and liabilities of the Town Improvement Trusts on the appointed day shall stand vested in the Municipality in that area and such Municipality shall have all powers necessary to take possession of, recover and deal with such assets and discharge such liabilities.

(3) Any proceedings pending immediately before the appointed day to which the Town improvement Trust was a party shall be continued as if the Municipality was a party thereof in lieu of the Town Improvement Trust:

Provided that the proceedings pending immediately before the appointed day, before the Tribunal constituted under Section 73 of the repealed Act shall continued and disposed by the Court of District Judge of the concerned District, where the acquired land is situated as if it is a reference made to that Court under Section 18 of the Land Acquisition Act, 1894 (1 of 1894).”

13. A reading of Section 3 of the Repealing Act shows that proceeding pending before the appointed day i.e. 1.8.94 was to continue as if Municipality was a party. Such provision was incorporated in view of the fact that all assets

and liability of the Town Improvement Trust vested in the Municipality. The proviso contemplated that if any proceedings are pending before the Tribunal that shall continue but if the proceeding is filed after the repealed Act, it shall be disposed of by the Court of District Judge of the concerned District as if it is a reference made to that Court under Section 18 of the Land Acquisition Act, 1894. Thus, the proceedings which are pending were referred for adjudication to the District Judge.

14. The arguments of learned counsel for the appellants is that since there is no provision for proceeding for determination of compensation, which have not been initiated by a land owner, therefore, the acquisition itself in respect of such land has lapsed as there cannot be any acquisition without payment of compensation.

15. We do not find any merit in the said argument. There cannot be any dispute with regard to the proposition that acquisition without payment of compensation is not tenable. However, the fact is that the scheme of the Act is that the payment of compensation has to be determined by the Tribunal, if no agreement is arrived at. Learned Single Judge has recorded a finding that no Tribunal was constituted and in the absence of constitution of Tribunal, the learned Single Bench directed for payment of compensation within 90 days to settle the dues. The appellants have not raised even a little finger for all these years that the compensation has not been paid. Still at this stage, the amount of compensation can be determined to settle the equities between the parties. However, we find that compensation is a process of adjudication which is required to be arrived at by some Authority. Intention of Legislature while incorporating sub-section (3) of Section 3 of the 1994 Act was that the Court of District Judge shall determine the amount of compensation in terms of Section 18 of the Land Acquisition Act, 1894. Therefore, even if, the proviso does not contemplate initiation of fresh proceeding for determination of compensation and such provision being beneficial to the land owner, we deem it appropriate to permit the appellants to invoke the jurisdiction of filing proceeding before the District Judge of concerned District for determination of compensation in terms of Section 18 of the Land Acquisition Act provided such an application is filed within 90 days from today. Apart from such modification, we find no merit in the present appeal.

16. Appeal stands **dismissed**.

Appeal dismissed.

I.L.R. [2017] M.P., 1633

WRIT APPEAL

Before Mr. Justice Hemant Gupta, Chief Justice &

Mr. Justice Vijay Kumar Shukla

W.A. No. 471/2014 (Jabalpur) decided on 10 July, 2017

MADHYANCHAL GRAMIN BANK & ors.

...Appellants

Vs.

NEERAJ KUMAR BARMAN & ors.

...Respondents

(Alongwith W.A. Nos. 460/2014, 461/2014, 462/2014, 463/2014, 464/2014, 465/2014, 467/2014, 473/2014, 474/2014 & 475/2014)

Service Law – Daily Wagers – Industrial Disputes Act (14 of 1947) – Central Government vide notification decided to amalgamate three Regional Rural Banks with the appellant bank whereby services of the daily wagers was decided to be dispensed with – Respondents, daily wage employees filed writ petitions before High Court whereby appellants were prohibited to hand over the petitioners (daily wagers) appointed by the erstwhile Regional Rural Banks to private agency and allow them in service as engaged by the erstwhile Regional Rural Banks – Challenge to – Held – A daily wager, by nomenclature itself is not a regular employee of Bank as there is no established employer and employee relationship – Daily wagers have protection as provided under the Industrial Disputes Act of 1947 but there cannot be any prohibition against employer, not to terminate services of daily wager as it is not even available to regular employees – Services of workmen can be dispensed with as and when it is considered appropriate by following due process of law – Order passed by single bench is set aside – Appeal disposed. (Paras 5, 7 & 8)

सेवा विधि – दैनिक वेतनभोगी – औद्योगिक विवाद अधिनियम (1947 का 14) – केन्द्र सरकार ने अधिसूचना द्वारा, अपीलार्थी बैंक के साथ तीन क्षेत्रीय ग्रामीण बैंको को समामेलित करने का निर्णय लिया जिससे दैनिक वेतनभोगियों की सेवा से अभिमुक्ति का निर्णय लिया गया – प्रत्यर्थीगण, दैनिक वेतन कर्मचारियों ने उच्च न्यायालय के समक्ष रिट याचिकाएं प्रस्तुत की जिससे तत्कालीन क्षेत्रीय ग्रामीण बैंको द्वारा नियुक्त याचीगण (दैनिक वेतनभोगी) को प्राईवेट ऐजेंसी को सौंपने से अपीलार्थीगण को प्रतिषिद्ध किया गया था तथा उन्हें सेवा में बने रहने की अनुमति दी गई जैसा कि तत्कालीन क्षेत्रीय ग्रामीण बैंको द्वारा उन्हें नियुक्त किया

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गया था — को चुनौती — अभिनिर्धारित — एक दैनिक वेतनभोगी, स्वयं नाम पद्धति द्वारा बैंक का एक नियमित कर्मचारी नहीं है क्योंकि यहां नियोक्ता एवं कर्मचारी का कोई स्थापित संबंध नहीं — दैनिक वेतनभोगियों को औद्योगिक विवाद अधिनियम, 1947 के अंतर्गत यथा उपबंधित संरक्षण प्राप्त है परंतु नियोक्ता के विरुद्ध कोई प्रतिषेध नहीं हो सकता कि वह दैनिक वेतनभोगी की सेवाओं को समाप्त न करें क्योंकि यह तो नियमित कर्मचारियों को तक उपलब्ध नहीं — विधि की सम्यक प्रक्रिया के पालन द्वारा, जैसा कि एवं जब उचित समझा जाता है, कर्मकारों को सेवा से अभिमुक्त किया जा सकता है — एकल न्यायपीठ द्वारा पारित आदेश अपास्त — अपील निराकृत।

V.S. Shrotri with Amit Nagpal, for the appellants.

Rajesh Maindiretta, for the respondent in W.A. No. 471/2014.

Rajneesh Gupta, for the respondent in W.A. No. 473/2014.

Manoj Chandurker, for the respondents in W.A. Nos. 474/2014 & 475/2014.

J U D G M E N T

The Judgment of the Court was delivered by :
HEMANT GUPTA, C.J. :- The challenge in the present appeals is to an order passed by the learned Single Bench on 3.12.2013 whereby the appellants were prohibited to hand over the daily wagers appointed by the erstwhile Regional Rural Banks to private agency and to allow them in service as engaged by the erstwhile Regional Rural Banks on the same terms and conditions.

2. The said order dated 3.12.2013 was made basis to decide many other writ petitions which were allowed and all such writ appeals against the said orders are being taken up for analogous hearing. Since the impugned order has been rendered in Writ Petition No.196/2013 (*Rajesh Kumar Patel v. Madhyanchal Gramin Bank and others*), the facts are taken from the said appeal itself being Writ Appeal No.461/2014.

3. The writ-petitioners were engaged as daily-rated employees. In November, 2012, the Central Government issued a Notification (Annexure A/1) whereby a decision was taken by the Central Government for amalgamation of three Regional Rural Banks with Madhyanchal Gramin Bank, the present appellants, with its Headquarter at Sagar. The condition of the status of the employees is contained in Clause 7 of the said circular, which reads as under:-

“7(a) The service of all the employees of the transferor Regional Rural Banks (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947) shall continue in the transferee Regional Rural Bank at the same remuneration and on the same terms and conditions of service, which they were getting or, as the case may be, by which they were governed immediately before the effective date of amalgamation.

(b) The inter-se-seniority of officers and employees, directly recruited or promoted, to be decided by the Committee representing the sponsor bank and the National Bank for Agriculture and Rural Development.”

However, in respect of daily wage employees, circular Annexure R-2 was issued on 12.12.2012 wherein it was pointed out that the services of daily wagers be dispensed with as the work shall be entrusted to a private agency. It is the said decision in respect of which the Court passed an order in view of the statement of the learned counsel for the Bank that as on that date, the services of the writ petitioners were not being dispensed with. Relevant operative part of the said order dated 3.12.2013, reads as under:-

“Furthermore, during course of hearing it has been expressed by learned Senior Counsel appearing for the Madhyanchal Gramin Bank, that the services of the petitioners are not being dispensed with presently. If that is so, the respondents are prohibited to hand over the daily wagers appointed by the transferor Regional Rural Bank to private agency and continue them in service as engaged by the erstwhile Regional Rural Banks on the same terms and conditions as was applicable to them. To this extent the communication dated 12.12.2012 is quashed.”

4. While issuing notices of the present appeals, an order was passed by the Bench on 27.06.2014 wherein the operation of the impugned order was stayed subject to the condition that the services of the respondents-employees shall not be dispensed with except after following the due process of law.

5. Learned counsel for the appellants vehemently argued that the daily wage employees have no right against their employer except as may be available

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to them in respect of applicable laws such as Industrial Disputes Act, 1947. There cannot be any order in perpetuity not to terminate the services of daily wagers, as has been ordered by the learned Single Bench.

6. We have heard learned counsel for the parties. We find merit in the argument raised by the learned Senior Counsel for the appellants.

7. A daily wager, by the nomenclature itself, is not a regular employee of the Bank. They might have been inducted as daily wagers without following the procedure to fill up a public post. Such daily wagers have a protection under the Industrial Disputes Act, 1947 but there cannot be any prohibition not to terminate their services and to continue them in service as engaged by the erstwhile Regional Rural Banks. In fact, such protection is not available even to the regular employees much less to the daily wagers, who have no established employer and employee relationship.

8. Considering the aforesaid, we find that the orders passed by the learned Single Bench are not sustainable. Accordingly, the same are set aside. However, the services of the workmen can be dispensed with as and when it is considered appropriate by following due process of law. With the said direction and liberty, the writ appeals shall stand **disposed of**.

Order accordingly.

I.L.R. [2017] M.P., 1636

WRIT PETITION

Before Mr. Justice Sujoy Paul

W.P. No. 12022/2015 (Jabalpur) decided on 12 January, 2017

PREM CHAND CHATURVEDI

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

Service Law – Civil Services (Pension) Rules, M.P. 1976, Rule 9 and Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 19 – Permanent Stoppage of Entire Pension – Opportunity of Hearing – Approval – Held – State Government has ample power under Rule 9 of the Pension Rules to stop the pension in cases where pensioner is found guilty of grave misconduct/offence in departmental enquiry or judicial proceedings – Such conduct should be related to the period when he was in service – In the present case, conviction is

founded upon his conduct as an employee – Conviction was upheld by this Court and Supreme Court – Full Bench of this Court held that after conviction by a Court of competent jurisdiction, no opportunity of hearing is required to be given – Further held – Vide executive instruction, State Government clarified that approval of PSC is required in such cases where employee is appointed through PSC – In the present case, petitioner was not appointed through PSC, thus no approval was required – Petitioner not entitled to receive pension from the date of impugned order – Petition dismissed. (Paras 8, 9 & 10)

सेवा विधि – सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9 एवं सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 19 – संपूर्ण पेंशन पर स्थाई रोक – सुनवाई का अवसर – अनुमोदन – अभिनिर्धारित – राज्य सरकार को पेंशन नियमों के नियम 9 के अंतर्गत ऐसे प्रकरणों में पेंशन रोकने की पर्याप्त शक्ति है जहां पेंशनभोगी को विभागीय जांच अथवा न्यायिक कार्यवाहियों में घोर अवचार/अपराध का दोषी पाया गया है – उक्त अवचार उस अवधि से संबद्ध होना चाहिए जब वह सेवा में था – वर्तमान प्रकरण में, दोषसिद्धि उसके कर्मचारी के रूप में आचरण पर आधारित है – दोषसिद्धि को इस न्यायालय द्वारा एवं उच्चतम न्यायालय द्वारा कायम रखा गया था – इस न्यायालय की पूर्ण न्यायपीठ ने अभिनिर्धारित किया कि सक्षम अधिकारिता के न्यायालय द्वारा दोषसिद्धि के पश्चात्, सुनवाई का अवसर दिया जाना अपेक्षित नहीं – आगे अभिनिर्धारित – कार्यपालिक अनुदेश द्वारा राज्य सरकार ने स्पष्ट किया कि पी.एस.सी. का अनुमोदन ऐसे प्रकरणों में अपेक्षित है जहां कर्मचारी पी.एस.सी. के जरिए नियुक्त किया गया है – वर्तमान प्रकरण में, याची को पी.एस.सी. के जरिए नियुक्त नहीं किया गया था, अतः कोई अनुमोदन अपेक्षित नहीं था – याची, आक्षेपित आदेश की तिथि से पेंशन प्राप्त करने का हकदार नहीं – याचिका खारिज।

Cases referred :

(2012) 8 SCC 417, 2004 (4) MPHT 343 (FB).

Parag Chaturvedi, for the petitioner.

Santosh Yadav, P.L. for the respondents No.1 to 3.

Arvind Kumar Pandey, for the respondent No.4.

ORDER

SUJOY PAUL, J. :- This petition filed under Article 226 of the Constitution takes exception to the order dated 18.8.2010 Annexure P/1 whereby the State Government by invoking Rule 9 of Madhya Pradesh Civil

Services (Pension) Rules, 1976 (for short '*Pension Rules*') stopped the entire pension of the petitioner permanently.

2. Brief facts as stated by Shri Parag Chaturvedi are that the petitioner was working as Drug Inspector. He retired on attaining the age of superannuation in the year 1985. Since retiral dues have not been paid to the petitioner, he filed OA No.194/89 before the Tribunal. The petitioner has not filed the said order. However, the order passed in MA No.114/97 Annexure P/6 shows that the petitioner filed a review application seeking review of order passed in OA No.194/1989. The review petition was allowed by the Tribunal and the respondents were directed to grant anticipatory pension to the petitioner. The Tribunal made it clear that entitlement of the petitioner to receive the pension in future will remain subject to general conditions stated in the Pension Rules.

3. Shri Chaturvedi submits that the impugned order dated 18.8.2010 Annexure P/1 came as a bolt from blue to the petitioner. Without affording any opportunity of hearing respondents have passed the impugned order whereby complete pension of the petitioner is permanently stopped. Criticising this order, Shri Chaturvedi raised following points:

(i) The impugned order is passed without following the principles of natural justice;

(ii) As per Rule 9 of the Pension Rules, before stopping the pension, the respondents were required to take consent of Public Service Commission which has not been obtained.

(iii) The petitioner was convicted by the Special Court on 28.5.1988. The respondents passed this order after few decades which is totally impermissible.

4. Shri Santosh Yadav, learned Panel Lawyer supported the impugned order. He submits that the petitioner was convicted by Special Court on 28.5.1988. The conduct of the petitioner which led to conviction is very grave and therefore pension of the petitioner is rightly stopped. More so when the judgment of Special Court dated 28.5.1988 was unsuccessfully challenged by the petitioner by filing Criminal Appeal No.576/88 before the High Court which was dismissed on 29.4.1999 and this judgment of High Court was not disturbed so far conviction part is concerned by the Supreme Court in SLP

No.2121/99 (Criminal). The SLP was decided on 15.7.2004. Shri Yadav submits that after decision of the SLP, the matter was examined and a conscious decision was taken by the State Cabinet. While dealing with the second contention of Shri Chaturvedi, it is submitted that the petitioner was holding the post of Drug Inspector which is a non-gazetted post. He was not appointed through Public Service Commission. This aspect was clarified by the Government by issuing circular dated 18.2.1999 Annexure P/1 which shows that the consent of PSC is required only in cases of such government servants who were appointed through PSC. Thus, no fault can be found if approval is not obtained from the PSC. He submits that the factual basis for stopping the pension is not in dispute and; therefore, principles of natural justice were not required to be followed. Lastly, it is submitted that in view of gravity of offence committed by the petitioner and his conviction which is upheld upto Supreme Court, no interference may be made on the ground of delay in issuing the impugned order.

5. Shri Arvind Kumar Pandey, learned counsel for the respondent bank submits that he has a limited role. By the time, the order dated 18.8.2010 was communicated to the bank, the petitioner drew certain amount of regular pension. Beyond 18.8.2010, petitioner had no right to receive the pension. Such payment of pension for want of knowledge of the order dated 18.8.2010, amounts to overpayment which can be recovered as per the law laid down by the Supreme Court in the case reported in 2012 (8) SCC 417 (*Chandi Prasad Uniyal and others vs. State of Uttarakhand and others*). He also relied upon the judgment of this Court passed in WP No.21844/2011(S) (*Vaidhyanath Shukla vs. State of M.P. and others*) and in WP No.21848/2011(S) (*Rajkaran Singh vs. State of M.P. And others*) to bolster his submission that after conviction by a Court of competent jurisdiction in relation to a serious offence, petitioner is not entitled to get pension.

6. No other point is pressed by the learned counsel for the parties.

7. I have bestowed my anxious consideration on the rival contentions of learned counsel for the parties and perused the record.

8. The first contention of the petitioner is based on principles of natural justice and the order passed by the Tribunal. A plain reading of the order of Tribunal makes it clear that the Tribunal, in no uncertain terms, held that the order for grant of pension will depend upon and subject to the conditions

mentioned in the Pension Rules. Rule 9 of the Pension Rules gives ample power to the State to stop the pension in cases where pensioner is found guilty of grave misconduct/offence in a departmental enquiry or judicial proceedings. The only requirement is that if such conduct of an employee should be related to the period when he was in service. Admittedly, the conviction of the petitioner is founded upon his conduct as an employee. Thus, it is clear that the Government is empowered to stop the pension under Rule 9.

9. Nothing is pointed out to show that after conviction also a notice or opportunity of hearing was required to be given. Even if it would have been given, petitioner would not have been in a position to improve his case because his conviction which is upheld by this court and by Supreme Court is not in dispute. In cases falling within the ambit of Rule 19 of Madhya Pradesh Civil Services (CCA) Rules/Article 311 of the Constitution, a Full Bench of this Court in the case of *Laxmi Narayan Haryaran vs. State of M.P. and another*, 2004 (4) MPHT 343(FB) opined that after conviction by a Court of competent jurisdiction, no opportunity of hearing is required to be given. Thus, this point raised by Shri Chaturvedi cannot cut any ice.

10. This is settled in law that statutory provisions can be supplemented by issuing executive instructions. By way of executive instruction dated 8.2.1999 Annexure R/1, the State Government clarified that approval of PSC for stopping pension is required in such cases where employee is appointed through PSC. The Executive Instruction dated 8.2.1999 is not called in question. In this view of the matter, I am unable to hold that the impugned order is bad in law for not obtaining prior consent from the PSC. So far delay in issuing the impugned order is concerned, it is clear that the SLP was decided on 15.7.2004. In the SLP, the conviction of the petitioner was not disturbed, only sentence imposed on him was modified. Thereafter, no doubt, the Government has taken six more years to pass this order. However, these six years were to the benefit of the petitioner and not to his detriment because during these years petitioner enjoyed the benefit of pension. There is no provision in the Pension Rules nor any other legal authority is pointed by the petitioner which puts any embargo on the State Government in passing the order after few years. In other words, on the ground of delay alone, no interference can be made when it is proved that petitioner was found guilty of serious offence by the Court of competent jurisdiction. The judgments cityed (sic:cited) by Shri Pandey are on the same point. I find no reason to interfere in equity and discretionary

jurisdiction of this Court under Article 226 of the Constitution. Petition being meritless is hereby dismissed. Needless to mention that the petitioner was not entitled to get any pension beyond the date of passing of the impugned order. The bank will be within its right to recover/adjust said excess payment of pension from the petitioner.

Petition dismissed.

I.L.R. [2017] M.P., 1641

WRIT PETITION

Before Mr. Justice Sheel Nagu & Mr. Justice S.A. Dharmadhikari

W.P. No. 7921/2016 (Gwalior) decided on 19 January, 2017

SHIVVAMAWASTHI & ors.

...Petitioners

Vs.

VICE CHANCELLOR JIWAJI UNIVERSITY & ors.

...Respondents

Constitution – Article 226 – Proctorial Board – Maintenance of Discipline Amongst Students of University Teaching Department, Ordinance No. 15, Clause 4, 11 & 12 – Rustication Order – Show Cause Notice – Natural Justice – Opportunity of Hearing – On numerous complaints made by different students regarding misbehavior, mental and physical torture by petitioners, rustication orders of the petitioners were passed by Proctorial Board – Held – As per the provisions of Ordinance 15, Proctorial Board is empowered to enquire into acts of indiscipline and to impose fine and/or other punishment which includes recommendation for rustication or expulsion of student – In the present case, no show cause notice in writing was given to petitioners specifying charges/complaint against them, thereby disabling them from effectively defending themselves – Principles of natural justice appears to have been violated – Principle of natural justice of *audi alterem partem* is binding not only on judicial but also on executive authorities – Reasonable opportunity of being heard should be afforded to persons before they are condemned/punished – Order of rustication is set aside and University is directed to follow the process contained in Ordinance 15 especially clause 11 and 12 before proceeding against petitioners – University is free to take suitable action against petitioners in accordance with law.

(Paras 5, 7, 7.1 & 9)

संविधान - अनुच्छेद 226 - प्रोक्टोरियल बोर्ड - विश्वविद्यालय शैक्षणिक विभाग के छात्रों के बीच अनुशासन का रखरखाव, अध्यादेश क्र. 15, खंड 4, 11 एवं 12 - निष्कासन आदेश - कारण बताओ नोटिस - नैसर्गिक न्याय - सुने जाने का अवसर - याचीगण द्वारा कदाचार, मानसिक और शारीरिक यातना किये जाने के संबंध में विभिन्न छात्रों द्वारा किये गये अनेक परिवादों पर, प्रोक्टोरियल बोर्ड द्वारा याचीगण के निष्कासन आदेश पारित किये गये थे - अभिनिर्धारित - अध्यादेश 15 के उपबंधों के अनुसार, प्रोक्टोरियल बोर्ड अनुशासनहीनता के कृत्यों में जांच करने तथा जुर्माना एवं/या अन्य दंड जिसमें छात्र के निष्कासन या बाहर निकाल देने हेतु सिफारिश सम्मिलित है, अधिरोपित करने के लिए सशक्त है - वर्तमान प्रकरण में, याचीगण को उनके विरुद्ध आरोपों/परिवाद को विनिर्दिष्ट करते हुये लिखित में कोई कारण बताओ नोटिस नहीं दिया गया था, जिससे उन्हें प्रभावी रूप से स्वयं का बचाव करने से निर्योग्य किया गया - नैसर्गिक न्याय के सिद्धान्तों को उल्लंघन किया जाना प्रतीत होता है - दूसरे पक्ष को भी सुनने के नैसर्गिक न्याय का सिद्धान्त न केवल न्यायिक बल्कि कार्यपालक प्राधिकारीगण पर भी बाध्यकारी है - व्यक्तियों को सिद्धदोष/दंडित करने से पूर्व उन्हें सुनवाई का उचित अवसर प्रदान किया जाना चाहिए - निष्कासन का आदेश अपास्त किया गया तथा विश्वविद्यालय को याचीगण के विरुद्ध आगे बढ़ने से पूर्व अध्यादेश 15 विशेष रूप से खंड 11 एवं 12 में अंतर्विष्ट प्रक्रिया का पालन करने हेतु निदेशित किया गया - विश्वविद्यालय, याचीगण के विरुद्ध, विधि के अनुसार उचित कार्रवाई करने हेतु स्वतंत्र है।

Gaurav Mishra, for the petitioners.

Anuradha Singh, for the respondents/Jiwaji University.

ORDER

The Order of the Court was delivered by :
SHEEL NAGU, J. :- The writ jurisdiction of this Court under Article 226 of the Constitution of India is invoked to assail the rustication order of seven petitioners who were pursuing their academic careers in different semesters in the B.E. Course imparted by the respondent / University.

2. With consent of the parties, arguments are heard on the question of admission and for final disposal.

3. The case of the petitioners in short is that petitioners No. 1 to 7 are peace loving students pursuing the undergraduate course in Engineering (B.E.) imparted by the respondents / University. Petitioners allege that they were victimized on 29.09.2016 by students of Aryabhata hostel of the respondent / University leading to one of the petitioner sustaining injuries. It is alleged that instead of taking action against the said hostellers petitioners were rusticated

by the impugned order Annexure P/1 dated 30.09.2016 without affording any opportunity to the petitioners in terms of the provision of clause 11 of Ordinance No.15 relating to maintenance of discipline amongst the students of the University teaching Department.

3.1 The respondent / University on the other hand represented by Ms. Anuradha Singh submits that numerous written complaints were made by different students of the University including girls students alleging misbehaviour, mental and physical torture and polluting the academic atmosphere of the University. The copy of the complaints have been cumulatively filed as Annexure R/1. It is further submitted that petitioners have been involved in similar acts of misconduct at earlier occasions which is evident from Annexure R/2 dated 03.02.2016 suspending the admission of petitioner No.3 and debarring him from entering the premises of the University. It is submitted that the said petitioner No.3 admitting his mistakes sought apology vide Annexure R/3 and therefore the University taking a lenient view vide Annexur R/4 dated 23.04.3016 revoked his suspension. It is further informed that yet again by Annexure R-5 dated 10.06.2016 the University took disciplinary action of suspending petitioners No. 2, 3 & 5 namely Neeraj Rawat, Shivmohan Singh Tomar and Sanjay Patel respectively. It is informed that said suspension was also revoked subsequently keeping the academic careers of the petitioners in mind and based upon apology submitted by the said three petitioners vide Annexure R/6. Learned counsel for the respondent submits that thereafter the petitioners yet again were found involved in instances of indiscipline which compelled the respondent / University to constitute a Proctorial Board in terms of Ordinance No.15 on 28.09.2016 which heard the rival parties and suspended the admission of the petitioners vide Annexure R-8 pending enquiry and submission of report by the Proctorial Board. The Proctorial Board thereafter met on 29.09.2016 where all the petitioners were called and their statements were recorded. The Proctorial Board also recorded the statements of complainants. It is submitted that opportunity was afforded even to the parents of the petitioners to make their submission before the Proctorial Board. Thereafter it is informed by the counsel for the University that the Proctorial Board submitted its report on 29.09.2016 recommending all the seven petitioners to be rusticated. Finally the impugned order of rustication was passed vide Annexure R-11 / Annexure P/1.

4. After hearing learned counsel for the parties, this Court took note of

the provisions of Ordinance 15 which regulate the procedure of maintenance of discipline amongst students of University teaching Department. Clause 4 define acts of gross indiscipline which are reproduced below along with other provisions prescribing procedure for imposing minor and major punishment including rustication :-

“Clause 4. The following acts, in particular, shall constitute act of gross indiscipline and any student indulge in any of them shall render himself liable for disciplinary action against him.

- (a) *Disobeying the teacher of misbehaving in the class.*
- (b) *Quarreling or fighting in any University building or in the campus among themselves.*
- (c) *Quarreling or fighting with a University employee or any employee of the University Canteen, mess or any other public utility functioning in the campus.*
- (d) *Behaving in the University campus or outside in a manner which is indecent or which is meant to annoy or harass the teachers, officers or employees or the University.*
- (e) *Any other act which the Discipline Committee may determine and the Kulapati may accept as an act of gross-indiscipline.*
- (f) *However all cases of discipline within Hostel Premises shall be dealt by the warden concerned. To deal with such incidents the warden shall have all the powers prescribed for the Proctor in this Ordinance.*

There shall be a Proctorial Board consisting of a Proctor and such number of Joint Proctors as the Executive Council may decide.

Clause 5. The Proctor and the Joint Proctor shall be appointed by the Kulapati from among the teachers of the

University whose number shall be determined by the Kulapati for a period not exceeding two years, the Proctor so appointed may be removed by the Kulapati before completion of his turn of two years if he fails to discharge the duty well or if his activities are prejudicial to the interests of the University.

Clause 6. *The Proctor and each of the Joint Proctors shall be paid allowance as follows :-*

1. Proctor Rs.200.00 per month.
2. Joint Proctor Rs.100.00 per month

Clause 7. *Power and duties of the Proctor- The proctor shall take action in all the matters which are referred to him for disciplinary action by any responsible or constituted authority of the University. He may also take action in matters which come to his knowledge and which, in his opinion call for disciplinary action. However cases of discipline in examination halls shall be dealt with in accordance with provisions of relevant Ordinances.*

Clause 8. *The Proctor may delegate any of his powers to Joint Proctor / Joint Proctors. In the absence of Proctor the senior most Joint Proctor shall act as Proctor and shall have all such powers which are exercised by the Proctor.*

Clause 9. *If in the opinion of the Proctor the act of indiscipline requiring action is not of a serious nature, he may hold a summary inquiry and shall have powers to impose the following penalties:*

1. a formal caution.
2. a fine not exceeding Rs.50.00.

Clause 10. *If in the opinion of the Proctor, the breach of discipline is of a serious nature, he may refer the case for investigation by the Proctorial Board. Proctor and Joint Proctor or any two Joint Proctors shall constitute a quorum for sittings for such investigation.*

Clause 11. *The investigation by the Proctorial Board may include:-*

- (i) *Issue of show cause notice to the person / persons concerned specifying the nature of charge / complaint against him /them.*
- (ii) *Recording of statement of the accused person / persons and of such other person / persons as the Board may deem necessary.*
- (iii) *Examination of such other documents or evidences as the Proctorial Board may find necessary.*

Clause 12. (a) *After investigation the Board may recommend imposition of fine and / or other punishment which could include recommendation for rustication or expulsion of student / students also.*

(b) *Recommendations of imposition of fine not exceeding Rs. 50.00 shall be sent to the Proctor for action. All other recommendations shall be sent to the Kulapati who may accept the recommendation or pass such order thereon as he may deem fit.*

Clause 13. *In case of acts of indiscipline, which in the opinion of the Proctor are of very serious nature or which constitute a grave offence under the criminal law the investigation and action on the same may be entrusted to the Police. In all such cases the Proctor shall send a report to the Police and also inform the Registrar.*

Clause 14. *In the cases under investigation by the Proctorial Board or the Police, if the Proctor is of the opinion that immediate action is called for in the interest of maintenance of peace and discipline, he may recommend to the Kulapati that the student /students concerned be suspended from their classes pending investigation of their cases. If the Kulapati accepts the recommendation, the student / students shall be suspended by the Proctor from their classes for the period specified in the order of the Kulapati."*

The Proctorial Board is thus empowered to enquire into acts of indiscipline.

5. The act of indiscipline alleged against the petitioners appears to be covered by clause 4(b) of Ordinance. The Proctorial Board is vested with the power of issuing formal caution and imposing fine not exceeding Rs. 50/- for acts of minor indiscipline. However the acts of breach of discipline of serious nature are prescribed to be referred for investigation by the Proctorial Board. The investigation contemplated by Clause-11 includes issuance of show cause notice to the person concerned specifying the nature of charge / complaint made against him /them followed by recording of statements of accused persons and of such other persons as the Board thinks fit. The Board may also in its discretion permit examination of such other documents or evidence if it finds necessary. After concluding such process of investigation, the Board is empowered to impose fine and / or other punishment which can include recommendation for rustication or expulsion of student.

6. From a bare perusal of above procedure laid down in clause 11 of Ordinance No.15, it is evident that the Proctorial Board has to follow bare essentials of the requirement of natural justice by issuing show cause notice and informing the accused of the charges / complaint in writing and thereafter recording of statement of the accused and of any other person if required followed by examination of such other documents as the Board thinks fit and then recommend for imposition of appropriate punishment commensurate to the gravity of misconduct found established.

7. In the instant case, it appears that no show cause notice in writing was given to the petitioners specifying the charges /complaint against them thereby disabling them from effectively defending themselves. There is nothing on record to indicate that any written show cause notice was issued to any of the petitioners specifying the charges against them.

7.1 The principle of natural justice of *audi alterem partem* which is binding not only on judicial but also executive authorities, requires that reasonable opportunity of being heard should be afforded to the person before he is condemned / punished. The concept of "reasonable opportunity" includes the few essential elements which are as follows :-

(i) Informing the accused of the charges alleged to enable him to respond to the same, and

(ii) To afford opportunity to the accused to defend himself.

7.2 The principle of natural justice appears to have been violated in the present case where the petitioners were not issued any written show cause notice informing the charges / complaint and therefore this Court is of the considered view that the impugned order of rustication is vitiated for having been passed in violation of the principle of *audi alterem partem* which is a facet of natural justice.

8. Before parting, it would be appropriate to observe that the edifice of academic institution stands on two pillars. These pillars are of merit and discipline. If either one of these is disturbed then the edifice may fall. A student should remember that their prime object is to gain knowledge. Indiscipline has no place in the process of imparting and gaining of knowledge. No doubt, any kind of indiscipline in an academic institution should be dealt with, with iron hand, but while doing so the procedure prescribed by law in that regard ought to be followed to the hilt so that no occasion arises for rendering the order of punishment invalid on account of some technical or procedural lapse. This Court has no manner of doubt that the respondent / University is an academic institution of great repute which zealously guards its name and fame which it has earned in the last so many decades and shall not allow unscrupulous elements to tarnish this image.

9. Accordingly, the present petition for the reasons mentioned above, is disposed of with following directions :-

(i) The impugned order of rustication dated 30.09.2016 (Annexure P/1) passed by the University is set aside.

(ii) The University is directed to follow the process contained in Ordinance 15 especially clause 11 and 12 before proceeding against the petitioners, if so advised.

(iii) This court hastens to add that no finding or opinion is expressed on the tenability of the charges alleged against the petitioners and the competent authority of the respondent / University is free to take suitable action against the petitioners in accordance with law.

(iv) No cost.

Order accordingly.

WRIT PETITION

Before Mr. Justice P.K. Jaiswal & Mr. Justice Virender Singh

W.P. No. 1575/2017 (PIL) (Indore) decided on 30 March, 2017

TAPAN BHATTACHARYA (Dr.)

...Petitioner

Vs.

STATE OF M.P. & ors

...Respondents.

A. Constitution – Article 14, 19, 25, 26, 38, 39, 39A, 48A, 51-A(h) & Part XII – Public Interest Litigation – Narmada Seva Yatra – Purpose – It was alleged that CM of the State is organizing the “Narmada Seva Yatra” and on pretext of cleaning and purifying holy river Narmada, he want to polarize Hindu votes and spending crores of rupees from State Exchequer and prayed to prohibit such yatra – **Held –** Move of the Government of M.P. is to clean holy river Narmada and have decided planting 5 crores plants on both sides of Narmada river for protection of environment of forest – Purpose of Yatra is to save water of river Narmada from pollution and to put awareness to villagers residing near the banks of river – Yatra is not to polarize Hindu vote in the name of holy river nor it is against the provisions of Article 14, 19, 25, 26, 38, 39, 39A, 48A and Part XII of Constitution – Cleaning of holy river Narmada is a secular activity of State and nothing to do with any religion – There is no prohibition of participation of any person or class or any other leader of political party, all are free to participate – Present PIL filed without thorough study of factual situation and there are no specific pleadings to substantiate allegations – Court cannot issue a writ of prohibition to stop Narmada Seva Yatra – Petition dismissed. (Paras 2, 7, 10 & 12)

क. संविधान – अनुच्छेद 14, 19, 25, 26, 38, 39, 39ए, 48ए, 51–ए(एच) एवं भाग XII – लोक हित वाद – नर्मदा सेवा यात्रा – प्रयोजन – यह अभिकथन किया गया था कि राज्य के मुख्यमंत्री “नर्मदा सेवा यात्रा” का आयोजन कर रहे हैं तथा पवित्र नदी नर्मदा की सफाई एवं शुद्धि के बहाने, वह हिन्दू मतों का धुवीकरण करना चाहते हैं तथा राजकोष से करोड़ों रुपये खर्च कर रहे हैं एवं इस तरह की यात्रा को प्रतिषिद्ध करने हेतु प्रार्थना की – अभिनिर्धारित – म.प्र. शासन का कदम पवित्र नदी नर्मदा को साफ करने हेतु है तथा वन के पर्यावरण का संरक्षण करने हेतु नर्मदा नदी के दोनों किनारों पर 5 करोड़ पौधे लगाने का विनिश्चय किया है – यात्रा का प्रयोजन नर्मदा नदी के जल को प्रदूषण से बचाना है तथा नदी के तटों के पास रहने वाले ग्रामीणों में

जागरूकता फैलाना है – यात्रा पवित्र नदी के नाम पर हिन्दू वोट का घुवीकरण करने के लिए नहीं है, न ही यह संविधान के अनुच्छेद 14, 19, 25, 26, 38, 39, 39ए, 48ए एवं भाग XII के विरुद्ध है – पवित्र नदी नर्मदा की सफ़ाई करना राज्य की एक धर्मनिर्पेक्ष गतिविधि है तथा किसी धर्म से कोई लेना देना नहीं है – किसी व्यक्ति या वर्ग या राजनीतिक पार्टी के किसी अन्य नेता के भाग लेने में कोई प्रतिषेध नहीं है, भाग लेने हेतु सभी स्वतंत्र हैं – वर्तमान लोक हित वाद तथ्यात्मक स्थिति का विस्तृत अध्ययन किये बिना प्रस्तुत किया गया तथा अभिकथनों को सिद्ध करने हेतु कोई विनिर्दिष्ट अभिवचन नहीं हैं – न्यायालय नर्मदा सेवा यात्रा को रोकने के लिए प्रतिषेध की रिट जारी नहीं कर सकती – याचिका खारिज।

B. Constitution – Article 226 – Public Interest Litigation – Jurisdiction & Scope of Interference – Held – Jurisdiction of PIL should be invoked very sparingly and in favour of vigilant litigant and not for persons who invoke this jurisdiction for sake of publicity – Further held – Constitution does not recognize or permit mixing of religion and State power and the two must be kept apart. (Para 5)

ख. संविधान – अनुच्छेद 226 – लोक हित वाद – अधिकारिता एवं हस्तक्षेप की सीमा – अभिनिर्धारित – लोक हित वाद की अधिकारिता का अवलंब बहुत मितव्ययता से तथा जागरूक मुकदमेबाज के पक्ष में लिया जाना चाहिए एवं न कि उन व्यक्तियों के लिए जो कि प्रचार के लिए इस अधिकारिता का अवलंब लेते हैं – आगे अभिनिर्धारित – संविधान धर्म तथा राज्य की शक्ति की मिलावट को मान्यता या अनुमति नहीं देता एवं दोनों को पृथक रखा जाना चाहिए।

C. Constitution – Article 226 – Public Interest Litigation – Locus Standi – Held – A person acting bonafide and having sufficient interest in proceedings of Public Interest litigation will only have locus standi, who can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions – It cannot be invoked for personal gain or personal causes or private profit or political motive or to satisfy personal grudge and enmity or any oblique considerations. (Para 11 & 12)

ग. संविधान – अनुच्छेद 226 – लोक हित वाद – सुने जाने का अधिकार – अभिनिर्धारित – एक व्यक्ति जो कि सद्भाविक रूप से कार्य कर रहा है तथा लोक हित वाद की कार्यवाहियों में पर्याप्त रुचि रखता है, केवल उसको सुने जाने का अधिकार है, जो कि मूलभूत अधिकारों का उल्लंघन तथा कानूनी उपबंधों का वास्तविक व्यतिक्रमण खत्म करने हेतु न्यायालय के समक्ष जा सकता है – इसका अवलंब व्यक्तिगत लाभ या व्यक्तिगत कारणों या निजी लाभ या राजनीतिक हेतु या व्यक्तिगत द्वेष या वैमनस्यता को

संतुष्ट करने के लिए या किसी अस्पष्ट प्रतिफलों के लिए नहीं लिया जा सकता।

Cases referred :

2017 (2) SCC 629, 1994 (3) SCC 1, 1997 (4) SCC 606, 2002 (7) SCC 368.

A.M. Mathur with P. Mishra, for the petitioner.

ORDER

The Order of the Court was delivered by :
P.K. JAISWAL, J. :- Petitioner, who is a social activist and also an advocate has filed this public interest litigation on the basis of news paper cutting of 'Khandwa Patrika' published from Khandwa dated 31.1.2017 (Annexure P/1), 'Nai Duniya' news paper published from Indore dated 28.2.2017 Annexure P/2 and prayed for the following relief :-

"(i) Respondents be restrained from taking out the Yatras in the name of Narmada Seva Yatra lead by Chief Minister, other Ministers, other officials, BJP and RSS leaders any further in future on the pretext of cleaning Narmada and proposed yatra till 11.5.2017 be prohibited at State expense;

(ii) The Chief Minister and other respondents be restrained from collectively performing "Maha Aarti" along with prominent personalities of either BJP or RSS or Bajrang Dal or Vishwa Hindu Parishad and similar other pro Hindu activists organisations at State expense;

(iii) The State be directed to the concerned District Collectors not to allow any personality big or small to immerse any 'Pooja' material and dead bodies in Narmada River throughout its journey from Amarkantak to Alirajpur or last terminal in Madhya Pradesh;

(iv) to restrain Chief Minister, Ministers, officials to take out the Yatras as done between 11.12.2016 to 9.2.2017 any more by continuing such yatras any further and not to spend any money on such Yatras sponsored by State;

(v) *to direct the 6 concerned Collectors of 6 districts not to allow such communal Yatras by Hindu as well as State Government;*

(iv) *to direct the respondents to furnish the details as to who are the experts from Madhya Pradesh or from India and abroad have been called to survey and prepare a plan of saving Narmada from contamination and pollution right from Amarkantak up to Alirajpur or the terminal point in Madhya Pradesh. All these details must be furnished to this Hon'ble Court;*

(vii) *to direct the respondents to submit the details as to what steps, methods, process have been taken by the State Government till today with regard to cleaning of Holy Narmada and disclose the budget and source of funds for the said purpose;*

(viii) *to direct the respondents to submit all expenditure on all the Yatras lead by Chief Minister, construction of helipads, construction of 'Manchas'/Stages and staying arrangements made by the State in various Government buildings on the route and restrain them from using further State funds on Yatras, Maha Artis; etc.*

(ix) *to direct the State Administration to protect the lives of Dalits, Adiwasis, minorities from any action and retaliation of those participated or intending to participate in such Yatras.*

2. According to the petitioner, the elections of the State of M.P. Legislative Assembly are due in November 2018, on account of fears of anti incumbency and other factors, the Chief Minister without taking the help of the Engineers, Water Resources Technocrats and Environmentalist, on the pretext of purifying holy river Narmada, he started religious campaign on 11.12.2016. Since then, he has been going on various town on the bank of holy river Narmada and visiting temples in the name of Hindu religious collecting the farmers, students and other officials and staffs. He is using this "Narmada Seva Yatra" to polarize the politics in M.P. between Hindus and Muslims and other minority communities. He want to polarise the Hindu votes under the cover of 'Narmada

Seva'. He is spending crores of rupees on this mission from the State Exchequer. It has also been alleged that large number of various news papers are reporting this news and the news bulletin of State of Madhya Pradesh with the photograph of Chief Minister, his wife and colleagues published in various newspaper at the cost of public exchequer. In order to promote his evil design of polarisation of Hindu votes, he started "*Narmada Seva Yatra*" on 11.12.2016 from Amarkantak. The Chief Minister and his officials and employees have only cleared '*Parikrama*' pathway at the cost of State Exchequer, there have been decorations by only saffron and yellow flowers. At various places, various slogans have been erected to welcome '*Yatra*'. Not only this, yellow rice has been distributed at every house like in a wedding to invite innocent and poor devotees to join in this Yatra. Various arrangements on this pathway have been made for guesthouses, free food, free residential premises etc. Helipad has been prepared and 'Ghats' have been chosen for the RSS and BJP leaders. At Omkareshwar, for this Narmada Seva Yatra, RSS Chief Shri Mohan Bhagwat and anti minority Sadhvi Ritumbhara, Swami Avdeshanand, Swami Chinmayanand, Sri Sri Ravishankar and Chief Minister will be there. The entire town of Omkareshwar has been decorated with lights and on the line of "Ganga Maha Aarti", "*Narmada Maha Aarti*" will be performed. All this has been managed through the Collectorate staff and ground staff. In the middle of holy river, a stage has been erected. The entire staff of District and Commissioner were busy for this occasion.

3. The following directions have been issued by the Chief Minister :-

- (i) The Municipal Corporation will arrange for shifting toilets;
- (ii) Two groups of 10 people will look after cleanliness of path;
- (iii) Sitting arrangements and free food arrangements will be made;
- (iv) 'Kalash Yatra' and 'Kanya Bhoj' will also be arranged;
- (v) The Education Department will arrange for competitions;
- (vi) Public Works Department will fill the ditches on the path.

(vii) Following programmes will be held (sic:held) on 9.2.2017.

The Minister Incharge Shri Para Jain and officers will welcome those coming in the Narmada Seva Yatra. During Yatra, painting and cleanliness competitions will be arranged.

(viii) Plantation on the path and Narmada Aarti will be arranged.

(ix) In the primary schools, there will be arrangement for the devotees to stay and same will be decorated.

(x) In the night, there will be 'Bhajan Mandali Kirten' which obviously means in relation to Hindu religion. The only bright spot in the entire programme is that the Forest Department will plant trees in an area of one kilometer on both sides of the bank of Narmada.

4. Learned Senior counsel for the petitioner has submitted that as per Article 51-A (h) the State cannot mix or super impose religious activities of Hindu religion in to secular activities of the State and placed reliance on the decisions of the Apex court in the case of *Abhiram Singh V/s. C.D. Commachen (d) By Legal Representatives & Others*, reported as 2017 (2) SCC 629, Para 10, 50.2, 62 in the case of *S.R. Bommai etc. etc V/s. Union of India & Others* etc etc, reported as 1994 (3) SCC 1, *Sri Adivishveshwar of Kashivishwanath Temple Varanasi & Others V/s. State of U.P. & Others*, reported as 1997 (4) SCC 606 and *Ms. Aruna Roy & Others V/s. Union of India & Others*, reported as 2002 (7) SCC 368 and submitted that the necessary directions be issued to the respondents.

5. The jurisdiction of public interest litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity.

6. Religion and State power of freedom and tolerance of religion is distinct from the secular life of the State, and the latter falls in the exclusive domain of the State. The Constitution does not recognize or permit mixing religion and State power and the two must be kept apart. Further more, as the Constitution requires the State to be secular in thought and action, the same requirement attaches to political parties as well. That India is a secular State has no longer

res integra. Secularism has been declared by the Supreme Court to be one of the basic feature of the Constitution. No one religion should be given preferential status, or unique distinction, and no one religion should accorded special privileges in national life or international relations for that would be a violation of the basic principles of democracy and contrary to the best interests of religion and Government. This view of religious impartiality, of comprehension and forbearance, has a prophetic role to play within the national and international life.

7. From the averments made in the writ petition the move of the Government of M.P. is to clean the holy river Narmada, which flows from Amarkanthak to Alirajpur. A decision has been taken by the Government of planting five crores of trees on both sides of Narmada for the involvement protection of forest of Satpura and Vidhyanchal. The Narmada Seva Yatra is not to polarise Hindu vote in the name of holy river. The whole purpose for the Narmada Yatra to purify the holy river Narmada. The Chief Minister and his Government are not acting against the basic structure of the Constitution. The cleaning of holy Narmada is a secular activity of the State and nothing to do with any religion even the Hindu religion. The said Yatra is not against the provisions under Article 14, 19, 25, 26, 38, 39, 39A, 48A and Part XII of the Constitution. There is no prohibition of participation of any person or class or any other leader of political party. They all are free to participate in the Narmada Seva Yatra, nor this court can issue a writ of prohibition to stop Narmada Seva Yatra.

8. Every good that is perceived to be in the interest of society cannot be mandated by the court. Nor is the judicial process an answer to every social ill which a public interest petitioner perceives.

9. Public interest litigation in simple words, means, litigation filed in a court of law, for the protection of 'Public interest', such as pollution, terrorism, road safety, constructional hazards etc.. Public interest litigation is not defined in any statute or in any act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is only 'Public Interest' there are various areas where a public interest litigation can be filed. For eg., violation of basic human rights of the poor, content or conduct of the government policy, compel municipal authorities to perform a public duty. Violation of religious right or other basic fundamental rights.

10. A speech with a secular stance alleging discrimination against any

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particular religion and promising removal of the imbalance cannot be treated as an appeal on the ground of religion as its trust is for promoting secularism. The whole purpose for 'Narmada Seva Yatra' is to clean holy Narmada river, so that water of Narmada holy river may not be polluted and awareness to the villagers, who are residing near the bank of holy river Narmada.

11. The rule of *locus standi* have been relaxed and a person acting bonafide and having sufficient interest in the proceeding of Public Interest Litigation will alone have a *locus standi* and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique considerations.

12. It is well settled law that, there must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting *bona fide* and having sufficient interest in the proceeding of public interest litigation will alone have a *locus standi* and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. PIL filed without thorough study of factual situation. Nor specific pleadings are made to substantiate allegations.

13. For these reasons, we find no merit to issue show cause notice in the writ petition. The writ petition shall accordingly, stand dismissed.

Petition dismissed.

I.L.R. [2017] M.P., 1656

WRIT PETITION

Before Mr. Justice J.K. Maheshwari

W.P. No. 21326/2012 (Jabalpur) decided on 3 May, 2017

REETA SINGH (SMT.)

...Petitioner

Vs.

INDIAN OIL CORPORATION LTD.

...Respondent

(Alongwith W.P. No. 15607/2013)

Constitution – Article 226 – L.P.G. Distributorship –

Cancellation of Candidature – Grounds – Natural Justice – Petitioner was found eligible for the distributorship of LPG retail outlet – Indian Oil Corporation cancelled his candidature on the ground that the land for godown offered by petitioner is not connected with approach road and gift deed for approach road was registered after the date of submitting application form – I.O.C. issued letter of intent to R-2 – Challenge to – Held – After selection of petitioner, field verification was carried out and on the basis of verification report which mentioned absence of connecting motorable approach road, candidature was cancelled – Looking to the procedure, such condition is directory and not mandatory effecting the eligibility of petitioner – On the date of verification, petitioner could have been asked to give undertaking to make the road motorable within time specified – Without giving such option to petitioner, action of IOC cancelling his candidature is unfair, non-judicious, partial and arbitrary and is not based on principle of natural justice – Moreso, letter of intent issued to respondent no.2 inspite of the fact that as per search and title report of land, the title and possession of respondent no. 2 was not clear and was under litigation – Order of cancellation of candidature of petitioner and order issuing letter of intent to respondent no.2 are quashed – Petition allowed. (Paras 9, 10 & 11)

संविधान – अनुच्छेद 226 – एल.पी.जी. वितरक – अभ्यर्थिता का रद्दकरण – आधार – नैसर्गिक न्याय – याची एल.पी.जी. खुदरा दुकान की वितरकता हेतु पात्र पाया गया था – इंडियन ऑइल कॉर्पोरेशन ने इस आधार पर उसकी अभ्यर्थिता रद्द कर दी कि याची द्वारा गोदाम के लिये प्रस्थापित की गई भूमि पहुँच मार्ग से नहीं जुड़ी है तथा पहुँच मार्ग हेतु दान विलेख, आवेदन पत्र प्रस्तुत किये जाने की तिथि के पश्चात् रजिस्ट्रीकृत किया गया था – इंडियन ऑइल कॉर्पोरेशन ने प्रत्यर्थी क्र. 2 का आशय पत्र जारी किया – को चुनौती – अभिनिर्धारित – याची का चयन होने के पश्चात् क्षेत्र का सत्यापन किया गया था तथा सत्यापन प्रतिवेदन जिसमें वाहनयोग्य पहुँच मार्ग को जोड़ने की अनुपस्थिति का उल्लेख किया गया है, के आधार पर अभ्यर्थिता रद्द की गई थी – प्रक्रिया को देखते हुए, इस प्रकार की शर्त निदेशात्मक है तथा याची की पात्रता को आज्ञापक रूप से प्रभावित नहीं करती – सत्यापन की तिथि को याची को विनिर्दिष्ट समय के भीतर मार्ग को वाहनयोग्य बनाने हेतु परिवचन देने के लिए कहा जा सकता था – याची को ऐसा विकल्प दिये बिना, आई.ओ.सी. द्वारा उसकी अभ्यर्थिता रद्द करने की कार्रवाई अनुचित, गैर-न्यायसम्मत, पक्षपातपूर्ण तथा मनमानी है एवं नैसर्गिक न्याय के सिद्धांत पर आधारित नहीं है – और तो और, प्रत्यर्थी क्र. 2 को इस तथ्य के बावजूद आशय

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पत्र जारी किया गया कि छानबीन एवं भूमि के हक संबंधी प्रतिवेदन के अनुसार, प्रत्यर्थी क्र. 2 का हक एवं कब्जा स्पष्ट नहीं था तथा मुकदमेबाजी के अधीन था. — याची की अभ्यर्थिता के रद्दकरण का आदेश तथा प्रत्यर्थी क्र. 2 को आशय पत्र जारी करने का आदेश अभिखंडित — याचिका मंजूर।

Cases referred :

(2003) 10 SCC 681, (2003) 2 SCC 673.

K.C. Ghildiyal, for the petitioner.

Aditya Adhikari assisted by *Jagat Singh*, for the respondent Indian Oil Corporation.

Rakesh Singh, for the respondent No.2.

O R D E R

J.K. MAHESHWARI, J. :- Invoking the jurisdiction under Article 226 of the Constitution of India and assailing the order dated 2.7.2012 of rejecting the candidature and the order dated 8.11.2012 rejecting the representation of petitioner, after the direction of this Court dated 7.8.2012 in WP No. 12692/2012, petitioner has filed WP No. 21326/2012. The another Writ Petition No. 15607/2013 is filed assailing the grant of LPG Distributorship of village Sarai, district Singrauli in favour of respondent No.2 vide order dated 13.5.2013 Annexure P/6.

2. The Facts unfolded to file the present two writ petitions are the respondent Indian Oil Corporation (hereinafter referred to in short as I.O.C.) issued an advertisement on 1.11.2011 for grant of outlet retail LPG dealership under the Rajiv Gandhi Gramin LPG Vitruk Scheme (in short 'RGGLV') with respect to village Sarai, Tehsil Deosar, District Singrauli. The petitioner as well as respondent No.2 both applied for the said grant and found eligible, however, lots of the candidates were drawn. The petitioner stood first, however, on 17.1.2012, intimation was sent by the I.O.C.. As per procedure field verification was made by the officers of the I.O.C. on 17.3.2012. After field verification in the report it was mentioned that the land for godown offered by the petitioner is not connected with the approach road and the gift deed for the approach road was registered on 29.2.2012 after the date of submitting the application form. Thus, vide order dated 2.7.2012 Annexure P/3 the candidature of the petitioner was rejected. Challenging the said order Writ Petition No. 12692/2012 was filed, which was disposed on 7.8.2012 directing

the I.O.C. to consider the representation afresh in terms of the procedure prescribed for selection. While considering the representation, I.O.C. reiterating the same reason, maintained the order of rejection of the candidature and rejected the same. Being aggrieved, WP No. 21326/2012 has been filed. On rejection of the representation, the respondent I.O.C. issued the letter of intent in favour of respondent No.2 on 13.5.2013, however, challenging the grant petitioner has preferred WP No. 15607/2013 seeking quashment of the letter of intent.

3. Learned counsel for petitioner contends that the land offered by respondent No.2 to I.O.C. is the disputed land, and do not confer clear title on him, which would reflect from the search and title report dated 2.2.2013 called by the I.O.C. through their advocate. In the report exclusive possession of respondent No.2 was also not found. The I.O.C. prior to receiving the clarification regarding possession from the Patwari issued the letter of intent on 13.5.2013 arbitrarily with malafide intention. It is further contended that immediate after issuing the letter of intent the land belong to respondent No.2 offered to I.O.C. has been sold by him vide sale deed dated 22.7.2013. However, the order of rejection of the candidature of the petitioner and grant made in his favour is in complete defiance to the procedure prescribed, without application of mind and arbitrary. In support of such contention reliance is placed on the judgment of Apex Court in the case of *K. Vinod Kumar vs. S. Palanisamy and others*-(2003) 10 SCC 681 to contend that the judicial review is open where the decision making process is affected by the bias of arbitrariness and contrary to the policy. Reliance has also been placed on the judgment of Apex Court in the case of *Onkar Lal Bajaj and others vs. Union of India and another*-(2003) 2 SCC 673 to contend that in such matters scope of judicial review is open when decision is not based on the touchstone of justice, equity and fair play. In the present case, the decision taken by the I.O.C. is without following the procedure and do not justify the said principles. Therefore, orders dated 2.7.2012 and 8.11.2012 are liable to be quashed and appropriate direction may be issued for grant of outlet retail LPG dealership in favour of the petitioner.

4. On the other hand, respondent I.O.C. has filed their reply without disputing the fact that the land offered by petitioner for construction of godown is owned by him, but it is not freely accessible through all weather having motorable approach road. However, after issuance of intimation in his favour,

on field verification it was found, the approach road was not owned by the petitioner on the date of submission of the application form and the gift deed was of subsequent date, thus, order rejecting the candidature of petitioner has rightly been passed. It is urged, para 3 Clause 4(f) of policy is the Common eligibility Criteria, which requires that land for construction of godown will be considered suitable, if it is freely accessible through all weather motorable approach road either private or public. The committee found that the approach road to the land offered by the petitioner is not accessible. Therefore, in exercise of powers contained under Clause 12.9 and 12.10 the order rejecting the candidature and the representation has rightly been passed. In the matter of issuance of letter of intent in favour of respondent No.2 it is not disputed that the search and title report towards the land offered by respondent No.2 was sought from the advocate of Corporation, but looking to the said report and the report of the Patwari Annexure P/9 the letter of intent has rightly been issued in favour of respondent No.2, which do not suffer from any bias of arbitrariness and in conformity to the procedure prescribed. Therefore, interference in both these petitions is not warranted.

5. Learned counsel appearing on behalf of respondent No.2 has supported the arguments of the counsel representing the I.O.C. to contend that respondent No.2 is the owner of the land bearing Khasra No. 619, 620, 623, 628, 629 and 630 as is apparent from the application form and title report. Therefore, order rejecting the candidature of the petitioner and grant in his favour has rightly been order, however, this petition may be dismissed.

6. After hearing learned counsel for both the parties and in the facts of the present case, it is not in dispute, petitioner and respondent No.2 both submitted their application forms for grant of outlet retail LPG dealership under the Rajiv Gandhi Gramin LPG Vitruk Scheme. The petitioner in application form described that she owned the land of Kh. No. 931, 932, 936 and 938, while respondent No.2 owned the land bearing Kh. No. 619, 620, 623, 628, 629 and 630, and both belong to SC category. However, following the criteria for evaluation of the application forms of the deserving applicants, marks were awarded as per Clause 11 of the brochure. It is also not in dispute that petitioner as well as respondent No.2 both secured more than 60% marks. However, both were found eligible for the field verification where the said retail outlet was to be commissioned. As per the information sent to petitioner, field verification was carried out on 17.3.2012. The committee reported that

the land offered for godown by the petitioner is not connected to approach road and the registered gift deed dated 29.2.2012 offered for the approach road was after the date of submitting his application form, however, his candidature was cancelled.

7. Learned counsel for the respondents lay much emphasis in case motorable approach road to the godown owned by the petitioner is not available then it would attach to the eligibility of the candidate. However, on receiving the report by the committee the order impugned has been passed. In this respect Indian Oil Corporation Ltd. has issued a brochure specifying the procedure for selection of Rajiv Gandhi Gramin LPG Vitran Scheme. Clause 4 deals with common eligibility criteria for all categories, which is reproduced as under:-

4. Common Eligibility Criteria for all Categories:

Applicant applying for RGGLV should

- (a) be an Indian citizen
- (b) be a resident of the town /village(s) of the advertised RGGLV location
- (c) have passed minimum Xth Standard examination or equivalent from recognized Board
- (d) be not less than 21 years and not more than 45 years in age as on the date of application
- (e) fulfil Multiple dealership/distributorship norm

Multiple Dealership/Distributorship norms means that the applicant or any other member of 'family unit' should not hold a dealership/distributorship/RGGLV or Letter of Intent (LOI) for a dealership/distributorship/RGGLV of a PSU Oil Company i.e only one Retail Outlet / SKO-LDO dealership / LPG distributorship/RGGLV of PSU Oil Company will be allowed to a 'Family Unit'.

'Family Unit' in case of married person/ applicant, shall consist of individual concerned, his/her Spouse and their unmarried son(s)/daughter(s). In case of unmarried person/ applicant, 'Family Unit' shall consist

of individual concerned, his/her parents and his/her unmarried brother(s) and unmarried sister(s). In case of divorcee, 'Family Unit' shall consist of individual concerned, unmarried son(s)/unmarried daughter(s) whose custody is given to him/her. In case of widow/widower, 'Family Unit' shall consist of individual concerned, unmarried son(s)/unmarried daughter(s).

(f) have minimum total amount of Rs.2 lakhs put together from Saving accounts in Bank (as on date of application), free and unencumbered fixed deposits in scheduled banks, Kisan Vikas Patra, NSC, bonds, any other investment, etc in the name of self or family members of the 'Family Unit' as defined above. (In case of RGGLV locations reserved under 'SC/ST' category, applicants with less than Rs 2 lakhs are also eligible also apply). For evaluation purpose, marks will be awarded to applicants of all categories based on the amount mentioned in the application.

(g) own a suitable land (plot) of minimum 20 metre X 24 metre in dimension at the advertised RGGLV location for construction of LPG cylinder Storage Godown .

Own means having clear ownership title of the property in the name of applicant / family member of the 'Family Unit' as defined in multiple dealership/distributorship norm. In case of ownership/co-ownership by family member, consent letter from the family member will be required.

Land for construction of Godown will be considered suitable, if it is freely accessible through all weather motorable approach road (public road or private road of the applicant connecting to the public road) and should be plain, in one contiguous plot, free from live overhead power transmission or telephone lines. Pipelines / Canals / Drainage / Nallahs should not be passing through the plot.

(h) be physically and mentally sound to be able to run the

business.

(i) neither have been convicted nor charges been framed by any Court of Law for any criminal offence involving moral turpitude/ economic offences.

(j) not be a signatory to distributorship/dealerships agreement, terminated on account of proven cases of malpractice/adulteration of any Oil Company.

For the purpose of present case, Clause (g) is relevant. First para thereof makes it clear that applicant must own a suitable land (plot) of minimum 20 meters x 24 meters in dimension at the advertised RGGLV location for construction of LPG cylinder Storage Godown. The second para explains the meaning of word "own" thereby ownership title of the property ought to be in the name of applicant/family member of the 'Family Unit' as defined in multiple dealership/distributionship norm. In case of ownership/co-ownership by family member, consent letter from the family member will be required. It is seen the word 'own' has been used only for the purpose of suitable land/plot. However, para-3 of Clause 4(g) indicates how the land offered for construction of godown will be considered suitable to which it is said to be freely accessible through all weather motorable approach road (public road or private road of the applicant connecting to the public road) and should be plain, in one contiguous plot, free from live overhead power transmission or telephone lines. Pipelines/Canals/Drainage/Nallahs should not be passing through the plot. However, for the purpose of motorable approach road either public or private ought to be of the applicant. In view of the spirit of the judgment of the Apex Court in the case of *K. Vinod Kumar* (supra) and looking to the Clause 4(g) it is apparent that the land required for the purpose of godown is a mandatorily required to be owned for the purpose of arranging the commercial activity and the said requirement ought to be fulfilled by the applicant. In the present case, the petitioner owned a suitable land which was offered by him. However, he was found eligible for the purpose of field verification. So far as the requirement with respect to motorable approach road is concerned it is directory looking to the language of it, and the said condition does not disqualify person from eligibility. The aforesaid fact finds support from Clause 12 itself, which deals with selection process. The clause 12 is also relevant, however, it is reproduced as under:-

12. Selection Process

- 12.1. A Committee consisting of two Officers of the concerned Oil Company will do scrutiny of the application and award marks to the applicants based on the information given in the application
- 12.2. Selection will be done by draw of lot out of all eligible applicants securing minimum qualifying marks. Minimum qualifying marks is 60% for locations reserved under SC/ST category and minimum 80% marks for all other category locations
- 12.3. The list of ineligible applicants, eligible but not qualified applicants and qualified applicants for draw of lot will be made available on the notice board of the concerned office of the Oil Company as well as on the website of the concerned Oil Company.
- 12.4. All the applicants will be individually informed about the status of their application. Ineligible and eligible but not qualified applicants can representations within 15 days from the date of the letter.
- 12.5. Efforts would be made by Oil Company to ensure that all the representations/complaints are disposed off within 3 months.
- 12.6. After disposal of representations/complaints if any, all the eligible candidates who have qualified will be asked to report at a specified place on specified date and time for draw of lot. The same will be notified in the local newspapers. Each qualified candidate will be issued a token number and this token number will be recorded on his/ her application.
- 12.7. All token numbers will be put in an empty box in the presence of the candidates, the officials of the Company and the invited guest from amongst the local MP, MLA, Zilla Parishad, Panchayat Samiti Chairman, Sarpanch, Revenue officials etc. However, a quorum comprising

of at least 50% of the candidates (whose names are there in the draw) and the concerned company officials could be sufficient to proceed with the draw of lots. The proceeding of the draw will be videographed

- 12.8. One token number will be drawn out and the candidate to whom the token number was allotted will be declared as selected candidate.
- 12.9. Field verification will be carried out for the selected candidate and if the information given in the application by the applicant is found to be correct, Letter of Intent will be issued to the selected candidate.
- 12.10. In case of rejection of selected candidate due to findings in the Field Investigation or if selected candidate is unable to develop facilities for Rajiv Gandhi Gramin LPG Vitrak within the specified time, then his candidature will be cancelled and draw will be held again from the remaining qualified eligible candidates to select the next candidate following the procedure as mentioned above in para 12.3 to 12.6.

On perusal of Clause 12 it is apparent that as per Clause 12.1 the committee shall scrutinize the application and award marks to the applicants based on the information given in the application. As per Clause 12.2 if a candidate belongs to SC/ST category has secured 60% marks for the locations reserved then he/she would be selected for the purpose of field verification. As per Clause 12.3 the eligible candidate will be sorted out drawing the lots and the list would be affixed on the notice board. In furtherance thereto, the name of the petitioner has been notified being eligible for the purpose of field verification. In the present case the rejection of the candidature is based on the field verification report, however Clause 12.9 and 12.10 are relevant. According to those clauses, it is apparent that if at the time of field verification the information given in the application by the applicant is found correct, the letter of intent will be issued in favour of the selected candidate. However, the present case squarely covered by Clause 12.10, either due to findings of the filed investigation report or if selected candidate is unable to develop facilities for Rajiv Gandhi Gramin LPG Vitarak within the specified time, then his

candidature will be cancelled and draw will be held again from the remaining qualified eligible candidates to select the next candidate following the procedure as mentioned in Clause 12.3 and 12.6.

8. Learned counsel for the respondents lay emphasis that in case the finding has been recorded by the committee of the filed investigation, the option as available in Clause 12.10 asking undertaking to develop the facilities for the purpose of grant of distributorship under the Scheme is not required to be observed. In this regard first of all in the context of Clause 12.10 and Clause 4(g) para-3 it is to examine that para-3 of Clause 4(g) is mandatory or directory and would it affect the eligibility of the petitioner to submit the application form. Looking to the language engrafted under Clause 4(g) para-1 and 2 it is apparent that owning of land or a plot or an area as specified therein is a condition mandatory while para-3 relates to the construction in godown and its suitability for the purpose of free accessibility of the all weather motorable approach road is an essential requirement. But, the aforesaid condition is directory because it is based upon the field verification after selection of the candidate and if the selected candidate failed to make it suitable as is apparent from the spirit of the brochure and the discussion made hereinabove by not making it motorable in all weather giving undertaking. After selection of the petitioner, field verification was carried out and on report the place offered was not found connected to approach road and the private land shown by the petitioner as per gifted to him was of the subsequent date of the application though relevant date may be the date of verification. Thus looking to the said procedure the condition para-3 of Clause 4(g) is directory and it cannot be termed to be mandatory effecting the eligibility of the petitioner.

9. It is to be noted here that the committee has not found the land owned by the petitioner is not suitable. The committee reported that the said piece of land is not connected to approach road private or public, and the private land offered by the petitioner to make the approach road was gifted subsequent to the date of application form. In this context Clause 12.10 attracts whereby it is clear that due to finding of the field investigation committee the candidature of the selected candidate may be rejected, or in case the selected candidate is unable to develop the facilities under the scheme of RGGL within the time specified. It is not a case wherein the field investigation committee has asked to submit undertaking to develop the land, which was not made suitable by the candidate, it is said, the land offered for approach road was gifted to

petitioner after the date of application form. It is to observe, if condition of para-3 of Clause 4(g) is not found mandatory and is directory then on the date of field verification i.e. 17.3.2012 if the private land offered by petitioner for approach road is owned by him as per registered gift deed to show free accessible approach road, then it ought to be accepted, asking undertaking from him to make it motorable within time specified as per Clause 12.10, however, without giving such option passing an order of rejection of the candidature is contrary to the procedure prescribed under Clause 4(g), 12.9 and 12.10.

10. In view of the foregoing discussion and in the light of the judgment of the Apex Court in the case of *Onkar Lal Bajaj* (supra) the cardinal principle of governance in a civilized society must be based on rule of law, showing transparency if it is not made applicable then looking to the discussion made hereinabove, it can safely be held that the action of the IOC is non-judicious and unfair, partial, arbitrary and capricious, however, the decision as taken by the authority is contrary to procedure prescribed. Therefore, the decision taken by the authority is not based on applying the principle of justice, equity and fair play.

11. Now reverting to the point of grant of letter of intent on 13.5.2013 in favour of respondent No.2, after rejection of the candidature of the petitioner vide Annexure P/3 and P/1, it is to be noted here that the respondent No.2 has offered the piece of land in his application form of Kh. No. 619, 620, 623, 628, 629 and 630. The I.O.C. asked for search and title report vide letter dated 16.11.2011 from their panel advocate. The search report furnished by the advocate of the Corporation is the part of record of this petition and filed as Annexure R-8. On perusal thereof, it reveals that Khasra No. 619, 620 and 623 were the part of litigation in a civil suit, first appeal and second appeal. The second appeal has been dismissed for want of prosecution to which restoration petition is pending, however, order was not passed on the restoration, therefore, it may be taken note of. Simultaneously it is pointed out that the land of Khasra No. 619, total area 0.045 Hects., out of which an area of 0.020 Hect. is in possession of one Deendayal Rajak and area 0.015 Hect. is road. Meaning thereby, the vacant land is only 0.010 hectare in Kh. No. 619. Similarly in Kh. No. 623 the possession is of one Prabhu Rajak and nothing is mentioned about Kh. No. 620, however, pointed out that as per the judgment of the trial court as well as of the first appellate court it is not clear that the respondent No.2 and the other plaintiffs were in possession

of the land. In the said context it was proposed that the report may be taken regarding exclusinve (sic:exclusive) possession of resondent (sic:respondent) no.2 from the revenue authority. The Corporation has not considered the same, and prior to receiving the verification report from the Patwari the letter of intent has been issued by the Corporation on 13.5.2013 although as per the report of search and title of the land, the title and possession of the respondent No.2 was not clear. However, there was no occasion to the I.O.C. to issue the letter of intent hurriedly in favour of the respondent No.2 ignoring the title and search report of their advocate. It is to be noted here that owning the land having possession is a mandatory condition for the purpose of para 1 and 2 of Clause 4(g). The Patwari intimated the Corporation in the month of December regarding possession, but nothing is on record, now the title of respondent no.2 was found with him during pendency of the litigation before this Court, however, issuance of letter of intent is not proper. It is most relevant to note that out of the land, selected for the purpose of grant of outlet retail dealership of Khasra No. 619, 620 and 623 the part thereof has been sold, subsequent to the letter of intent vide registered sale deed dated 22.7.2013 Annexure P/5 in-favour of one Smt. Phoolmati wife of Sadhulal Singh. Thus in the said sequel of facts, this Court is unable to understand that looking to the search report if the litigation is pending in the court up to the stage of second appeal to which restoration is pending and the possession has also not been reported by the advocate of the Corporation then under what circumstances violating the mandatory condition of paras 1 and 2 of Clause 4(g) the letter of intent has been issued in favour of respondent No.2. More so, after issuance of letter of intent out of the said piece of land part there of has been sold by a registered sale deed dated 22.7.2013 Annexure P/5. However, in such circumstances, it can safely be ruled out that while rejecting the candidature of the petitioner, procedure as prescribed in Clause 12.9 and 12.10 has not been followed. Simultaneously while issuing letter of intent in favour of respondent No.2 the mandatory condition of para 1 and 2 of Clause 4(g) has not been observed and ignoring the same the letter of intent has been issued in favour of respondent No.5 (sic:2). Therefore, it is a case where process of selection in the matter of issuing letter of intent in favour of respondent No.2 is suffered from the bias of arbitrariness and in violation of the procedure prescribed and similar is in the case of rejection of the candidature of the petitioner. In that view of the matter, in my considered opinion the order impugned dated 8.11.2012 (Annexure P/1) and 2.7.2012 (Annexure P/3) under challenge in WP No. 21326/2012 are hereby quashed and letter of intent dated 13.5.2013 (Annexure P/6) under challenge in WP No. 15607/

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2013 is also quashed. It is to be observed here that the Corporation who is a public body is supposed to act with the touchstone of justice, equity and fair play to maintain rule of law which is not observed by them as apparent from the discussion made herein above.

12. Accordingly both the writ petitions succeed and are hereby allowed. The order impugned dated 8.11.2012 (Annexure P/1) and 2.7.2012 (Annexure P/3) under challenge in WP No. 21326/2012 are hereby quashed and letter of intent dated 13.5.2013 (Annexure P/6) under challenge in WP No. 15607/2013 is also quashed. It is directed that the Corporation shall take appropriate steps for grant to petitioner in accordance with the guidelines within a period of two months from the date of communication of this order. However, in the facts and circumstances of the case, parties shall bear their own costs.

Petition allowed.

I.L.R. [2017] M.P., 1669

CONTEMPT PETITION

Before Mr. Justice R.S. Jha & Mr. Justice A.K. Joshi

CONC Petition No. 350/2016 (Jabalpur) order passed on 2 March, 2017
and decided on 6 April, 2017

IN REFERENCE

... Petitioner

Vs.

LAVIT RAWTANI

...Respondent

Contempt of Courts Act (70 of 1971), Section 2(c), 12 & 14 – Allegation of Corruption against Judges without any justification and Proof – Petitioner filed a PIL which was later converted into a regular petition and was subsequently dismissed because of the default of peremptory directions – Petitioner sent a communication to Court through speed post stating “Judges of this Court are possibly corrupt” – Contempt proceedings were drawn against petitioner – Held – Contemner is not an illiterate person and is a professor – In the highlighted portion of his reply, he clearly stated that, Bench dismissed his petition “possibly due to receiving corruption amount” – Petitioner fails to produce or submit any evidence in respect of such allegations – Amicus curiae appointed by this Court has explained the petitioner that such conduct was contemptuous but petitioner was stick to the allegation – Prima facie looking to his conduct and the repeated

assertions and unsubstantiated allegations made by him against sitting judges of this Court, he is guilty of committing contempt of this Court – Such statement is defamatory, libelous, scurrilous, vilificatory and is totally unfounded attack on judicial system, the dignity and authority of this Court – Petitioner sentenced to three months simple imprisonment. (Paras 25, 26 & 27) (Para 19 in ord.dtd. 6/4/17)

न्यायालय अवमान अधिनियम (1971 का 70), धारा 2(सी), 12 व 14 – न्यायाधीशों के विरुद्ध, बिना किसी न्यायोचित्य एवं सबूत के भ्रष्टाचार का अभिकथन – याची ने लोक हित वाद प्रस्तुत किया जिसे बाद में नियमित याचिका के रूप में संपरिवर्तित किया गया था तथा तत्पश्चात्, अवश्य पालनीय निदेशों के व्यतिक्रम के कारण खारिज किया गया – याची ने न्यायालय को स्पीड पोस्ट के द्वारा यह कथन करते हुए संसूचना भेजी कि “इस न्यायालय के न्यायाधीश संभवतः भ्रष्ट हैं” – याची के विरुद्ध अवमानना कार्यवाहियां तैयार की गई – अभिनिर्धारित – अवमान करने वाला निरक्षर व्यक्ति नहीं है और एक प्रोफेसर है – उसके प्रतिउत्तर के चिन्हित अंश में उसने स्पष्ट रूप से कहा कि न्यायपीठ ने उसकी याचिका को “संभवतः भ्रष्टाचार की राशि प्राप्त करने के कारण” खारिज किया – उक्त अभिकथनों के संबंध में याची किसी साक्ष्य को प्रस्तुत करने या निवेदन करने में विफल रहा – इस न्यायालय द्वारा नियुक्त न्याय-मित्र ने याची को स्पष्ट किया है कि उक्त आचरण, अवमानकारक था, परंतु याची उक्त अभिकथन पर अड़ा रहा था – प्रथम दृष्ट्या उसके आचरण एवं बारंबार प्राख्यान तथा इस न्यायालय के पीठासीन न्यायाधीशों के विरुद्ध उसके द्वारा लगाये गये सार विहीन अभिकथनों को देखते हुए, वह इस न्यायालय का अवमान कारित करने का दोषी है – उक्त कथन मानहानिकारक, अपमानलेखीय, अमद, निन्दास्पद है तथा न्यायिक प्रणाली एवं इस न्यायालय की गरिमा व प्राधिकार पर पूर्णतः निराधार आक्रमण है – याची को तीन माह साधारण कारावास से दण्डादिष्ट किया गया।

Case referred :

(2005) 6 SCC 109.

ORDER

The Order of the Court was delivered by :
R.S. JHA, J. :- The Contemner is present in person and has stated that he shall argue his own case. He has not engaged any advocate to argue on his behalf and has infact refused to engage any advocate.

2. This Contempt petition arises out of order passed on 16.2.2016 passed in W.P.No.20415/2014 by Hon'ble Chief Justice Shri A. M. Khanwilkar and Justice Sanjay Yadav, JJ, which is in the following terms:-

"16.02.2016

Shri K.K. Gautam, Advocate for the petitioner. Shri Swapnil Ganguly, Govt. Advocate for respondents/State.

Shri Vivek Baderiya, Advocate for the respondent No.2.

Shri A.S. Raizada, Advocate for the respondent No.10.

Shri Anupama Mishra, Advocate for respondent Nos.8, 12 and 14.

During the course of hearing, our attention was invited to communication sent by the petitioner through Speed Post. On the main cover, the petitioner has written by his own handwriting mentioning the names of Judges who, in his opinion, are corrupt.

The petitioner was counselled by his Advocate as well as Shri Rajendra Tiwari, Senior Counsel, whom, we requested to appear as Amicus Curiae in the context of the objectionable comments made by the petitioner. The petitioner is present in Court and inspite of having given enough time to reconcile and to express his remorse and reticence, he chose not to offer any comment. On the other hand, he showed reluctance to offer his apology and had the audacity to admit the writing on the envelope as written by him. Since the comments written by the petitioner were circulated and were placed in public domain by sending the envelope through Speed Post, we are prima facie convinced that the petitioner in the garb of public spirited person, has a different agenda of not only pursuing tirade against his colleagues working in the same organization, but, also has the audacity to make irresponsible and unsubstantiated allegations against the Judges of this Court who had occasion to deal with his matter at some stage, which is unacceptable. It is nothing short of showing utter disrespect to the Court, constituting contempt of Court.

Hence, we issue show cause notice to the petitioner

as to why contempt action should not be initiated against him for making reckless allegations against the sitting Judges of this Court who have dealt with his matter at some stage, which is bordering on undermining the majesty of this Court. The Registry must serve copy of the show cause notice on him. The show cause notice must indicate that on the next date if petitioner fails to submit his defence, the matter will proceed as per law.

We request Mr. Tiwari, Senior Counsel to assist us as Amicus Curiae in this case. He has graciously accepted our request.

The envelope sent by petitioner through speed post containing the offending noting in his own handwriting be kept in a sealed cover in the custody of the Registrar (Judicial) to be made available on the next date.

On account of the conduct of the petitioner, as noted earlier, in our opinion, the petitioner is not a fit person to pursue any public interest litigation. He has evidently made irresponsible allegations in the petition only for his ulterior design or reasons best known to him. The petition filed as a public interest litigation though was permitted to be converted into regular writ petition, in terms of judicial order, the petitioner is insisting for pursuing this petition as public interest litigation. We decline to entertain this writ petition at the instance of this petitioner, having found that the petitioner has committed contempt of this Court; and until he purges the contempt, question of hearing him any further on this petition does not arise. The writ petition and accompanying applications are dismissed.

Issue show cause notice to the petitioner in terms of this order treating it as suo motu contempt petition. Returnable on 24th February, 2016. Petitioner has accepted the notice in Court. Nevertheless, a formal show cause contempt notice be served on him forthwith. Petitioner shall remain present in Court on the returnable date to defend himself either personally or through his Advocate.”

3. Pursuant to the aforesaid order, notices have been served upon the contemner and the reason for issuance of the notice were explained to him in detail. From a perusal of the order passed by this Court on 16.2.2016 it is apparent that the reason for initiating contempt proceedings against the contemner is that he has stated in writing that certain Judges of this Court are possibly corrupt.

4. When the matter came up on 14.6.2016 the contemner, who was personally present informed the Court that he had filed some reply in his own handwriting. He was accordingly directed to file a typed copy of the reply. Admittedly, he has not filed any such typed copy till date. When the matter came up on 25.7.2016 the contemner, who was again present in the Court, informed the Court that the reply had been sent through Speed Post. When the matter was listed on 27.1.2017 the contemner informed this Court that he had not received notice of the contempt petition. Accordingly, he was directed to be served with a notice of the contempt petition in the Court on that date itself. The note sheet indicates that the notice alongwith necessary documents were received by the contemner on 27.1.2017 itself but inspite of having received the notice of this Court the contemner did not file any reply and on the contrary on 15.2.2017 when the matter was listed he informed this Court that he had already sent his reply through Speed Post in July 2016. However, the said Speed Post sent by the contemner in July 2016 was not on record and, therefore, the contemner was specifically informed about the consequences of his not filing a reply and the fact that this Court would henceforth proceed in the matter by treating the silence of the contemner which was maintained by him in the Court on 15.2.2017 to mean that he did not wish to file any reply or to justify the statement made by him to the effect that the Judges of the Court were possibly corrupt. The contemner was informed that in case he does not file any reply or justification before this Court in that regard, the Court shall thereafter proceed in the matter on the basis of the material on record.

5. On 23.2.2017 the contemner again stated before this Court that he had already sent his reply filed in his defence by Speed Post to the Registry and on a specific question being asked stated that he did not wish to file anything more in writing in his defence.

6. Today, when the matter came up for hearing before this Court, the reply sent to this Court by the contemner by Speed Post and received by this

Court on 23.2.2017 has been placed before us.

7. Before we proceed in the matter and looking to the haphazard scribblings made by the contemner in the alleged reply sent to this Court through Speed Post, the contemner was informed and explained that the proceedings in the present case were confined to the contempt proceedings initiated against him on account of the fact that he had made unsubstantiated allegations in oral and in writing to the effect that the Judges of this Court were possibly corrupt. It was specifically and clearly explained to the contemner that the correctness of the order passed by this Court in the PIL or the issue of the correctness of the allegations made by the contemner in his PIL regarding corruption and illegalities committed in the appointment made in Maulana Azad National Institute of Technology (MANIT) were not the subject matter of this contempt petition and that no issue connected with or related to the aforesaid issue could be gone into or decided by this Court in the present contempt petition. It was specifically and clearly explained to the contemner that in the present contempt proceedings he was required to explain and justify the oral and written allegations made by him to the effect that Judges of this Court were possibly corrupt.

8. The contemner submits that the justification given by him for making that statement has been given by him in the reply sent by him through Speed Post.

9. He submits that he had initially filed W.PNo.20415/2014 (PIL) without claiming any relief for himself alleging that there had been rampant corruption in making appointment in MANIT in the year 2005 and that issue should be taken up and appropriate enquiry and direction be issued. It is submitted by the contemner that a Bench comprising of Hon'ble The Chief Justice Shri A. M. Khanwilkar and Justice Shri Alok Aradhe, JJ, directed the contemner to convert the PIL into a regular Writ Petition. It is stated that subsequently, W.P No.20415/2014 (PIL) was listed on 28.4.2015 before a Division Bench comprising of Hon'ble Acting Chief Justice Shri Rajendra Menon and Justice M. C. Garg, JJ, and the said Bench issued notice to respondent nos.1 & 2 and directed service of a copy of the petition alongwith annexures to the learned Assistant Solicitor General. Process Fee for issuance of notice was also directed to be paid within a week.

10. It is submitted that subsequently when W.PNo.20415/2014 came up

for orders on 24.6.2015, the Division Bench of this Court, comprising of Hon'ble Acting Chief Justice Shri Rajendra Menon and Justice Ms. Vandana Kasrekar, on quoting the order passed by the previous Division Bench on 31.3.2015 and taking note of the fact that neither the amendment had been filed nor had the petition been converted into a regular writ petition pursuant to the liberty granted to the contemner and taking note of the fact that the order dated 31.3.2015 was a peremptory order that was required to be complied with within two weeks, dismissed the Writ Petition. The contemner submits that he thereafter filed an application for restoration and while doing so sent a written communication by Speed Post to this Court in which he had clearly and specifically stated that on account of the aforesaid orders passed by the Division Bench of this Court, the Judges who had passed the orders were possibly corrupt. On the basis of the aforesaid, this contempt proceedings have been initiated against him.

11. The contemner submits that his reply and justification for stating that the Judges who passed the orders were possibly corrupt is given in his reply sent to this Court by Speed Post. He has specifically pointed out and flagged the marked portions of the reply on which he has placed reliance to justify his stand. He states that the typed portion mentioned in the aforesaid pages which has been flagged by him in Court are the justifications for making the statement that the Judges of this Court are possibly corrupt. The flagged portion which was specifically pointed out by the contemner himself as justification for his statement is reproduced below for ready reference:-

“Respected Chief Justice High Court Jabalpur (Mr. A.M. Khanwilkar) is possibly (may be) corrupt in ordering to convert PIL 20415/2014 to regular writ petition on 31.3.2015 (Thirty First March Two Thousand and Fifteen) and thus Respected Chief Justice High Court Jabalpur (Mr. A.M. Khanwilkar) must issue an stamp paper in his name and write as to which line did he seen in PIL 20415/2014 which Prof. Lavit Rawtani had asked for himself, write that line (s) in own handwriting on stamp paper, put the seal on stamp paper and sent it through Registered A/D (Acknowledgment Due) to Prof. Lavit Rawtani.

PIL 20415/2014 (Public Interest Litigation Two Zero Four

One Five of year Two Thousand and Fourteen mentioned above) talks about the possibility of corruption in 2005 (Two Thousand and Five) open selection at MANIT Bhopal in which five unqualified employees and eight lower merit employees were selected. This was filed as PIL 20415/2014 by Advocate Mr. Krishan Kumar Gautam (Advocate of Prof. Lavit Rawtani) on 24.12.2014 (Twenty Fourth December Two Thousand and Fourteen). During the months of January and February 2015 (Two Thousand Fifteen) due to some strike/bycot etc. this case was listed before Respected Chief Justice High Court Jabalpur (Mr. A.M. Khanwilkar) & other Respected Judge who on 31/03/2015 (Thirty First March Two Thousand & Fifteen) told to convert PIL 20415/2014 (mentioned above) to regular writ petition. There is a vast difference between PIL (Public Interest Litigation) and regular writ petition i.e. in a PIL the petitioner (person) does not ask anything for himself whereas in regular writ petition the person asks sometime for himself & thus corruption is possible in ordering to convert PIL 20415/2014 (mentioned above) to regular writ petition. Thus Respected Chief Justice High Court Jabalpur (Mr. A.M. Khanwilkar) & other Respected Judge who on 31.03.2015 (Thirty First March Two Thousand & Fifteen) are possibly (may be) corrupt in ordering to convert PIL 20415/2014 to regular writ petition. It may kindly be noted that Advocate Mr. Krishan Kumar Gautam (Advocate of Prof. Lavit Rawtani) has filed it as PIL 20415/2014 (mentioned above) meaning that Prof. Lavit Rawtani is not asking anything for himself. Respected Chief Justice High Court Jabalpur (Mr. A.M. Khanwilkar) & other Respected Judge who on 31.03.2015 (Thirty First March Two Thousand & Fifteen) told to convert PIL 20415/2014 (mentioned above) to regular writ petition must pick up a stamp paper (both separately i.e. get that stamp paper issued in their name) and write as to what did they see (which line (s)) in PIL 20415/2014 (mentioned above) which Prof. Lavit Rawtani had asked for himself. Then even after filing restoration / recalling application Prof. Lavit Rawtani had thought that possibly PIL 20415/2014 (mentioned above) will not be restored/recalled.

So Prof. Lavit Rawtani as per RTI 861 (Right to Information Eight Sixty One) dated 08/02/16 (Eight February Two Thousand and Sixteen) at MANIT Bhopal having subject please give the copy of the notesheet Respected Judges who will not recall PIL 20415/2014 (mentioned above) as PIL 20415/2014 (mentioned above) are also corrupt possibly was written on torn movement / Dispatch Dak Register as CSE/IT/MANIT/16/167 (Comp. Sc. & Engg./Info. Tech./Maulana Azad National Inst. Of Tech. Bhopal/year Two Thousand and Sixteen / Number one sixty seven). What happened to this RTI 861? Even after writing that Respected Judges who in future will not restore / recall PIL 20415/2014 (mentioned above) as PIL 20415/2014 (mentioned above) was dismissed on 16-02-2016 (Sixteenth February Sixteen) by Respected Chief Justice High Court Jabalpur (Mr. A.M. Khanwilkar) & other Respected Judge (Mr. Sanjay Yadav) and CONC 350/2016 (Contempt of Court Three Fifty of year Two Thousand and Sixteen) filed. As Respected Chief Justice High Court Jabalpur (Mr. A.M. Khanwilkar) has no right to dismiss PIL 20415/2014 (mentioned above) and file CONC 350/2016 (mentioned above). Also as Prof. Lavit Rawtani has written that Respected Judges (which includes Respected Chief Justice alao) are possibly (may be) corrupt and there is a vast difference between corrupt and possibly (may be) corrupt, hence CONC 350/2016 (mentioned above) is not correct to be filed against Prof. Lavit Rawtani.

On this sheet it is mentioned how Respected Judge (Mr. Rajendra Menon) is possibly corrupt and for this purpose Respected Judge Respected Judge (Mr. Rajendra Menon) must issue two stamp papers in his name and on the first stamp paper write as to why after seeing the order of Respected Chief Justice High Court Jabalpur (Mr. A.M. Khanwilkar) on 31.03.2015 (Thirty First March Two Thousand and Fifteen) to convent PIL 20415/2014 to regular writ petition (which have totally different meanings) on 28.04.2015 (Twenty Eight April Two Thousand and Fifteen) you (Respected Judge-Mr.

Rajendra Menon) had ordered to do notice to Respondent One (Union of India through M.H.R.D. ministry) and Respondent Two (Honorable Director MANIT Bhopal) which was right decision by passing the wrong order of 31.03.2015 (Thirty First March Fifteen mentioned above) and on second stamp paper write the reason of dismissing PIL 20415/2014 (mentioned above) on 24.06.2015 (Twenty Forth June Two Thousand Fifteen) possibly due to receiving corruption amount between 28.04.2015 (Twenty Eight April Fifteen) and 24.06.2015 (Twenty Forth June Fifteen) PIL 20415/2014 (mentioned above) talks about the possibility of corruption in 2005 (Two Thousand and Five) open selection in which five unqualified employees and eight lower merit employees were selected at MANIT Bhopal. Respected Judge (Mr. Rajendra Menon) please send both stamp papers separately through speed post, Registered A/D (Acknowledge Due), Registry to Prof. Lavit Rawtani at address given in PIL 20415/2014 (mentioned above) and by no other means.

PIL 20415/2014 (Public Interest Litigation Two Zero Four One Five of year Two Thousand and Fourteen) talks about the possibility of corruption in 2005 (Two Thousand and Five) open selection in MANIT Bhopal in which five unqualified employees (i.e. Respondents Three to Seven) and eight lower merit employees (i.e. Respondents Eight to Fifteen) were selected and PIL 20415/2014 (mentioned above) was filed in High Court Jabalpur during winter vacation on 24.12.2015 (Twenty Forth December Fourteen). In the months of January & February 2015 (Two Thousand Fifteen) due to some strike/bycott this PIL 20415/2014 (mentioned above) could not be heard. On 31.03.2015 (Thirty First March Fifteen) Respected Chief Justice High Court Jabalpur (Mr. A.M. Khanwilkar) and other Respected Judge gave wrong decision to convert PIL 20415/2014 (mentioned above) to regular writ petition. The main difference between PIL (Public Interest Litigation) & regular writ petition is that in PIL the petitioner (person) does not ask anything for himself whereas in regular

writ petition the petitioner (person) asks for himself and thus there is a Vast difference between them and thus corruption is possible to tell to convert PIL 20415/2014 (mentioned above) to regular writ petition. It may kindly be noted that Advocate Mr. Krishan Kumar Gautam (Advocate of Prof. Lavit Rawtani) has filed it as PIL 20415/2014 (mentioned above) meaning that Prof. Lavit Rawtani is not asking anything for himself. Then on the next hearing date of the case 28.04.2015 (Twenty Eight April Fifteen) Respected Judge-Mr. Rajendra Menon (by passing the wrong order given by Respected Chief Justice High Court Jabalpur (Mr. A.M. Khanwilkar) & other Respected Judge who on 31.03.2015 (Thirty First March Fifteen) told to convert PIL 20415/2014 (mentioned above) to regular writ petition did correct thing by giving notices to Respondent One (Union of India through MHRD ministry) and Respondent Two (Honorable Director MANIT Bhopal). Respected Judge (Mr. Rajendra Menon) please issue the first stamp paper in your name and write down as to whether the decision given by Respected Chief Justice High Court Jabalpur (Mr. A.M. Khanwilkar) & other Respected Judge to convert PIL 20415/2014 (mentioned above) to regular writ petition was correct or your (Respected Judge-Mr. Rajendra Menon) to do notice to Respondent One (Union of India through MHRD ministry) and Respondent Two (Honorable Director MANIT Bhopal) was correct on 28.04.2015 (Twenty Eight April Fifteen) as both decisions are opposite of each other & please also tell Respected Chief Justice High Court Jabalpur (Mr. A.M. Khanwilkar) to issue an stamp paper in his name and comment on these two opposite orders and send that stamp paper to Prof. Lavit Rawtani through speed post, Registered A/D, Registry. On 28.04.2015 (Twenty Eight April Fifteen) Respected Judge (Mr. Rajendra Menon) had given the judgment to do notices to Respondent One (Union of India through MHRD ministry) and Respondent Two (Honorable Director MANIT Bhopal) for PIL 20415/2014 (mentioned above) which is correct. Then on 24.06.2015 (Twenty Forth June Fifteen-after summer break of High Court Jabalpur)

Respected Judge (Mr. Rajendra Menon) gave the judgment to dismiss PIL 20415/2014 (mentioned above) as PIL 20415/2014 (mentioned above) was not converted to regular writ petition which was possibly a wrong decision and for this decision corruption is possible. Prof. Lavit Rawtani requests Respected Judge (Mr. Rajendra Menon) to write an stamp paper as to which line (s) did he see which Prof. Lavit Rawtani had asked for himself because of which Prof. Lavit Rawtani had asked for himself because of which PIL 20415/2014 (mentioned above) was dismissed as PIL 20415/2014 (mentioned above) was not converted to regular writ petition was dismissed and send that second stamp paper through Registered A/D to Prof. Lavit Rawtani (not along with first Registered A/D). Possibly between 28.04.2015 (Twenty Eight April Fifteen) and 24.06.2015 (Twenty Forth June Fifteen) the amount of corruption has reached Respected Judge (Mr. Rajendra Menon) because of which PIL 20415/2014 (mentioned above) was dismissed as PIL 20415/2014 (mentioned above) was not converted to regular writ petition and both have totally different meaning altogether.

Respected Judge (Mr. Sanjay Yadav) is possibly (may be) corrupt in dismissing PIL 20415/2014 (Public Interest Litigation Two Zero Four One Five of year Two Thousand and Fourteen) as per Judgment gives on 16.02.2016 (Sixteenth February Two Thousand and Sixteen). PIL20415/2014 (mentioned above) talks about the possibility of corruption in 2005 (Two Thousand and five) open selection in MANIT (Maulana Azad National Institute of Technology) Bhopal in which five unqualified employees and eight lower merit employees were selected. It may kindly be noted that Advocate Mr. Krishan Kumar Gautam (Advocate of Prof. Lavit Rawtani) has filed it as PIL 20415/2014 (mentioned above) meaning that Prof. Lavit Rawtani is not asking anything for himself. Respected Chief Justice High Court Jabalpur (Mr. A.M. Khanwilkar) and other Respected Judge who on 31.03.2015 (Thirty First March Two Thousand and Fifteen) ordered to convert PIL 20415/2014 (mentioned above) to regular writ petition even when petitioner (Prof. Lavit

Rawtani) has not asked anything for himself and thus they are possibly (may be) corrupt. Respected Judges (Mr. Rajendra Menon and Ms. Vandana Kasrekar) who on 24.06.2015 (Twenty Fourth June Two Thousand and Fifteen) dismissed PIL 20415/2014 (mentioned above) as it was not converted to regular writ petition even when petitioner (Prof. Lavit Rawtani) has not asked anything for himself in PIL 20415/2014 (mentioned above) and thus they are possibly (may be) corrupt. After that restoration & recalling application was filed by Advocate Krishan Kumar Gautam to recall & restore PIL 20415/2014 (mentioned above). Looking at the way in which the decisions were given on PIL 20415/2014 (mentioned above) petitioner (Prof. Lavit Rawtani) had a doubt that possibly this time also PIL 20415/2014 (mentioned above) may be dismissed and to try to avoid that Prof. Lavit Rawtani had done an RTI (Right to Information) at MANIT Bhopal having number MANIT/RTI/861 (Maulana Azad National Institute of Technology, Bhopal / Right to Information/ having Number Eight Sixty One) dated 08/02/2016 (Eight February Two Thousand and Sixteen) having subject :- Please give the copy of the notesheet Respected Judges who will not recall PIL 20415/2014 (mentioned above) as PIL 20415/2014 (mentioned above) are also corrupt possibly (may be) was written on the torn movement/Dispatch Dak Register as MANIT/CSE/IT/16/167 (MANIT Bhopal/ Computer Science & Engineering/ Information Technology/ of year Two Thousand and Sixteen / having Number One Sixty Seven). Even after doing this PIL 20415/2014 (mentioned above) was dismissed on 16.02.2016 (Sixteen February Two Thousand and Sixteen) in High Court Jabalpur by Respected Chief Justice High Court Jabalpur (Mr. A.M. Khanwilkar) & Respected Judge (Mr. Sanjay Yadav) out of the five unqualified employees of 2005 (Two Thousand and Five) open selection of MANIT Bhopal three unqualified employees Prof. Aruna Saxena, Ms. Archana Saxena, Prof. Anshu Gupta (all three related to Mr. Sanjeev Saxena and Mr. Sanjeev Saxena is one of the persons under trial in Vyapam Ghotala Case). Thus if PIL 20415/2014

(mentioned above) is run in the direction to open corruption then almost certainly the five unqualified employees and eight lower merit employees of 2005 (Two Thousand and Five) open selection of MANIT Bhopal will be removed from Job (as all committees like CBI (Central Bureau of Investigation), MHRD (Ministry of Human Resource & Development), Retired Judge Justice Lodha has found fault in 2005 (Two Thousand and Five) open selection at MANIT Bhopal) and thus there is a possibility Vyapam Ghotala case opening up through Mr. Sanjeev Saxena, which everyone wants. Thus please run PIL 20415/2014 (mentioned above) in direction to open corruption in 2005 (Two Thousand & Five) open selection at MANIT Bhopal, Vyapam Ghotala case etc. (if any other also gets opened through it). Respected Judge (Mr. Sanjay Yadav), Prof. Lavit Rawtani requests you to issue an stamp paper in your name & write the reason for dismissing PIL 20415/2014 (mentioned above) & put your signature & seal (having your name and lawyer number) on original stamp paper and kindly send that original stamp paper to Prof. Lavit Rawtani through Court's procedure of Registered A/D (Acknowledgement Due) at the address given in PIL PIL 20415/2014 (mentioned above).

Respected Judge (Ms. Vandana Kasrekar) is possibly (may be) corrupt due to the decision given for PIL 20415/2014 on 24-06-2015 (Twenty Forth June Two Thousand & Fifteen) in dismissing PIL 20415/2014 as it was not converted to regular writ petition. There is a vast difference between PIL (Public Interest Litigation) and regular writ petition i.e. in PIL the petitioner (person) does not ask anything for himself. It may kindly be noted that Advocate Mr. Krishan Kumar Gautam (Advocate of Prof. Lavit Rawtani) has filed it as PIL 20415/2014 meaning that Prof. Lavit Rawtani is not asking anything for himself. PIL 20415/2014 (Public Interest Litigation Two Zero Four One Five of Year Two Thousand and Fourteen-mentioned above) talks about the possibility of corruption in which five unqualified employees and eight lower merit employees were selected in 2005 (Two Thousand and Five)

open selection at MANIT (Maulana Azad National Institute of Technology), Bhopal. Out of these five unqualified, three unqualified employees are Prof. Aruna Saxena, Ms. Archana Saxena, Prof. Anshu Gupta (all three related to Mr. Sanjeev Saxena & Mr. Sanjeev Saxena is one of the person under trial in Vyapam Ghotala case). Thus if PIL 20415/2014 is run in Court in the direction to point corruption then almost certainly these five unqualified employees and eight lower merit employees of 2005 (Two Thousand and Five) open selection of MANIT Bhopal will be removed from job (because all committees like CBI (Central Bureau of Investigation), MHRD (Ministry of Human Resource & Development), Retired Judge Justice Lodha etc. have found fault in 2005 (Two Thousand and Five) open selection of MANIT Bhopal) and then there is a possibility of Vyapam Ghotala case opening up with like being Mr. Sanjeev Saxena's family members and thus Mr. Sanjeev Saxena's involvement in PIL 20415/2004 cannot be ruled out. Respected Judge (Ms. Vandana Kasrekar) please issue a stamp paper in your name and kindly write down as to which line(s) did you see in PIL 20415/2014 (mentioned above) which Prof. Lavit Rawtani had asked for himself, put your signature and Judge's seal (having your (Respected Judge – Ms. Vandana Kasrekar's) name and number) and send that original stamp paper to the address of Prof. Lavit Rawtani given in PIL 20415/2014 (mentioned above) through Court's procedure of Registered A/D (Acknowledgment Due)."

12. We have heard the contemner in person to a great length and we have also explained to him the reason for initiating contempt proceedings against him and have given him full opportunity to submit his reply and justification to the oral and written statement made by him to the effect that the Judges passing the order in the writ petition are possibly corrupt. We have also explained to him that the allegations of the Judges being possibly corrupt is much more serious and derogatory than a direct assertion regarding corruption against the Judges because direct allegations of corruption are made on the basis of facts and evidence available with him whereas an off-hand allegation against Judges to the effect that they are possibly corrupt is based on an individual's perception without having any factual or substantial basis as the person making

such an allegation is himself not clear, positive and certain about such allegations and, therefore, making such a written allegation without any basis and thereafter standing by it and reiterating it by stating that the Judges are possibly corrupt is definitely contemptuous as it amounts to lowering the prestige and authority of the Court and as it seriously interferes in the delivery of justice and also amounts to intimidate the Judges sitting and deciding cases.

13. In the backdrop of the aforesaid, we now proceed to consider the reply of the contemner. At the very outset we would like to point out that the order sheet of this Court dated 31.3.2015 passed in W.P No.20415/2015 (sic:2014) reads as under:-

“31.3.2015

Shri K. K. Gautam, counsel for the petitioner.

Shri Abhay Pandey, counsel for Respondent No.1/Union of India.

Shri Vikram Singh, counsel for Respondent No.2.

This petition has been filed as Public Interest Litigation to challenge the appointment of Respondent No.3 to 15. The petitioner is also working in the same organization. If the petitioner is aggrieved by appointment of the said respondents is free to challenge the same by way of regular writ petition. It is well established position that the Court must be circumspect in entertaining Public Interest Litigation with regard to matters of appointment and service conditions.

Realizing this position, counsel for the petitioner seeks liberty to convert this petition into regular writ petition.

Petitioner is free to carry out necessary amendment within two weeks to convert this Public Interest Litigation into regular writ petition, failing which the petition be treated as dismissed for non-prosecution without further reference to the Court.

If the steps are taken in time, the regular writ petition be listed on 28.4.2015 before appropriate Bench.”

14. A bare perusal of the aforesaid order passed in W.P No.20415/2015

(sic:2014) makes it clear that the counsel appearing for the petitioner, on realizing the position that the PIL was required to be converted into a regular petition, himself sought liberty to convert the petition into a regular petition and, therefore, the very first assertion of the contemner that it was the Court which deliberately and with some possibly corrupt motive directed the petitioner to convert the PIL into a regular petition is absolutely false and factually incorrect. A perusal of the aforesaid order sheet also makes it clear that on the liberty sought by the counsel for the petitioner, he was granted two weeks time to convert the PIL into a regular writ petition with a peremptory direction to the effect that in case he fails to amend the petition within two weeks, the petition would be treated as dismissed for non-prosecution without further reference to the Court.

15. It is also apparent from the record and perusal of the order sheet dated 28.4.2015 passed by this Court in W.P No.20415/2015 (sic:2014) (PIL) that though the said writ petition should have been treated as dismissed due to non compliance of the peremptory order as admittedly the order was not complied with, the office did not do so and incorrectly listed the petition before the Division Bench comprising of Hon'ble the Acting Chief Justice Shri Rajendra Menon and Shri M. C. Garg, JJ, and as the previous order was not pointed out to the Bench, notices were directed to be issued. However, when the matter came up before the Court again on 24.6.2015, the peremptory order passed the previous Division Bench comprising of Hon'ble the Chief Justice Shri A.M. Khanwilkar and Shri Alok Aradhe, JJ was pointed out to the Court, and therefore, the Court by quoting the peremptory order, stated that the petition actually stood dismissed on account of non-compliance of the peremptory order and could not be entertained and, therefore, dismissed it.

16. Apparently, inspite of the aforesaid factual aspect, the contemner by deliberately reading something that is totally non-existent and unconceivable has filed a written note alongwith the Speed Post sent by him to this Court stating that the Judges dealing with the aforesaid case were all possibly corrupt on account of dismissal of the petition. This Court while initiating proceedings against him had explained the consequences of such unsustained statements to him and had also appointed an amicus curie (sic:curiae) to try and explain the implications and consequences of such a statement made by the contemner but the contemner has refused to retract the same and has infact reasserted his allegations in Court.

17. Today when the matter was taken up, the contemnor has again tried to justify his statement that the Judges were possibly corrupt only on the basis of the order passed on 31.3.2015, 28.4.2015 and 24.6.2015 passed in W.P No.20415/2015 (sic:2014) (PIL). From the paragraphs of his reply that has been quoted in the preceding paragraphs, it is apparent that the justification which he has offered before this Court for making such an allegation is that the first Division Bench that had dealt with the matter comprising of Hon'ble the Chief Justice Shri A.M. Khanwilkar and Shri Alok Aradhe, JJ, was possibly corrupt because they had ordered to convert the PIL into a regular writ petition on 31.3.2015 because of some unknown ulterior motive.

18. We have repeatedly asked the contemner as to what information or evidence did he have or possess with him on the basis of which he is alleging that the aforesaid Judges are corrupt. He, however, submits that he has no information or other evidence in this regard and his allegations is based simply on the fact that the Bench ordered conversion of the PIL into a writ petition. This is evident from the assertions made by him in his written reply which we have quoted in the preceding paragraphs.

19. Before we proceed any further we would like to emphasis and reiterate that infact in the instant case there was no order by the Bench directing conversion of PIL into a regular writ petition. Infact a bare perusal of the order dated 31.3.2015 makes it clear that when the legal position was noticed by the learned counsel appearing for the petitioner/contemner, the counsel himself sought liberty to convert the PIL into a regular writ petition consequent to which he was granted two weeks' time to do so with a peremptory condition attached to it.

20. The contemnor next submits that the Acting Chief Justice Shri Rajendra Menon and Ms. Justice Vandana Kasrekar, JJ, are possibly corrupt because initially that Bench ordered issuance of notice to the respondents on 28.4.2015 and thereafter, dismissed the writ petition on 24.6.2015. In his reply the contemnor submits that this was done by the aforesaid Bench "possibly due to receiving corruption amount between 28.4.2015 and 24.6.2015".

21. On a specific question being asked, the contemnor has clearly stated that he has no evidence or proof in respect of this allegation but he has made the same and sticks to it and asserts the same to be correct only because of aforesaid two orders, which according to him are conflicting. He has asserted

in his reply that the Hon'ble the Chief Justice Shri A.M. Khanwilkar, Acting Chief Justice Shri Rajendra Menon and their companion Judges should file affidavits to explain and to inform the contemner as to why this was done. The contemnor has also made allegations in similar terms against the Judges who were sitting along with the Hon'ble Chief Justice Shri A.M. Khanwilkar and Hon'ble the Acting Chief Justice Shri Rajendra Menon, namely Hon'ble Ms. Justice Vandana Kasrekar, Justice Shri Sanjay Yadav and Justice Shri Alok Aradhe (whom incidentally he has admitted and stated in Court that he does not even know).

22. From the aforesaid it is apparent that the contemner has made the allegations against Hon'ble the Chief Justice Shri A.M. Khanwilkar, the Acting Chief Justice Shri Rajendra Menon, Justice Shri Alok Aradhe and Justice Ms. Vandana Kasrekar, simply on account of the fact that order dated 31.3.2015, 28.4.2015 and 24.6.2015 were passed by the Judges. Apparently and admittedly he has no material to substantiate the allegations and the serious accusations made by him in writing to the effect that the Judges of this Court are possibly corrupt.

23. As we have stated in the preceeding paragraphs, the entire stand and justification taken by the contemner is absolutely misconceived. At the cost of repetition we reiterate that there was no direction or order by the Division Bench comprising of Hon'ble the Chief Justice Shri A.M. Khanwilkar and Justice Shri Alok Aradhe, directing or ordering the petitioner to convert the PIL into a regular petition. Infact, when the legal position was noticed by the counsel appearing for the contemner he, on his own, sought liberty and was granted two weeks' time to convert the PIL into a regular petition, which time was granted to him subject to the peremptory condition attached to it.

24. We also reiterate the fact that on the next date this peremptory order was not noticed by the Bench and, therefore, notices were directed to be issued. However, when the peremptory order was pointed out to the Bench comprising of Hon'ble the Acting Chief Justice Shri Rajendra Menon and Justice Ms. Vandana Kasrekar and taking note of the fact that the petition already stood dismissed by operation of the peremptory order passed by the Division Bench on 31.3.2015, the Bench comprising of Hon'ble the Acting Chief Justice Shri Rajendra Menon and Justice Ms. Vandana Kaserakar had no option but to state that the petition already stood dismissed pursuant to the peremptory order dated 31.3.2015.

25. At this stage, we regretfully take note of the fact that the contemner (sic: contemner) is not an illiterate person and infact states that he is a Professor who is working in MANIT. Hoping that there was some confusion in his mind, we spent considerable time in trying to explain to him the scope of the present proceedings and the implications thereof. Unfortunately, as on the previous occasions, the present attempt of this Court has also failed and the contemner still asserts that simply because of the aforesaid three orders passed in the PIL W.P. No. 20415/2014, the Judges of this Court dealing with the same are possibly corrupt. Infact, the statement of the contemner is not just confined to expressing any possibility as far as the Division Bench comprising of Hon'ble the Acting Chief Justice Shri Rajendra Menon and Justice Ms. Vandana Kasrekar is concerned; as in the highlighted portion of his reply that have been quoted in the preceding paragraphs, the contemnor has clearly stated in writing that the aforesaid Bench dismissed his petition "possibly due to receiving corruption amount". Apparently and admittedly, he has not produced any evidence, oral or documentary to establish such a serious charge or offer any explanation for making such a statement. On the contrary, he still asserts and reiterates such a statement without any basis. Such a conduct apparently and blatantly amounts to contempt of the Court as it lowers the authority of the Court and interference in the process of delivery of justice and amounts to intimidate the Judges of this Court.

26. We may at this stage take note of the fact the amicus curie (sic: curiae) appointed by this Court as well as the counsel who was appearing for the contemner have tried their level best to explain to the contemner that his conduct was contemptuous and that he should take immediate remedial measures but the contemner has refused to listen to the same and has infact reasserted and stuck to his allegations that the Judges are possibly corrupt.

27. In the circumstances, we have no doubt and we are infact convinced that the Contemner is guilty of having committed contempt of this Court. We are also of the considered prima facie opinion that looking to the conduct of the contemnor and the repeated assertions and unsubstantiated allegations made by him against sitting Judges of this Court, he should be fastened with the maximum punishment of imprisonment and fine that is permissible and possible in law. The unsubstantiated statement of the contemner is defamatory, libellous, scurrilous, vilificatory and is a totally unfounded attack on the judicial system, the dignity and authority of the Court and the Judges who were presiding

over their Courts.

28. However, before issuing any order imposing punishment with fine upon him, we think it appropriate to give him an opportunity to submit his reply in respect of the punishment that may be imposed upon him and to furnish and submit reasons or justification, if any, for imposing either the maximum or some reduced punishment upon him. For this purpose, the contemnor is granted four weeks time.

List this contempt petition on 6.4.2017 for hearing the contemnor on the question of punishment and penalty that has to be imposed upon him.

Certified copy today.

ORDER

The Order of the Court was delivered by :
R.S. JHA, J. :- Respondent Lavit Rawtani present in person.

Pursuant to the order passed by this Court on 2.3.2017 holding the contemnor to be guilty of contempt of this Court, the matter was taken up today for hearing the contemnor on the question of quantum of punishment that may be imposed upon him.

2. The contemnor who is personally present in person, instead of tendering any apology, unconditional or otherwise or making any submission in respect of the quantum of punishment or penalty, has again reiterated that the Public Interest Litigation, filed by him before this Court, could not have been directed to be converted into a regular Writ Petition and that the facts and figures mentioned by him in his petition were justified and correct thereby clearly establishing his allegations of corruption and, therefore, this Court should re-register the original petition filed by him as a Public Interest Litigation and take action in the said petition in accordance with law by punishing those who had indulged in corruption while making appointment in MANIT. The contemnor submits that the issue raised by him did not and does not involve any personal interest and that it was purely in the interest of the institution and in such circumstances no direction could have been issued by this Court for converting the Public Interest Litigation into a regular Writ Petition.

3. As on the previous occasion this Court again tried to make the contemnor understand that in the present contempt petition we were not

required to look into nor can we look into the correctness or otherwise of the issues raised by the contemner in the writ petition and the present proceedings were confined to the contempt proceedings initiated against him for his oral and written allegations to the effect that certain Judges of this Court were possibly corrupt.

4. By a detailed order dated 2.3.2017 passed by this Court in the present case, this Court has specifically considered each and every issue raised by the contemner in respect of the allegations made by him regarding certain Judges of this Court being possibly corrupt. The allegations made by the contemner in respect of Hon'ble The Chief Justice (now sitting Judge of the Supreme Court, Justice Shri A.M.Khanwilkar), Justice Shri Sanjay Yadav, J; Justice Ms. Vandana Kasrekar, J; Justice Shri Alok Aradhe, J; Justice Shri Rajendra Menon, J (now Chief Justice of Patna High Court); and Justice Shri M.C.Garg, J, were considered in the light of the written submissions made by the contemner in this regard and this Court by a detailed order, has already held that the highly contemptuous statement of the contemner is totally unsubstantiated and baseless and, therefore, the contemner is guilty of contempt.

5. While we are not required to look into or examine the aforesaid aspect again once having held the contemner to be guilty of contempt, however in view of the repeated attempt made by the contemner in this regard, to raise the same issue, without making any submission in respect of punishment, we re-affirm the view taken by us in the order dated 2.3.2017 and while doing so we also take note of the decision of the Supreme Court rendered in the case of *Rajendra Sail vs. M.P. High Court Bar Association and others*, (2005) 6 SCC 109, specifically paragraph nos. 10 to 29, to emphasis that the totally unprovoked statement of the contemner to the effect that certain Judges of this Court, whom he has named, are possibly corrupt, is highly contemptuous.

6. While hearing the contemner on the question of punishment, the learned Senior Counsel Shri Brian D'silva and Shri Mrigendra Singh, both stated that they may be given an opportunity to explain the entire case to the contemner and again try to persuade him to understand the implication of his statements. For this purpose the matter was adjourned in the first half and it was taken up again after the tea break.

7. Shri Brian D'silva and Shri Mrigendra Singh, learned Senior Advocates, submit that their attempts to persuade the contemner to make him understand

the consequences of his statements have failed and they are not able to make the contemner understand or to make amends for the written as well as oral submission made by the contemner to the effect that certain Judges of this Court are possibly corrupt.

8. We have given full and ample opportunity to the contemner to make his submission.

9. During the entire proceedings today, instead of trying to apologize or to give a written statement in respect of the contempt proceedings or in respect of the quantum of punishment that may be imposed upon him, the contemner repeatedly tried to persuade this Court that the Court, instead of passing any order in the present case, should take up proceedings in the Public Interest Litigation and conduct an investigation in respect of his allegations in the petition.

10. At this stage we think it apposite to take note of the fact that repeated attempts by this Court, from the very initial stage, to provide legal assistance to the contemner, have failed as he has consistently and repeatedly refused to accept any legal assistance from any Advocate. Even after passing of the order on 2.3.2017 when we had asked the contemner to go through the order that had been dictated before him in the Court and had also requested his counsel, who had appeared for the contemner in the Public Interest Litigation, to persuade him to do so, the office note indicates that the contemner refused to sign or acknowledge the aforesaid fact. The office note also indicates that his counsel Shri K.K. Gautam, Advocate, read and explained the entire order to him as well as the consequences thereof but the contemner did not appreciate the legal advice given to him or accept it.

11. Even today, Shri K.K. Gautam, learned counsel who is present in the Court, informed us that after the passing of the order dated 2.3.2017 he had tried to explain the entire case to the contemner and had also gone to the extent of visiting his house and having a meeting with his family members before whom also he had tried to explain the consequences of the unwarranted statements of the contemner. Shri K.K. Gautam, learned counsel has stated before us that inspite of his best efforts and the efforts of his family, the contemner has refused to accept their advice. As on date the contemner has neither withdrawn nor has he tendered any kind of apology or otherwise in respect of his written and oral statement that certain Judges of this Court are possibly corrupt.

12. On a suggestion being made by the learned Senior Counsel Shri Brian D'silva, the contemner has reacted vociferously and has stated that he is a person of fit state of mind and that he is not a person who is suffering from any kind of a mental disorder or disillusionment and that he fully understand the implications and the consequences of his action and his statements in the present proceedings.

13. In the circumstances, as the contemner stands by his statement and still asserts that certain Judges of this Court are possibly corrupt without justifying or submitting any proof of the same, we have no option but to punish him for the contempt committed by him.

14. Apparently, the contemner is a person who, on failing to obtain a favourable order in his writ petition, has made the aforesaid remarks in respect of certain Judges by specifically naming them and accusing them of being possibly corrupt. To our mind making such an unjustified statement and casting scurrilous aspersions against thoroughly honest and hardworking Judges who have discharged their judicial functions with utmost devotion results in casting a deep shadow on their integrity, honesty and judicial impartiality which if unpunished or ignored would seriously erode the dignity, authority and status of the highest Court of the State and, therefore, deserves to be punished severely because, if ignored, it would encourage litigants who have lost in the Court to impute unsubstantiated and unjustified motives to the Judges of the institution in the name of fair criticism.

15. The statement of the contemner appears to have been made as a calculated attempt to obstruct and to interfere with the course of justice and the due administration of law, moreso as this Court and the Judges perform their duties herein enjoying the highest confidence and respect of the people which cannot be allowed to be tarnished, diminished or wiped out by such scurrilous abusive unsubstantiated statements of the contemner.

16. The dignity and authority of this Court has to be respected and protected at all costs so that the judiciary can perform its duties and functions effectively without fear and in the true spirit. If we ignore and permit such statements as made by the contemner to go un-noticed, we would be failing in our pious duty to uphold the trust and confidence of the people that they have reposed in the ability of the institution to deliver fearless and impartial justice and would result in disrespect and distrust in the working of this Court resulting in erosion of the judicial system and the administration of justice moreso as the statement made by the contemner, oral and written to the effect that certain Judges of

this Court are possibly corrupt has been made without submitting any oral or documentary proof to substantiate the same.

17. While a fair criticism of a judgment by a person who knows the law and is an expert in the field may, in certain cases and to a limited extent, be justified however, making statements to the extent of calling certain Judges possibly corrupt by a litigant who has lost his case in the Court with the ulterior motive of trying to force this Court to reopen his case has to be taken seriously and no person can be permitted to make such a statement and expect to go scot free as that would not just lower down the dignity and authority of the judiciary but would also results in loss of faith of the public in the highest judicial institution of the State. Such a statement is not just contemptuous but it also tends to interfere with the proper administration of justice and is calculated to obstruct the course of justice and the due administration of law.

18. Looking to the facts and circumstances of the present case, specifically the fact that the contemner has stuck to his statement and re-asserts his statement that certain Judges of this Court are possibly corrupt, the quantum of punishment to be imposed on him has to be considered.

19. We may take note of the fact that in the instant case, there is no iota of any remorse or regret in the stand of the contemner before this Court nor has he tendered any kind of apology or explanation for his conduct. In view of the aforesaid facts that are admitted and undisputed, while normally we would have imposed the maximum punishment upon him, however, looking to the fact that the contemner is not a young man and is a Professor of MANIT, we think it appropriate and hereby impose a punishment of three months of Simple Imprisonment upon him as anything less would be a gross travesty of justice looking to the heinous and monumentally obnoxious statement of the contemner. The contemner is, accordingly, sentenced to **three months Simple Imprisonment**.

20. We have specifically asked the contemner in the Court whether he wishes to assail the order passed by this Court imposing punishment upon him. The contemner has not expressed any kind of opinion in this regard. In spite of being advised by the Senior Counsel present in the Court that he should take time to file an appeal.

21. Although, in spite of giving such an opportunity, the contemner has not made any request to suspend the sentence to enable him to file an appeal against the order passed by this Court today, however, in the interest of

justice and keeping the facts and circumstances of the case in mind as well as the age and status of the contemner, it is ordered that this punishment shall remain suspended for a period of three weeks from today to enable the contemner to file an appeal before the Supreme Court. To enable him to do so, a certified copy of the order passed by this Court on 2.3.2017 and the order passed today be supplied to the contemner.

22. It is, however, made clear that in case no such appeal is filed within the aforesaid period and an order of stay of the punishment is not obtained by the contemner from the Supreme Court within the aforesaid period, the order of punishment passed by this Court shall come into operation from **26.4.2017** and the contemner shall accordingly either surrender before the Chief Judicial Magistrate, Bhopal on his own on that date or in case he does not do so, the concerned authorities shall take immediate steps to execute this order of punishment by sending the contemner to jail to serve out the punishment imposed upon him by this Court.

23. For this purpose a copy of this order be sent to the Chief Judicial Magistrate, Bhopal the Superintendent of Police, Bhopal, the Superintendent of Police, Jabalpur and the Director, Maulana Azad National Institute of Technology, Bhopal. The contemner shall be lodged in Central Jail Bhopal.

24. Registry is directed to prepare a jail warrant and take all other necessary steps to ensure proper implementation of this order.

In view of the aforesaid this contempt petition stands disposed of.

Order accordingly.

I.L.R. [2017] M.P., 1694

ELECTION PETITION

Before Mr. Justice Alok Verma

E.P. No. 15/2014 (Indore) order passed on 27 March, 2017

ANTAR SINGH DARBAR

...Petitioner

Vs.

KAILASH VIJAYVARGIYA & ors.

...Respondents

Evidence Act (1 of 1872), Section 65-B – Electronic Records – Certificate – Admissibility – In compliance of the order passed by this Court, enquiry conducted and report submitted to Commissioner

alongwith CD, which was later produced before this Court – Held – CD produced was a copy of original CD prepared by Constable in a computer shop run by a person who reportedly expired – Held – The said constable was posted at the relevant place of Vidhan Sabha elections and was having knowledge of all the circumstances under which the copy was prepared and therefore he appears to be the proper person to issue the certificate in this regard – Notice issued to Constable directing him to issue a certificate and to appear before the Court for evidence to prove the certificate. (Paras 9, 15, 16 & 18)

साक्ष्य अधिनियम (1872 का 1), धारा 65-बी – इलेक्ट्रॉनिक अभिलेख – प्रमाण-पत्र – ग्राह्यता – इस न्यायालय द्वारा पारित आदेश के अनुपालन में, जांच संचालित की गई तथा आयुक्त को सी.डी. के साथ-साथ प्रतिवेदन प्रस्तुत किया गया, जिसे कि बाद में इस न्यायालय के समक्ष प्रस्तुत किया था – अभिनिर्धारित – प्रस्तुत की गई सी.डी. मूल सी.डी. की प्रति थी जिसे आरक्षक द्वारा, एक व्यक्ति जिसकी सूचना अनुसार मृत्यु हो चुकी है द्वारा चलाई जा रही कम्प्यूटर दुकान में तैयार किया गया था – अभिनिर्धारित – उक्त आरक्षक विधान सभा निर्वाचनों के सुसंगत स्थान पर पदस्थ था एवं उसे उन सभी परिस्थितियों जिसके अन्तर्गत प्रति तैयार की गई थी, का ज्ञान था एवं इसलिए इस संबंध में प्रमाण-पत्र जारी करने हेतु वह उचित व्यक्ति प्रतीत होता है – प्रमाण-पत्र जारी करने को तथा प्रमाण-पत्र को साबित करने के लिए साक्ष्य हेतु न्यायालय के समक्ष प्रस्तुत होने के लिए निदेशित करते हुये, आरक्षक को नोटिस जारी किया गया।

Cases referred :

(2014) 10 SCC 473, (2017) 1 SCC 734, 2015 Lawsuit (Delhi) 5843.

Ravindra Singh Chhabra, for the petitioner.

Vivek Patwa, for the respondent No.1.

Sudhanshu Vyas, for the State.

(Supplied: Paragraph numbers)

ORDER

ALOK VERMA, J. :- This order shall govern disposal of I.A.No.1455/2017 and I.A.No.1340/2017.

2. I.A.No.1455/2017 is filed by the petitioner. According to the facts stated in the application this Court in proceedings dated 22.2.2017 recorded in the order sheet as under:-

"Counsel for the petitioner submits that if the certificate is issued by Shri Dinesh Singh Chouhan it will fulfill the purpose and he is ready to face the consequence".

3. It is further stated in the application that on 11.01.2017, Shri Dinesh Singh Chouhan, the then SHO Police Station, Mhow was present before the Court and he was directed to issue a certificate under Section 65-B of the Indian Evidence Act, 1972 (sic:1872) (hereinafter referred to as the Act). When direction was issued, Shri Chouhan was present in the Court and no protest was made by him. Shri Chouhan instead of issuing a certificate, filed an application I.A.No.658/2017 seeking necessary direction of this Court and this application was disposed of by order dated 14.02.2017 directing him to file the details of shop owner, who had prepared the copy of the original CD of regular size.

4. Subsequently an affidavit was filed by Constable Shri Anil Ahirwar, who was posted at the relevant time at Police Station Mhow, district Indore who took the original CD to a computer shop run by Mohammad Ansar. It is further submitted in the affidavit that Mohammad Ansar had expired before some time.

5. Counsel for the petitioner stated that such CD was prepared under the direction of Constable Shri Anil Ahirwar. He is competent to issue the certificate under Section 65-B of the Act. Counsel for the petitioner thereafter made a concession that if the certificate is issued by the Constable Shri Anil Ahirwar, the purpose would be fulfilled and that he is ready to face the consequence. However, instead of Constable Shri Anil Ahirwar name of Shri Dinesh Singh Chouhan was mentioned in the order sheet.

6. I have heard the counsel for the petitioner and also perused the relevant portion of the order sheet. The order sheet was dictated in open Court in the presence of the counsel himself. No protest was made at the relevant date and, therefore, after the note sheet was signed, no case is made out for incorporating any modification/correction in the order sheet.

7. In view of the aforesaid, this application has no force and is dismissed accordingly.

8. I.A.No. 1340/2017 is filed by Shri Dinesh Singh Chouhan, the then SHO. Police Station Mhow, district Indore. Presently, he is posted as SHO,

Police Station Kotwali, district Dhar.

9. In the application it is stated that the CD which was submitted to the Commissioner during the enquiry which the Commissioner was conducting under the orders of this Court was got prepared by Constable Shri Anil Ahirwar from the shop of Mohammad Ansar who has expired meanwhile. The shop is located at Mhow in the name of Galaxy Computers. When this Court ordered to identify the shop from where the CD was prepared, Constable Shri Anil Ahirwar went to the shop and then he came to know the factum of death of Mohammad Ansar. Constable Shri Anil Ahirwar also submitted an affidavit on 21.02.2017 in this respect stating the same facts on oath.

10. Now the question arises as to who will be the proper person in such a situation to issue a certificate under Section 65-B of the Act. Section 65-B provides for admissibility of electronic records. Sub section (2) of section 65-B of the Act and in respect of the Certificate Sub section (4) of Section 65-B of the Act provides as under :-

"(2) The conditions referred to in the Sub-section (1) in respect to the computer output shall be the following, namely :-

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents, and

(d) The information contained in the electronic record reproduces or is derived from such information fed into the

computer in the ordinary course of the said activities.

(3)

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) Identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it."

11. In the case of *Anvar P.V. Vs. P.K.Basheer* (2014) 10 SCC 473, the Hon'ble Apex Court as laid down that if a certificate issued in accordance with the provisions of Section 65-B of the Act, no electronic record/electronic output can be admitted in evidence. In para 24 of the judgment Hon'ble Apex Court laid down the following exceptions :-

"24. The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other

instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65B of the Evidence Act are not satisfied. It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence on electronic record with reference to Section 59, 65A and 65B of the Evidence Act, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance with the conditions in Section 65B of the Evidence Act."

12. The law laid down in the case of *Anvar P.V.* (Supra) is also reiterated by Hon'ble Apex Court in the case of *Harpal Singh @ Chhota Vs. State of Punjab* (2017) 1 SCC 734.

13. This Court while disposing of I.A.No.0036/2016 vide order dated 09.08.2016 issued the following directions :-

"Thus, the application [I.A.No.6036/2016] is allowed. Therefore, Commissioner, Madhya Pradesh State Election Commission, Bhopal himself or by any officer not below the rank of District Election Officer but not the District Election Officer, Indore be directed to make the inquiry and submit its report within a month from the receipt of copy of this order along with the annexures on following points.

(i) Why after direction of the Appellate Authority under Right to Information Act, 2005, CD has not been supplied to the petitioner?

(ii) Why the CD has not been produced in the Election petition?

(iii) If the CD is destroyed, so what action has been taken against the erring officers?

(8) Office is directed to immediately send the photo copy of this order; application [I.A. No.6036/2016] along with the annexures and affidavit filed by Mr. Santosh Taigore and his

deposition by a registered letter to the Commissioner, Madhya Pradesh State Election Commission, Election Building, 58 Arera Hills, Bhopal".

14. In compliance of this order the Commissioner submitted his report by letter dated 27.09.2016 which was taken note of by the Court on 21.10.2016. With this report a CD was also attached. It is stated that the CD contains the videography made by Police Station Mhow, during Vidhan Sabha Elections held in 2013. The CD was prepared by an official camera which used CD of small size. 22 such CDs are available in the record of concerning Police Station alongwith the Camera (sic:Camera). When in the enquiry, the CD was sought by the Commissioner as stated above, Constable Shri Anil Ahirwar got the CD prepared and submitted it before the Commissioner which was forwarded by the Commissioner to this Court.

15. I have gone through the report. The CD is stated to be the original CD. However, subsequently as stated above, it was found that the CD was a copy of the original CD prepared by Constable Shri Anil Ahirwar in a computer shop run by one Mohammad Ansar, who is reportedly expired.

16. In such a situation if we go through the provisions of Section 65-B of the Act, as quoted above, Sub section 2(a) provides that the computer by which copy was produced was used regularly to store or process information for the purpose of any activities. In this case, a video camera was used to prepare videography of various events during elections and that was under the control of Police Station Mhow where the Constable Shri Anil Ahirwar was also posted. Similarly, Sub section 2(a)(c) and (d) of Section 65-B of the Act can also be certified by the said Constable. Sub section (4) provides that the certificate should be signed by a responsible officer. The Constable Anil Ahirwar was posted and he was the person having knowledge of all the circumstances under which the copy was prepared and, therefore, he appears to be the proper person to issue the certificate in this regard. This view is also, to some extent, supported by judgment of Delhi High Court in the case of *Kundan Singh Vs. The State* 2015 Lawsuit (Delhi) 5843 dated 24.11.2015 in which it was held that the Doctrine of hearsay in its application to proof of electronic evidence has been limited a great deal. When it is not possible to produce certificate from person in charge of the computer system at that time, the person assuming charge later on can issue certificate. Such evidence cannot be eschewed merely on the ground of hearsay.

17. Accordingly, after going through the law laid down by the Hon'ble Apex Court in the case of *Anvar P.V.*(Supra) and *Harpal Singh* (Supra), as also the provisions of Section 65-B of the Act, it is directed that the said Constable Shri Anil Ahirwar should issue a certificate in accordance with the provisions of Section 65-B of the Act pertaining to the CD submitted to the Commissioner during enquiry.

18. On payment of necessary process fee by the petitioner, issue notice to the Constable Shri Anil Ahirwar to appear before the Court alongwith the certificate under Section 65-B of the Act for recording of his statement for the purpose of proving the certificate before this Court on 10.04.2017.

19. List on 10.04.2017.

Order accordingly.

I.L.R. [2017] M.P., 1701

APPELLATE CIVIL

Before Mr. Justice S.K. Seth

F.A. No. 603/2016 (Jabalpur) decided on 13 April, 2017

CHANDRA KUMAR CHANDWANI & ors. ...Appellants

Vs.

ANIL GUPTA & anr. ...Respondents

Civil Procedure Code (5 of 1908), Order 21 Rule 97, 100 & 102 – Execution Proceedings – Bonafide Purchaser Lis pendens –
Respondent No.1/Plaintiff filed a suit for specific performance of contract against Respondent No.2/Defendant in which ex-parte decree was passed – In execution proceedings before Trial Court, appellant herein filed application under Order 21 Rule 97 on the ground that he was a bonafide purchaser of the suit property – Application was dismissed – Challenge to – Held – A purchaser of suit property during pendency of litigation has no right to resist or obstruct execution of decree passed by Court – *Lis pendens* prohibits a party from dealing with property which is the subject matter of suit – Rule 102 further clarifies that there should not be resistance or obstruction by a transferee *pendente lite* and if it is caused/offered by a transferee *pendente lite* of the judgment debtor, he cannot seek benefit of Rule 98 or 100 of Order 21 C.P.C. – Further held – It seems that appellants

must have colluded with judgement debtor and have been set up by him to resist the execution of decree – Application is absolutely frivolous and does not disclose any legal right to obstruct delivery of possession of property so as to recording of evidence – Trial Court rightly dismissed the application after affording opportunity of hearing – Appeal dismissed with cost of Rs. 5000.
(Paras 3, 4, 13 & 14)

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 97, 100 व 102 – निष्पादन कार्यवाहियों – सद्भाविक क्रेता का विचाराधीन वाद – प्रत्यर्थी क्र. 1/वादी ने प्रत्यर्थी क्र. 2/प्रतिवादी के विरुद्ध संविदा के विनिर्दिष्ट पालन हेतु एक वाद प्रस्तुत किया जिसमें एकपक्षीय डिक्री पारित की गई थी – विचारण न्यायालय के समक्ष निष्पादन कार्यवाहियों में, अपीलार्थी यहाँ ने इस आधार पर आदेश 21 नियम 97 के अन्तर्गत आवेदन प्रस्तुत किया कि वह वाद संपत्ति का सद्भाविक क्रेता था – आवेदन खारिज किया गया था – को चुनौती – अभिनिर्धारित – वाद संपत्ति के क्रेता को मुकदमे के लंबित रहने के दौरान न्यायालय द्वारा पारित डिक्री के निष्पादन का प्रतिरोध करने या बाधा डालने का कोई अधिकार नहीं है – विचाराधीन वाद एक पक्षकार को, ऐसी संपत्ति के संबंध में व्यवहार करने से प्रतिषिद्ध करता है जो कि वाद की विषय वस्तु है – नियम 102 आगे यह स्पष्ट करता है कि वादकालीन अंतरिती द्वारा प्रतिरोध या बाधा नहीं होनी चाहिए तथा यदि यह निर्णीत ऋणी के वादकालीन अंतरिती द्वारा कारित/प्रस्तावित किया जाता है, तो वह सिविल प्रक्रिया संहिता के आदेश 21 नियम 98 या 100 का लाम नहीं चाह सकता – आगे अभिनिर्धारित – यह प्रतीत होता है कि अपीलार्थीगण ने निर्णीत ऋणी के साथ सांठगांठ की थी तथा डिक्री के निष्पादन का विरोध करने के लिए उसके द्वारा खड़े किये गये थे – आवेदन आत्यंतिक रूप से परेशान करने वाला है तथा संपत्ति के कब्जे का परिदान को बाधित करने हेतु कोई विधिक अधिकार प्रकट नहीं करता है ताकि साक्ष्य अभिलिखित हो सके – विचारण न्यायालय ने सुनवाई का अवसर प्रदान करने के पश्चात् उचित रूप से आवेदन खारिज किया – अपील 5000 रु./- के व्यय के साथ खारिज।

Case referred :

(1857) 1 DG & J 566 : 44 ER 847.

Avinash Zargar, for the appellants.

Ashish Shroti, for the respondent no.1.

ORDER

S.K. SETH, J. :- This appeal is directed against the order dated 2.8.2016 handed down by the XIVth Additional District Judge, Bhopal in

execution case, whereby rejecting the application under order XXI Rule 97 of the Code of Civil Procedure submitted by the appellants.

2. Relevant facts in brief for disposal of the appeal are as under.
3. Respondent No. 1 herein filed a suit for specific performance against respondent No. 2, who remained ex-parte in the suit, and as such, suffered an ex-parte decree for specific performance of contract on 15.3.2013.
4. Respondent No. 1 put the decree in execution and at that stage, appellants herein entered appearance to resist the execution by filing application under Order XXI Rule 97 on the ground that they are bona fide purchaser for valuable consideration of the suit property.
5. After hearing rival submissions, Court below found that purchase of suit property is hit by doctrine of *lis-pendence* and as such appellants could not be said to be bona fide purchasers and as result rejected the application by the order impugned. Hence, this appeal.
6. We have heard rival submissions at length. Perused the material on record.
7. Learned counsel appearing for appellants after referring to relevant provisions of the Code of Civil Procedure submitted that the Court below erred in dismissing the application without affording an opportunity to establish that the appellants were bona-fide purchaser of suit property and as such could resist the execution of decree passed against respondent No.2.
8. After having heard rival submissions and going through the material on record, it clear to us that respondent No.2 was the owner of the suit property. He entered into an agreement of sale dated 17.4.2012 with respondent No.1 for valuable consideration of Rs.95 lacs. Further respondent No. 2 had received Rs. 66 lacs as earnest money and it was agreed that the remaining amount would be paid at the time of registry. Since respondent No. 2 backed out from the agreement, therefore respondent No.1 filed the suit for specific performance. That suit was decreed on 15.3.2013. Subsequent thereto, appellants entered into an agreement of sale of the suit property and obtained a sale deed on the basis whereof, they are trying to resist the execution of ex-parte decree for specific performance.

9. On the said point, law is no longer *res-integra*. A third party to the decree who offers resistance or obstruction to execution of the decree would fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee *pendente lite* of the judgment debtor, the scope of the adjudication would be shrunk to the limited question whether he is such transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of property Act.

10. When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resistor raised it. The questions which executing court is obliged to determine under rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g. if the obstructor admits that he is a transferee *pendente lite* it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree- holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. In the adjudication process envisaged in order 21 Rule 97(2) of the Code, execution court can decide whether the question raised by a resistor or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.

11. The executing court can decide whether the resistor or obstructor is a person bound by the decree and he refused to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned in Order 21 Rule (2) of the C.P.C. need not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or

even on the averments made by the resistor. Of course the Court can direct the parties to adduce evidence for such determination, if the Court deems it necessary.

12. - Before one and half century, in *Bellamy v. Sabine*, (1857) 1 D.G. & J 566 : 44 ER 847, Lord Cranworth, L.C. proclaimed that where a litigation is pending between a plaintiff and a defendant as to the right to a particular estate, the necessities of mankind require that the decision of the Court in the suit shall be binding not only on the litigating parties, but also on those who derive title under them by alienations made pending the suit, whether such alienees had or had not notice of the pending proceedings. If this were not so, there could be no certainty that the litigation would ever come to an end.

13. - It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent Court. The doctrine of '*lis pendens*' prohibits a party from dealing with the property which is the subject matter of suit. '*lis pendens*' itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee *pendente lite*. It declares that if the resistance is caused or obstruction is offered by a transferee *pendente lite* of the judgment debtor, he cannot seek benefit of Rule 98 or 100 of Order XXI.

14. - Considering the case from every angle, I find that the appellants have colluded themselves with judgment debtor and have been set up by him to resist the execution of decree. Application filed by the appellant is absolutely frivolous and on the face of it does not disclose any legal right to obstruct delivery of possession so as to warrant recording of evidence. The Court below has rightly dismissed it after affording opportunity of hearing. I find no force, merit or substance in the appeal and the same is dismissed with costs. Counsel fee Rs.5000/- (Rupees five thousand).

15. - Ordered accordingly:

Appeal dismissed.

I.L.R. [2017] M.P., 1706

APPELLATE CIVIL

Before Mr. Justice Vivek Rusia

S.A. No. 257/2016 (Indore) decided on 19 April, 2017

SATISH

...Applicant

Vs.

MURLIDHAR

...Respondent

A. Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a), 12(1)(c), 12(1)(f) & 13 – Bonafide Requirement and Arrears of Rent – Concurrent decree of eviction against tenant – Held – Courts below has concurrently held that plaintiff has proved his bonafide need and such concurrent findings are not liable to be disturbed in Second Appeal – Further held – After receiving notice for arrears of rent, tenant sent the pay order to landlord's counsel who was not authorized to receive the same and thus counsel rightly refused to accept the rent – Defendant was required to pay rent to plaintiff and not to his counsel – Appellant in his cross examination has admitted that he deposited the arrears of rent in Court after 1 ½ months from receipt of summons – There was a delay in depositing the rent on time – Appellate Court rightly granted decree u/S 12(1)(a) of the Act of 1961 – Appeal dismissed.
(Para 14 to 17)

क. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ए), 12(1)(सी), 12(1)(एफ) व 13 – वास्तविक आवश्यकता एवं भाड़े का बकाया – किराएदार के विरुद्ध बेदखली की समवर्ती डिक्री – अभिनिर्धारित – निचले न्यायालयों ने समवर्ती रूप से अभिनिर्धारित किया है कि वादी ने अपनी वास्तविक आवश्यकता साबित की है और ऐसे समवर्ती निष्कर्ष, द्वितीय अपील में बाधित करने योग्य नहीं है – आगे अभिनिर्धारित – भाड़े के बकाया हेतु नोटिस प्राप्त करने के पश्चात्, किराएदार ने भूमिस्वामी के काउंसल को भुगतान आदेश भेजा जो कि उक्त को प्राप्त करने के लिए प्राधिकृत नहीं था और इसलिए काउंसल ने भाड़ा स्वीकार करने से उचित रूप से मना कर दिया – प्रतिवादी को भाड़े का भुगतान वादी को करना अपेक्षित था और न कि उसके काउंसल को – अपीलार्थी ने अपने प्रतिपरीक्षण में स्वीकार किया है कि उसने समन की प्राप्ति से 1 ½ माह पश्चात्, भाड़े का बकाया न्यायालय में जमा किया – समय पर भाड़ा जमा करने में विलम्ब हुआ था – अपोली न्यायालय ने उचित रूप से 1961 के अधिनियम की धारा 12(1)(ए) के अंतर्गत डिक्री प्रदान की – अपील खारिज।

B. Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a), 12(1)(c), 12(1)(f) & 23 (J) – Category of Special Landlord – Jurisdiction of Civil Court – Trial Court held, that although plaintiff comes under the category of special landlord, but he filed composite suit u/S 12(1)(a), 12(1)(c) and 12(1)(f) of the Act of 1961, therefore Civil Court has jurisdiction to entertain the suit – Supreme Court also held that composite suit for eviction of tenant can be filed by plaintiff of special category. (Para 4 & 18)

ख. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ए), 12(1)(सी), 12(1)(एफ) व 23(जे) – विशेष मूमिस्वामी की श्रेणी – सिविल न्यायालय की अधिकारिता – विचारण न्यायालय ने अभिनिर्धारित किया कि यद्यपि वादी विशेष मूमिस्वामी की श्रेणी के अंतर्गत आता है परंतु उसने 1961 के अधिनियम की धारा 12(1)(ए), 12(1)(सी) व 12(1)(एफ) के अंतर्गत सम्मिश्र वाद प्रस्तुत किया, इसलिए सिविल न्यायालय को वाद ग्रहण करने की अधिकारिता है – उच्चतम न्यायालय ने भी अभिनिर्धारित किया कि विशेष श्रेणी के वादी द्वारा किराएदार की बेदखली हेतु सम्मिश्र वाद प्रस्तुत किया जा सकता है।

Cases referred :

(2003) 1 SCC 462, (2004) 5 SCC 762, (2009) 5 SCC 264, 2005(II) MPACJ 276, 2009 JLJ (1) page 244, S.A. No. 107/2011 decided on 17.08.2011.

A.K. Sethi with Himanshu Joshi, for the appellant.

D.S. Saxena, for the respondent.

ORDER

VIVEK RUSIA, J. :- Heard on the question of admission.

The appellant/ defendant has filed present appeal being aggrieved by the judgment and decree dated 17/01/2012 passed in Civil Suit no. 35-A/ 2015 by the 4th Civil Judge, Class-II, Ujjain affirmed by 9th ADJ Ujjain in Civil Appeal no. 9-A/2016 vide judgment and decree dated 30/03/2016.

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

Plaintiff Murlidhar is owner of four stories house having municipal no. 97/5, Kanthal Crossing, Ujjain. A shop in ground floor of the said building has been rented out in the year 1976 to the defendant on rent @ Rs. 900/- per month. According to the plaintiff, he is residing in first floor along with his

wife and second floor is occupied by son with his family and third floor is being used as kitchen and living room and fourth floor is in possession of his elder son and his family. There is a rented shop in the ground floor, which is required bonafidely to start business of Jewelry and ornaments for his son Manish. At present Manish is assisting his elder brother Mukesh in his shop at Gopal-Mandir Complex. Now he want to start his own business of Jewelry and ornaments and the shop in dispute is best suitable for the said business looking to his location. He requested the defendant to vacate the house, but he refused. The defendant has deposited the rent till 03/02/2015 (sic:2005), thereafter, he has stopped paying rent. The plaintiff sent legal notice dated 28/06/2005, which was received by defendant on 29/06/2005 and despite that he did not pay the rent from 04/02/2005 till 03/10/2005 in total Rs. 8100/-. When the plaintiff demanded the rent, he misbehaved also which caused nuisances to him, therefore, he filed composite suit seeking decree of eviction under sections 12(1)(a), 12(1)(c) and 12(1)(f) of M.P. Accommodation Control Act.

3. After notice, the defendant appeared and filed written statement denying the averments made in the plaint. By way of the special pleading, he pleaded that there is one shop at the first floor, which was in possession of Shri Manoharlal Shah, Advocate, who has vacated the same and handed over the vacant possession to the plaintiff. The said shop was got vacated showing bonafide need of his wife and son, but till today, they have not started any business. After receipt of the notice, he tendered rent of Rs. 6300/- by way of pay order no. 148898 to his counsel Shri Dilip Kumar Saxena on 26/08/2005, but he refused to accept. Thereafter, he personally tendered rent to the plaintiff who has also refused to receive the rent, hence there is not default on the part of the defendant. He further pleaded that initially the rent was Rs. 150/- per month, which was enhanced from time to time upto Rs. 900/-. Now, the plaintiff has again demanded the rent of Rs. 1500/-, for which the defendant did not agree, therefore, he filed the suit for eviction.

On the basis of the pleadings, the trial Court has framed 9 (nine) issues for adjudication.

4. Both the parties examined their witnesses to prove their pleadings. Plaintiff examined himself as also Manish Soni, Mukesh Soni, Rangrao Ingle and Shri P.C.Kulkarni. Defendant has examined Santosh Neema. The trial Court has decided issue nos. 7 and 8 in respect of the jurisdiction of Civil

Court to entertain the suit. The defendant took specific objection that the plaintiff being a retired government employee comes under the specific category of landlord under section 23(j) of the M.P. Accommodation Control Act and therefore, he was required to file an application before the rent control authority and the civil suit is not maintainable. The trial Court has held that though the plaintiff comes under the category of special landlord, but he filed composite suit under section 12(1)(a), 12(1)(c) and 12(1)(f) of the Act, therefore the Civil Court is having jurisdiction to entertain the suit. Thereafter, the trial Court has recorded the findings that there was arrears of rent, but the defendant has tendered after receipt of notice, therefore, the decree under section 12(1)(a) and 12(1)(c) of the Act was denied. The trial Court has decreed under section 12(1)(f) of the Act because plaintiff has established bonafide need for his son to start business of Jewelry and ornaments in the shop in question.

5. Vide judgment and decree dated 17/01/2012, the suit has been decreed under section 12(1)(f) of the Act and the defendant was directed to hand over the possession within two months.

6. Being aggrieved by the judgment and decree dated 17/01/2012, defendant preferred first appeal no. 9-A/2016 against the decree under section 12(1)(f) of the Act.

7. After notice, defendant appeared and filed cross-appeal under Order 41 Rule 22 of C.P.C against the denial of the decree under section 12(1)(a) and 12(1)(c) of the Act.

8. Learned ADJ, vide judgment and decree dated 30/03/2016 has upheld that decree under section 12(1)(f) of the Act and set aside so far as it relates to denial of decree under section 12(1)(a) of Act. According to the Appellate Court, during pendency of the plaint, there was default on the part of the defendant to deposit rent, therefore, the trial Court ought to have granted decree under section 12(1)(a) of the Act as well, hence vide judgment and decree dated 30/03/2016, decree of eviction under section 12(1)(a) and 12(1)(f) of the Act has been granted in favour of the plaintiff.

9. The defendant has preferred now second appeal before this Court under section 100 of C.P.C proposing four substantial questions of law, which are reproduced below :

“ ::उत्पन्न होने वाले विधिकसारभूत प्रश्न::

(एक) क्या वाद प्रस्तुती दिनांक को म.प्र. स्थान नियंत्रण अधिनियम 1961 की धारा 12 (1) (ए) के आधार पर दिये गये सूचनापत्र के प्रस्तुत में प्रतिवादी द्वारा समस्त बकाया राशि वादी को टेन्डर किये जाने के बावजूद भी उक्त धारा के आधार पर वाद आधारित किया जा सकता है?

(दो) क्या प्रतिवादी से समय समय पर प्राप्त किये गये एडवान्स की राशि जो रुपये 23,000-00 (तैवीस हजार) से अधिक है को किराये में समायोजित किये जाने के पश्चात भी कोई किराया राशि प्रतिवादी पर शेष रहती है इस बिन्दु पर माननीय अधीनस्थ अपील न्यायालय द्वारा ठीक-ठीक विचार किया गया है?

(तीन) क्या जिन आधारों पर कास आब्जेक्शन वादी की ओर से प्रस्तुत किया गया है उन आधारों के अतिरिक्त अन्य आधार पर कास आब्जेक्शन स्वीकार किया जाने योग्य होता है?

(चार) क्या व्यवसायिक आवश्यकता के आधार पर प्रस्तुत किये गये वाद में पूर्व से प्राप्त किये गये व्यवसायिक स्थल पर व्यवसाय प्रारम्भ न करते उसी आधार पर अन्य किरायेदार के विरुद्ध प्रस्तुत वाद पोषणीय रहता है?

(पाच) क्या माननीय अधीनस्थ न्यायालयों द्वारा इन परिस्थितियों पर ध्यान दिया है कि वादी द्वारा भवन खरीदने के 11 माह की अवधि में ही प्रथम बार मनोहरलाल शाह अभिभाषक के विरुद्ध पत्नि एवं पुत्रों की आवश्यकता के आधार पर वाद प्रस्तुत किया एवं पश्चात में आवश्यकता होते हुए भी प्रतिवादी का किराया 600-00 रुपये से बढ़ाकर 900-00 रुपये किया व यह तथ्य प्रमाणित होने के बावजूद भी माननीय सर्वोच्च न्यायालय द्वारा प्रतिपादित न्याय दृष्टान्त ए.आय.आर. 2005 पेज 578 पर ठीक-ठीक विचार किया गया है?

(छ) क्या प्रतिवादी के किरायेदारी वाले स्थान के आकार-प्रकार वाली प्रथम मंजिल परस्थित स्थान को वैकल्पिक स्वरूप का स्थान न होने के संबंध में अभिवचन एवं साक्ष्य के अभाव में मान्य किये जाने योग्य होते हैं?

(सात) क्या व्यवसायिक स्थल की आवश्यकता के लिये राष्ट्रीयकृत बैंक से सेवानिवृत्त कर्मचारी की वास्तविक आवश्यकता के आधार पर वाद व्यवहार न्यायालय में पोषणीय होता है?”

10. Shri A.K. Sethi, Sr. Counsel for the appellant emphasis that the first Appellate Court has wrongly granted. Decree under section 12(1)(a) of the Act. Admittedly, defendant has tendered rent by way of pay order to counsel for the plaintiff, but he refused to accept the rent. As required under section

12(1)(a) of the Act, the defendant is required to tender the rent. After filing the suit, he deposited the rent before the trial Court as well before the Appellate Court, but there was delay in deposit of the suit, but on that count, decree under section 12(1)(a) of the Act cannot be granted. If there was default in deposit of the rent, during the pendency of the suit, for which, consequences thereof is provided under section 13(6) of the Act and according to which, his right of defense could have been struck off.

11. He further argued that, when decree under sections 12(1)(a) and 12(1)(c) of the Act is set aside, then decree under section 12(1)(f) of the Act cannot be granted by the Civil Court as the plaintiff admittedly comes under the special category of landlord and for him, remedy is to approach the Rent Control Authority and the jurisdiction of the Civil Court is barred, hence prayed for admission of this appeal

12. *Per contra*, Shri D.K.Saxena, counsel appearing for the respondent submitted that when the composite decree is sought in addition to the *bonafide* need, then the Civil suit is only the remedy, because the Rent Control Authority can grant decree on the ground of *bonafide* need. He further submits that the provisions of section 12(1)(a) and section 13(1) are liable to be read together and if there is any default in payment of rent prior to filing the suit and during pendency of the suit, the plaintiff is entitled for decree under section 12(1)(a) of the Act. He further submits that there is concurrent findings by both the Courts and it is not for the High Court to interfere the same in second appeal. Landlord has discretion to decided the suitability of the Accommodation owned by him. Tenant cannot decide that plaintiff is having other accommodation and the same are suitable.

The Apex Court in the case of *Akhileshwar Kumar and others Vs. Mastaqim and others* reported in (2003) 1 SCC 462 has held that the choice of the accommodation which would be more suitable fo (sic:for) his requirement has to be left to the subjective choice of the landlord and the Court cannot thrust its own choice upon him and while discussing the availability of other alternative accommodation. Para 4 is reproduced below :

"4. So is the case with the availability of alternative accommodation, as opined by the High Court. There is a shop in respect of which, a suit for eviction was filed to satisfy the need of plaintiff 2. The suit was compromised and the shop

was got vacated. The shop is meant for the business of plaintiff 2. There is yet another shop constructed by the father of the plaintiffs which is situated over a septic tank but the same is almost inaccessible inasmuch as there is a deep ditch in front of the shop and that is why it is lying vacant and unutilized. Once it has been proved by a landlord that the suit accommodation is required bona fide by him for his own purpose and such satisfaction withstands the test of objective assessment by the Court of facts then choosing of the accommodation which would be reasonable to satisfy such requirement has to be left to the subjective choice of the needy. The Court cannot thrust its own choice upon the needy. Of course, the choice has to be exercised reasonably and not whimsically. The alternative accommodations which have prevailed with the High Court are either not available to plaintiff 1 or not suitable in all respects as the suit accommodation is. The approach of the High Court that in accommodation got vacated to satisfy the need of plaintiff 2, who too is an educated unemployee, should be diverted or can be considered as a relevant alternative accommodation to satisfy the requirement of plaintiff 1, another educated unemployed brother, cannot be countenanced. So also considering a shop situated, over a septic tank and inaccessible on account of a ditch in front of the shop and hence lying vacant, cannot be considered a suitable alternative to the suit shop which is situated in a marketing complex, is easily accessible and has been purchased by the plaintiffs to satisfy the felt need of one of them".

13. I have heard learned counsel for the parties.

14. The plaintiff has filed the suit claiming eviction on bonafide need, default of arrears of rent and nuisance. After careful examination of the evidence on record, both the courts below has concurrently held that the plaintiff has proved his bonafide need and the shop is required to start business for his second son. The concurrent finding are not liable to be disturbed in second appeal as held in the case of *Thiagrajan Vs. Sri Venugapadaswamy B. Koil* reported in (2004) 5 SCC 762, *Narayan Rajendran and another Vs. Lekshmy Sarojini and others* reported in (2009) 5 SCC 264 that jurisdiction

of High Court under section 100 of C.P.C to interfere with the finding of facts is limited to cases where the findings are based on either no evidence or are perverse, which is not case here in so far as it pertains to ground of *bonafide* need. Learned Sr. Counsel for the appellant has also not argued on the point of bonafide need of the plaintiff.

15. The plaintiff has demanded arrears of rent by sending notice through his counsel and according to the defendant, he got prepared pay order and sent to the counsel who gave notice to him, but he refused to accept the said rent as he was not authorized to receive the rent. The plaintiff sent the notice dated 26/06/2005 (Ex.-P/27) through his counsel Dilip Kumar Saxena. In this notice, the counsel has directed the defendant that the entire arrears of rent be paid to his client and obtain receipt, therefore, the defendant was required to pay the rent to the plaintiff and not to the counsel, who rightly refused to accept rent.

16. In cross-examination, the plaintiff has specifically stated that he did not authorize his counsel to receive the rent. The defendant in his cross-examination in para 38, admitted that he deposited the amount of Rs. 10,800/- in the court after 1 ½ months from the receipt of the summons. He has not produced the receipts of the said deposit. He do not remember the month and year, in which he deposited the rent. The first Appellate Court has recorded the findings that first time, he deposited the arrears of rent on 09/12/2005 for the period from 04/02/2005 upto 03/02/2006 i.e. after one month as required under section 13. There was delay in deposit the rent in time. This Court in the case of *Vinay Kumar and others Vs. Radheshyam and others* reported in 2005 (II) MPACJ 276 has held that if there is any default in deposit of rent during pendency of the suit as well as appeal, the plaintiff is entitled for decree of eviction.

17. Therefore, the Appellate Court has rightly granted decree under section 12(1)(a) of the Act, even if the plaintiff is not entitled for relief under section 12(1)(a) of the Act. He filed the composite suit seeking eviction under sections 12(1)(a), 12(1)(c) and 12(1)(f) of the Act.

18. The Apex Court in the case of *Sulochana Vs. Rajinder Singh* reported in 2009 JIJ (1) page 244 has held that the composite suit for eviction of the tenant can be filed by plaintiff of special category. Para 41 to 43 are reproduced below:

41. We may now examine the decision whereupon reliance has been placed by the High Court, i.e., Dhannalal (supra). In Dhannalal (supra) the question which arose for consideration was as to whether a specified landlord could file a composite suit alongwith others for whose bona fide requirement the eviction of the tenant was sought for. Holding that in such a case even a suit by a co-owner alone would be maintainable, it was opined :-"

"17. It follows that a widow, who is a co-owner and landlady of the premises can in her own right initiate proceedings for eviction under Section 23-A(b), as analyzed hereinbefore, without joining other co-owners/co-landlords as party to the proceedings if they do not object to the initiation of proceedings by such landlady, because she is the owner of the property and requires the tenanted accommodation for the purpose of continuing or starting the business of any of her major sons. The major sons though co-owners/co-landlords may not have been joined as party to the proceedings but it would not adversely affect the maintainability of the proceedings. It 25 would also not make any difference if they are also joined as party to the proceedings. Their presence in the proceedings is suggestive of their concurrence with the widow landlady maintaining the proceedings in her own right."

On the aforementioned narrow context of the factual matrix involved therein, it was held :-

"19..... The requirement pleaded is the requirement of a widow landlady for continuing or starting the business of her major sons. In proceedings for eviction of a tenant it is permissible for all the co-owner landlords to join as plaintiffs. Rather, this is normally done."

Now, if they all file a claim before the civil court, an objection may possibly be raised on behalf of the defendant tenant that the widow landlady being one of the claimants for eviction she must go to the Rent Controlling Authority under Chapter III-A. If they collectively join in initiating the proceedings for eviction of the tenant before the Rent Controlling Authority under Chapter III-A the defendant tenant may object that the requirement being that of the major sons who are themselves applicant landlords the claim should have been filed before the civil court, as is the plea before us. How can such dilemma be resolved?

20. Both the learned Senior Counsel for the parties stated that there is no specific statutory provision nor a binding precedent available providing resolution to the problem posed. Procedural law cannot betray the substantive law by submitting to subordination of complexity. Courts equipped with power to interpret law are often posed with queries which may be ultimate. The judicial steps of the Judge then do stir to solve novel problems by neat innovations. When the statute does not provide the path and precedents abstain to lead, then they are the sound logic, rational reasoning, common sense and urge for public good which play as guides of those who decide. Wrong must not be left unredeemed and right not left unenforced. Forum ought to be revealed when it does not clearly exist or when it is doubted where it exists. When the law -- procedural or substantive -- does not debar any two seekers of justice from joining hands and moving together, they must have a common path. Multiplicity of proceedings should be

avoided and same cause of action available to two at a time must not be forced to split and tried in two different fora as far as practicable and permissible."

The said decision, therefore, in our opinion, cannot be said to have any application to the present case.

42. Ashok Kumar Gupta (*supra*) in fact runs counter to the contention of the respondent. Noticing Section 12, 23-A, 23-J and Section 45 of the Act it was held :

"10. The position after 16-1-1985 is that only in respect of the aforementioned categories of the landlords the Rent Controlling Authority has jurisdiction to order eviction of a tenant on grounds of bona fide requirement under Section 23-A. A conjoint reading of Sections 11-A, 12, 23-A, 23-J and Section 45 would show that in regard to the bona fide personal requirement of the landlord who does not fall within the specified categories in Section 23-J, the civil Court has jurisdiction to entertain a suit and pass decree under clause (e) of sub-section (1) of Section 12 of the Act. It follows that the civil court rightly entertained counter-claim under Section 12(1)(e) of the Act so the decree passed by it is not vitiated for want of jurisdiction."

43. Thus, any matter which *stricto sensu* does not come within the purview of Chapter III-A would be entertainable by a civil court. This ratio of the decisions, in our opinion, was wrongly applied.

19. This Court has also dismissed the Second Appeal no. 107/2011 (*Damodar S/o Murlidhar Vs. Anita D/o Murlidhar*) by order dated 17/08/2011 on the same point. Para nos. 5 to 6 are produced below :

5/ As per section 23J(iv) physically handicapped persons are covered in the special category of landlord who have the

remedy of filing the eviction application on the ground of bona fide need before the Rent Controlling Authority. This court in the matter of *Karan Lal Kesharwani VS. Sardar House, Jabalpur and others* reported in 2008(2) MPLJ 365 considering section 23-J(iv) has held that handicapped must mean something more than mere claim of being physically handicapped person to be covered under the term "physically handicapped person", he must be such a person suffering from disease which may prevent him from following ordinary pursuits of his life and it is for the person claiming himself to be handicapped to establish by cogent and convincing evidence that he is suffering from such disease that he cannot pursue his normal course of life. Same is the view taken by this Court in the matter of *Krishan Kumar Baori V. Ganga Prasad Singhi* reported in 1996 JIJ 386.

6/ In the present case, respondent/landlord has neither claimed himself to be a handicapped nor any evidence has been brought on record establishing that he is a handicapped person. The two courts below have already examined this issue in detail and have rightly rejected such a submission of the counsel for the appellants.

7/ Even otherwise Supreme Court in the matter of *Smt. Sulochana Vs. Rajindra Singh* reported in 2008 (III) MPJR 271 has held that a composite suit for eviction filed not only on the ground of bona fide requirement but also on the ground of default of payment of rent and denial of relationship of landlord and tenant by special category of landlord, is maintainable in the civil court.

20. Therefore, the second ground raised by Shri A.K.Sethi, Sr. Counsel is also liable to be rejected that the civil court was not having jurisdiction to entertain the suit when the plaintiff comes under the special category of landlord.

21. In view of the above, I do not find any ground as well as question of law involved in this appeal. Accordingly, present appeal is dismissed.

Cc as per rules.

Appeal dismissed.

I.L.R. [2017] M.P., 1718

APPELLATE CIVIL

Before Mr. Justice Prakash Shrivastava

S.A. No. 57/1999 (Indore) decided on 21 June, 2017

RANCHHOD & ors.

...Appellants

Vs.

RAMCHANDRA & anr.

...Respondents

Hindu Adoptions and Maintenance Act (78 of 1956), Section 12(b) – Effect of Adoption – Appellants challenging the concurrent findings of civil & appellate Court – Suit filed by plaintiff is decreed on the ground that he was taken in adoption at the age of 10-11 years but his right on the ancestral property has not come to an end – Held – Suit filed by plaintiff is for partition – Share of a coparcener in undivided property is fluctuating share which keeps on varying with addition and extinct of members of coparcenery – Share is crystallized when property is partitioned – Therefore, till partition takes place the ancestral property cannot be said to have vested in coparcener – Property which stands vested in the adopted child before adoption continues to be vested in him u/S 12 (b) – Respondent no. 01 being a member of Coparcenery having undivided share in coparcenery before the adoption – Properties of the Coparcenery of the natural father did not vest in him and are not protected u/S 12(b) – Respondent no. 1 not entitled to partition of ancestral property after his adoption – Appeal allowed – Judgment and decree set aside. (Paras 4, 9 & 14)

हिन्दू दत्तक और भरण-पोषण अधिनियम, (1956 का 78), धारा 12(बी) – दत्तक ग्रहण का प्रभाव – अपीलार्थीगण द्वारा सिविल एवं अपीली न्यायालय के समवर्ती निष्कर्षों को चुनौती – वादी द्वारा प्रस्तुत वाद को इस आधार पर डिक्रीत किया गया कि 10-11 वर्ष की आयु में उसे दत्तक लिया गया परन्तु पैतृक संपत्ति पर उसका अधिकार समाप्त नहीं हुआ है – अभिनिर्धारित – वादी द्वारा प्रस्तुत वाद विभाजन के लिए है – अविभाजित संपत्ति में सहदायिक का अंश घटता-बढ़ता अंश है जो कि सहदायिकी के सदस्यों के बढ़ने एवं निर्वापित होने के साथ परिवर्तित होता रहता है – अंश निश्चित रूप धारण कर लेता है जब संपत्ति विभाजित है – इसलिए, जब तक विभाजन नहीं हो जाता है, पैतृक संपत्ति सहदायिक में निहित नहीं कही जा सकती – संपत्ति जो कि दत्तक ग्रहण पूर्व दत्तक बालक में निहित है वह धारा 12(बी) के अंतर्गत उसमें निहित रहना जारी रहेगी – प्रत्यर्थी क्र. 1 का सहदायिकी का सदस्य होने के नाते दत्तक ग्रहण के पूर्व सहदायिकी में अविभाजित

अंश है – नैसर्गिक पिता की सहदायिकी की संपत्तियां उसमें निहित नहीं थी तथा धारा 12(बी) के अंतर्गत सुरक्षित नहीं है – प्रत्यर्थी क्र. 1 उसके दत्तक ग्रहण के पश्चात् पैतृक संपत्ति के विभाजन के लिए हकदार नहीं है – अपील मंजूर – निर्णय एवं डिक्री अपास्त।

Cases referred :

AIR 1988 SC 845, AIR 1981 Bombay 109, AIR 1987 SC 398, AIR 1981 Andhra Pradesh 19, AIR 1992 Bombay 189, AIR 2001 PATNA 125, 2010 (4) RCR (Civil) 252.

S.S. Garg, for the appellants.

B.L. Pavecha, as amicus curiae.

J U D G M E N T

PRAKASH SHRIVASTAVA, J. :- This appeal under Section 100 of the CPC is at the instance of the defendants in the suit challenging the judgment of the two courts below. Trial Court by the judgment dated 4.4.1996 had decreed the C.S. No.70A/94 filed by the respondent-plaintiff and the first appellate court by the judgment dated 28.11.1998 by dismissing the Civil Appeal No.53-A/1996 has affirmed the judgment of the trial Court.

2. The respondent No.1 had filed the suit for declaration, partition, possession and mesne profit pleading that the suit properties originally belong to Sevaram and on his death they were received by his sons Sitaram and Narayan. Respondent No.1 is the biological son of Sitaram, whereas the appellants are sons, daughters and widow of Narayan. It was further pleaded that respondent No.1 is the sole heir of Sitaram who had died 40 years prior to filing of the suit, when the respondent No.1 was a minor child. Narayan had taken care of the respondent No.1 and he was cultivating the suit land with Narayan and his name was also mutated in place of his father. Thereafter the respondent No.1 was taken in adoption by Chunnibai in village Banediya but he had continued to jointly cultivate the suit land and when he came to know about the deletion of his name from the revenue record, he had filed the present suit.

3. The suit was opposed by the appellants by filing the written statement and taking the plea that the respondent No.1 was taken in adoption 35 years back by Chunnibai W/o Bheraji and that Sitaram was never a member of the

joint family and on account of his bad conduct, he was separated from the family and after the death of Sitaram, his wife had gone in Natra leaving the respondent No.1 orphan, therefore, Narayan had taken care of the respondent No.1 but the respondent No.1 had no right or title in the suit property and with his consent on 1.3.1971 his name was deleted from the revenue record.

4. Trial Court had decreed the suit on reaching to the conclusion that the suit properties were ancestral properties of the appellant and the respondent No.1, which were jointly cultivated by them. It was also found that the respondent No.1 was taken in adoption at the age of 10-11 years by Chunnibai but his right on the ancestral property had not come to an end. Accordingly the suit was decreed. The first appellate court has affirmed the judgment of the trial Court.

5. This Court vide order dated 16.11.1999 had admitted the appeal on the following substantial question of law:-

“1. Whether the words *property which vested* used under Section 12 of the Hindu Adoption and Maintenance Act, 1956 can be construed as right which vested?

2. Whether under the facts and in the circumstances of the case, when a child gone in adoption who was a member of co-parcenary and had only a right in the co-parcenary property by birth will continue to have a right with other co-parceners even after going in adoption?”

6. The aforesaid questions of law are interrelated, therefore, they are being answered as under:-

7. Having heard the learned counsel for the parties and on perusal of the record, it is noticed that the two courts below have concurrently found that the suit properties were ancestral properties and they were inherited by Sitaram and Narayan, the two sons of Sevaram. The appellants are LRs of Narayan, whereas the respondent No.1 is the son of Sitaram. It has also been concurrently found that the respondent had gone in adoption on 4.11.1962 to Chunnibai of village Banediya and Sitaram, father of the respondent, had died somewhere around 1955-56. The first appellate court has taken the view that on the death of Sitaram, the title had accrued to the respondent No.1 in respect of the suit house and the agricultural land and therefore, in terms of proviso to

Section 12(b) of the Hindu Adoption and Maintenance Act, 1956 (for short "the Act") his right on the suit property will remain intact even after his adoption.

8. Section 12 of the Hindu Adoption and Maintenance Act provides as under:-

"12. Effect of adoption.- An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that-

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption."

9. In terms of proviso (b) to section 12 the property vested in adopted child before the adoption, continues to be vested in him subject to the obligations attached to it. In the present case admittedly no partition has taken place because the suit of the respondent itself is for partition, therefore, the pivotal question is that if undivided share in the ancestral property received by the respondent No.1 on the death of Sitaram, amounts to vesting of property in him? The position in this regard is that the share of a co-parcener in the undivided property is fluctuating share which keeps on varying with addition and extinct of members of coparcenery. The share is crystallized only when the property is partitioned, therefore, till the partition takes place the ancestral property can not be said to have vested in the coparcener. [See: AIR 1988 SC 845 (Dharma Shamrao Agalawe Vs. Pandurang Miragu Agalawe and others), AIR 1981 Bombay 109 (Y.K. Nalavade and others Vs. Ananda G.

Chavan and others), AIR 1987 SC 398 (Vasant and another Vs. Dattu and others).

10. The Supreme Court in the matter of *Dharma Shamrao* (supra) while approving the earlier judgment in the *Vasant's* case, it has been held that:-

“10. The decision of the High Court of Bombay in Y.K. Nalavade's case (supra) which was followed by the High Court in dismissing the appeal, out of which the present appeal arises, has been rightly given. We agree with the reasons given by the High Court of Bombay in that decision for taking the view that clause (c) to proviso of section 12 of the Act would not be attracted to a case of this nature since as observed by this Court in Vasant's case (supra) there was no 'vesting' of joint family property in Dharma- the appellant took place on the death of Miragu and no 'divesting' or property took place when Pandurang-the first respondent was adopted. The decision of the Andhra Pradesh High Court in Narra Hanumantha Rao's case (supra) which takes a contrary view is not approved by us. It, therefore, stands overruled.”

11. Initially Andhra Pradesh High Court in the matter (sic: matter) of *Yarlagadda Nayudamma Vs. The Government of Andhra Pradesh and others* reported in AIR 1981 Andhra Pradesh 19 had taken the view that under proviso (b) of Section 12 of the Act, a coparcener given in adoption has vested right in the undivided property of his natural father but subsequently Bombay High Court in the matter of *Devgonda Raygonda Patil Vs. Shamgonda Raygonda Patil and another* reported in AIR 1992 Bombay 189 after taking note of the judgment of the Supreme Court in the case of *Vasant* (supra) and *Dharma Shamrao Agalawe* (supra) has held that the adoptee cannot have vested right in the undivided joint family property of his natural birth. The view of the Bombay High Court in the case of *Devgonda Raygonda Patil* (supra) is that:-

“16. The same view came to be reiterated by the Supreme Court in AIR 1988 SC 845 *Dharmu Shamrao Agalawe v. Pandurang Miragu Agalawe*. The Supreme Court also approved the decision of this Court in AIR 1981 page 109. Therefore, in my view, if there is coparcenary or joint

family in existence in the family of birth on date of adoption, then the adoptee cannot be said to have any vested property. The property does not vest and therefore provision of S.12 proviso (b) is not attracted. In the context of S.12 proviso (b) 'vested property' means where indefeasible right is created i.e. on no contingency it can be defeated in respect of particular property. In other words where full ownership is conferred in respect of a particular property. But this is not the position in case of coparcenary property. The coparcenary property is not owned by a coparcener and never any particular property. All the properties vest in the joint family and are held by it. I therefore reject the contention of Mr. Ingale."

12. The same issue came up before the Patna High Court, wherein the Division Bench of the Patna High Court in the matter of *Santosh Kumar Jalan @ Kanhaya Lal Jalan Vs. Chandra Kishore Jalan and Anr.* reported in AIR 2001 PATNA 125 while dissenting with the view of the Andhra Pradesh High Court in the matter of *Yarlagadda Nayudamma* (supra), has held that:-

"12. I regret my inability to accept this as the correct legal position. I have already stated above that though a coparcener has vested right of joint possession and enjoyment of the estate of his natural family, Proviso (b) refers to "any property which vested". As there is no vesting of "any property" and there is vesting of only community of interest with other coparceners, the proviso cannot be extended to cover such interest."

13. The Punjab & Haryana High Court also in the matter of *Khidmat Singh Vs. Joginder Singh and others* by the judgment dated 12.3.2010 in RSA.No.1234/1985 reported in 2010(4) RCR(Civil) 252 has considered the similar question of law in the appeal which has been formulated in the present case and has taken note of the judgment of Bombay High Court in the case of *Devgonda Raygonda Patil* (supra) and Supreme Court in the case of *Dharma Shamrao Agalawe* (supra) and has held that the property inherited by a person before adoption only is protected under Section 12 of the Hindu Adoption and Maintenance Act and not mere interest in coparcenary property.

14. Having considered the aforesaid factual and legal position, I am of the

opinion that only the property which stands vested in the adopted child before the adoption continues to be vested in him under proviso (b) to Section 12 of the Act and the respondent No.1 being a member of coparcenery having undivided share in the coparcenery before the adoption, the properties of the coparcenery of the natural father did not vest in him and are not protected under proviso (b) to Section 12 of the Act. Hence the respondent No.1 is not entitled to the partition of the said ancestral property after his adoption. The courts below have committed an error in appreciating the effect of proviso (b) of Section 12 of the Act while decreeing the suit of the respondent by holding that the undivided ancestral properties of the family of natural father of the respondent had vested in him. Such a conclusion of the courts below cannot be sustained in view of the legal position noted above.

15. Hence, the appeal is allowed and the judgment and decree passed by the courts below is set aside and the suit filed by the respondent is dismissed.

Appeal allowed.

I.L.R. [2017] M.P., 1724

APPELLATE CRIMINAL

Before Mr. Justice N.K. Gupta & Mr. Justice S.K. Awasthi

Cr.A. No. 167/2002 (Gwalior) decided on 23 May, 2017

PAPPU @ CHANDRA PRAKASH

...Appellant

Vs.

STATE OF M.P.

...Respondent

A. Penal Code (45 of 1860), Section 302 and Evidence Act (1 of 1872), Section 32 – Conviction – Dying Declaration – Identity of Accused – Appellant gave 11 blows with knife to deceased, who was taken to hospital where he lodged dehati Nalishi – Doctor recorded the dying declaration – Held – Evidence of the eye witnesses is duly corroborated by the testimony of the other prosecution witnesses and by Dehati Nalishi – Further held – Dying declaration is a substantive piece of evidence and accused can be convicted for the offence u/S 302 IPC on the sole basis of dying declaration – Dying declaration can be used for corroboration of eye witnesses – Deceased has stated in the dying declaration that he was assaulted by Pappu son of Dayaram Lahri, and in terms of such submission, he gave a complete address and identification of appellant – Doctor also confirmed that at the time of

recording of dying declaration, deceased was in a fit condition to give his statement – Dying declaration is trustworthy and is acceptable – Trial Court rightly convicted the appellant – Appeal dismissed.

(Paras 8, 9, 11 & 13)

क. दण्ड संहिता (1860 का 45), धारा 302 एवं साक्ष्य अधिनियम (1872 का 1), धारा 32 – दोषसिद्धि – मृत्युकालिक कथन – अभियुक्त की पहचान – अपीलार्थी ने मृतक पर चाकू से 11 वार किये, जिसे चिकित्सालय ले जाया गया जहाँ उसने देहाती नालिशी दर्ज कराई – चिकित्सक ने मृत्युकालिक कथन अभिलिखित किये – अभिनिर्धारित – चक्षुदर्शी साक्षीगण के साक्ष्य की अन्य अभियोजन साक्षीगण के परिसाक्ष्य से तथा देहाती, नालिशी द्वारा सम्यक् रूप से संपुष्टि की गई – आगे अभिनिर्धारित – मृत्युकालिक कथन, साक्ष्य का एक सारमूल हिस्सा है तथा अभियुक्त को मृत्युकालिक कथन के एकमात्र आधार पर भारतीय दण्ड संहिता की धारा 302 के अंतर्गत दोषसिद्ध किया जा सकता है – मृत्युकालिक कथन को चक्षुदर्शी साक्षीगण की संपुष्टि हेतु उपयोग किया जा सकता है – मृतक ने मृत्युकालिक कथन में यह कथन किया है कि उस पर पप्पू पुत्र श्री दयाराम लहरी द्वारा हमला किया गया था तथा ऐसे निवेदन के संबंध में, उसने अपीलार्थी का पूर्ण पता एवं पहचान दी – चिकित्सक ने भी पुष्टि की कि मृत्युकालिक कथन अभिलिखित करने के समय, मृतक अपना कथन देने के लिए स्वस्थ स्थिति में था – मृत्युकालिक कथन मरसेमंद है तथा स्वीकार्य है – विचारण न्यायालय ने अपीलार्थी को उचित रूप से दोषसिद्ध किया – अपील खारिज।

B. Penal Code (45 of 1860), Section 302 – Intention to Kill – Held – Looking to conduct of appellant that after quarrel he left and came back with his father and other companions and gave as many as 11 blows to deceased on chest, abdomen and on other vital parts of the body which caused injuries to many vital parts like omentum, large intestine and small intestine etc – In these circumstances it is proved beyond doubt that appellant had intended to kill the deceased. (Para 18)

ख. दण्ड संहिता (1860 का 45), धारा 302 – हत्या का आशय – अभिनिर्धारित – अपीलार्थी के आचरण को देखते हुये कि झगड़े के पश्चात् वह चला गया अपने पिता तथा अन्य साथियों के साथ वापस आया एवं मृतक की छाती, पेट तथा शरीर के अन्य महत्वपूर्ण अंगों पर 11 वार किये, जिससे कि ओमेन्टम, बड़ी आंत और छोटी आंत इत्यादि जैसे कई महत्वपूर्ण अंगों में चोटें कारित हुई – इन परिस्थितियों में संदेह से परे यह साबित होता है कि अपीलार्थी का मृतक की हत्या करने का आशय था।

Cases referred :

2010(III) MPWN 9, AIR 2001 SC (Cri) 2383, AIR 1972 SC 1557, 1997 CAR 1 (SC), AIR 1979 SC 1831.

R.K. Sharma with V.K. Agrawal, for the appellant.

J.M. Sahni, P.L. for the State/respondent.

J U D G M E N T

The Judgment of the Court was delivered by :
N.K. GUPTA, J. :- The appellant has preferred the present appeal against the judgment dated 02/02/2002 passed by XI Additional Sessions Judge, Gwalior (MP) in Sessions Trial No.384/1996, whereby the appellant has been convicted of offence under Section 302 of IPC and sentenced to life imprisonment.

2. Prosecution's case, in short, is that on 19/06/1996 at about 09:00 pm, the appellant passed by in front of the house of the deceased Bhagirath in Tikoniya, Morar on a bicycle upon which he had kept a wooden rib of cot. While passing in such a way, that wooden rib of cot dashed one of the buffaloes of the deceased Bhagirath and, therefore, the deceased Bhagirath told him not to transport such wooden rib of cot on a bicycle. Thereafter, heated exchange of words took place between them and the appellant Pappu alias Chandra Prakash left the place for his house and threatened the deceased Bhagirath that he would "see him". Thereafter, at about 10:30 pm the appellant Pappu alias Chandra Prakash and his father Dayaram came to the spot in a matador and started abusing the deceased Bhagirath. When the deceased Bhagirath told them not to abuse him, the appellant Pappu alias Chandra Prakash gave four- five blows with his knife. Dayaram and Vishnu also pelted stones upon the deceased Bhagirath, his wife and his sons. Other accused like Totaram, Rajendra, Lalla and Tulsi were shouting and exhorting the accused-appellant Pappu alias Chandra Prakash. The deceased Bhagirath was taken to the hospital where he lodged a *Dehati Nalishi* Ex.P10. Dr. Vishwajit Jalaj (PW10) recorded a Dying Declaration Ex.P5 of the deceased Bhagirath. While his treatment was still going on, he succumbed to the injuries. After performing the various formalities the dead body of the deceased Bhagirath was sent for postmortem. Dr. Yogendra Singh (PW5) performed the postmortem on the body of the deceased Bhagirath and gave his report Ex.P4. He found ten stitched wounds to the deceased on his chest and abdomen. One incised

wound was also found on his waist which was skin deep. On opening of the wound, he found that omentum, large intestine and small intestine were stitched at various places. Those were cut due to assault from a stabbing weapon. According to Dr. Yogendra Singh (PW5), the deceased Bhagirath died due to aforesaid injuries and complications due to profuse bleeding.

3. ASI RA Tiwari (PW11) who recorded the *Dehati Nalishi* Ex.P10 sent the same for registration of crime and the FIR Ex.P11 was registered. He also gave a request letter to record the Dying Declaration. SHO Pradeep Rajoriya (PW13) went to the spot and prepared a spot map Ex.P12. He also recovered the minibus (matador) by which the appellant and his companions had travelled to the spot and prepared a recovery memo Ex.P13. He took bloodstained and plain soil from the spot and prepared a recovery memo Ex.P14. The appellant Pappu alias Chandra Prakash was arrested and a buttoned knife was recovered from him vide a seizure memo Ex.P3. Various other accused persons were arrested and their weapons were recovered. SHO Pradeep Rajoriya (PW13) examined various witnesses under Section 161 of CrPC. Various articles received from the hospital, picked up by the investigating officer from the spot and weapons recovered from the accused, were sent for Forensic Science Analysis. After due investigation, the charge-sheet was filed before the JMFC, Gwalior who committed the case to the Court of Session and ultimately it was transferred to XI Additional Sessions Judge, Gwalior.

4. The appellant abjured his guilt. He took a plea that he was falsely implicated in the matter. Since the co-accused Totaram had lodged the FIR against the deceased Bhagirath about a previous quarrel, various accused persons were falsely implicated in the matter. In defence, Surendra Singh Parihar (DW1) and Ashok Sharma (DW2) were examined.

5. The trial Court, after considering the evidence adduced by the parties, acquitted the remaining accused persons and also acquitted the appellant Pappu alias Chandra Prakash from the charge of Section 324 read with Section 34 of IPC but convicted and sentenced him under Section 302 of IPC, as mentioned above.

6. We have heard the learned counsel for the parties at length.

7. First of all, it is to be considered as to whether the death of the deceased was homicidal in nature or not? In this connection, the evidence of

Dr. Yogendra Singh (PW5) may be considered who performed the postmortem on the body of the deceased Bhagirath and gave a report Ex.P4. He found following injuries to the deceased:-

"(1) Stitched wound 4 stitches sized 4 ½ cm on the left side of chest at level of third rib 6 cm away from sternum edges transversely placed.

(2) Stitched wound 15 cm with 13 stitches vertically placed at the middle of abdomen (upper part) up-to umbilicus, abdominal cavity deep.

(3) Stitched wound 11 cm with 10 stitches vertically placed at middle of abdomen just 1 cm below from umbilicus, abdominal cavity deep.

(4) 3 cm stitched wound obliquely placed 12 cm away from umbilicus left side of abdomen, abdominal cavity deep.

(5) 8 cm stitched wound with 7 stitches on right epigastrium region, abdominal cavity deep, obliquely placed.

(6) 1 ½ cm stitched wound obliquely placed on right iliac fossa ½ cm deep.

(7) 2 ½ cm stitched wound with 3 stitches on left iliac fossa, abdominal cavity deep.

(8) 2 ½ cm stitched wound on lateral side of abdomen at middle part obliquely placed with 3 stitches.

(9) 3 cm stitched wound on left upper epigastrium region obliquely placed with 3 stitches, abdominal cavity deep.

(10) Incised wound stitched with clear cut margin 2x½x skin deep on the back at lumber region opposite 1st lumber vertebra.

(11) Tear in spleen with clear cut margin at lateral middle part, sized 3 cm.

(12) Tear in abdominal wall injuries no.2, 3, 4, 5, 7 and 9.

(13) Stitched wound in anterior part and middle of stomach with 7 stitches 6cm size.

(14) Tear of omentum opposite the wounds with blood in abdomen cavity.

(15) Tear of middle part of descending colon non-stitched 2 ½ cm with faecal matter comes out.

(16) No bony injury found on body, venesection on left leg.”

According to Dr. Yogendra Singh, various stitched wounds were found to the deceased Bhagirath and the deceased sustained injuries on small intestine, large intestine and other parts of the abdomen and due to the cumulative injuries and the profuse bleeding, he lost his life. Dr. Vishwajit Jalaj (PW10) who treated the deceased Bhagirath, also recorded a Dying Declaration Ex.P5 and it was confirmed that the injuries were caused by a sharp cutting weapon, like a knife. Looking to the number of injuries and their effect, the opinion given by Dr. Yogendra Singh (PW5) is acceptable that the death of the deceased Bhagirath was homicidal in nature. So many injuries could not be caused to the deceased Bhagirath due to an accident. Similarly, such injuries could not be caused by the deceased Bhagirath himself and hence, when death of the deceased Bhagirath was neither accidental nor suicidal, the opinion of Dr. Yogendra Singh (PW5) is acceptable that his death was homicidal in nature.

8. In the present case, the witnesses Prem Bai (PW1), Jitendra (PW2) and Dharmendra (PW3) etc. have been examined as eye-witnesses. They have stated that initially at about 09:00 pm the appellant Pappu alias Chandra Prakash was going on a bicycle having a wooden rib of cot on the bicycle and he gave a dash with that wooden rib to a buffalo at the house of the deceased Bhagirath and when the deceased Bhagirath blamed the appellant Pappu alias Chandra Prakash, then he started quarrelling and thereafter, he went from the spot giving a threat to the deceased Bhagirath and then he came back along with various companions and started abusing the deceased Bhagirath and thereafter, he gave various blows of knife to the deceased Bhagirath causing his death. Various contradictions were brought in the statements of these witnesses relating to number of blows and sequence of blows and where the injuries were caused to the deceased but such computation cannot be provided by the witnesses when the incident took place in a sudden spirit. The evidence of these eyewitness is duly corroborated by timely lodged FIR which was recorded in the shape of *Dehati Nalishi* Ex.P10. The FIR was lodged within one hour and twenty minutes of the incident while the spot was two kilometers

away from the police station. The FIR/*Dehati Nalishi* Ex.P10 was lodged by the deceased Bhagirath himself and it is duly proved by ASI RA Tiwari (PW11). ASI RA Tiwari (PW11) has stated that he went to the hospital and recorded a *Dehati Nalishi* Ex.P10. He also gave a requisition to the concerned doctor for recording of Dying Declaration and that application was Ex.D4. In the meaning time, the Dying Declaration Ex.P5 was recorded by Dr. Vishwajit Jalaj (PW10). He proved the Dying Declaration Ex.P5. The Dying Declaration was recorded in question-answer form and Dr. Vishwajit Jalaj (PW10) has clearly opined at closure of the Dying Declaration that the deceased Bhagirath was in a fit condition to give Dying Declaration. In that Dying Declaration, the deceased Bhagirath has stated that the injuries were caused by the appellant Pappu alias Chandra Prakash, son of Dyaram Lahari.

9. The learned Senior Advocate for the appellant has relied upon the judgment passed by the Division Bench of this Court in the case of "*Sitaram vs. State of MP*" [2010 (III) MPWN 9], in which it is held that Dying Declaration should be proved by admissible evidence. If Dying Declaration Ex.P5 recorded by Dr. Vishwajit Jalaj (PW10) is considered, then before the trial Court, Dr. Vishwajit Jalaj had to give the complete description of Dying Declaration and according to the judgment passed by the Division Bench of this Court in the case of *Sitaram* (supra), the Dying Declaration is properly proved. The learned Senior Advocate for the appellant has also submitted that the deceased Bhagirath sustained many injuries and that he was not in a position to give any statement, therefore, the Dying Declaration Ex.P5 was not the actual Dying Declaration of the deceased. In this connection, the judgment passed by the Apex Court in the case of "*Smt. Laxmi vs. Om Prakash and Others*" [AIR 2001 SC (Cri) 2383] was referred, in which it is mentioned that before accepting the Dying Declaration the Court should satisfy that the deceased was in a fit state of mind and capable to make the statement when he gave a Dying Declaration and the same was recorded. In the present case, Dr. Vishwajit Jalaj (PW10) has categorically stated that the deceased Bhagirath was in a fit condition to give his statement and he gave answers to the questions asked by Dr. Vishwajit Jalaj. When a doctor confirms about the mental state of the deceased at the time of recording of Dying Declaration then it cannot be accepted that the deceased Bhagirath was not in a condition so that he could not give Dying Declaration. The Dying Declaration Ex.P5 as recorded by Dr. Vishwajit Jalaj is acceptable.

10. The learned Senior Advocate for the appellant has also submitted that when there was an opportunity for the police to send a requisition to the Executive Magistrate for recording of Dying Declaration, then it was for the Executive Magistrate to record the Dying Declaration and if Dying Declaration was recorded by others, then such Dying Declaration cannot be accepted. He has referred to the statement of ASI RA Tiwari (PW11) who has stated that he sent a requisition as Ex.D4 and he recorded the *Dehati Nalishi* at about 11:50 pm whereas Dr. Vishwajit Jalaj (PW10) who was a treating doctor, did not receive any such requisition and he recorded Dying Declaration of the deceased at about 12:30 am on 20/06/1996. Since Dr. Vishwajit Jalaj was the treating doctor and he says that no police officer had visited the hospital in front of him still the possibility cannot be ruled out that ASI RI Tiwari (PW11) would have visited the hospital and recorded a *Dehati Nalishi* Ex.P10 and since he recorded the *Dehati Nalishi*, he gave requisition Ex.D4 in written to record the Dying Declaration and it is possible that the staff of the hospital did not produce that requisition when Dr. Vishwajit Jalaj started examining the deceased Bhagirath. Hence, by difference of timings an overt act of Dr. Vishwajit Jalaj did not create any doubt that he did not record the Dying Declaration at a proper time or the deceased Bhagirath was not in a fit condition to give the Dying Declaration. Hence, the judgment passed by the Apex Court in the case of *Smt. Laxmi* (supra) cannot be applied in a negative form. According to the dictum laid down in that judgment, Dying Declaration was recorded by Dr. Vishwajit Jalaj and the deceased Bhagirath was in a fit state of mind and capable of giving statements. Hence, the Dying Declaration Ex.P5 is trustworthy.

11. The learned Senior Advocate for the appellant has also submitted that a complete address of the appellant was not given in Dying Declaration Ex.P5 and, therefore, it cannot be accepted to connect the appellant with the crime. In this connection, the judgment passed by the Apex Court in the case of "*Gopal Singh and Another vs. The State of MP and Another*" [AIR 1972 SC 1557] is referred, in which it is held that in Dying Declaration if names and addresses of the accused persons are omitted then such Dying Declaration cannot be used against the accused persons. However, in the present case, the various witnesses have stated that initially a quarrel took place between the deceased Bhagirath and the appellant Pappu alias Chandra Prakash and thereafter, the appellant went to the spot along-with his father Dayaram who had also participated in the assault and quarrel. Therefore, if the deceased

Bhagirath has stated that he was assaulted by Pappu son of Dayaram Lahari then he gave a complete address and identification of the appellant. It was for the appellant to prove that he had a brother who is known as Pappu, son of Dayaram Lahari but the appellant could not prove any of his brothers was called by name of Pappu. Hence, the appellant was identifiable by the description given in the Dying Declaration Ex.P5. Hence, the law laid down in the case of *Gopal Singh* (supra) is not acceptable in the present case. On the basis of the aforesaid discussion, the Dying Declaration Ex.P5 proved by Dr. Vishwajit Jalaj (PW10) is acceptable. The Dying Declaration is a substantive piece of evidence and the accused can be convicted for the offence under Section 302 of IPC on the sole basis of Dying Declaration. However, in the present case, there is availability of the eye-witnesses in the case. Hence, the Dying Declaration can be used as a substantive piece of evidence as well as for corroboration of eye-witnesses.

12. The evidence of eye-witnesses is duly corroborated by the *Dehati Nalishi* Ex.P10 recorded by ASI RA Tiwari (PW11). Though it is pointed out by learned Senior Advocate for the appellant that there was interpolation in the date of the *Dehati Nalishi* Ex.P10 but since the *Dehati Nalishi* was taken soon before 12 O'clock in the night and it was possible that ASI RA Tiwari (PW11) would have mentioned the date 20/06/1996 by mistake with the apprehension that *Dehati Nalishi* was recorded after 12 O'clock and thereafter, if he corrected his mistake, then by such correction the entire *Dehati Nalishi* cannot be discarded. *Dehati Nalishi* is duly supported by the FIR Ex.P11 which was recorded on 20/06/1996 at about 00:10 am i.e. within 20 minutes of recording of *Dehati Nalishi*. Hence, it cannot be said that ASI RA Tiwari had recorded *Dehati Nalishi* after the death of the deceased Bhagirath or that it was an ante-timed document. It is true that there is a little contradiction between the statements of Dr. Vishwajit Jalaj (PW10) and ASI RA Tiwari (PW11) that ASI Tiwari did not meet Dr. Vishwajit Jalaj who was the treating doctor and, therefore, according to the learned Senior Advocate for the appellant a doubt is created to *Dehati Nalishi* that it was not recorded at an appropriate time. The learned Senior Advocate for the appellant has relied upon the judgment passed by the Apex Court in the case of "*Paramjit Singh and Others vs. State of Punjab and Others*" [1997 CAR 1 (SC)] in which it is held that such Dying Declaration recorded by the police is not acceptable. Factual position of case of *Paramjit Singh* (supra) is quite different from the present matter. In the case of *Paramjit Singh* (supra), the deceased was

admitted in the hospital for one and half months but the Investigating Officer did not try to arrange the recording of his Dying Declaration by the Executive Magistrate and he simply recorded his Dying Declaration on his own and there was no description about the health condition of the deceased when such Dying Declaration was recorded. In the present matter, it appears that ASI RA Tiwari (PW11) went to the hospital at about 11:50 pm and recorded *Dahati Nalishi* Ex.P10. At that time, Dr. Vishwajit Jalaj (PW10) was not present who recorded the Dying Declaration Ex.P5 at about 12:30 am on 20/06/1996. Hence, it is possible that ASI RA Tiwari went to the hospital first and he left before arrival of Dr. Vishwajit Jalaj. However, if Dr. Vishwajit Jalaj found the deceased Bhagirath to be competent and fit for giving the Dying Declaration at 12:30 am then it cannot be said that at about 11:50 pm in the same night the deceased was not competent to give his statement. Hence, though there is no certificate given by the doctor that the deceased Bhagirath was in a fit condition of his mind, *Dehati Nalishi* Ex.P10 recorded by ASI RA Tiwari cannot be discarded on the basis that there was no medical certificate appended below that *Dehati Nalishi*. Also, the same text of evidence was given by the deceased Bhagirath to Dr. Vishwajit Jalaj in Dying Declaration Ex.P5 and, therefore, if *Dehati Nalishi* Ex.P10 is discarded then still by the remaining evidence the case of the prosecution is duly proved.

13. In this connection, the judgment passed by the Apex Court in the case of "*Somappa Vamanappa Madar Shankarappa Ravanappa Kaddi vs. The State of Mysore*" [AIR 1979 SC 1831] may be referred, in which it is held that if the FIR is discarded due to any reason then testimony of the eye-witnesses and other evidence should be considered by its own merits. In the present case, if the evidence of eye-witnesses Prem Bai (PW1), Jitendra (PW2) and Dharmendra (PW3) is considered along-with Dying Declaration Ex.P5 recorded by Dr. Vishwajit Jalaj (PW10) and the injuries found to the deceased by Dr. Yogendra Singh (PW5) who performed the postmortem on the body of the deceased Bhagirath and gave a report Ex.P4, then the deceased found such injuries which were shown to be caused by the appellant and as described by the eyewitnesses. Hence, the evidence of the eyewitness is duly corroborated.

14. The learned Senior Advocate for the appellant has also submitted that the witness Uday Singh (PW9) who took the deceased Bhagirath in his auto-rickshaw has stated that the deceased Bhagirath was not accompanied by his

mother or brothers and, therefore, the eye-witnesses are not the actual eye-witnesses. Being relatives of the deceased Bhagirath, they cooked a story. However, the witness Uday Singh (PW9) has declared hostile. In his Case Diary statement Ex.P8 he has stated about the incident and presence of family members of the deceased Bhagirath. Under these circumstances, testimony of hostile witness Uday Singh cannot be accepted in such a manner that testimony of the eye-witnesses would be discarded. At this stage, it can be said that if testimony of all the eye-witnesses is discarded still the appellant Pappu alias Chandra Prakash can be convicted only on the basis of Dying Declaration Ex.P5 recorded by Dr. Vishwajit Jalaj (PW10). Under these circumstances, it is proved beyond doubt that the appellant gave many blows of knife and killed the deceased Bhagirath.

15. The learned Senior Advocate for the appellant has also referred to the evidence given by Surendra Singh Parihar (DW1) and Ashok Sharma (DW2) to show that unknown persons were beating the deceased Bhagirath and thereafter, Uday Singh (PW9) a driver of two-seater, took the deceased Bhagirath to the hospital and the witness Surendra Singh Parihar told the witness Dharmendra (PW3), son of the deceased Bhagirath, about the incident and he also informed that he did not know the names of the culprits. Hence, the learned Senior Advocate has submitted that the culprits were unknown and wife and sons of the deceased Bhagirath have falsely implicated the appellant. It is possible that the defence witnesses Surendra Singh Parihar and Ashok Sharma might have not known the appellant but the deceased had identified the appellant and he blamed him in the Dying Declaration Ex.P5. Hence, the testimony of the eye-witnesses is reliable. It is possible that the witnesses Surendra Singh and Ashok Sharma were created witnesses in favour of the appellant to discard the testimony of the eye-witnesses. Hence, by statements of these two witnesses there is no adverse effect on the prosecution case.

16. The learned Senior Advocate for the appellant has also submitted that there was no arrangement of light at the spot and therefore, neither the eye-witnesses nor the deceased Bhagirath could see the actual culprits. However, by the statements of Surendra Singh Parihar (DW1) and Ashok Sharma (DW2), it is proved that there was sufficient light so that these witnesses were capable to see the incident. Also, no cross-examination was done of the various eye-witnesses relating to availability of appropriate light and hence, such submission

cannot be accepted at this stage.

17. The learned Senior Advocate for the appellant has submitted that quarrel was started on the basis of a trifling matter and the appellant had never intended to kill the deceased Bhagirath and, therefore, the trial Court has wrongly convicted him of offence under Section 302 of IPC. However, the submission made by the learned Senior Advocate for the appellant, cannot be accepted.

18. According to the factual position of this case, initially a quarrel was started between the appellant and the deceased Bhagirath on a trifling matter but the appellant went back after giving a threat to the deceased Bhagirath and thereafter, he came to the spot with some companions. The appellant had a knife with him and according to Dr. Vishwajit Jalaj (PW10) who proved the bedhead ticket Ex.P6 of the deceased Bhagirath, many injuries to the deceased Bhagirath were found caused by a sharp cutting weapon. Dr. Yogendra Singh (PW5) has proved the postmortem report Ex.P4 of the deceased. According to him, there were eleven injuries caused by a sharp cutting weapon, out of them some injuries were stab wounds and various vital organs of the body were found cut. If the appellant Pappu alias Chandra Prakash was not interested to kill the deceased Bhagirath then he could teach a lesson to the deceased Bhagirath by giving one or two blows of knife but according to postmortem report Ex.P4 he has given as many as eleven blows of knife to the deceased Bhagirath. Under these circumstances, it cannot be said that the appellant Pappu alias Chandra Prakash did not intend to kill the deceased Bhagirath. In this case, looking to the conduct of the appellant Pappu alias Chandra Prakash that he came with a plan to kill the deceased Bhagirath, he was accompanied by his father and other companions and he gave as many as eleven blows to the deceased Bhagirath, out of which various blows were on chest and abdomen and other vital parts of the body of the deceased Bhagirath and caused injuries to many vital parts like omentum, large intestine and small intestine etc. then under these circumstances, it is proved beyond doubt that the appellant had intended to kill the deceased Bhagirath.

19. The appellant did not prove any factual position that at the time of incident the deceased Bhagirath did any activity so that any right of private defence would have accrued to the appellant Pappu alias Chandra Prakash or that he was under sudden or grave provocation. If a quarrel had taken place two hours before the incident then provocation received by the appellant

was relaxed and after two hours it cannot be said that he was under sudden or grave provocation. On the other hand, he went to take revenge with the deceased Bhagirath because Bhagirath had blamed him for causing injury to one buffalo. The trial Court has rightly convicted the appellant of offence under Section 302 of IPC and there is no reason to intervene in the judgment of the trial Court where conviction under Section 302 of IPC was recorded.

20. So far as the sentence is concerned, the trial Court has recorded the minimum sentence prescribed for the offence under Section 302 of IPC and, therefore, no further dilution can be done by this Court. Hence, no interference is required on the order of sentence recorded by the trial Court.

21. On the basis of aforesaid discussions, appeal filed by the appellant has no substance. Consequently, it cannot be accepted. The appeal filed by appellant Pappu alias Chandra Prakash is hereby dismissed affirming the conviction and sentence passed by the trial Court against him for the offence under Section 302 of IPC.

22. The appellant is in jail and the Registry is directed to provide a copy of the judgment to the appellant with the intimation that he can file an SLP before the Apex Court either directly or with the help of High Court Legal Services Committee.

23. A copy of the judgment be also sent to the trial Court alongwith its record for information.

Appeal dismissed.

I.L.R. [2017] M.P., 1736

CRIMINAL REVISION

Before Mr. Justice Rajendra Mahajan

Cr.R. No. 967/2015 (Jabalpur) decided on 17 March, 2017

MANOJ PILLAI & anr.

...Applicants

Vs.

SMT. PRASITA MANOJ PILLAI

...Non-applicant

A. *Protection of Women from Domestic Violence Act (43 of 2005), Section 2(a) & 2(f) – “Domestic Relationship” & “Aggrieved Person”* — There is no divorce between the parties – Wife is still in domestic relationship and therefore respondent wife would be an

aggrieved person u/S 2(a) of the Act – Supreme Court has held that legal relationship between husband and wife continues even after the decree for judicial separation. (Para 4 & 5)

क. घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 2(ए) व 2(एफ) – “घरेलू नातेदारी” एवं “व्यथित व्यक्ति” – पक्षकारों के मध्य कोई विवाह विच्छेद नहीं हुआ – पत्नी अभी भी घरेलू नातेदारी में है एवं इसलिए प्रत्यर्थी पत्नी अधिनियम की धारा 2(ए) के अंतर्गत व्यथित व्यक्ति होगी – उच्चतम न्यायालय ने यह अभिनिर्धारित किया है कि न्यायिक पृथक्करण हेतु डिक्री के बाद भी पति और पत्नी के मध्य विधिक नातेदारी जारी रहेगी।

B. Protection of Women from Domestic Violence Act (43 of 2005), Section 2(q) – “Respondent” – Female Member – Wife seeking relief under the Act of 2005 against mother-in-law – Challenge to – Held – Supreme Court has recently deleted the word “male” appearing in the definition of Section 2(q) – Aggrieved person may seek remedies under the Act against female members also. (Para 9)

ख. घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 2(क्यू) – “प्रत्यर्थी” – महिला सदस्य – पत्नी, सास के विरुद्ध, 2005 के अधिनियम के अंतर्गत अनुतोष चाह रही है – को चुनौती – अभिनिर्धारित – उच्चतम न्यायालय ने हाल ही में धारा 2(क्यू) की परिभाषा में वर्णित “पुरुष” शब्द को हटा दिया है – अधिनियम के अंतर्गत व्यथित व्यक्ति, महिला सदस्यों के विरुद्ध भी उपचार चाह सकता है।

C. Protection of Women from Domestic Violence Act (43 of 2005), Section 12 and Criminal Procedure Code, 1973 (2 of 1974), Section 468 – Retrospective Effect of the Act – Limitation – Maintainability of Application – Incidents and conduct of the parties prior to the date of coming into force of the Act will also be considered while passing orders u/S 18, 19 and 20(1)(d) of the Act – Further held – Provisions of Section 468 Cr.P.C. are not applicable at the time of filing an application u/S 12 of the Act of 2005 – Application is maintainable. (Para 6 & 7)

ग. घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 12 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 468 – अधिनियम के मूललक्षी प्रभाव – परिसीमा – आवेदन की पोषणीयता – अधिनियम की धारा 18, 19 एवं 20(1)(डी) के अंतर्गत आदेश पारित करते समय अधिनियम के प्रभाव में आने से पूर्व की घटनाओं तथा पक्षकारों के आचरण को भी विचार में लिया जायेगा –

आगे अभिनिर्धारित – 2005 के अधिनियम की धारा 12 के अंतर्गत आवेदन प्रस्तुत करते समय, दण्ड प्रक्रिया संहिता की धारा 468 के उपबंध लागू नहीं होंगे – आवेदन पोषणीय है।

D. Protection of Women from Domestic Violence Act (43 of 2005), Section 27(1)(a) – Territorial Jurisdiction – Husband presently living in Dubai and wife living at Bhopal – As per Section 27(1)(a), aggrieved person may file an application where the person permanently or temporarily resides or carries on the business or is employed – It is undisputed that wife is presently residing with her parents at Bhopal – JMFC Court at Bhopal has jurisdiction to entertain the application – Revision dismissed. (Para 8)

घ. घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 27(1)(ए) – क्षेत्रीय अधिकारिता – पति वर्तमान में दुबई में रह रहा है तथा पत्नी भोपाल में रह रही हैं – धारा 20(1)(ए) के अनुसार, व्यथित व्यक्ति आवेदन प्रस्तुत कर सकता है जहाँ वह व्यक्ति स्थायी रूप से या अस्थायी रूप से निवास करता है या कारबार करता है या नियोजित है – यह अविवादित है कि पत्नी वर्तमान में अपने माता-पिता के साथ भोपाल में निवास कर रही है – न्यायिक मजिस्ट्रेट प्रथम श्रेणी, भोपाल को आवेदन को ग्रहण करने की अधिकारिता है – पुनरीक्षण खारिज।

E. Protection of Women from Domestic Violence Act (43 of 2005), Section 28 and Criminal Procedure Code, 1973 (2 of 1974), Chapter VII A – Execution of Order – Held – Section 28 of the Act of 2005 lays down that Courts shall be governed by general provisions of the Cr.P.C. – If husband is living at Dubai, wife may take recourse to provisions of Chapter VII A of Cr.P.C. to get the order executed in Dubai against husband. (Para 11)

ड. घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 28 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), अध्याय VII ए – आदेश का निष्पादन – अभिनिर्धारित – 2005 के अधिनियम की धारा 28 यह प्रतिपादित करती है कि न्यायालय दण्ड प्रक्रिया संहिता के सामान्य उपबंधों द्वारा शासित होगा – यदि पति दुबई में रह रहा है, तो पति के विरुद्ध दुबई में आदेश निष्पादित किये जाने हेतु पत्नी दण्ड प्रक्रिया संहिता के अध्याय VII ए के उपबंधों का अवलंब ले सकती है।

F. Interpretation of Statute – Protection of Women from Domestic Violence Act (43 of 2005) – Aims and Objects – Act of 2005 is essentially a remedial statute and it is trite law that a remedial statute needs to be interpreted liberally to promote the beneficial object behind

it and any interpretation which may defeat its object necessarily needs to be eschewed. (Para 7)

च. कानून का निर्वचन — घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43) — लक्ष्य एवं उद्देश्य — 2005 का अधिनियम आवश्यक रूप से एक उपचारी कानून है तथा यह जीर्ण विधि है कि एक उपचारी कानून के पीछे के लाभकारी उद्देश्य को बढ़ावा देने हेतु, उसका उदारतापूर्वक निर्वचन करने की आवश्यकता है तथा ऐसा कोई निर्वचन जो उसके उद्देश्य को विफल कर सकता है से आवश्यक रूप से दूर रहने की जरूरत है।

Cases referred :

(2015) 11 SCC 718, (2012) 3 SCC 183, (2014) 3 SCC 712, 2016 Cr.L.J. 330 SC, 2016 Cr.L.J. 2960, 2013 Cr.L.J. 85, 2011 AIR SCW 1372, (2016) 10 SCC 165, 2013 Cr.L.J. 2182.

R.K. Agarwal, for the applicants.

Rahul Choubey, for the non-applicant.

ORDER

RAJENDRA MAHAJAN, J. :- The applicants have filed this Criminal Revision Petition under Section 397 read with 401 of the Cr.P.C. being aggrieved by and dissatisfied with the order dated 08.04.2015 passed by the Sixth Additional Sessions Judge Bhopal in Criminal Appeal No.695/2014, thereby affirming the order dated 03.07.2014 passed by the Judicial Magistrate First Class Bhopal in MJC No.1187/2014 after holding that the application filed by the non-applicant under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short "the Act") is maintainable.

2. The brief facts necessary for disposal of this revision are given below :-

2.1 On 10.12.2013, the non-applicant-wife has filed in the court of JMFC Bhopal an application under Section 12 of the Act (for short "the application") with her own affidavit seeking reliefs under Sections 18, 19, 20, 21, 22 and 23 of the Act stating that on 07.11.1999, she got married to applicant No.1 Manoj Pillai as per Hindu rites and customs at Bhopal. Applicant No.2 Smt. Kowalli Pillai is the mother of applicant No.1, and therefore, she is her mother-in-law by marital relation. At the time of her marriage, he was working in the Bridgestone Company at Indore. In the year 2000, he left the company and joined the Apollo company at Baroda. He worked with the company between

the years 2000 and 2006. Thereafter, he got a job in Dubai (UAE). She lived in the company of applicant No.1 in Indore, Baroda and Dubai. She has alleged that in her marriage her father gave her nearly 600 gms of gold ornaments presently valued at Rs.18,00,000/- (eighteen laks) in addition to other valuable gifts. He took the ornaments in his custody at the beginning of her marital life. He would not allow her to meet her parents and misbehave with them. He always demanded money from her father as expenditure incurred by his mother at the time of his marriage with her. Her father gave him one lakh rupees for repayment of his outstanding dues. He would drink alcohol heavily. In the drunken state, upon the provocation and instigation of applicant No.2, he would brutally beat her. He forced her to have perverted sex with him. However, she suffered in silence all kinds of violence and atrocities being meted out to her at the hands of the applicants as an obedient Indian house-wife. When she and applicant No.1 were residing in Baroda, she gave birth to a son who is christened Aryan. He dropped her and new born Aryan with her parents in Bhopal, and he moved to Dubai to do the job there. Some time later, she with Aryan joined him in Dubai, where he often committed marpeet (beatings) with her in the drunken state. He never loved and cared her and Aryan. He only gave her monthly expenses. She observed that he lavishly spent money on friends. She also came to know that he had illicit relations with some women whose names have been mentioned in para 8 of the application. Whenever she opposed his extra-marital relations, he tortured her mentally and physically. He sold all her gold ornaments, which is her Stridhan, despite her strong protest. He forcibly sent her and Aryan to Bhopal from Dubai. Ever since, she along with Aryan has been living perforce with her parents in Bhopal.

2.2 The non-applicant has also averred that applicant No.1 has his own business of interior decoration under the name and style of the Immersion Interior Designs in Dubai. His monthly profit from the said business is around Rs.4,75,000/- (four laks and seventy five thousand) per month in terms of the Indian currency. She is a house-wife. She does not have any independent source of income and her father incurs presently their all living expenses. She does not have her own accommodation, therefore, she along with Aryan has to reside under compulsion with her parents. As such, she and Aryan are living

in misery in Bhopal. She, therefore, prays to allow the application and direct the applicants to provide her the reliefs as specified in para 17 of the application.

2.3 In written reply to the application, the applicants have admitted the facts namely that applicant No.1 got married to the non-applicant on 07.11.1999 at Bhopal, that from the loins of applicant No.1, the non-applicant gave birth to Aryan and that in February 2006, applicant No.1 moved to Dubai for doing a job there. However, they have denied all the allegations levelled by the non-applicant against them. On the other hand, they have blamed the non-applicant for every wrong. They have alleged that her behaviour with them was very atrocious. She never took interest in household chores. She always preferred to stay with her parents at Bhopal. She lived in the company of applicant No.1 for a total period of one year between the time-period 2001 and February 2005 at Baroda. She seldom took interest in having physical intimacy with applicant No.1. She gave birth to Aryan in the fifth year of their marriage. She did not take proper care in his upbringing. Therefore, applicant No.2 had to look after him. In the year 2010, the father of applicant No.1 passed away. Thereafter, applicant No.2 started living with them in Dubai. She used to quarrel with her on trivial matters. In the circumstances, applicant No.1 had to send applicant No.2 back to India. In Dubai, she did not take proper care of Aryan and that she spent most of time in conversations with her parents on phone. She left Dubai with Aryan upon her own volition. They have also averred that applicant No.1 had to close down his business in November 2012 on account of huge losses. He is, now, doing the brokery to earn a living in Dubai. Thus the applicants have denied that they had ever committed any sort of domestic violence upon the non-applicant and prayed for dismissal of the application.

2.4 On 16.04.2014, the applicants have filed an application, numbered as I.A. No.2, before the learned JMFC, challenging the maintainability of proceeding under Section 12 of the Act on the following grounds :-

(i) The non-applicant remained in the company of applicant No.1 till February 2006, whereas the Act came into force on 26.10.2006. Therefore, the provisions of the Act are not applicable

in the case.

(ii) Applicant No.1 and the non-applicant had not been in domestic relationship for over seven years i.e. from February 2006 till the date of filing of the application. Thus, the non-applicant has already lost the status of an aggrieved person as defined in “clause (a)” of Section 2 of the Act.

(iii) As per the provisions of Section 468(2)(b) of the Cr.P.C. the application is barred by limitation as the period of filing the complaint is one year from the date of incident of domestic violence. But, the non-applicant has filed the application after long lapse of the said period.

(iv) The JMFC court at Bhopal has no territorial jurisdiction to entertain the application as the alleged domestic violence occurred in Baroda.

(v) Applicant No.2 is a woman, therefore, she does not come within the ambit of the respondent as defined in “clause q” of Section 2 of the Act. Hence, the learned JMFC has committed a legal error by registering the case against her and the learned Appellate Judge committed the same error by upholding the registration of the proceeding against her.

(vi) Since applicant No.1 is presently residing in Dubai, the provisions of the Act are not applicable there.

2.5 As per the record of the trial court, the non-applicant has not submitted a written reply to I.A No.2.

2.6 Having heard the learned counsel for the parties, the learned JMFC has dismissed I.A. No.2 vide order dated 03.07.2014 holding that the proceeding is maintainable under the Act after rejecting all the aforestated objections raised by the applicants.

2.7 Feeling aggrieved by the aforesaid order of the JMFC, the applicants filed an appeal under Section 29 of the Act. The learned appellate Judge, having heard the learned counsel for the parties, dismissed the appeal vide the impugned order affirming the order passed by the JMFC.

- 2.8 Further aggrieved by the impugned order, the applicants are before this court by filing this revision.
3. I have heard the learned counsel for the parties at length and perused the order dated 03.07.2014, the impugned order dated 08.04.2015 and all the materials available on record.
4. Undisputed facts of the case are that applicant No.1 and the non-applicant got married to each other on 07.11.1999, that son Aryan was born from their wedlock, and they have not so far divorced as per law each other. As such, the domestic relationship between applicant No.1 and the non-applicant stands established.
5. In the application, the non-applicant has not mentioned the time whereafter she has been living separately from applicant No.1 along with Aryan. The applicants in I.A. No.2 have claimed that the domestic relationship between applicant No.1 and the non-applicant came to an end in February 2006, whereas in para 4 of the reply to the application they have averred that the non-applicant had resided with applicant No.1 in Dubai from March 2010 to March 2013. Thus, the applicants have made self-contradictory averments with regard to the time when applicant No.1 and non-applicant have started living separately in I.A. No.2 and the reply to the application. If the non-applicant remained in the company of applicant No.1 till March 2013 as stated by the applicants in the application, then there would be no dispute with regard to the application of the Act in the case as the Act has been in operation since 26.10.2006. It is assumed just for the sake of academic discussion that the non-applicant has been living separately from applicant No.1 since February 2006. Notwithstanding that, the provisions of the Act are still applicable in the case in view of the following decisions rendered by the apex court. In the case of *Shalini Vs. Kishor and others*, (2015) 11 SCC 718, the undisputed facts were that the applicant-husband got married to respondent-wife on 8.5.1990 and that he drove her away from the matrimonial house sometime in the year 1992. In that case Hon'ble the Supreme Court has interpreted the domestic relationship as defined in "clause (f)" of Section 2 of the Act and held on the basis of the aforesaid admitted facts that the domestic relationship between them is established. In that case, the Supreme Court, having placed reliance on the law laid down by it in the case of *V.D. Bhanot Vs. Savita Bhanot*, (2012) 3 SCC 183; and *Saraswathy Vs. Babu*, (2014) 3 SCC 712, has held that the conduct of the parties even prior to coming into force

of the Act can be taken into consideration while passing orders under Sections 18, 19 and 20(1)(d) of the Act. In the case of *Krishna Bhattacharjee Vs. Sarathi Choudhary and another* (2016 Cr.L.J. 330 SC) the wife was not living with her husband at the time when the Act came into force on 26.10.2006 because of decree for judicial separation. The Supreme Court has held that the legal relationship between the husband and the wife continues even after the decree for judicial separation, therefore, the status of wife is an aggrieved person as per the definition given under Section 2(a) of the Act, with the result the provisions of the Act will apply in the case. In view of the law laid down in the aforesaid authorities, it is held that the non-applicant has acquired the status of an aggrieved person and that the provisions of the Act are applicable in the instant case.

6. The Supreme Court has held in the cases of *V.D. Bhanot Vs. Savita Bhanot* (supra) and *Saraswathy Vs. Babu* (supra) that the conducts of the parties even prior to the commencement of the Act can be taken into consideration, therefore, by implication the provisions of Section 468 of the Cr.P.C. are not applicable at the time of filing an application under Section 12 of the Act. Thus it is held that the provisions of Section 468 of the Cr.P.C. are not applicable in the case.

7. Whether or not the provisions of Section 468 of the Cr.P.C. are applicable in a case under the Act may be examined from another angle. As per the provisions of the Act, only the breach of protection order or interim protection order, which is passed under Section 18 of the Act, by the respondent is an offence under Section 31 of the Act, meaning thereby the breach of any order passed under Sections 19, 20, 21, 22 and 23 of the Act by the respondent is not an offence. The same view is taken by the Chhatisgarh High Court and the Rajasthan High Court in the decisions rendered in the cases of *Suraj Satyanarayana Sharma and others Vs. Bharti Suraj Sharma* (2016 Cr.L.J. 2960) and *Smt. Kanchan Vs. Vikramjeet Setiya* (2013 Cr.L.J. 85) respectively. Hence, the provisions of Section 468 of the Cr.P.C. are not applicable in the cases arising out of the Act. On account of language employed in Section 28(1) of the Act, supposing that the provisions of Section 468 of the Cr.P.C. are applicable in the Act, then the court has power under Section 473 of the Cr.P.C. for extension of period of limitation in initiating proceedings under the Act if the delay has been properly explained by the aggrieved person or it is necessary so to do in the interest of justice, taking into consideration

the Act is essentially a remedial statute and it is a trite law that a remedial statute needs to be interpreted liberally to promote the beneficial object behind it and any interpretation which may defeat its object necessarily needs to be eschewed.

8. Section 27(1) of the Act provides for the territorial jurisdiction of the court where an aggrieved person can file an application under Section 12 of the Act. As per clause "(a)" of Sub-Section 1 of Section 27 of the Act, the aggrieved person may file an application where the person permanently or temporarily resides or carries on the business or is employed. The non-applicant has stated in the application that she has been presently residing in Bhopal with her parents after applicant No.1 had driven her out of the matrimonial house. This fact is not contradicted by the applicants. Thus, the JMFC court at Bhopal has jurisdiction to entertain the application filed by the non-applicant under Section 12 of the Act.

9. Hon'ble the Supreme Court in the case of *Sou. Sandhya Manoj Wankhade Vs. Manoj Bhimrao Wankhade and others*, (2011 AIR SCW 1372), has held that in the definition of "respondent" given in "clause (q)" of Section 2 of the Act, the word respondent includes "female" person/persons who is/are in the domestic relationship with the aggrieved person and that she may also seek any relief against her/them under the Act. In a recent judgment rendered in the case of *Hiral P. Harsora and others Vs. Kusum Narottamdas Harsora and others*, (2016) 10 SCC 165, the Supreme Court has deleted the word "male" appearing in the definition of Section 2(q). Thus, the aggrieved person may seek remedies under the Act against a female member or members who is/are or has been/have been in a domestic relationship with her. The applicants have not denied the fact that the relation between applicant No.2 and the non-applicant is of the mother-in-law and the daughter-in-law respectively. The non-applicant has averred in the application that she was subjected to domestic violence at the hands of applicant No.1 upon the instigation of applicant No.2. Therefore, in view of the aforesaid decisions of the Supreme Court, it is held that the non-applicant may seek relief(s) against applicant No.2 as well. Thus the case is rightly registered against applicant No.2.

10. In the matter of *Hima Chugh Vs. Pritam Ashok Sadaphule and Others*, (2013 Cr.L.J. 2182), the petitioner-wife and the respondent- husband were living in the U.K. Upon the infliction of domestic violence by the husband

on the wife, she had to return to India and thereafter, she filed an application under Section 12 of the Act. The husband challenged the maintainability of the proceeding thereunder on the ground *inter alia* that he is living in the U.K.; therefore, the provisions of the Act are not applicable to him. In that case, the Delhi High Court, after elaborate discussion and logical and legal reasoning, has ruled that the provisions of the Act are applicable to the husband despite that he has been living in the U.K. I am fully in agreement with the reasoning behind the said ruling. Therefore, it is held that the provisions of the Act are also applicable to applicant No.1 nevertheless he is presently living in Dubai.

11. At the time of arguments, the learned counsel for the applicants has contended as to how any order passed under the Act in the instant case will be executable in Dubai ? From the perusal of the application, it is evident that the non-applicant has sought mainly monetary reliefs against applicant No.1. The monetary relief has been defined in Section 2(k) of the Act and such reliefs are to be granted by way of proceedings under Sections 12 and 23 of the Act. The Section 12 covers in its application all kinds of reliefs including monetary relief as well as protection order and compensation. In case of non-compliance of an order of monetary relief or compensation the aggrieved person has to apply to the jurisdictional Magistrate, who has passed the said order, for execution of the order as per the provisions of Section 20 of the Act. The Magistrate may get the order executed in terms of Sub-Sections 4 and 6 of Section 20 of the Act. Section 28 of the Act lays down that the courts shall be governed by the general provisions of the Code of Criminal Procedure in relation to the proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 as well as Section 31 of the Act. Thus, in the present case the non-applicant may take recourse to provisions of "CHAPTER VIIA" of the Cr.P.C. to get the order executed in Dubai against applicant No.1.

12. From the aforesaid reasons and discussion, I come to the conclusion that the learned JMFC and the learned appellate Judge have rightly held that the proceeding initiated by the non-applicant under the Act is maintainable. Therefore, this revision is liable to be dismissed and is hereby dismissed being devoid of merits and substance.

13. Few words more, the Act is intended to protect the women from being victims of domestic violence which in its sweep also includes domestic violence of economic nature, therefore, the filing of appeals and revisions on flimsy and frivolous grounds against the order(s) passed by the trial court in favour of the

aggrieved woman amounts to causing further domestic violence of economic nature upon her. It is already held that this revision is devoid of merits and substance and it is also apparent from the contents of the application that the non-applicant is a victim of domestic violence inflicted by the applicants. Therefore, the applicants are directed to pay the non-applicant Rs.5000/- (five thousand) towards the expenses of this revision.

14. Accordingly, this revision is finally disposed of.

Revision dismissed.

I.L.R. [2017] M.P., 1747

CRIMINAL REVISION

Before Mr. Justice G.S. Ahluwalia

Cr.R. No. 206/2012 (Gwalior) decided on 13 April, 2017

JAKIR KHAN

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 451 & 457 and Forest Act (16 of 1927) , Section 52 – Custody of Vehicle on Supurdnama – Confiscation Proceeding – Jurisdiction of Magistrate – Held – Considering the fact that there is specific provision u/S 52 of the Act of 1927 which provides for confiscation proceedings and remedies against such order, it is clear that once an intimation of initiation of confiscation proceedings is given to the Magistrate, he loses it's jurisdiction to release the vehicle on Supurdgi – In the instant case, confiscation proceedings had begun and hence Magistrate had no jurisdiction to release the vehicle on Supurdgi – Revisional Court rightly set aside the order of Magistrate – Application dismissed.

(Para 7)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 451 व 457 एवं वन अधिनियम (1927 का 16), धारा 52 – सुपुर्दनामें पर वाहन की अभिरक्षा – अधिहरण कार्यवाही – मजिस्ट्रेट की अधिकारिता – अभिनिर्धारित – यह तथ्य विचार में लेते हुए कि 1927 के अधिनियम की धारा 52 के अंतर्गत विनिर्दिष्ट उपबंध है जो अधिहरण कार्यवाहियां एवं उक्त आदेश के विरुद्ध उपचारों को उपबंधित करता है, यह स्पष्ट है कि एक बार मजिस्ट्रेट को अधिहरण कार्यवाहियां आरंभ किये जाने की सूचना दी जाने पर, वह सुपुर्दगी पर वाहन को मुक्त करने की अधिकारिता खो देता है – वर्तमान प्रकरण में

अधिहरण कार्यवाहियां आरंभ हो चुकी थी और इसलिए मजिस्ट्रेट को वाहन को सुपुर्दगी पर मुक्त करने की कोई अधिकारिता नहीं थी — पुनरीक्षण न्यायालय ने मजिस्ट्रेट के आदेश को उचित रूप से अपास्त किया — आवेदन खारिज।

Case referred :

2008 Volume 1 JT 364.

H.K. Shukla, for the applicant.

B.P.S. Chauhan, P.P. for the non-applicant/State.

(Supplied: Paragraph numbers)

ORDER

G.S. AHLUWALIA, J. :- This Criminal Revision under Section 397, 401 of Cr.P.C has been filed against the order dated 7.2.2012 passed by the Sessions Judge, Morena in Cr.Revision No.223 of 2011 setting-aside the order dated 12.12.2011 passed by JMFC, Morena in M.Cr.C No.369 of 2011 by which, the Magistrate had allowed the application filed by the applicant under Section 457 of Cr.P.C for release of the vehicle.

2. Necessary facts for the disposal of the present revision in short are that a Tractor bearing Registration No.MP06/A-2808 was seized by the forest authorities in connection with an offence punishable under Section 27, 29, 39(1) (d), 550, 551 and also under Section 41 and 42 of Indian Forest Act, 1927. The said vehicle was confiscated by the order dated 7.3.2011. Against the order of confiscation, the applicant filed an appeal which was allowed and the matter was remanded back to the prescribed officer to decide confiscation proceedings afresh. During pendency of the confiscation proceedings, the applicant filed an application under Section 451 and 457 of Cr.P.C for release of the vehicle on supurdginama. The said application was allowed and the vehicle was directed to be released on supurdginama in favour of the applicant.

3. Being aggrieved by the order of the Magistrate, the respondent filed a criminal revision before the Sessions Court Morena. The said revision has been allowed by order dated 7.2.2012 passed by Sessions Judge, Morena in Cr.Revision No.223 of 2011. Hence, this revision has been filed by the applicant.

4. It is submitted by counsel for the applicant that in view of the judgment passed by the Supreme Court in the case of *State of M.P. Vs. Madhukar Rao* reported in 2008 Volume 1 JT 364, the Magistrate did not commit any mistake in releasing the vehicle on interim supurdgi and the revisional Court

has wrongly set-aside the order of Magistrate.

5. Per-contra, it is submitted by counsel for the applicant that once an information has been given to the Magistrate with regard to the initiation of the confiscation proceedings, then, he loses all its jurisdiction to release the vehicle on interim custody.

6. This Court in the case of *State of M.P. Vs. Shivdayal* (Cr.Revision No.24 of 2012) has held as under :

"It appears that the revisionary Court has relied upon the order passed by the single Bench of this Court in M.Cr.C. No. 7937/ 2008 (Dilip Vs. State of M.P.) which was dependent upon the judgment of Apex Court in case of Madhukar Rao. However, if case of "Madhukar Rao Vs. State of M.P. and others" reported in 2000 (1) MPLJ 289, decided by full Bench of this Court is considered then in Para 20 of that judgment, it is held that if property is seized under Indian Forest Act then situation would be different. The entire case decided by the full Bench was relating to the provision of confiscation in Wild Life Protection Act. In Wild Life Protection Act, there is no provision of any inquiry or confiscation proceeding and, therefore, such view was given by the full Bench of this Court, which was duly confirmed by the Supreme Court. However, in Forest Act, various provisions of Sections 52, 52-A, 52-B and 52-C were enacted, in which the proceeding of confiscation is provided. No Court including the Apex Court has declared such provision to be ultra virus and, therefore, according to those provisions when intimation is given to the concerned Magistrate that the property seized under the Indian Forest Act is under confiscation then Magistrate has no right to release the property either temporarily or finally. In various cases, the Supreme Court has its firmed view that no Court can go against the provisions enacted in the Forest Act. Hence, when provisions under Sections 52, 52-A, 52-B and 52-C of the Indian Forest Act have not been declared ultra virus then those cannot be defeated by any of the Court. Position of Madhukar Rao's case is different. It was not related to the Indian Forest Act and, therefore, by relying upon the judgment

of that case, if any single Bench of this Court has passed an order to release the vehicle or property seized by the Forest Officer under the Forest Act then such order is nothing but per curiam and that cannot be applied for.”

7. Considering the fact that there is specific provision under Section 52 of the Indian Forest Act which provides for the confiscation proceedings and remedies against the said order. It is clear that once an intimation is given to the Magistrate with regard to the initiation of the proceedings or (sic:of) confiscation, then, he loses its jurisdiction to release the vehicle on Supurdgi. In the present case also, undisputedly, confiscation proceedings had begun. In fact, the confiscation order was passed and the matter was remanded back by the appellate court and therefore, this court is of the view that the Magistrate had no jurisdiction to release the Tractor on Supurdgi. The revisional court did not commit any mistake by setting-aside the order of Magistrate.

8. At this stage, it is prayed by counsel for the applicant that he may be granted liberty to file an application in the confiscation proceedings for release of the vehicle on Supurdginama.

9. The prayer made by counsel for the applicant appears to be just and proper.

10. Accordingly, this application is dismissed with liberty to the applicant that if he so desires, he may file an application for release of the vehicle in the confiscation proceedings. In case, if such an application is filed, the same shall be decided by the authority in accordance with law.

11. This application is dismissed with the aforesaid liberty.

Revision dismissed.

I.L.R. [2017] M.P., 1750

CRIMINAL REVISION

Before Smt. Justice Anjali Palo

Cr.R. No. 263/2008 (Jabalpur) decided on 3 May, 2017

SHIV KUMAR KUSHWAH

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

A. Penal Code (45 of 1860), Section 354 – Conviction –

Testimony of Prosecutrix – Held – In such type of cases, sole testimony of prosecutrix can be relied on because accused would have committed the offence in lonely place when he found the prosecutrix alone, therefore it is not expected that in every case, independent witnesses will be available – In the instant case, testimony of prosecutrix was cogent and consistent – No previous enmity proved – No ground for interference – Applicant rightly convicted – Revision dismissed. (Para 10)

क. दण्ड संहिता (1860 का 45), धारा 354 – दोषसिद्धि – अभियोक्त्री का परिसाक्ष्य – अभिनिर्धारित – इस प्रकार के प्रकरणों में, मात्र अभियोक्त्री के परिसाक्ष्य पर विश्वास किया जा सकता है क्योंकि अभियुक्त एकांत स्थान पर, जहां उसने अभियोक्त्री को अकेले पाया, अपराध कारित करेगा, इसलिए यह अपेक्षित नहीं कि प्रत्येक प्रकरण में स्वतंत्र साक्षीगण उपलब्ध होंगे – वर्तमान प्रकरण में, अभियोक्त्री का परिसाक्ष्य प्रबल एवं संगत था – कोई पूर्व वैमनस्यता सिद्ध नहीं – हस्तक्षेप हेतु कोई आधार नहीं – आवेदक उचित रूप से दोषसिद्ध – पुनरीक्षण खारिज।

B. Criminal Trial – Related Witness – Credibility – Held – Law does not prohibit reliance upon evidence of closely related witnesses, however it requires that such evidence must be appreciated with care and caution – Such evidence cannot be discarded merely on the ground that witnesses are closely related to victim – If such evidence is found cogent, reliable and trustworthy, it can be relied upon. (Para 9)

ख. दण्डिक विचारण – संबंधी साक्षी – विश्वसनीयता – अभिनिर्धारित – विधि, निकट संबंधी साक्षियों के साक्ष्य पर विश्वास करने से प्रतिषिद्ध नहीं करती अपितु यह अपेक्षित है कि ऐसे साक्ष्य का मूल्यांकन सावधानी एवं सतर्कता से करना चाहिए – ऐसे साक्ष्य को मात्र इस आधार पर अस्वीकार नहीं किया जा सकता कि साक्षीगण पीड़ित के निकट संबंधी हैं – यदि उक्त साक्ष्य प्रबल, विश्वसनीय एवं मरोसेमंद पाया गया है, उस पर विश्वास किया जा सकता है।

C. Criminal Trial – Delay in FIR – Held – In FIR, it is narrated that at the time of incident, husband of prosecutrix was out of station, hence FIR was lodged after two days – Delay satisfactorily explained and is not fatal to prosecution. (Para 12)

ग. दण्डिक विचारण – प्रथम सूचना प्रतिवेदन में विलम्ब – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन में यह वर्णित है कि घटना के समय अभियोक्त्री का पति शहर से बाहर था, अतः प्रथम सूचना प्रतिवेदन दो दिनों के पश्चात् दर्ज किया गया

— विलम्ब संतोषजनक रूप से स्पष्ट किया गया एवं अभियोजन हेतु घातक नहीं है।

Cases referred :

AIR 2017 SC 869, AIR 2017 SC 845, (2009) 1 SCC (Cri.) 20, AIR 1995 SC 2472, AIR 1996 SC 1392.

Amanulla Usmani, for the applicant.

Ramesh Kushwah, P.L. for the non-applicant/State.

ORDER

ANJULI PALO, J. :- This criminal revision has been filed by the accused under Section 397 read with Section 401 of the Code of Criminal Procedure being aggrieved by the judgement dated 30.01.2008 passed by the Fourth Addl. Session Judge, Katni confirming the judgement and conviction dated 12.12.2005 passed by the JMFC in criminal case no. 639/2003 for offence under Section 354 of IPC and imposed sentence for one year RI with fine of Rs. 1,000/-.

2. In short, the prosecution case is that, the prosecutrix is a married woman residing at village Mawai. On 01.06.2003 at about 6:00 pm when the prosecutrix was doing domestic work at her premises, the applicant/accused came there and caught hold of her hand with intention to outrage her modesty and pulled her. When the prosecutrix started shouting, the applicant/accused left her. The applicant/accused is her brother-in-law. At the time of the incident, the husband of the prosecutrix was not at home. When he came back, the prosecutrix lodged a report at Police Station, Sleemanabad, District Katni. Crime under Section 354 of Indian Penal Code has been registered against the applicant.

3. Learned Trial Court convicted the applicant/accused for offence under Section 354 of IPC on the basis of testimony of the prosecutrix which is corroborated by PW-2 / Dhaniram and PW-3 / Purushottam. Learned Trial Court convicted and sentenced the applicant/accused for 1 year RI with fine of Rs. 500/-.

4. Learned lower Appellate Court also confirmed the findings of the learned Trial Court. Learned Courts below did not agree with the defence contention of the applicant, that the evidence produced by the prosecution was contradictory. Learned Appellate Court also found no material

contradictions in the evidence of the prosecutrix and other witnesses. The prosecutrix had no enmity with the applicant/accused. The Courts below found no property dispute for which the applicant/accused could have been falsely implicated by the prosecutrix or her family members. Thus, the conviction and sentence of the applicant/accused was maintained by the learned Appellate Court.

5. This revision has been filed on the grounds that the prosecution has failed to prove the ingredients of the offence beyond all reasonable doubt against the applicant/accused. The statement of prosecution witnesses are full of contradictions and omissions, hence, no implicit reliance could be placed on such testimony. There is delay in filing of FIR. Findings of the lower Courts are illegal and contrary to law therefore, the applicant / accused prays that the appellant be acquitted from the charges under Section 354 of IPC.

6. Heard. Perused the record.

7. It is not disputed that the complainant / prosecutrix and the applicant/accused both are neighbors and related to the same family. Father of the prosecutrix's husband is the brother of father of the applicant/accused. Learned counsel for the applicant contended that there was a dispute over the property between the parties, hence, the applicant / accused has been falsely implicated. In this regard, no suggestion has been given by learned counsel for the applicant/accused to the prosecutrix (PW-1) and her husband (PW-2) in their cross examination, which was very essential for challenging their testimony. Therefore, the testimony of DW-1 Balmukund Kushwah is not found reliable, who stated about the enmity of the parties.

8. PW-3 Purushottam was the eye witness. During the incident when the prosecutrix shouted, he came to the spot and saw applicant/accused. He also denied any enmity between the families of the applicant and the prosecutrix with regard to property and that the applicant/accused was falsely implicated by them, through their daughter-in-law (prosecutrix). The applicant / accused is a relative of the prosecutrix. Naturally, it cannot be possible that a woman made up false story as an after thought particularly in respect of her modesty. Learned counsel for the applicant submitted that PW-3 Purushottam is a relative and an interested witness. So evidence of related witnesses is cannot be believed.

9. It is true that no independent witness has been examined by the

prosecution. Law does not prohibit reliance upon the evidence of closely related witnesses – However, it requires that evidence of such witnesses must be appreciated with care and caution. Once evidence is found reliable / trustworthy, it cannot be discarded merely on the ground that witness was closely related to victim – If evidence of such witness is found cogent, credible and trustworthy it can be relied upon. There is nothing on record to show that, at time of cross-examination of IO, learned counsel for the appellant had put to him a question as to why witnesses, other than related witnesses were not examined – It is highly improbable that related witnesses would scream and spare real assailants and falsely enrope appellants, only because of old enmity.

10. Generally in such types of offences, sole testimony of prosecutrix can be relied on, because accused would have committed the offence in lonely places, when he found the prosecutrix alone at her house. Therefore, it cannot be expected that in every case independent witness will be available. In case of *Virendra Singh Vs. State of UP* [AIR 2017 SC 869], the Apex Court has held that independent witness is not necessary in every case – non examination is not fatal. As per Section 134 of Evidence Act, no number of witness is prescribed to prove the offence. It is settled principle of law that not quantity but quality of evidence is evaluated. Therefore, sole witness can prove the commission of offence. In the instant case, the testimony of the prosecutrix itself seems reliable. In the case of *State of Himachal Pradesh Vs. Sanjay Kumar @ Sunny* [AIR 2017 SC 845], the Hon'ble Supreme Court has held that :

"It is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. Her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does."

11. In the case of *Premiya @ Prem Prakash Vs. State of Rajasthan* [(2009) 1 SCC (Cri.) 20], the Apex Court has held that:

"The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight."

12. Learned counsel for the appellant has contended that the First Information Report (Ex. P-1) has been lodged after two days without any explanation, hence, it creates reasonable doubt in favour of the appellant. But with this regard no suggestion has been given to the prosecutrix and her husband (PW-2) / Dhaniram. In FIR (Ex. P/1), it is narrated that at the time of incident husband of the prosecutrix was out of station, hence FIR was lodged after two days. In case of *Karnel Singh Vs. State of MP* [AIR 1995 SC 2472], Hon'ble Supreme Court has held that :

"In India women are slow and hesitant to complain of such assaults and if the prosecutrix happens to be a married person she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false."

Likewise in the case of *State of Punjab Vs. Gurmeet Singh & Ors.* [AIR 1996 SC 1392] and *State of Himachal Pradesh Vs. Sanjay Kumar @ Sunny* [AIR 2017 SC 845] Hon'ble Supreme Court has held that :

"The courts cannot over-look the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual

offence is generally lodged."

13. Therefore, the delay in filing of FIR is not fatal to prosecution. In the present case, the reason for delay in filing the FIR has been satisfactorily explained. Therefore, the contention of the learned counsel for the appellant is not acceptable.

14. The evidence of prosecutrix was cogent and consistent that the accused caught hold of victim by hand and pulled her, when she resisted. The use of force will become criminal when it is done against the consent of prosecutrix.

15. Therefore findings of the learned Courts below are not perverse or erroneous. The sentence imposed by the learned Trial Court is found according to offence and not excessive. Thus, in view of the discussions in the foregoing paragraphs, this Court finds no ground for interference in the judgement of conviction passed by the learned Trial Court. Hence, the impugned order passed by the learned Courts below is hereby affirmed. The applicant / accused is directed to surrender before the Trial Court for undergoing the remaining jail sentence immediately.

16. Accordingly, this criminal revision stands dismissed.

17. A copy of this order be sent to the trial Court for information and compliance.

Revision dismissed.

I.L.R. [2017] M.P., 1756

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice S.K. Palo

M.Cr.C. No. 562/2017 (Jabalpur) decided on 3 February, 2017

ISHWAR PRASAD

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 437(6) and Excise Act, M.P. (2 of 1915), Section 34(2) – Non Conclusion of Trial within 60 days – Right of Bail – Offence u/S 34(2) of the Act of 1915 was registered against petitioner for possessing 1000 bulk litres of illicit liquor – He filed application u/S 437(6) Cr.P.C. praying bail on the ground that trial was not concluded within 60 days from the first

date when matter was fixed for evidence – Application was dismissed – Challenge to – Held – Seizure memo indicates that petitioner was preparing illicit liquor and a huge quantity was seized from his possession – Order sheet shows that when prosecution witnesses appeared in Court, counsel for accused refused to examine them on the ground that accused was not produced from custody – This amounts to delay in progress of trial attributable to accused – Magistrate has used his discretion rightly and has given cogent reasons for not allowing the application – Accused cannot be allowed to take advantage of his own mistake – Petition dismissed. (Paras 6, 7, 8, & 11)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 437(6) एवं आवकारी अधिनियम, म.प्र. (1915 का 2), धारा 34(2) – विचारण की समाप्ति 60 दिनों के भीतर न की जाना – जमानत का अधिकार – याची के विरुद्ध भारी मात्रा में 1000 लीटर अवैध मदिरा का कब्जा रखने के लिए 1915 के अधिनियम की धारा 34(2) के अन्तर्गत अपराध पंजीबद्ध किया गया था – उसने दण्ड प्रक्रिया संहिता की धारा 437(6) के अन्तर्गत जमानत के लिए प्रार्थना करते हुये इस आधार पर आवेदन प्रस्तुत किया कि विचारण, उस पहली दिनांक से जब मामला साक्ष्य हेतु नियत किया गया था से 60 दिनों के भीतर समाप्त नहीं किया गया था – आवेदन खारिज किया गया था – को चुनौती – अभिनिर्धारित – जब्ती मेमो यह दर्शाता है कि याची अवैध मदिरा तैयार कर रहा था तथा उसके कब्जे में से भारी मात्रा जब्त की गई थी – आदेश पत्र यह दर्शाता है कि जब अभियोजन साक्षीगण न्यायालय में प्रस्तुत हुये, अभियुक्त के अधिवक्ता ने इस आधार पर उनका परीक्षण करने से इंकार कर दिया कि अभियुक्त को अभिरक्षा से प्रस्तुत नहीं किया गया था – यह अभियुक्त के कारण विचारण की प्रगति में विलंब की कोटि में आता है – मजिस्ट्रेट ने उचित रूप से अपने विवेकाधिकार का प्रयोग किया है तथा आवेदन मंजूर न किये जाने के लिए प्रबल कारण दिये हैं – अभियुक्त को स्वयं की मूल का लाम उठाने की मंजूरी नहीं दी जा सकती – याचिका खारिज।

Cases referred :

M.Cr.C. No. 11154/2016 order passed on 23.08.2016, M.Cr.C. No. 21157/2016 order passed on 13.12.2016, AIR 1978 SC 179, 2008 CrLJ 2750 (Guj.), 2006 CrLJ 1954 (Jharkhand), 2008 CrLJ 2771 (MP).

Sunil Kumar Mishra, for the applicant.

Ramji Pandey, P.L. for the non-applicant/State.

ORDER

S.K. PALO, J. :- Heard.

This petition under Section 482 of the Code of Criminal Procedure has been filed to challenge the legality and propriety of the order dated 04.11.2016 passed by JMFC, Niwadi, district- Tikamgarh in Criminal Case No. 579/2016, whereby the application under Section 437 (6) of the Code of Criminal Procedure filed by the petitioner was dismissed.

2. Brief facts of the prosecution story are that the petitioner allegedly was apprehended for possessing 1000 bulk litres of country made illicit liquor. Therefore, offence was registered under Section 34 (2) of the MP Excise Act. According to the petitioner, charges have been framed, an application for regular bail under Section 439 of the Code of Criminal Procedure M.Cr.C. No.15507/2016 was dismissed vide order dated 21.09.2016 as withdrawn with the liberty to move an application under Section 437 (6) of the Code of Criminal Procedure. It is stated that charges have been framed on 10.08.2016 and the matter was fixed for evidence for the first time on 24.08.2016. More than sixty days have been elapsed since then yet the evidence has not been completed.

3. The petitioner moved an application under Section 437 (6) of the Code of Criminal Procedure before learned JMFC, Niwadi, district- Tikamgarh on these grounds. The same was dismissed vide order dated 04.11.2016. The petitioner prays that under provisions of Section 437 (6) of the Code of Criminal Procedure, the petitioner is entitled for release on bail as the evidence could not be completed within sixty days from the first date when the case was fixed for recording the prosecution evidence. It is claimed that the order impugned is against the true spirit of law. It is further averred that the petitioner has no criminal antecedent and therefore, the order dated 04.11.2016 is not sustainable.

4. Learned counsel for the petitioner by placing reliance on the order dated 23.08.2016 passed by this Court in *Rajju @ Khemchand Sanodiya v. State of M.P.* (M.Cr.C. No.11154/2016) and the order dated 13.12.2016 passed in M.Cr.C No.21157/20116 (sic:2016) requested for setting aside the impugned order.

5. Per contra, learned Panel Lawyer for the respondent has vehemently

opposed the contentions and submitted that counsel for the petitioner did not cooperate with the trial Court in recording evidence of the prosecution witnesses, who were present on 06.09.2016 and 17.10.2016. Therefore, the evidence could not be completed within the prescribed period. Hence, the petitioner is not entitled for release on bail. He further contended that 1000 bulk litres of illicit liquor has been seized from the petitioner. Therefore, learned trial Court rightly exercised its judicial discretion not to release the petitioner on bail under the provision of Section 437 (6) of the Code of Criminal Procedure.

6. On perusal of the seizure memo dated 23.05.2016, it is clear that 1000 bulk litres of country made liquor in five plastic drums worth Rs. 1 Lac along with appliances for preparation of illicit liquor were seized by police-Niwadi, from the possession of the petitioner at village- Bawai which indicates that the petitioner was preparing illicit liquor and a huge quantity has been seized from his possession.

7. Order sheet dated 06.09.2016 indicates that witness Dayasagar was present but the counsel for the petitioner refused to examine him on the ground that the accused has not been produced from the custody. Similar was the situation on 17.10.2016 that witness Balchand was present. Though the order sheet does not indicate that the counsel for the petitioner refused to examine but the witness could not be examined for accused was not produced from custody. This in the opinion of this Court would amount to delay in progress of trial attributable to the accused.

8. Though there is no straight jacket formula but it would be appropriate to mention here that Section 437 (6) of the Code of Criminal Procedure is an enabling provision which gives discretion to the Court while granting bail due to delay in trial of the case. In the circumstances, the Court has to exercise the judicial discretion. In *Gurcharan Singh and Others v. State (Delhi Administration)*, AIR 1978 SC 179, the Apex Court has held that this provision is intended to speed up the trial without unnecessarily detaining a person, who is an undertrial prisoner. It applies only to the case triable by the Magistrates and not to a case committed to Sessions Judge for trial.

9. In the case of *Mayurbhai Shah v. State of Gujrat*, 2008 CrLJ 2750 (Guj.), *Bidar Singh v. State*, 2006 CrLJ 1954 (Jharkhand) and *Arjun Sahu v. State of M.P.* 2008 CrLJ 2771 (MP) it has been held that it is not mandatory

or obligatory on the part of the Magistrate once the period of sixty days from the first date of fixing for taking evidence is over to release accused on bail. There is no such mathematical consequence. It depends upon the facts and circumstances of each case, gravity of offence, quantum of punishment and manner in which the accused is involved in offence.

10 In an earlier order dated 25.07.2016 passed by this Court in M.Cr.C. No. 12453/2016, considering various authorities encapsuled law in paragraphs 18 to 21 as follows :

"18. A perusal of aforesaid authorities makes it abundantly clear that sub-section 6 of Section 437 does not create an absolute and indefeasible right to be released on bail, in favour of the accused. In that sense, it cannot be equated with sub-section 2 of section 167 of the Cr.P.C. The Magistrate conducting the trial is invested with discretion to refuse to release the accused on bail, for the reasons to be recorded in writing. There can be no doubt that the discretion vested in the Magistrate must be exercised on the settled judicial principle and the exercise must not be arbitrary and capricious. Once the discretion has been exercised in a judicious manner, it is not liable to be interfered with unless the higher Court is of the view that the exercise of jurisdiction was improper, unjust and arbitrary.

19 The legislature has given no indication as to the reasons which might be germane for declining the bail to accused under Section 437 (6) of the Cr.P.C; however, as has been noted above, collective judicial wisdom over the years, seek to provide guidelines for exercise of discretion to the Magistrate. Various judicial pronouncements have recognized certain principle which may govern the exercise of discretion by the Magistrate under Section 437 (6) of the Cr.P.C.

(1) Gravity of offence, quantum of punishment and manner in which the accused was involved in committing offence.

(2) Large number of witnesses that are necessary to be examined on behalf of the prosecution and quantum of prosecution evidence to be placed before the Magistrate.

(3) Delay in progress of trial attributable to the accused.

(4) Where the accused or a co-accused had been absconding at any stage during the course of inquiry, investigation or trial,

(5) Likelihood of jumping bail having regard to the facts and circumstances of the case.

(6) Overall impact of the offence and release of the person accused of such offence on the society.

(7) Likelihood of tempering with the evidence by the accused in case of his released on bail.

20 Aforesaid list of course is enumerative and not exhaustive, as there may be other relevant factors in a case which may have a bearing on the exercise of discretion by the Magistrate.

21 The presence of all or any of the aforesaid factors may influence the Court in declining to release the accused on bail. In the case of *Riza Abdul Razak ZunZunia* (supra), the Gujarat High Court has observed that the bail cannot be refused for the reasons which are generally invoked for refusing bail under Section 437 (1) of the Code of Criminal procedure; however, with due respect, aforesaid observations cannot be made as an absolute proposition of law. Reasons for refusing bail under Section 437 (1) of the Code of Criminal Procedure and 437 (6) of the Code of Criminal Procedure may sometimes be overlapping. It is obvious that there needs to be something more for denying bail under sub-section (6) than mere grounds on which the bail may be refused under Section (1), for the simple reason that the accused would be in jail after 2 months from the first date of evidence only where the grounds for refusing bail under Section 437 (1) are in existence. If same reasons are cited against for denying bail under Section 437 (6), it would render the provision under sub-Section (6) of Section 437 otiose. However, broadly speaking it may be observed that mere probability, without any reasonable basis,

that the accused would abscond if released on bail or accused had prayed for adjournment once or twice, should not be cited as reasons for denying bail to the accused."

11 In the instant case, Learned JMFC has given reasons for not allowing the application which includes the gravity of offence, seizure of huge quantity of illicit liquor from the possession of the petitioner, refusal by the defence counsel to examine the witnesses in the absence of accused who could not be produced from jail, etc. Therefore, it can safely be said that learned JMFC has used his judicial discretion rightly and has given cogent reasons for not allowing the application under Section 437 (6) of the Code of Criminal Procedure. The accused cannot be allowed to take advantage of his own mistake and delay in trial attributable to himself. Therefore, discretion cannot be exercised in favour of the petitioner.

12 In view of the preceding analysis, this petition being sans merit, stands dismissed.

Application dismissed.

I.L.R. [2017] M.P., 1762

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Atul Sreedharan

M.Cr.C. No. 965/2008 (Jabalpur) decided on 28 February, 2017

B.C. JAIN (Dr.)

...Applicant

Vs.

MAULANA SALEEM

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 197, 200 & 482 and Penal Code (45 of 1860), Section 304-A – Quashment – Sanction of State Government – Cognizance Against Government Doctor – Offence was registered u/S 304-A I.P.C. against petitioner, a doctor in State Government, alleged to have committed negligence while discharging his duty, because of which daughter of respondent died – Challenge to – Held – It is undisputed that post-mortem was not done in present case and therefore cause of death remained speculative without any certainty – Nothing on record to show that deceased died on account of conduct by petitioner which can be termed as “grossly negligent” – Petitioner being a public servant and was discharging his

duties as such, the alleged negligent omission arising therefrom had to be seen in context of discharge of official duties and a sanction u/S 197 Cr.P.C. was *sin qua non* for taking cognizance of offence against petitioner – Proceedings against the petitioner is quashed – In respect of such cases, guidelines for Court below and Police laid down – Petition allowed. (Paras 4, 7 & 14)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 197, 200 व 482 एवं दण्ड संहिता (1860 का 45), धारा 304-ए – अभिखंडन – राज्य सरकार की मंजूरी – शासकीय चिकित्सक के विरुद्ध संज्ञान – याची, जो कि राज्य शासन में एक चिकित्सक है, के विरुद्ध भारतीय दण्ड संहिता की धारा 304-ए के अन्तर्गत अपराध पंजीबद्ध किया गया, जिस पर अपने कर्तव्य का निर्वहन करते समय उपेक्षा कारित करने का अभिकथन किया गया था, जिसकी वजह से प्रत्यर्थी की पुत्री की मृत्यु हुई थी – को चुनौती – अभिनिर्धारित – यह अविवादित है कि वर्तमान प्रकरण में शव परीक्षण नहीं किया गया था तथा इसलिए मृत्यु का कारण बिना किसी निश्चितता के काल्पनिक बना रहा – यह दर्शाने हेतु अभिलेख पर कुछ मौजूद नहीं कि मृतक की मृत्यु याची द्वारा किये गये आचरण के कारण हुई जिसे "घोर रूप से उपेक्षा" कहा जा सकता है – याची एक लोक सेवक होने के नाते अपने कर्तव्यों का निर्वहन कर रहा था इसलिए, उसमें से उत्पन्न अभिकथित उपेक्षित लोप को पदीय कर्तव्यों के निर्वहन के संदर्भ में देखा गया था तथा याची के विरुद्ध अपराध का संज्ञान लेने के लिए दण्ड प्रक्रिया संहिता की धारा 197 के अन्तर्गत मंजूरी अनिवार्य थी – याची के विरुद्ध कार्यवाहियाँ अभिखंडित – ऐसे प्रकरणों के संबंध में, निचले न्यायालय एवं पुलिस हेतु दिशा निर्देश प्रतिपादित – याचिका मंजूर।

Cases referred :

(2006) 6 SCC 1, (2016) 1 SCC 594, (2016) 6 SCC 734, (2013) 10 SCC 741.

None, for the applicant.

Ajay Mishra, for the non-applicant.

ORDER

ATUL SREEDHARAN, J. :- This petition is pending since 2008. The proceeding before the learned J.M.F.C. Sagar were stayed vide order dated 01/02/08.

In the order dated 02/02/17 it was specifically noted that if nobody appears on behalf of the petitioner or the respondent on the next date of hearing, this Court shall consider the petition on merits and dispose of the

same. Today also, no one appears on behalf of the Petitioner.

The present petition has been filed under Section 482 of Cr.P.C. for the quash of the proceedings in Criminal Complaint Case No.1259/2006 pending in the Court of learned J.M.F.C. Sagar. The petition raises an important question of law relating to the prosecution of a doctor who is in the service of the State Government, for an offence u/s. 304-A IPC alleged to have been committed while discharging his duty as a Government Doctor.

1. The facts relating to the case are that on 27/05/02, the daughter (hereinafter referred to as the "Deceased") of the respondent was admitted in Ward No.2 at the Government Hospital, Sagar, as she was unwell. The cerebral spinal fluid (hereinafter referred to as "CSF") of the deceased was extracted by the Petitioner. Subsequently, the deceased passed away and it was alleged by the Respondent that the Petitioner failed to send the CSF for pathological evaluation and therefore, in the absence of a report on the said sample, proper diagnosis of the affliction was not made and therefore, in the absence of appropriate treatment, the deceased died. Thereafter, the respondent is stated to have written to several authorities including the Collector and the minority commission and to various other authorities seeking prosecution of the petitioner herein for negligence under Section 304-A of I.P.C but however, no action was taken against the Petitioner. It is not disputed that the petitioner by occupation is a Government doctor and therefore a public servant.

2. The respondent approached the Court of the learned J.M.F.C. in a complaint case under Section 200 Cr.P.C. in which the learned J.M.F.C. was pleased to take cognizance for offence U/s.304-A I.P.C. against the petitioner and proceeded against him. The petitioner preferred a criminal revision before the Court of Ist Additional Sessions Judge, Sagar being Criminal Revision No.287/2007, which was dismissed vide order dated 28/12/07 against which the present petition has been filed. The petitioner has prayed for quash of the entire proceedings pending against the petitioner in Complaint Case No.1259/2006. The revision preferred before the Court of Sessions was dismissed primarily on two grounds. Firstly, the learned Sessions Court observed, that the report of the Civil Surgeon/Hospital Superintendent, Sagar District, is stated to have indicted the petitioner herein and found him prima-facie guilty of negligence. The crux of the issue is that the CSF which was taken out by the petitioner, the same having not been sent for pathological evaluation, resulted

in the death of the deceased as the affliction suffered by her could not be diagnosed properly in the absence of the laboratory report and therefore appropriate treatment could not have been given to the deceased on account of which she died. Secondly, though the Petitioner was a public servant, his negligence in not sending the CSF to the laboratory for evaluation could not be said to be an omission done in discharge of his official duty.

3. The petitioner in his pleadings has disclosed that the CSF that was taken from the deceased which ought to have been clear was actually mixed with blood on account of movements made by the deceased at the time when the sample was extracted and the sample of CSF which is mixed with blood could not be sent for pathological evaluation and, therefore, the same was not sent. Annexure A/3 at page 17 is a copy of the reply submitted by the petitioner herein to the notice sent to him by the Collector, in which the petitioner has stated that the reasons for taking the CSF were two-fold. Firstly, the petitioner has stated that the deceased was suffering from cerebral tuberculosis and drawing out of the CSF would reduce the pressure on the brain giving relief to the patient and Secondly, the sample could be thereafter sent for pathological evaluation which would ascertain if the clinical diagnosis made by the petitioner was precise. In the said letter, he has also stated that as the sample was mixed with blood, it was worthless sending the same for pathological evaluation, as four other CSF sample which were earlier sent for pathological evaluation, mixed with blood, could not be evaluated by the laboratory.

4. It also appears to be undisputed that post-mortem was not done in this case and therefore the cause of death remained speculative without any certainty. In other words, there was nothing to substantiate that the deceased died on account of conduct by the Petitioner that could be termed as "grossly negligent".

5. The revision was preferred on two grounds firstly that there was no negligence by the petitioner herein and therefore, the offence U/s.304-A of I.P.C. was not made out and secondly even if such an offence was committed, keeping in view the fact that the petitioner was a public servant, prior sanction of the Government was required under Section 197 Cr.P.C. which was mandatory, and in the absence of same, cognizance ought not to have been taken. The learned Court of Sessions while dealing with this aspect in para 14 of its order has also conceded to the fact that the act of extracting the CSF was done as part of the discharge of official duties of the petitioner. However,

his conduct in not having sent the same for pathological evaluation could not have been stated to be an omission done in the discharge of duties as a public servant.

6. Heard the Ld. Counsel for the Respondent and perused the documents filed along with the petition. The Ld. Counsel for the Respondent has opposed the Petitioner and has argued for its dismissal on the ground that there is nothing illegal with the impugned order. He has further submitted that prima facie, a case of negligence has been made out against the Petitioner and that this Court must desist from going into disputed questions of facts as that would mean transgressing into the domain of the Trial Court. He has also supported the impugned order on the question of the non-requirement of previous sanction u/s. 197 Cr.P.C by arguing that being negligent in not sending the CSF for pathological assessment, his conduct would not fall into the category of "discharge of official duty".

7. This Court, with the utmost respect, finds the reasoning given by the Ld. Court below to be incorrect and unsustainable. Once it was clear to the Ld. Court below that the petitioner was a public servant and was discharging his duties as such, then the alleged negligent omission arising therefrom had to be seen in the context of the discharge of official duties. If such a nexus was there between the act complained of and the discharge of official duty, notwithstanding the remoteness between the two, a sanction U/s.197 Cr.P.C. was a *sine qua non* for taking cognizance of the said offence against the Petitioner.

8. As regards the aspect of negligence, in the absence of a post-mortem report, there can be no conclusive assessment relating to the cause of death. Further, the appreciation of document dated 24/08/02 by the learned Court below has been incorrect. The said document is the report of the Civil Surgeon, which the Ld. Revisional Court has held to indict the petitioner of negligence. However, upon reading the same, the said document approves of the action of the petitioner herein in extracting the CSF. However, for not having sent the said sample for pathological evaluation to the laboratory, the Civil Surgeon only opined that the petitioner may be asked to give an answer for such an omission. The said document does not state either directly or by necessary implication, that the petitioner herein was prima facie guilty of negligence.

9. Even otherwise, the law as it stands today has been well settled by the

Supreme Court in *Jacob Mathew Vs. State of Punjab* – (2006) 6 SCC 1, where a three judge bench of the Supreme Court had laid down in paragraph 52, that before a criminal court takes cognizance or the police proceeds against a doctor for an offence u/s. 304-A, both shall secure a report from an independent doctor or a board of doctors, preferably practicing in the same field as the doctor sought to be proceeded against, who opines that the doctor to be prosecuted, acted in “gross negligence” to the known standards of the medical profession.

10. In *Manorama Tiwari Vs. Surendra Nath Rai* – (2016) 1 SCC 594, the Supreme Court, while deciding the case of the Petitioner therein, who was a doctor in the service of the State of Chhattisgarh and was dragged into a case u/s. 304-A by the Complainant whose daughter had died after being operated upon by the Petitioner in that case. The case proceeded on a complaint u/s. 200 Cr.P.C before the JMFC, before whom the Petitioner had moved an application saying that she could not be prosecuted in the absence of a sanction u/s. 197 Cr.P.C. The said application was dismissed by the JMFC and the Petitioner failed to get any succour from the High Court also and so, approached the Supreme Court. The Supreme Court, following its earlier judgements in Jacob Mathew’s case quashed the case by holding that as the Petitioner was serving as a doctor in a Government Hospital, she was entitled to the protection accorded u/s. 197 Cr.P.C.

11. Likewise, in *Amal Kumar Jha Vs. State of Chhattisgarh* – (2016) 6 SCC 734, the police had registered an FIR against the Petitioner U/s. 304-A IPC and the Court of the Ld. JMFC Dharamjaigarh, dismissed the application filed by the Petitioner for discharge on account of the non-availability of sanction U/s. 197 Cr.P.C. The High Court of Chhattisgarh declined to intervene with the order passed by the Ld. JMFC and so as the Petitioner appealed to the Supreme Court. The Petitioner was the in charge of the Primary Health Centre at Patthalgaon. The deceased needed to be moved to the District Hospital at Raigarh. There was no ambulance at the Patthalgaon PHC to transport the patient to the District Hospital at Raigarh and so the official vehicle of the Petitioner was requested for this purpose which, was declined by the Petitioner. As the deceased died, it was alleged that it was negligent on the part of the Petitioner in that case for not having given his official vehicle to transport the deceased to Raigarh for treatment. While quashing the case against the Petitioner, the Supreme Court held at paragraph 4 of the said

judgement that **“It is apparent from the facts of the instant case that the allegation against the appellant is of omission in discharge of official duty in not providing government vehicle for shifting the patient from Primary Health Centre to District Hospital, Raigad; whereas he himself travelled in the vehicle in question for attending the monthly official meeting at the District Headquarters. In our considered opinion, it was an act or omission in discharge of the official duty. The sanction to prosecute was necessary. In this case, the accused was acting in discharge of his official duty when he refused to provide the official vehicle. The refusal is directly and reasonably connected with his official duty, thus sanction is required for prosecution as provided under Section 197(1) CrPC”.**

12. While assessing the degree of negligence on the part of a medical professional which would expose him to a criminal prosecution for an offence U/s. 304-A, the Supreme Court in *A.S.V Narayana Rao Vs. Ratnamala – (2013) 10 SCC 741*, held that mere negligence, which could make the doctor liable under civil law or under the consumer law, was inadequate to prosecute the doctor u/s. 304-A IPC. It followed the law laid down earlier in *Joseph Mathew’s* case and quotes paragraph 48 of that judgement to support the abovesaid view and held, that to make an act or omission of a doctor punishable u/s. 304-A, the degree of negligence ought to be “gross negligence”.

13. The only allegation against the Petitioner in this case is that he did not send the sample of the CSF that he had extracted from the spine of the deceased for pathological test to the laboratory and that the deceased died on account of the absence of the report relating to the CSF which had indirectly impacted the administration of the treatment given to the deceased.

14. Looking at the rising trend of roping in doctors working in the Government Hospitals by the next of kin of persons dying during the course of treatment at Government Hospitals, this Court considers it essential to lay down guidelines for the police and the courts below while dealing with cases implicating doctors working in Government Hospitals and Health Centers.

I. That, all allegations relating to negligent conduct on the part of a Government Doctor for which a prosecution u/s. 304-A IPC and/or its cognate provisions, or under such other law involving penal consequences is sought, the same shall be enquired into by a Medical Board consisting of at least three doctors, constituted by the Dean of any Government Medical College in the

State of Madhya Pradesh; upon the request of the Police, Administration or the directions of a Court/Tribunal/Commission, within seven days of such requisition.

II. The doctor so selected by the Dean of the Medical College concerned to sit on the Medical Board, shall not be inferior in seniority and experience to that of an Associate Professor.

III. The doctor against whom such negligence is alleged, shall be given an opportunity by the Medical Board to give his reply/explanation in writing and if the doctor so desires to be heard personally, he shall be given such an opportunity by the Medical Board. However, if the Medical Board is of the opinion that the request for personal hearing is with the intent of procrastinating the proceedings before the Board, it may, for reasons to be recorded, waive the opportunity of a personal hearing and proceed to decide the case on the basis of the documents/treatment record and give its finding.

IV. The Medical Board shall endeavour to complete the exercise within sixty days from the date on which it is constituted and upon completion of the enquiry, submit the report to the Police, Administration or the Court/Tribunal/Commission, as the case may be.

V. The police shall not register an FIR against such a doctor in the absence of the report of the Medical Board referred hereinabove and also, only when the report by the Medical Board has held the doctor prima facie guilty of "Gross Negligence" and not otherwise.

VI. If a complaint case has been preferred U/s. 200 Cr.P.C, there shall be no order u/s. 156(3) Cr.P.C unless the complaint is accompanied by the report of the Medical Board adverted to in guideline I with prima facie finding of "Gross Negligence" on the part of the Doctor. However, if the complaint is not accompanied with a report of the Medical Board, the Court may ask the Police to enquire into the case u/s. 202 Cr.P.C. The police, if so directed by the Court, shall approach the Dean of the Medical College for the constitution of the Medical Board and thereafter place the report of the Medical Board before the Court concerned.

VII. If the opinion of the Medical Board is one of "Gross Negligence" on the part of the doctor, the Court concerned shall direct the police to seek sanction u/s. 197 Cr.P.C from the State Government. The State Government shall, within thirty days from the date of such request for sanction, either grant

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or refuse the same, which the police shall convey to the Court concerned. Thereafter, the Court concerned shall either dismiss the complaint case against the doctor by exercising jurisdiction u/s. 203 Cr.P.C or issue process u/s. 204 Cr.P.C and try the case in accordance with the law.

15. Thus, on account of what has been stated hereinabove, the petition is allowed. The proceedings against the Petitioner in complaint case No.1259/2016 pending before the Court of learned J.M.F.C., Sagar is quashed.

Application allowed.

**I.L.R. [2017] M.P., 1770
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Rajeev Kumar Dubey**

M.Cr.C. No. 9023/2015 (Indore) decided on 28 March, 2017

RAMKRISHAN SOLVEX PRIVATE LIMITED (M/S) ...Applicant
Vs.

SUPERINTENDENT OF POLICE & ors. ...Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Sections 154, 156 & 482 – Lodging of F.I.R. – Alternate Remedy – Inherent Power – Applicant seeking direction against respondent no. 1 to 3 for registering F.I.R. against respondent no. 4 & 5 for offence u/S 420, 467, 468, 471 & 120-B IPC on it's complaint – Held – Where a person has approached the police station u/S 154 of Code, but the police does not register F.I.R. as contemplated under law, he has right to make a complaint to superintendent of police concerned in terms of Section 154(3) Cr.P.C. - Superintendent of Police concerned exercising the power of officer – in – charge would investigate the matter himself or direct another police officer subordinate to him – If there is inaction on the part of Station House Officer & Superintendent of Police, Complainant is at liberty to move to Jurisdictional Magistrate u/S 156(3) Cr.P.C. and not directly to the High Court u/S 482 Cr.P.C. - Complaint shall be accompanied by affidavit as mandated by Supreme Court – On receipt of complaint, Magistrate shall pass order thereon – Petition disposed of.

(Para 6 & 12)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154, 156 व 482 – प्रथम सूचना प्रतिवेदन दर्ज किया जाना – वैकल्पिक उपचार – अंतर्निहित शक्ति – आवेदक, प्रत्यर्थी क्र. 4 व 5 के विरुद्ध उसके परिवाद पर धारा 420, 467, 468, 471 व 120-बी भा.दं.सं.

के अंतर्गत प्रथम सूचना प्रतिवेदन पंजीबद्ध करने के लिए प्रत्यर्थी क्र. 1 से 3 के विरुद्ध निदेश चाहता है – अभिनिर्धारित – जहां एक व्यक्ति संहिता की धारा 154 के अंतर्गत पुलिस थाना जाता है किन्तु पुलिस, विधि अंतर्गत अनुध्यात प्रथम सूचना प्रतिवेदन दर्ज नहीं करती, उसे धारा 154(3) दं.प्र.सं. के निबंधनों के अनुसार संबंधित पुलिस अधीक्षक को परिवाद करने का अधिकार है – प्रभारी अधिकारी की शक्ति का प्रयोग करते हुए संबंधित पुलिस अधीक्षक स्वयं मामले का अन्वेषण करेगा या उसके अधीनस्थ अन्य पुलिस अधिकारी को निदेशित करेगा – यदि थाना प्रभारी एवं पुलिस अधीक्षक की ओर से निष्क्रियता होती है, परिवादी, दं.प्र.सं. की धारा 156(3) के अंतर्गत अधिकारिता के मजिस्ट्रेट के समक्ष जाने के लिए स्वतंत्र है न कि धारा 482 दं.प्र.सं. के अंतर्गत सीधे उच्च न्यायालय के समक्ष – परिवाद के साथ शपथपत्र होना चाहिए जैसा कि उच्चतम न्यायालय द्वारा आदेशित है – परिवाद प्राप्त होने पर, मजिस्ट्रेट उस पर आदेश पारित करेगा – याचिका निराकृत।

Cases referred :

2014 (2) SCC 1, 2013 All MR (Cri) 3060, (2015) 6 SCC 439, (2015) 6 SCC 287, (2008) 2 SCC 409, (2016) 6 SCC 277.

Vinay Sarraf, for the applicant.

Abhishek Soni, Dy. G.A. for the non-applicant/State.

ORDER

RAJEEV KUMAR DUBEY, J. :- Heard.

This petition has been filed under Section 482 of the Code of Criminal Procedure for directing respondents No.1 to 3 for registering FIR against respondents No.4 & 5.

2. Learned counsel for the applicant submitted that applicant is a company and involved in production of Soybean product like DOC etc. and also having solvent extraction plant at Mahidpur Road, Village Champla Khedi, District Ratlam. Applicant company and respondents No.4 and 5 took over Marvel Agrex Limited Company as per memorandum of understanding on 26.12.2006. The applicant company supplied Indian Solvent Extracted Toasted Yellow Soyabean Meal to M/s. Bishan Saroop Ramkrishna Agro Private Ltd. in lieu of payment of that goods M/s. Bishan Saroop Ramkrishna Agro Private Ltd. gave three Demand Draft worth Ro.(sic:Rs.)90.00 Lacs each and One D.D worth of Rs.30 Lacs. That draft was received by non applicant No.3 and 4 (sic:4 and 5) on behalf of applicant company. After receiving that Demand Draft non applicant No.4 and 5 informed the applicant company that they

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had deposited that Demand Draft in the account of company and a copy of deposit receipt was also provided to applicant by the non applicant No.4.

3. After some time applicant came to know that non applicant no. 4 and 5 opened an account in Bank of India and on forged documents and illegally misappropriated Rs.3 Crores belonging to petitioner company and committed offence under section 420, 467, 468, 471 and 120B of IPC. On that applicant company lodged a report against respondents No.4 & 5 but Police is not registering FIR against respondents No.4 and 5 and not taking action against them with an ulterior and mala fide motive while said offences are cognizable offence. So respondents No.1 to 3 be directed to register FIR against respondents No.4 and 5 on applicant's complaint.

4. Learned counsel for the respondent/State opposed the prayer and submitted that police had enquired the matter regarding which a civil suit also pending in the Court of District Judge Indore between both the parties. So, FIR was not registered. If applicant is aggrieved, he is free to file private complaint before the competent court and pray for rejection.

5. This court has gone through the record and arguments put forth by both the parties. Applicant filed this petition for issuing direction to respondents No.1 to 3 for registering FIR against respondents No.4 and 5 on the complaint filed by the petitioner before the police.

6. This Court had gone through the record and arguments put forth by both the parties, according to provisions of section 154 to 156 Cr.P.C. where a person has approached the Police Station under Section 154 of the Code, but the Police does not register FIR as contemplated under law, he has a right to make a complaint to the Superintendent of Police concerned in terms of Section 154(3) of the Code and such Superintendent of Police concerned exercising the powers of an officer in charge of a police station would investigate the matter himself or direct the investigation to be conducted by another police officer subordinate to him. If there is inaction on the part of the Station House Officer and the Superintendent of Police, the complainant is at liberty to move the jurisdictional Magistrate under Section 156(3) Cr.P.C.

7. While dealing with the exercise of power under Section 156(3) Cr.P.C. by the Magistrate, the Hon'ble Supreme Court in case of *Lalita Kumari V/s. State of U.P. & Others* reported in 2014(2) SCC 1, held that,

"The registration of First Information Report is

mandatory in Cognizable offences and action will be taken against the police officer for his failure to register a First Information Report on the complaint of a cognizable offence.

If action is not taken by the superior officer under Section 154 (3) of the Code, then any person has a right to invoke the power of the court under Section 156(3) of the Code. The Legislature provides a specific protection in terms of Section 156(3) of the Code and gives right to a person to approach the court of competent jurisdiction for issuance of direction to the police officer to investigate the matter in accordance with law.”

8. The Bombay High Court in the case of *State of Maharashtra V/s. Shashikant Shinde* reported in 2013 All MR (Cri) 3060, held that,

“when a petition or complaint is presented before the Magistrate, in which a request is made for taking action as mentioned in Section 2(d) of the Code, the Magistrate is expected to apply his mind. The Magistrate has to ascertain as to whether the contentions made in the petition /complaint constitute any offence. If they constitute some offence then the Magistrate is expected to take decision as to whether the matter needs to be referred to police for investigation as provided in section 156(3) of the Code or he needs to proceed further as provided in Section 200 and subsequent Sections of Chapter XV of the Code. There is a discretion with the Magistrate in this regard. Though police officer is duty bound to register case on receiving information of cognizable offence, the Magistrate is not bound to refer the matter to police under section 156(3) of the Code.”

And a Three-Judge Bench of Apex Court in *Ramdev Food Products(P) Ltd. V/s. State of Gujarat*, (2015) 6 SCC 439 has held that,

“the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued.

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In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed".

9. Apex court also in *Priyanka Srivastava Vs State of U.P.* reported in (2015) 6 SCC 287, held as follows;

"In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations."

10. Regarding maintainability of petition directly in the High Court for registering the FIR Hon'ble Apex Court in his judgment passed in *Sakiri Vasu V/s. State of U.P. & others* reported in (2008) 2 SCC 409 clearly observed that :-

"If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, *then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover, he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?*

As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to

ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154 (3) before the police officers concerned, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere."

11. The same view has been reiterated by the apex court in *Sudhir Bhaskarrao Tambe V/s. Hemant Yashwant Dhage and others* (2016) 6 SCC 277 observing in paras 2 and 3, as follows:-

"This Court has held in *Sakiri Vasu v. State of UP* (2008) 2 SCC 409 that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in *Sakiri Vasu* case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information

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report or praying for a proper investigation.” “3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.”

12. So in the light of above pronouncements it emerges that if there is inaction on the part of the Station House Officer and the Superintendent of Police, the complainant is at liberty to move the jurisdictional Magistrate under Section 156(3) Cr.P.C. (not directly in the High court under section 482 of Cr.P.C.) The complaint shall be accompanied by an affidavit as mandated by the Supreme Court in *Priyanka Srivastava* (supra). On receipt of the complaint, the Magistrate shall pass orders thereon, either issuing directions or dismissing the petition.

13. So petition is rejected with a direction that if police is not registering FIR on the complaint of petitioner, he will be free to avail alternative remedy to approach the concerned Magistrate under Section 156(3) of Cr.P.C as held by the Hon'ble Apex Court in the aforesaid judgments.

Petition is disposed of accordingly.

Application dismissed.

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MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice J.K. Maheshwari

M.Cr.C. No. 6093/2016 (Jabalpur) decided on 7 April, 2017.

SYED PARVEZ ALI

...Applicant

Vs.

SMT. NAHILA AKHTAR

...Non-applicant

A. Muslim Women (Protection of Rights on Divorce) Act (25 of 1986), Section 3 and Mohammedan Law, Clause 311 & 312 – Maintenance – Entitlement – “Divorced Women” – Mode of Taqak –

“Talak ahsan” - Wife filed application u/S 3 of the Act of 1986 against husband before the JMFC – Magistrate allowed the application holding the wife to be a divorced woman – Husband filed revision which was dismissed – Challenge to – Husband submitted that he communicated and pronounced Talak once, which is revocable and is not complete Talak and hence wife is not a divorced woman – Held – As per Mohammedan Law, such single pronouncement falls under clause 311(1) **“Talak ahsan”** which is revocable under Clause 312(1) – **“Talak ahsan”** becomes irrevocable and complete on expiration of iddat period until husband resumes sexual intercourse during period of iddat to make it revocable by express or implied act – In the present case, husband has not taken any plea in written statement that adopting a mode specified in Clause 312(1) and substantiating by evidence, talak was revoked by him – Wife is a **“Divorced Woman”** and her application u/ S 3 of the Act of 1986 is maintainable – Trial Court rightly allowed the application – Petition dismissed. (Paras 10, 11 & 13)

क. मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) अधिनियम (1986 का 25), धारा 3 एवं मुस्लिम विधि, खंड 311 व 312 – मरणपोषण – हकदारी – **“तलाकशुदा महिला”** – तलाक की रीति – **“तलाक अहसन”** – पत्नी ने न्यायिक मजिस्ट्रेट प्रथम श्रेणी के समक्ष पति के विरुद्ध 1986 के अधिनियम की धारा 3 के अंतर्गत आवेदन प्रस्तुत किया – मजिस्ट्रेट ने पत्नी को एक तलाकशुदा महिला ठहराते हुए आवेदन मंजूर किया – पति ने पुनरीक्षण प्रस्तुत किया जिसे खारिज किया गया था – को चुनौती – पति ने निवेदित किया कि उसने एक बार तलाक का संवाद तथा उच्चारण किया, जो कि प्रतिसंहरणीय है एवं पूर्ण तलाक नहीं है तथा इसलिए पत्नी तलाकशुदा महिला नहीं है – अभिनिर्धारित – मुस्लिम विधि के अनुसार, इस तरह की एक घोषणा खंड 311(1) **“तलाक अहसन”** के अंतर्गत आती है, जो कि खंड 312(1) के अंतर्गत प्रतिसंहरणीय है – इद्दत अवधि समाप्त होने पर तलाक अहसन प्रतिसंहरणीय एवं पूर्ण हो जाता है जब तक कि पति अभिव्यक्त या विवक्षित कृत्य द्वारा इसे प्रतिसंहरणीय बनाने हेतु इद्दत अवधि के दौरान पुनः लैंगिक संभोग नहीं करता – वर्तमान प्रकरण में, पति ने लिखित कथन में कोई अभिवाक् नहीं किया है कि खंड 312(1) में विनिर्दिष्ट ढंग अंगीकृत कर एवं साक्ष्य द्वारा सिद्ध कर उसके द्वारा तलाक प्रतिसंहृत किया गया था – पत्नी एक **“तलाकशुदा महिला”** है तथा 1986 के अधिनियम की धारा 3 के अंतर्गत उसका आवेदन पोषणीय है – विचारण न्यायालय ने उचित रूप से आवेदन मंजूर किया – याचिका खारिज।

B. Muslim Women (Protection of Rights on Divorce) Act

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(25 of 1986), Section 3 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Amount of Maintenance – Quantum – Trial Court directed husband to pay Rs. 5 lacs to wife as lumpsum maintenance alongwith Rs. 51,000 towards amount of Mahr – In revision, the same was upheld by the Revisional Court – Held – It is not disputed that husband use to work at Dubai and he was a sales person, hence his potentiality of earning cannot be doubted – Finding of fact recorded by the Courts below do not warrant interference u/S 482 Cr.P.C. – Petition dismissed with cost of Rs. 10,000, which shall be paid to wife.

(Para 14 & 15)

ख. मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) अधिनियम (1986 का 25), धारा 3 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – मरणपोषण की राशि – मात्रा – विचारण न्यायालय ने पति को 51,000 रु. की मेहर की राशि के साथ 5 लाख रु. एकमुश्त मरण पोषण के रूप में पत्नी को दिये जाने हेतु निदेशित किया – पुनरीक्षण में, उक्त को पुनरीक्षण न्यायालय द्वारा कायम रखा गया था – अभिनिर्धारित – यह विवादित नहीं है कि पति दुबई में काम करता है तथा वह एक विक्रेता व्यक्ति था इसलिए उसकी आय की क्षमता पर संदेह नहीं किया जा सकता – निचले न्यायालय द्वारा अभिलिखित किये गये तथ्य के निष्कर्ष पर दण्ड प्रक्रिया संहिता की धारा 482 के अंतर्गत किसी हस्तक्षेप की आवश्यकता नहीं – याचिका, 10,000 रु. के व्यय के साथ खारिज की गई, जो कि पत्नी को मुगतान किये जायेंगे।

Cases referred :

(2014) 10 SCC 736, AIR 2002 SCW 4162, (2007) ILR 2 Delhi 1329, AIR 1985 SC 945, AIR 2001 SC 3958, (2014) 12 SCC 636.

A.T. Faridee, for the applicant.

Ishteyaq Husain, for the non-applicant.

ORDER

J.K. MAHESHWARI, J. :- Invoking the jurisdiction under Section 482 of the Code of Criminal Procedure challenging the order dated 30.5.2015 passed by Third Additional Sessions Judge to the Court of First Additional Sessions Judge, Bhopal in Criminal Revision No.184/2015 confirming the order dated 28.2.2015 of the Judicial Magistrate First Class passed in Miscellaneous Criminal Case No.126/2009, allowing the application under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986

(hereinafter referred to as “the Act”) and awarded a sum of Rs.5,00,000/- to the respondent as lump sum maintenance and Rs.51,000/- towards an amount of Mahr, this petition has been preferred.

2. The facts unfolded to file present case is the marriage of the petitioner and respondent was solemnized on 29.10.1999 as per the customs of Muslim Laws at Bhopal. It is not in dispute an amount of Rs.51,000/- has been settled towards Mahr. After the marriage, from the wedlock, two kids were born who are residing with the wife. It is also not in dispute that various proceedings either under the provisions of Indian Penal Code or of Dowry Prohibition Act and Domestic Violence Act have been contested by the parties. The husband by communication dated 26.10.2008, received on 6.11.2008 to wife gave the divorce to her. However, being “divorced woman”, the application under Section 3 was filed asking maintenance to the tune of Rs.15 lacs and a sum of Rs.51,000/- towards Mahr and expenses for the period of *Iddat* and also to return the articles.

3. The husband by filing the written statement denied the averments regarding divorce *inter alia* contending, the divorce was not given thrice, however, it is revocable. The husband made the communication of divorce to the wife with intent to warn and improve her conduct. Therefore, the divorce given to her stating *Talak* once would not be the valid divorce, however, the respondent would not fall within the purview of “divorced woman” and the application filed under Section 3 of the Act is not tenable.

4. Learned counsel for the petitioner referring various provisions of Mahomedan Law *inter alia* contended the divorce given stating it once is revocable, however, the finding recorded by the Courts below accepting the divorce Ex.P/2 is unsustainable. It is urged by him that in a case of *Khula* where Mufti gave his fatwa or advisory decision based on the Shariat of his school, if the matter is carried to the point of litigation and cannot be settled privately then the Qazi (Judge) is required to deliver a *qaza* (judgment) based upon the Shariat. It is contended, the *Khula* is one of the mode of divorce as per Shariat, in case any advisory is given by the husband, it would not be called as irrevocable *talak*. In support of his contention, reliance has been placed on the judgment of Supreme Court in the case of *Juverja Abdul Majid Patni vs. Atif Iqbal Mansoori and another* (2014) 10 SCC 736. It is further contended that mere taking a plea of *talak* reduced once in writing would not be termed as divorce asking maintenance to the muslim woman. In support of

his contention, reliance has been placed on the judgment of the Supreme Court in the case of *Shamim Ara vs. State of U.P. and another* reported in AIR 2002 SCW 4162. In view of the said submissions, it is urged that Ex.P/2 cannot be treated to be a divorce to maintain the application under Section 3 of the Act. In alternative, on merit as per material brought on record, the husband had left the job at Dubai and started to reside at Bhopal, at present he do not have any earning to pay a sum of Rs.5 lacs towards maintenance, therefore, the amount as awarded is on higher side, which may be reasonably reduced.

5. On the other hand, learned counsel appearing on behalf of the respondent/wife referring Clause 311 of the Mahomedan Law contends that divorce is of three types which are known as "*Talak ahsan*", "*Talak hasan*", "*Talak-ul-bidaat*" or "*talak-i-badai*". Looking to the document Ex.P/2, it is a case of single pronouncement of divorce, however, it would come under the purview of *Talak ahsan*. As per Clause 312, *Talak ahsan* would become irrevocable and complete after expiration of the period of *iddat*. The husband is having option to revoke it either expressly or impliedly by resuming sexual intercourse during the said period. In the present case, nothing has been said either in the defence or in the evidence that *Talak ahsan* has been revoked by petitioner resuming the sexual intercourse during the period of *iddat*. However, the plea that divorce was revocable and application cannot be maintained is misplaced, and the Courts below have rightly repelled the said plea. It is further contended that petitioner is having same earning at Bhopal as he was having in Dubai, nothing contrary is brought on record by the petitioner. In absence thereto interference in the findings of fact is not warranted.

6. After having heard learned counsel for the parties and looking to the arguments as advanced, it may be seen whether application under Section 3 of the Act can be maintained by the respondent, being a "divorced woman". It is also required to be seen whether the alleged *talak* is revocable and it has been revoked by the husband after giving her *talak* vide Ex.P/2. To appreciate the aforesaid issues, certain provisions of the Act of 1986 are relevant which are reproduced as under :-

(a) "divorced woman" means a Muslim woman who was married according to Muslim law, and has been divorced by, or has obtained divorce from, her husband in accordance with Muslim law;

(b) "iddat period" means, in the case of a divorced woman,-

(i) three menstrual courses after the date of divorce, if she is subject to menstruation;

(ii) three lunar months after her divorce, if she is not subject to menstruation; and

(iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier;

Sec. 3. *Mahr* or other properties of Muslim woman to be given to her at the time of divorce –

(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to-

(a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according of Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of mahr or dower due has not been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorized by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, mahr or dower

or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that-

(a) her husband having sufficient means, has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children; or

(b) the amount equal to the sum of mahr or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her, make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such mahr or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or mahr or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973, and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defense and the said sentence being imposed according to the provisions of the said Code.

7. On perusal of the aforesaid, it is apparent that if a muslim woman was married according to the Muslim rituals and divorced or has taken divorce from her husband, as per the provisions of Muslim Law would be called a divorced woman. Under Section 3, the divorced woman shall be entitled for the maintenance which is required to be paid to her within *iddat* period. She is also entitled to claim maintenance for the children, further asking the sum of Mahr or dower as agreed and also the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends. It is clarified that if any application has been filed under sub-section (2) by a divorced woman and on being satisfied, the Magistrate finds that husband is having sufficient means has failed or neglected to make or pay her within the *iddat* period a reasonable and fair provision for her and the children and the amount equal to the sum of *Mahr* or dower, if not paid, may be directed to be paid.

8. In the context of the aforesaid legal provisions under the Act and to maintain the application filed by the respondent/wife and looking to the facts of the case, it is required to be adjudicated whether the respondent would come within the purview of "divorced woman". It is required to see, in the facts the petitioner has given the divorce to the respondent/wife, as per Mahomedan Law. Under the Mahomedan Law, Clause 311 deals the different modes of talak which are reproduced as under :-

311. Different modes of talak – A talak may be effected in any of the following ways –

(1) *Talak ahsan* – This consists of a single pronouncement of divorce made during a *tuhr* (period between menstruations) followed by abstinence from sexual intercourse for the period of *iddat* (s. 257).

When the marriage has not been consummated, a *talak* in the *ahsan* form may be pronounced even if the wife is in her menstruation.

Where the wife has passed the age of periods of menstruation the requirement of a declaration during a *tuhr* is inapplicable; furthermore, this requirement only applies to a oral divorce and not a divorce in writing.

(2) *Talak hasan*— This consists of three pronouncements made during successive *tuhrs*, no intercourse taking place during any of the three *tuhrs*.

The first pronouncement should be made during a *tuhr*, the second during the *next tuhr*, and the third during the *succeeding tuhr*.

(3) *Talak-ul-bidaat* or *talak-i-badai* — This consists of—

(i) three pronouncements made during a single *tuhr* either in one sentence e.g. "I divorce thee *thrice* — or in separate sentences e.g., "I divorce thee, I divorce thee, I divorce thee" or,

(ii) a single pronouncement made during a *tuhr* clearly indicating an intention irrevocably to dissolve the marriage, e.g., "I divorce thee irrevocably."

9. On perusal thereto, it is clear that *Talak ahsan* consists of single pronouncement of divorce made by the husband during *tuhr* (period between menstruations) followed by abstinence from sexual intercourse for the period of *iddat*. It is explained, if marriage is not consumed, *Talak ahsan* may be given, to wife during menstruation. On passing the age of menstruation, the requirement of declaration *Talak during tuhrs* do not apply. Further, it applies to oral divorce and not to a divorce in writing. While *Talak hasan* consists of three pronouncements made during successive *tuhrs*, no intercourse taking place during any of the three *tuhrs*. *Talak-ul-bidaat* or *talak-i-badai* consists of (i) three pronouncements made during a single *tuhr* either in one sentence e.g. "I divorce thee *thrice* — or in separate sentences e.g., "I divorce thee, I divorce thee, I divorce thee" or, (ii) a single pronouncement made during a *tuhr* clearly indicating an intention irrevocably to dissolve the marriage, e.g., "I divorce thee irrevocably". Clause 312 is also relevant, because it deals when *talak* becomes irrevocable, therefore, reproduced as under—

Clause 312. specify when *talak* becomes irrevocable—

(1) A *talak* in the *ahsan* mode becomes irrevocable and complete on the expiration of the period of *iddat*.

(2) a *talak* in the *hasan* mode becomes irrevocable and complete on the third pronouncement, irrespective of the *iddat*.

(3) A talak in the *badai* mode becomes irrevocable immediately it is pronounced, irrespective of the *iddat*. As the talak becomes irrevocable *at once*, it is called talak-i-bain, that is, irrevocable talak.

Until a talak becomes irrevocable, the husband has the option to revoke it which may be done either expressly, or implied as by resuming sexual inter-course.

10. On perusal of the aforesaid, it is apparent, the *Talak ahsan* becomes irrevocable and complete on expiration of period of *iddat* until husband resumes sexual intercourse during the period of *iddat* to make it revocable by express or implied act. Similar provisions have been specified in a case of *talak hasan* and *Talak-ul-bidaat* or *talak-i-badai*. Meaning thereby if talak has been given by the husband under one of the mode as specified in Clause 311, it may be revoked by express or implied act as specified in Clause 312. In the facts of the present case, learned counsel for both the parties have not disputed that the present case falls under Clause 311(1) *Talak ahsan* because it is a case wherein one single pronouncement of divorce has been made in Ex.P/2. The relevant portion of *Talaknama* is reproduced as under :-

तलाक नामा

में सैयद परवेज अली S/o सैयद मजहर अली निवासी 4/11, शिरीन काम्पलेक्स, बी.डी.ए. कालोनी कोहेफिजा, भोपाल आज दिनांक 26/10/08 को अपनी पत्नी नाहिला अखतर D/o सैयद अखतर अली निवासी आंहाता रुस्तम खों श्यामला हिल्स भोपाल को अपने पूर्ण होशो हवास एवं बिना किसी दबाव के समक्ष गवाहन 1) सैयद लियाकत अली 2) सैयद इकबाल अली के समक्ष तलाक देता हूँ। तलाक नामा लिख दिया है कि, सनद रहे इसकी प्रतिलिपि पत्र वाहक से दस्ती सूचनार्थ नाहिला अखतर को भेज रहा हूँ।

हस्ताक्षर तलाक देने वाला

सैयद परवेज अली S/o सैयद
मजहर अली निवासी 4/11,
शिरीन काम्पलेक्स, कोहेफिजा,
भोपाल!

हस्ताक्षर साक्षीगण:-

दस्तखत

1) सैयद लियाकत अली S/o सैयद कुदरत

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अली निवासी इतवारा भोपाल!

दस्तखत

2) सैयद इकबाल अली S/o सैयद कुदरत

अली निवासी इतवारा भोपाल!

11. On perusal of the aforesaid, it is apparent that the husband gave talak to the wife writing once that in front of the witnesses Sayyed Liyakat Ali and Sayyed Iqbal Ali, "*TALAK DETA HUN*". The said *talak* would be called as *Talak ahsan* and may be revoked by express or implied act of the husband resuming sexual intercourse during the period of *iddat* otherwise it becomes irrevocable and complete on the expiration of the period of *iddat*. In the present case, neither in the written statement nor in the evidence of the husband, nothing is brought on record establishing that he has resumed sexual intercourse expressly or impliedly during the period of *iddat* with the wife after giving *talak* to her on 26.10.2008. In absence *talak ahsan* given under Clause 311(1) would become irrevocable and complete.

12. At this stage, the argument advanced by the learned counsel for the petitioner relying on the judgment of *Juverja Abdul Majid Patni* (supra) is required to be considered. In the said case, the 'Khula' which is a mode of divorce may be given by a wife to a husband has been considered. In the said case, the Supreme Court in para-13 relying upon the observation of Delhi High Court in the case of *Masroor Ahmed vs. State (NCT of Delhi) and another* (2007) ILR 2 Delhi 1329, observed that a Khula is a mode of dissolution of marriage when the wife does not want to continue with the marital tie with husband. The aforesaid observation is based on the Muslim Personal Law (Shariat) whereby it is said to settle the matter privately, the wife need only consult a mufti (juris consult) of his or her school. The Mufti gives fatwa or advisory decision based on the Shariat of his school. If the wife does not want to continue with the marital tie and takes mode of "Khula" for the dissolution of marriage, she is required to propose her husband for dissolution of marriage. This may or may not accompany her offer to give something in return. The wife may offer to give up her claim of Mahr (dower). The Khula is a mode of divorce which proceeds from the wife, the husband cannot refuse subject only to reasonable negotiation with regard to what the wife has offered to give him in return. The Mufti gives fatwa or advisory decision based on the Shariat of his school. If the matter is carried to the point of litigation and cannot be settled privately then the Qazi (Judge) is required to

deliver a qaza (judgment) based upon Shariat. On perusal of the said judgment, Hon'ble Supreme Court has merely dealt with the case where proceedings of divorce was initiated by the wife and as per Shariat it is known as Khula, however, in the context of Shariat the Court interpreted the situation which may take place in the event when the wife is willing for divorce. While in the present case, the husband gave the divorce in a shape of *Talak ahsan* as discussed above. However, the argument of learned counsel for the petitioner relying upon the judgment of *Juverja Abdul Majid Patni* (supra) is misplaced and liable to be repelled. The judgment in the case of *Shamim Ara* (supra) relied by the learned counsel for the petitioner is also not relevant wherein merely taking a plea in the written statement, Courts below accepted it as a divorce and treated the muslim wife as a divorced woman, however, maintaining the application, grant of maintenance was ordered. Therefore, on facts the said judgment is distinguishable, and do not apply to the facts of this case.

13. In the undisputed facts of the present case, the situation is entirely different. As stated hereinabove, it is apparent that husband gave the divorce on 26.10.2008 and its written communication is received to the wife on 6.11.2008. The said communication, indeed, state single pronouncement of *Talak* but as discussed, it would come within the purview of Clause 311(1) "*Talak ahsan*" which may be revocable as per Clause 312(1) of the Mahomedan Law. In the present case, the husband has not taken any plea that adopting a mode specified in Clause 312 and substantiating by the evidence, talak given by him was revoked by resuming the sexual intercourse with the wife during the period of *iddat* either expressly or impliedly. In absence to it *Talak ahsan* has become irrevocable and complete on expiration of the period of *iddat*. In that view of the matter, in my considered opinion, looking to the contents of Talaknama, the defence raised by the petitioner and the evidence brought on record, talak given by the petitioner/husband to the respondent/wife by one pronouncement has become irrevocable and in consequence thereto the respondent falls within the connotation "divorced woman". In consequence thereto, the application filed under Section 3 of the Act can be maintained by her and in exercise of power under Section 3(3) of the said Act, the Magistrate can pass order granting maintenance and award mahr or dower.

14. Now, reverting back to the issue of grant of maintenance in lump sum to the tune of Rs. 5 lacs as awarded by the Courts below, in the facts of the case, it is seen that trial Court while considering the issue of earning has

appreciated the evidence in paragraphs 20, 21 and 22. The said finding of fact has been reaffirmed by the revisional Court, further appreciating the fact that while granting maintenance, it is required to be seen whether husband is having potentiality to earn or not. Looking to the evidence brought on record, it is not in dispute that when husband was working at Dubai, he was a sales personal, however factum of potentiality of earning cannot be disputed and in the context of the same finding of fact recorded by the revisional Court also do not warrant interference in exercise of powers under Section 482 of Cr.P.C. In the said context, for grant of maintenance, the judgments of the Supreme Court in the cases of *Mohd. Ahmad Khan vs. Shah Bano Begum and others* AIR 1985 SC 945; *Danial Latifi and another vs. Union of India* AIR 2001 SC 3958 and *Shamim Bano vs. Asraf Khan* reported in (2014) 12 SCC 636 are relevant to take guidance, in the cases of Protection of Rights on Divorce Act, 1986. In the context of the said judgments, in my considered opinion, even on the point of quantum, interference is not warranted.

15. In view of the foregoing discussion, the petition filed by the petitioner is devoid of any merit, however, maintaining the orders passed by the Courts below, this petition stands dismissed with cost Rs.10,000/-. The amount of cost shall be payable to the wife by the husband.

Application dismissed.

**I.L.R. [2017] M.P., 1788
MISCELLANEOUS CRIMINAL CASE**

Before Mr. Justice J.P. Gupta

M.Cr.C. No. 2394/2016 (Jabalpur) decided on 17 April, 2017

BHUPENDRA SINGH YADAV

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Penal Code (45 of 1860), Section 341 & 384 – Quashment of Proceeding – Offence registered against petitioner, a police constable on an allegation that while on duty, he stopped two dumpers carrying/transporting sand illegally and asked for money showing fear of arrest and seizure of vehicle – Held – As per provisions of Section 341, it is clear that if any person or officer with a view to prevent crime or chase criminal, restrains or stopped him from going ahead, such act does not come within purview of Section 341 IPC –

Similarly, saying or threatening of any person who is involved in crime concerned that if he is not paid money, he will be arrested or property will be seized by a public servant like police constable, it cannot be said that he caused fear to complainant to cause injury and dishonestly induced the person to deliver any money and therefore such act of the petitioner does not come within the purview of Extortion – There is no ingredient in FIR or outcome of investigation, to prosecute petitioner for offence u/S 341 and 384 IPC – Proceedings quashed – Petition allowed. (Paras 8, 9 & 11)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं दण्ड संहिता (1860 का 45), धारा 341 व 384 – कार्यवाही का अभिखंडन – याची, एक पुलिस आरक्षक के विरुद्ध इस अभिकथन पर अपराध पंजीबद्ध किया गया कि ड्यूटी पर रहते समय, उसने अवैध रूप से रेत ले जा रहे/परिवहन करते दो डम्परों को रोका तथा गिरफ्तारी एवं वाहन की जब्ती का भय दर्शाते हुये पैसे की मांग की – अभिनिर्धारित – धारा 341 के उपबन्धों के अनुसार, यह स्पष्ट है कि यदि कोई व्यक्ति या अधिकारी अपराध का निवारण करने या अपराधी का पीछा करने के दृष्टिकोण के साथ, उसे आगे बढ़ने में अवरोध करता है या रोकता है, तो ऐसा कृत्य भारतीय दण्ड संहिता की धारा 341 की परिधि के भीतर नहीं आता है – उसी प्रकार, संबंधित अपराध में अंतर्बलित किसी भी व्यक्ति को कहना या धमकी देना कि यदि वह पैसे का भुगतान नहीं करता है, तो उसे गिरफ्तार कर लिया जाएगा या लोक सेवक जैसे पुलिस आरक्षक द्वारा संपत्ति को जब्त कर लिया जाएगा, यह नहीं कहा जा सकता कि उसने परिवादी को चोट पहुँचाने का भय कारित किया एवं कोई पैसे देने हेतु बेईमानी से व्यक्ति को उत्प्रेरित किया तथा इसलिए याची का इस तरह का कृत्य उद्दापन की परिधि के भीतर नहीं आता – याची को भारतीय दण्ड संहिता की धारा 341 एवं 384 के अंतर्गत अपराध के लिए अभियोजित करने हेतु प्रथम सूचना प्रतिवेदन में कोई घटक या अन्वेषण का कोई परिणाम नहीं है – कार्यवाहियाँ अभिखंडित – याचिका मंजूर।

Case referred :

(2000) 3 SC : 269.

Manish Datt with Rahul Sharma and Pradeep Hazari, for the applicant.

Akhilesh Singh, P.L. for the non-applicant/State.

ORDER

J.P. GUPTA, J. :- This petition under Section 482 of the Code of Criminal Procedure has been preferred by the petitioner seeking quashment

of the FIR registered against him at Crime No.130/2015 in the Police Station Civil Line, Sagar, District Sagar, for the offence under Sections 341 and 384 of the IPC.

2. As per the prosecution case, on 3.11.2015 the petitioner was posted as Constable No. 780 in the police station Civil Line, Sagar, District Sagar and he was deputed to perform his duty in Dial-100 FRV No.MP04-6246. On the aforesaid date, without getting any instructions from Dial 100, he along with driver of the said FRV No.MP04-6246 had gone to Bamhori Tiraha and stopped two dumpers bearing registration no. MP05-G728 and MP05-G6804 on the road and checked them and found that sand was loaded in those dumpers. The petitioner showed his terror over the drivers of the said dumpers and illegally demanded Rs.5000/- from each of the drivers of the dumpers by showing fear to arrest the drivers and to seize the vehicles for committing offence of illegally transporting mining product sand. On the report of the drivers of the said dumpers, Gyan Singh and Amar Singh, an FIR was registered against the petitioner at Crime No.130/15 for the offence under Sections 341 and 384 of the IPC.

3. On perusal of the case diary it is also found that after completion of the investigation, charge sheet has been filed showing the petitioner absconding and learned JMFC, Sagar has taken cognizance for the offence under Sections 341 and 384 of the IPC by registering case no. 4704212/16.

4. This petition has been filed on the ground that the FIR is false and fabricated. The numbers of the dumpers mentioned in the FIR do not tally with the numbers mentioned in the termination order dated 3.11.2015 passed by the Superintendent of Police, Sagar against the petitioner on account of aforesaid alleged act and it has been wrongly mentioned in the FIR that the petitioner had taken FRV without any call from the Control Room, Bhopal. Whereas, the fact is that the message was received from Control Room, Bhopal on 3.11.2015 at about 3.00 AM to the effect that the petitioner was directed to take FRV No. MP04-6246 Dial-100 on patrolling at the instance of TI Gopalganj, Sagar and ASI, Civil Line, Sagar along with the driver of the said FRV i.e. Kasim Khan and this message is available on the record of screen of computer installed in FRV itself along with Event ID and on the aforesaid direction, he went to the spot concerned and returned on his duty at the Point beneath Hotel, Sangam at 6.00 AM and did not do the aforesaid alleged act and the witnesses had never said anything against him. The petitioner has

been falsely implicated in the offence. Hence, the FIR be quashed. However, it has been orally prayed that as now the charge sheet has been filed and cognizance has been taken, hence, further proceedings be also quashed.

5. Learned PL has opposed the petition stating that the factual controversy cannot be considered at this moment. FIR and the outcome of the investigation, prima facie disclose the ingredients with regard to commission of the aforesaid offences. Hence, the petition be dismissed.

6. Having considered the contentions of learned counsel for the parties and on perusal of the record, in view of this court, considering the contents of the FIR and investigation, no offence under sections 341 and 384 of the IPC is made out against the petitioner. The fact that the petitioner was directed or not to reach on the alleged spot is controversial as at present on record there is nothing to decide the aforesaid fact on the basis of unimpeachable material. Even then, being a Police constable, during his duty if he got any information to reach at any spot / place with a view to prevent any crime or to catch hold the culprits, his action cannot be made questionable merely on the ground that he was not directed to reach on the spot. As per the allegation, the complainants were stopped while they were transporting sand through dumpers illegally and they were threatened that if they wanted to avoid their arrest or seizure of the dumpers, they would have to pay Rs.5000/- each and also received the amount. The aforesaid act of the petitioner does not come within the purview of Sections 341 and 384 of the IPC.

7. In this regard, it would be appropriate to quote the relevant provisions here as follows :-

339. Wrongful restraint.-Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

(Exception) -The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

341. Punishment for wrongful restraint.-Whoever wrongfully restrains any person shall be punished with

simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

383. Extortion.-Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

384. Punishment for extortion.-Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

79. Act done by a person justified, or by mistake of fact believing himself justified, by law.-Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

44. "Injury".-The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

8. The aforesaid legal provisions make it clear that if any person or officer with a view to prevent crime or chase criminal is restrained or stopped him from going ahead, such act does not come within the purview of Section 341 of the IPC. Otherwise, no police officer or any other person can arrest or chase any person from proceeding in any direction.

9. Similarly saying or threatening of any person who is involved in the crime concerned that if he is not paid money, he will be arrested or the property will be seized by a public servant like police constable, it cannot be said that he caused fear to the complainant to cause injury and thereby dishonestly induced the person to deliver any money as definition of injury denotes any harm which may illegally cause to any person in body, mind, reputation or property on the basis of saying that the person be arrested or property be

seized as he has committed crime, cannot be said to be a harm to intentionally put the person in fear of any injury as it is not a case of the prosecution or the complainant that they were transporting sand validly or legally without committing any offence. Therefore, the act of the petitioner does not come within the purview of extortion.

10. The Apex court in the case of *Medchl Chemicals & Pharma (P) Ltd. V. Biological E. Ltd.* (2000) 3 SCC 269, has discussed at length about the scope and ambit while exercising power under Section 482 Cr.P.C. The relevant para 2 of the judgment is quoted as follows :-

"2. Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as the rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount"

11. In view of the aforesaid legal backdrop and in view of the foregoing discussion, it is held that there is no ingredient in the FIR or outcome of the investigation to prosecute the petitioner for the offence punishable under Sections 341 and 384 of the IPC. However, the averments of the FIR categorically disclose the ingredients of the offence punishable under Section

7 of the Prevention of Corruption Act but the investigation has not been carried out in accordance with the procedure prescribed under the Prevention of Corruption Act. Therefore, the order of taking cognizance against the petitioner and the procedure of the investigation are bad in law. Hence, the proceeding of the prosecution against the petitioner for the offence under Sections 341 and 384 of the IPC is quashed. However, it is made clear that the prosecution is free to take action against the petitioner with regard to the offence punishable under Section 7 of the Prevention of Corruption Act as per the provisions of law on the basis of the aforesaid FIR.

12. A copy of this order be sent to the concerned court below as well as to the police station concerned for information and compliance.

Order accordingly.