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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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PART - 19 (15th OCTOBER 2017)

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Held – Object behind Bankers Book Evidence Act is to ensure that original books of accounts are retained by bank to enable them to carry on their day-to-day transactions – This object is not stultified by production of some correspondence relating to a One Time Settlement proposal between petitioner and the bank - Endeavour of every court should be to find out the truth, to enable the court to render justice – The summoning of documents in question, would certainly enable the court to arrive at the truth –This Court finds absolutely no reasons to interfere with the Order of Trial court - Revision petition is dismissed. **(Hyd.)** ***123***

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Petitioners filed an IA seeking return of original registered sale deeds filed by

them to avail bank loans – Trial court dismissed IA on the ground that High Court had granted stay of all further proceedings of suit, till disposal of appeal.

Held – Section 10 of CPC projects only stay of trial of suit in which matter in issue is also directly and substantially in issue in a previously instituted suit between same parties – This provision does not prevent or bars the court from passing incidental orders required to meet the ends of justice –Any incidental orders not affecting trial of the suit nor decides rights of parties conclusively can be passed – Trial court has not exercised its jurisdiction properly – Petitioners are permitted to take original registered sale deeds filed into courts by substituting with the certified copies with an undertaking to produce same as when required by the court – Civil Revision Petition is allowed. **(Hyd.)** ***108***

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Held – It is not established by petitioners as to how they could maintain a single application to set aside both ex parte preliminary decree and ex parte final decree passed and petitioners have not stated as to when they came to know about the same – Petitioners should have moved necessary applications to condone delay in filing application to set aside ex parte decrees passed in the suit – Though a transferee pendente lite is entitled to maintain application under Order IX Rule 13 of C.P.C., to set aside ex parte decrees passed against his transferor but the application preferred by petitioners had not conformed the requirements of law – Application laid by petitioners is not maintainable – Civil revision petition is dismissed. **(Madras)** ***27***

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renuka due to his physical relationship with women of loose character, which in turn made him to get vexed up with her – Appellant is also alleged of killing renuka.

Held – In the cases based on circumstantial evidence, circumstances from which inference of guilt is sought to be drawn, must be cogently and firmly establish the guilt of appellant – Circumstances, taken cumulatively, should form a chain so complete that there is no escape from conclusion that within all human probability the crime was committed by appellant and none else – No such evidence is available on record – Even at the time of inquest, there were no witnesses to identify dead body and under these circumstances, I.O. ought have collected blood samples, soft tissues, hair etc., from dead body and preserved the same and could have sent them to Forensic Science Laboratory to establish the identification of dead body – Investigating officers are required to subject the dead body for its proper identification by following required procedures to conduct DNA test – Prosecution failed to establish complete chain of circumstances beyond reasonable doubt - Appellant is acquitted of the charges framed against him – Criminal appeal is allowed. **(Hyd.)** ***112***

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Appellants advanced a plea before High Court for quashing of FIR on the ground that they amicably settled dispute with complainant, and even complainant had also filed an affidavit to that effect – In the view of High Court, it was not in the interest of society at large to accept settlement and quash the FIR - Prayer to quash FIR has been rejected.

Held – In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of jurisdiction under section 482 of Cr.P.C, by High Court, revolves ultimately on facts and circumstances of each case and nature of offence committed and High Court must evaluate whether ends of justice would justify the exercise of inherent power – There may be criminal cases which have predominant element of civil dispute and they stand on different footing in so far as exercise of inherent power to quash is concerned – Instant case involves allegations of extortion, forgery and fabrication of documents – Supreme Court agrees with the view of High Court – Criminal appeal stands dismissed. **(S.C.)** ***25***

NEGOTIABLE INSTRUMENTS ACT, Secs.138, 139 & 143 - **CRIMINAL PROCEDURE CODE,**Sec.258 and 357(1) (b) – Question as to how proceedings for an offence U/Sec. 138 of NI Act can be regulated, where the accused is willing to deposit cheque amount – Whether in such a case, proceedings can be closed or exemption granted from personal appearance or any other order can be passed.

Respondent filed complaint alleging that appellants were to pay a monthly amount to her under an agreement – Cheque was given in discharge of legal liability but the same was returned unpaid for want of sufficient funds – In spite of service of legal notice amount was not paid.

Held – The object of Sec.138 of NI Act was described to be both punitive as well as compensatory – Complainant could be given not only cheque amount but double the amount so as to cover interests and costs – The Law Commission in its 213th Report, noted that out of total pendency of 1.8 crores cases in the country, 38 lakh cases (about 20% of total pendency) are related to section 138 of NI Act – Where cheque amount with interest and costs as assessed by the court is paid by a specified date, the court is entitled to close proceedings in exercise of its powers U/S 143 of NI Act read with 258 Cr.P.C – It is open to court to explore possibility of settlement and consider provisions of plea bargaining – Trial can be on day to day basis and endeavour must be to conclude it within six months. **(S.C.)** ***35***

REGISTRATION ACT, Sec.69 and Rule 26(k) of Andhra Pradesh Rules - **SPECIFIC RELIEF ACT,** Sec.31 – Question as to whether there can be cancellation of a registered document unilaterally by the executant and registration of same by Registering Authorities and whether writ petition is maintainable for setting aside such deeds of cancellation.

No dispute of facts in present cases – All deeds were executed unilaterally by executants and these documents were registered by registering authorities – Documents fall under two category of cases, one relates to period prior to amendment of Rule 26(k) of registration rules; Where as the second category relates to registration of documents by registering authorities in violation of said Rules after amendment.

Held – Complete and absolute sale deeds can be cancelled at the instance of transferor only by taking recourse to the civil court by obtaining a decree of cancellation of sale deed on ground of fraud or any other valid reasons – Instant cases, there is an alternative remedy of approaching civil court U/S 31 of Specific Relief Act – Even

it is assumed that action of registering authority was accentuated by fraud, it has to be proved by specific averments and no such averment is made in these petitions – Fraud cannot be assumed from a mere registration of a document by registering authority – Merely because respondent is a State under Article 12 of the constitution, this court cannot interfere – In order to exercise jurisdiction by this court, action of statutory authorities must be without any alternative authority and in discharge of public law duty – Writ petitions are accordingly dismissed. **(Hyd.) 89**

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ADMISSION OF DOCUMENTS IN EVIDENCE : ANALYSIS

By
Y. Srinivasa Rao,M.A (English)., B.Ed., LL.M
Senior Civil Judge, Avanigadda,

There is no God higher than the truth.
—— Mahatma Gandhiji

Introduction:

Every Court of law is free to regulate its own affairs within the framework of law. There are catena of rulings of our Hon'ble Superior Courts as to receiving and marking of documents. Still, in some situations, some confusion arises while receiving and marking of documents. There are several issues are involved while receiving and marking of documents. Whether an unregistered document can be marked or not? Whether an unregistered document can be received for collateral purpose or not? When the question of impounding arises ? If a document is insufficiently stamped, what should be done? If an Vakil raises any objection while marking a document, how a judicial officer should tackle it? When should decide the question of admissibility of a document? There are several doubts usually crept in the mind of young judicial officers while admission of a document in a civil case. It is my strenuous attempt to give some important case-law on this subject for the benefit of all legal fraternity more in particular for the benefit of judicial officers who are dealing with civil cases.

It is also well-known principle of law that admission of a document in evidence is not to be confused with proof of a document. But, it is curious to note that under Order-13 Rule-4 of the Code of Civil Procedure, when once the document is admitted in evidence, there is a bar under Section-36 of the Indian Stamp Act as regards the objection of admissibility of the document. We all know that mere marking of an exhibit does not dispense with the proof of documents. Further, the question of impounding arises when it is within the meaning of instrument defined by the Stamp Act. The question of impounding by court arises when tendered in evidence to exhibit and not from mere filing with plaint. Every Court is free to regulate its own affairs within the framework of law.

Ten Fundamental principles as to receiving of documents:-

For ready reference, let me list out ten (10) important fundamental principles with regard to receiving of documents in a suit. I will later on discuss various other aspects with

support of latest case-law as to receiving, marking and admissibility, proof, relevancy, and genuineness of documents etc.

1.Order VII of CPC relates to the production of documents by the plaintiff whereas Order VIII of CPC relates to production of documents by the defendant. Under Order-18 Rule-4 of the Code of Civil Procedure, examination-in-chief shall be filed in the form of an affidavit and the copies thereof shall be supplied to the opposite party. As per the proviso to Rule-4 of Order-18 of the Code of Civil Procedure, the proof and admissibility of the documents filed by the respective parties along with the affidavit shall be subject to the orders of the Court. As per Order-13 Rule-3 of the Code of Civil Procedure, the Court may at any stage of the suit, reject any document, which it considers irrelevant or otherwise inadmissible, recording the grounds for such rejection. Under Order-13 Rule-4 of the Code of Civil Procedure, when once the document is admitted in evidence, there is a bar under Section-36 of the Indian Stamp Act as regards the objection of admissibility of the document.

2. Under Order VIII Rule 1A(4) a document not produced by defendant can be confronted to the plaintiff's witness during cross-examination. Similarly, the plaintiff can also confront the defendant's witness with a document during cross-examination

3. By mistake, instead of 'defendant's witnesses', the words 'plaintiff's witnesses' have been mentioned in Order VII Rule (4). The Hon'ble Apex Court has given clear direction till the legislature corrects the mistake, the words 'plaintiff's witnesses, would be read as 'defendant's witnesses' in Order VII Rule 4.

4. Order-7 Rule-14(1) C.P.C. enjoins upon the plaintiff to file all his documents along with the plaint and that unless he puts forth convincing reasons, the Court cannot allow him to file the documents at a later stage, the same is unexceptionable.

5.Similar is the provision under the sub-clause (3) of Rule 1 of Order XIII of the Code. Being so, it cannot be disputed that if the plaintiff fails to mention the documents in the list annexed to the plaint and to place on record a copy of such document, which is required to be produced under the law at the time of filing of the plaint, the plaintiff is not entitled to produce any additional document thereafter without the leave of the Court. But, at the same time, it is also to be noted that nothing prevents the Court in its discretion to grant leave subsequent to the documents being produced before the Court even though such documents were not entered in the list annexed to the plaint. It would depend upon the facts of each case.

6. A document filed under Order XIII, Rule 1 as a piece of evidence in support of the claim of one of the parties to the suit filed along with the pleading may eventually

be proved or may not be proved by the concerned party depending upon the issues involved in the suit.

7.Order 13, Rule 1 deals with only reception of the documents by the Court as part of the record of the suit. It does not deal with reception of the document as a piece of evidence. Rule 13 deals with a stage prior to the reception of the evidence in the suit. Whereas Order 7, Rule 14 deals with different situation altogether.

8. There is a clear embargo on the reception of a document in evidence, which forms the basis of the suit and filed by the plaintiff along with the plaint, but not filed. The Court of course is vested with the discretion under Sub-rule (3) of Rule 14 to receive any such document contemplated under Rule 14(1) at a belated stage by granting leave.

9. There are three stages for every document before it is proved or disproved:- Any document filed by either party passes through three stages before it is held proved or disproved. These are :

a) ***First stage*** :-when the documents are filed by either party in the Court; these documents though on file, do not become part of the judicial record;

b) ***Second stage***:- when the documents are tendered or produced in evidence by a party and the Court admits the documents in evidence. A document admitted in evidence becomes a part of the judicial record of the case and constitutes evidence.

c) ***Third stage***:- the documents which are held 'proved, not proved or disproved' when the Court is called upon to apply its judicial mind by reference to Section of 3 of the Evidence Act. Usually this stage arrives 31 the final hearing of the suit or proceeding. See. Sudir Engineering Company vs Nitco Roadways Ltd., 1995 IIAD Delhi 189.

I till now discussed the fundamental principles relating of receiving of documents in a suit. A word about principles relating of proof, admissibility and genuineness of documents would not be out place. For more clarity, I also mention herewith the relevant case -law besides the principle of law relating to receiving, marking, admissibility, proof, relevancy and genuineness of documents.

1. Setti Siddamma Vs. S. Ramulu {2004 (6) ALT 418} Mere receiving of a document does not entail any adjudication as to its admissibility or proof.

Mere receiving of a document does not entail any adjudication as to its admissibility or proof. As was held in Sait Taraji Khimechand VS. Yelamarti Satvam, AIR 1971 SC 1865, 'the mere marking of an exhibit does not dispense with the proof of docments'.

2.IVRCL Assets and holding Lmited Hyderabad Vs AP State Consumer disputes redressal commission {2014(5) ALT 93 (D.B.}

If an unregistered and insufficiently stamped document if marked as a document does not amount to admitting in documentary evidence.

3.Vanapalli JayalAkshmi Vs A.Kondala Rao {2014(1) ALT 356}

An agreement of sale requires payment of stamp duty and penalty before it is admitted in evidence.

4. **S.Kala devi Vs V.R. Soma Sundaram and others** {2010 94) ALT 58 (SC)}

Administration of unregistered agreement of sale in a suit for specific performance.

5.K.B.Saha and Sons (P) Limited Vs Development Consultant Limited {2008(6) ALD 92 (SC)}

***Collateral purpose**: Collated transaction and certain principles of law relating to admissibility of document requiring of stamp duty and registration of documents*

6.**Budda JagadeeswaraRao Vs Sri Ravi enterprises Rep By its Proprietor.** {2017(2) ALT 736}

Once the instrument is duly impounded, it is as good as originally duly stamped.

On the point of "Collateral purpose"...

Budda JagadeeswaraRao Vs Sri Ravi enterprises Rep By its Proprietor. {2017(2) ALT 736}

There is no prohibition under Section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if it is not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or stamp duty and penalty are paid under sections 33 and 35 of the Stamp Act.

7. Buddha JagadeswaraRao"s case {2017(2) ALT 736}**:** *Effect of non-registration of a document shall not affect any immovable property covered by it.*

8.Scope of an Agreement of sale :

Narandas Karsondas v. S.A. Kamtam and Anr.(1977) 3 SCC 247

Section 54 of TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act.

9. **Scope of Power of Attorney :** Rajasthan vs. Basant Nehata- 2005 (12) SCC 77 ***2011 (3) ALT 19 (SC)H.Siddigui (Dead) by LRs Vs A.Rama Lingam.***

10. ***Mere admission of signature/and denial of its contents does not amount to admission of such document unless the contents of such document have sale probative value*** {AIR 1983 SC 684}

11.State of Bihar Vs Radha Krishna Singh
Mere admission of document by itself does not automatically prove its contents as its probative value is altogether different.

12. J.Yashoda Vs K. Shoba Rani **{2007(3) SCJ 825}**
Secondary evidence :- Secondary evidence as a general rule, is admissible only in the absence of primary evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove the existence and execution of the original document.

13. G.Sukhendar Reddy Vs M .Pullaiah {2015(3) ALT 575}
Principles relating marking and admission of documents.

14. **Syed Yousuef Ali Vs Md. Yousuf and Others** {2016(2) ALT 557}
Stamp duty on possessory contract of sale (Sec Article 47-A of schedule I-A of stamp Act)

15. ***Sait Taraji Khimechand Vs Yelamarti Satvam:***
The mere marking of an exhibit does not dispense with proof of documents

16. Admission of document: Ferozchin Vs Nawnb Khan **{**AIR 1928 Lahore 432}
Admission of documents under Order 13 Rule 4 of CPC does not bind the parties and unproved documents cannot be regarded as proved nor do they become evidence in the case without formal proof. See also: Sudir Engineering Company Vs Nitco Roadways Limited.

17. There are two stages relating to documents: Baldeo Sahai Vs Ram Chander & others: {**AIR 1931 Lahore 546}**

There are two stages relating to documents. One is the stage when all the documents on which the parties rely or filed by them in court. The next stage is when the documents are proved and formally tendered in evidence. It is at the later stage that the court has to decide whether they should be admitted or rejected.
Sudir Engineering Company Vs Nitco Roadways Limited:

Admission of a document in evidence not to be confused with proof of a document.

18. **Production of documents by the parties. Order 7, Rule 14 and Order 8 , Rule 1A CPC.**

Salem Advocate Bar Association,Tamil Nadu Vs. Union of India, {AIR 2005 SCC 3363}

Held: Order VII relates to the production of documents by the plaintiff whereas Order VIII relates to production of documents by the defendant. Under Order VIII Rule 1A(4) a document not produced by defendant can be confronted to the plaintiff's witness during cross-examination. Similarly, the plaintiff can also confront the defendant's witness with a document during cross-examination. By mistake, instead of 'defendant's witnesses', the words 'plaintiff's witnesses' have been mentioned in Order VII Rule (4). To avoid any confusion, we direct that till the legislature corrects the mistake, the words 'plaintiff's witnesses, would be read as 'defendant's witnesses' in Order VII Rule 4. We, however, hope that the mistake would be expeditiously corrected by the legislature.

19. **A distinction between the nature of the documents covered under Order 7, Rule 14 and Order 13, Rule 1 CPC**

Katakam Viswanatham vs Katakam China Srirama Murthy {AIR 2004 AP 522, 2004 (3) ALD 338, 2004 (3) ALT 791}.

Held: A document filed under Order XIII, Rule 1 as a piece of evidence in support of the claim of one of the parties to the suit filed along with the pleading may eventually be proved or may not be proved by the concerned party depending upon the issues involved in the suit Order 13, Rule 1 deals with only reception of the documents by the Court as part of the record of the suit. It does not deal with reception of the document as a piece of evidence. Rule 13 deals with a stage prior to the reception of the evidence in the suit. Whereas Order 7, Rule 14 deals with different situation altogether. There is a clear embargo on the reception of a document in evidence, which forms the basis of the suit and filed by the plaintiff along with the plaint, but not filed. The Court of course is vested with the discretion under Sub-rule (3) of Rule 14 to receive any such document contemplated under Rule 14(1) at a belated stage by granting leave.

20 **Receiving the documents in evidence at a belated stage.**
Lukka Srinivasa Rao @ Venkateswarlu Vs.Lukka Sivaiah {2016 (1) ALT 36}

Observed: As regards the proposition of law viz., that Order-VII Rule-14(1) C.P.C. enjoins upon the plaintiff to file all his documents along with the plaint and that unless he

puts forth convincing reasons, the Court cannot allow him to file the documents at a later stage, the same is unexceptionable. Indeed, this Court has reiterated this legal position in both the judgments cited by learned counsel, as referred to supra. However, whether a party has put forth sufficient reasons for filing the documents at a belated stage or not, depends upon the facts of each case and no hard and fast rule can be laid down in that regard.

21. **Marking of documents subject to objection.**

Sri Kathi Narsinga Rao vs Kodi Supriya And Another, {C.R.P.Nos.4384 of 2015 and batch. Dt. 29-09-2016. 2017 (1) ALD 626}.

Observed:

1. In fact from the expression in Bipin Shantilal there was a direction as guidance to be followed by all Courts while marking documents including on secondary evidence as subject to objections by let open to decide ultimately on the objection while recording the evidence, unless it touches stamp duty and registration to decide instantly. In fact Shalimar Chemicals supra particularly at Para 10 internal Para 20, the expression of the Apex Court in RVE Venkatachala Gounder Vs. Arulmigu Viswesaraswamy and V.P.Temple, referred and relied which speaks about objections as to admissibility of documents in evidence may be classified into 2 classes, one is objection that the document which is sought to be proved is inadmissible and the other towards the mode of proof.

2. In the case of objection as to admissibility, it is only a procedural aspect, if not raised while marking, it is not open to raise later including on secondary evidence for as good as primary evidence.

3. Whereas objection as to mode of proof even not raised while marking unless it is proved it cannot be considered in evidence for which there is no waiver, thereby even no objections raised on mode or method of proof there is no waiver to consider document proved or not from objection can be raised on proof at any time but for on the objection as to nature of document for its admissibility if not raised while marking that amounts to waiver.

22. **Indian Stamp Act is a fiscal statute in nature.**

Hameed Joharan (D) And Ors vs Abdul Salam (D) By Lrs. And Ors, **{2001 (7) SCC 573}**

Turning attention on to Section 2 (15) read with Section 35 of the Indian Stamp Act, be it noted that the Indian Stamp Act 1899 (Act 2 of 1899) has been engrafted in

the Statute Book to consolidate and amend the law relating to stamps. Its applicability thus stands restricted to the scheme of the Act. It is a true fiscal statute in nature, as such strict construction is required to be effected and no liberal interpretation.

23. **An unregistered and insufficient stamp documents are inadmissible in evidence**

1. Pariti Suryakanthamma and another Vs. Saripalli Srinivasa Rao and another, [2010(2)ALD847, 2010(2)ALT648].

An unregistered and insufficient stamp documents are inadmissible in evidence.

2. Rachakonda Ramakoteswara Rao and Others v. Manohar fuel centre,nereducherla, khammam and another {2003 (2) ALD 638}

"The bar engrafted under section 35 of the stamp act is an absolute bar and, therefore, the document cannot be used for any purpose, unlike the bar contained in section 49 of the indian registration act (for brevity 'the Registration Act').

23. Buddha Jagadeeswara Rao vs Sri Ravi Enterprises**,** CIVIL REVISION PETITION No.1850 of 2015, Dt. 23-08-2016.
If instrument-unregistered and insufficiently stamped runs in two parts, which are separable-on stamp duty required to be paid on impounded respectively.

V. Anjaneyulu vs Vadapalli Peddanna @ Peddaiah {2005 (5) ALD 206, 2005 (4) ALT 674} Also it was held:

A document executed within the meaning of instrument-unregistered and insufficiently stamped, if it runs in two parts which are separable-on stamp duty required to be paid on impounded respectively, the portion which is required to be registered cannot be looked into but for collateral purpose and the other portion which is not required to be registered can be looked into for main purpose.

24. **When a document is sent for impounding, RDO cannot take different view.**
Purini Krishnaiah vs Nuvvuru Venkata Ramanaiah
{AIR 2005 AP 504, 2005 (5) ALD 151, 2005 (6) ALT 202}

Held: - Whatever may be the power of the jurisdiction of the RDO under the Indian Stamp Act, while dealing with the document, which came to be presented before him under Section 33 once a document was referred to him by a Court, he cannot take the view that the document does not require any impounding, or collection of deficit

Court fee, at all. Such a course would amount to sitting in appeal, against the order of the Court, which has sent the document.

25. **Collection of stamp duty together with penalty**
Chintalapudi Annapurnamma vs Andukuri Punnayya Sastry
{2000 (3) ALD 649, 2000 (3) ALT 159}

"If an application is made before a Court for sending a document to the Revenue Divisional Officer for collection of stamp duty, is the Court bound to do so or is the Court free to impound the document itself and admit the document on collection of stamp duty together with penalty."

26. Unilateral cancellation of deed cannot be made in the absence of any specific provision for the Registrar to do so. G.D. Subramaniam v. The Sub-Registrar, **{Konur, 2009 CIJ 243 Madras}**
See also. Satya Pal Anand vs. State of M.P. and Others, CIVIL APPEAL NO. 6673 OF 2014.

27. **Sub-Registrar cannot refuse to register a document.**
Nagineni Venkata Subba naidu vs. Sub-Registrar, Tirupathi, AIR 2006 AP 363, LAWS(APH)-2005-11-101, 2006(1)ALD679.

28. **When objection to be taken for marking of a document?**
The document to be marked is in presence of parties and they have an opportunity to object for marking and though it is also the duty of the Court to determine judicially on sufficiency of stamp duty before admission, same arises generally when an objection in this regard was taken by the party in opposing for marking as insufficiently stamped. If it is marked not in the presence of opposite party or even from presence an objection for marking was taken the question of waiver or taking away the objection does not arise. See. Vemi Reddy Jkota Reddy vs Vemi Reddy Prabhakar Reddy, 2004 (2) ALD 627.

Conclusion: The marking of a document as an exhibit, be it in any manner whatsoever either by use of alphabets or by use of numbers, is only for the purpose of identification. While reading the record the parties and the Court should be able to know which was the document before the witness when it was deposing. Absence of putting an endorsement for the purpose of identification no sooner a document is placed before a witness would cause serious confusion as one would be left simply guessing or wondering while was the document to which the witness was referring to which deposing. Endorsement of

an exhibit number on a document has no relation with its proof. Neither the marking of an exhibit number can be postponed till the document has been held proved; nor the document can be held to have been proved merely because it has been marked as an exhibit. See. Sudir Engineering Company vs Nitco Roadways Ltd., 1995 IIAD Delhi 189. Examining the factum of admissibility of a document and the factum of forming a judicial opinion to know whether it is proved , disproved, or not proved are two important tasks which are linked to documents when a document is placed before a court. When the Court is called upon to examine the admissibility of a document , the court has to concentrates only on the document. When called upon to form a judicial opinion whether a document has been proved, disproved or not proved, the Court has to look not at the document alone or only at the statement of the witness standing in the box; it would take into consideration probabilities of the case as emerging from the whole record. It could not have been hurdle of any law, rule or practice direction to expect the Court applying its judicial mind to the entire record of the case, each time a document was placed before it for being exhibited and form an opinion if it was proved before marking it as an exhibit.

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2017(3) L.S. 89

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
A. Ramalingeswara Rao

Smt.P.Veda Kumari & Anr., ..Petitioner
Vs.
The Sub Registrar, Hyd.,
& Anr., ..Respondents

REGISTRATION ACT, Sec.69 and Rule 26(k) of Andhra Pradesh Rules - SPECIFIC RELIEF ACT, Sec.31 – Question as to whether there can be cancellation of a registered document unilaterally by the executant and registration of same by Registering Authorities and whether writ petition is maintainable for setting aside such deeds of cancellation.

No dispute of facts in present cases – All deeds were executed unilaterally by executants and these documents were registered by registering authorities – Documents fall under two category of cases, one relates to period prior to amendment of Rule 26(k) of registration rules; Where as the second category relates to registration of documents by registering authorities in violation of said Rules after amendment.

Held – Complete and absolute sale deeds can be cancelled at the instance of transferor only by taking recourse to the civil court by obtaining a decree of cancellation of sale deed on ground of fraud or any other valid reasons – Instant cases, there is an alternative remedy of approaching civil court U/S 31 of Specific Relief Act – Even it is assumed that action of registering authority was accentuated by fraud, it has to be proved by specific averments and no such averment is made in these petitions – Fraud cannot be assumed from a mere registration of a document by registering authority – Merely because respondent is a State under Article 12 of the constitution, this court cannot interfere – In order to exercise jurisdiction by this court, action of statutory authorities must be without any alternative authority and in discharge of public law duty – Writ petitions are accordingly dismissed.

Cases referred:

1. 2004 (1) ALT 174
2. AIR 2007 AP 57
3. 2017 (4) ALD 12
4. (2010) 15 SCC 207 : 2012 (1) ALD 90 (SC)
5. AIR 2011 Mad 16
6. AIR 1922 PC 56
7. AIR 1961 Ori 19
8. AIR 1960 Mad 1 (FB)
9. 2010 (6) ALT 142
10. AIR 2012 AP 163
11. (2015) 15 SCC 263
12. 2006 (2) ALD 371
13. (2016) 10 SCC 767
14. AIR 1990 Mad 251
15. (2015) 7 SCC 728

W.P.Nos.4174/08 Date:18-8-2017

Mr.J.Janakiram Reddy, Advocate for the Petitioner.

GP for Revenue (TG), Advocate for Respondent No.1.

Mr.T.Sharath, Advocate for the Respondent No.2.

C O M M O N O R D E R

The following writ petitions are filed for setting aside deeds of cancellation of sale deeds and the gift settlement deeds unilaterally by the executants.

W.P.No.	Name of Deed	Date of Execution of Deed
4174 of 2008	Cancellation of Gift Settlement Deed	18.9.2007
11045 of 2009	Cancellation of Gift Sale Deed	25.5.2009
13863 of 2009	Cancellation of Gift Sale Deed	30.6.2009
17002 of 2009	Date of cancellation of sale deed	23.7.2009
20958 of 2009	Cancellation of sale deed	7.8.20099
27568 of 2009	Cancellation of sale deed	18.11.2009
5699 of 2010	Revocation of Gift setttlement deed	30.01.2010

The factual aspects of the matter involved in the Writ Petitions are not necessary for the disposal of these Writ Petitions and hence they are not considered.

The consideration of the writ petitions involved the following points:

1. Whether there can be cancellation of a registered document unilaterally by the executant and registration of the same by the Registering Authorities and whether the same is valid under law

2. Whether a Writ Petition is maintainable for setting aside such deeds of Cancellation

There is no dispute of facts in the present cases since all the deeds were executed unilaterally by the executants and those documents were registered by the Registering Authorities. The documents fall under two categories of cases; one category of cases relates to the period prior to amendment of Rule 26(k) of the Registration Rules with effect from 02.06.2014, whereas the second category relates to the registration of documents by the Registering Authorities in violation of the said Rules after amendment.

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framed Rules called 'the Andhra Pradesh Rules under the Registration Act, 1908' under Section 69 of the Registration Act, 1908. The unamended Rule 26 reads as follows.

26. (i) Every document shall, before acceptance or registration examined by the Registering Officer to ensure that all the requirements prescribed in the Act and in these rules have been complied with, for instance :

(a) that it has been presented in the proper office (Sections 28,29 and 30);

(b) that the person is entitled to present it (Sections 32 and

40)

(c) that if it is a non-testamentary document and relates to. immovable property, it contains a description of property sufficient to identify the same and fulfils the requirements of Rules 18 to 20:

(d) that if it is written in a language not commonly used in the District and not understood by the Registering Officer it is accompanied by a true translation into a language commonly used in the District and also by true copy (Section 19);

(e) that if it contains a map or plan, it is accompanied by true copies of such map or plan as required by Section 21(4);

(f) that it contains no unattested interlineations, blanks, erasures or alterations, which in his opinion require to be attested as required by Section 20(1);

(g) that if the document is one other than a will it has been presented within the time prescribed by Sections 23 to 26;

(h) that it bears the date of its execution and does not bear a date anterior to the date of purchase of stamp papers and the document is written on a date subsequent to the date of presentation.

i) that if the date is written in any document other a will presented for registration after the death of the testator according to both the British and the Indian calendars, these dates tally; and

(j) that if the presentant is not personally known to the Registering Officer, he is accompanied by such identifying witness with whose testimony the Registering Officer may be satisfied;

Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a Government Officer competent to execute Government orders declaring the properties contained in

the previously registered conveyance on sale to be Government or Assigned or Endowment lands or properties not registerable by any provision of law.

(k)(i) The registrating officer shall ensure at the time of presentation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing mutual consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale;

Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a Government Officer competent to execute Government Orders declaring the properties contained the previously registered conveyance on sale to be Government or Assigned or Endowment lands or properties not registerable by any provision of law.

Note: See Govt. Memo Rc.No.G1/10866/2006, dt. 14.03.2008.

(ii) Save in the manner provided for above no cancellation deed of a previously registered deed of conveyance on sale before him shall be accepted for presentation for registration. (Ins. by Noti. No.R.R.1/2016, Pub. In A.P.Gaz. R.S.to Pt.II, Ext. No.18, dt.29-11-2006.)

In the light of the said Rule, when deeds of cancellation were executed, W.P.No.14007 of 2004 was filed before a learned single Judge of this Court challenging the acceptance of deed of cancellation of the Gift Deed dated 02.08.2004 and the learned single Judge following the decision in PROPERTY ASSOCIATION OF BAPTIST CHURCHES VS. SUB REGISTRAR, JANGOAN(1) dismissed the writ petition observing that a party aggrieved by a registered document of conveyance has to file a suit seeking proper declaration. The same was confirmed by Judgment dated 11.10.2004 passed in W.A.No.1486 of 2004. Thereafter, W.P.Nos.23005 and 23088 of 2004 came up for consideration before another learned single Judge, before whom, the cancellation deeds were challenged. The learned single Judge, having felt that various points were not brought to the notice of the earlier Division Bench, thought it fit to refer the matter to another Division Bench or if necessary to a Full Bench. Accordingly, in view of the decision of the earlier Division Bench, the matter was referred to a Full Bench. The Full Bench considered the following points:

1. 2004 (1) ALT 174

1. Whether a person can nullify the sale by executing and registering a Cancellation Deed Whether a registering officer, like District Registrar and/or Sub Registrar appointed by the State Government, is bound to refuse registration when a Cancellation Deed is presented

2. Whether a writ petition is maintainable for invalidation of a Cancellation Deed or for cancellation of an instrument which purports to nullify a Sale Deed Both the points were held against the petitioners by a majority of the Judges of the Full Bench and the writ petitions were dismissed in Yanala Malleshwari vs. Smt. Ananthula Sayamma . It was held that the registering authority cannot reject the registration when a deed of cancellation was presented and when such an action is challenged, the writ petition is not a proper remedy.

In view of the above decision of the Full Bench, Rule 26 was amended by substituting clause (k) as follows:

(k) That the Cancellation Deed of the previously registered deed of conveyance on sale of immovable property is executed by both the executing and the claiming parties thereof unless such Cancellation Deed is executed under the orders of a competent Court or under Rule 243.

(Vide G.O.Ms.No.121, Rev.(Regn.I), Dept. dt.1-6-2016, w.e.f.2-6-2014) In view of this amendment, the registering officer shall ensure the presence of all the executants and claimant parties to the previously registered conveyance before registering the deeds of cancellation. But even violating this procedure also, it appears that some registering authorities registered certain deeds of cancellation, which was challenged as aforesaid in some of the writ petitions. Though it is clear that no action of the officials is valid in view of the violation of rules, the point with regard to the remedy still remains. It necessitates the examination of the scope of remedy in such cases.

The very amendment of Rule 26(k) was challenged before this Court in Kaitha Narasimha v. State of Andhra Pradesh (W.P.No.3744 of 2007) on the ground that the amendment was contrary to the Judgment of Full Bench of this Court in Yanala Malleshwaris case (supra), but a Division Bench of this Court by order dated 13.03.2007 upheld the said amendment.

A learned single Judge of this Court in EDIGA CHANDRASEKAR GOWD VS. STATE OF ANDHRA PRADESH(3) , while considering the action of the registering authority in registering cancellation deed cancelling the Agreement of Sale cum irrevocable General Power of Attorney, after tracing out the history relating to amendment to Rule 26(i)(k)(i) and considering the case of Supreme Court in THOTA GANGA LAXMI VS. GOVERNMENT OF ANDHRA PRADESH(4), allowed the writ petition implying that a writ petition was maintainable.

3. 2017 (4) ALD 12

4. (2010) 15 SCC 207 : 2012 (1) ALD 90 (SC)

The violation of procedure by the registering authority after amendment of Rule 26 may not involve any disputed questions of fact so far as the procedure is concerned but such a deed is a voidable deed. A party affected by such registration can keep quiet or challenge the same. When he/she challenges, the question of remedy arises for consideration.

An identical point which arose before a Full Bench of this Court in the above case of Yanala Malleswari, came up for consideration before a Full Bench of Madras High Court in M/S.LATIF ESTATE LINE INDIA LIMITED VS. MRS.HADEEJA AMMAL(5) , wherein the validity of registration of deed of cancellation after registering a sale deed came up for consideration. Initially when the matter came up before a learned single Judge, the learned single Judge held as follows.

> "i) Challenging registration of a unilaterally executed cancellation of a sale deed, a writ petition is maintainable under Article 226 of the Constitution of India.
>
> ii) A cancellation of a sale deed executed by mutual consent by all parties to the sale deed, if presented for registration, Registering Officer is bound to register the same if the other provisions like Section 32-A of the Registration Act are complied with.
>
> iii) The Registering Officer is obliged legally to reject and to refuse to register a unilaterally executed Deed of Cancellation of a sale deed without the knowledge and consent of other parties to the sale deed. On the basis of the aforesaid conclusion, learned single Judge held that the cancellation deed was executed unilaterally by the second respondent/appellant without the knowledge and consent of the writ petitioner and without complying the requirements of Section 32-A of the Registration Act. Hence, the writ petition was allowed and the registration of Cancellation Deed was quashed."

The matter was ultimately referred to a Full Bench and the Full Bench formulated the following points:

> (i) Whether cancellation of a registration of a registered sale deed of a immovable property having valuation of more than one hundred rupees can be registered either under Sections 17 or 18 or any other provision of the Registration Act
>
> (ii) Whether for such cancellation of a registered sale deed, signature of person claiming under the document for sale of property is required to sign the document, if no such stipulation is made under the Act and
>
> (iii) Whether the decisions of the single Judge dated 10.02.2009 made in W.P.No.8567 of 2008 and the Division Bench dated 01.04.2009 made in W.A.No.194 of 2009 amount

5. AIR 2011 Mad 16

to amending the provisions of the Registration Act and the Rules framed thereunder, by inserting a clause for extinguishing right, title or interest of a person on an immovable property of value more than Rs.100/- in a manner not prescribed under the Rules

As could be seen above, though the learned single Judge decided a point with regard to the maintainability of the writ petition, the same was not considered by the Full Bench. The Full Bench of the Madras High Court considered the Full Bench decision of this Court in Yanala Malleshwari. After considering the four Judge decision of the Privy Council in MD.IHTISHAN ALI VS. JAMNA PRASAD(6) , that of the decision in MICHHU KUANR VS. RAGHU JENA(7) and Section 31 of the Specific Relief Act, which came up for interpretation in MUPPUDATHI PILLAI VS. KRISHNASWAMI PILLAI (8) , the Full Bench ultimately held as follows:

59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion:-

(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.

(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.

A perusal of the above conclusions of the Full Bench of the Madras High Court shows that a complete and absolute sale deed can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of

6. AIR 1922 PC 56
7. AIR 1961 Ori 19
8. AIR 1960 Mad 1 (FB)

cancellation of sale deed on the ground of fraud or any other valid reasons. It does not lay down any principle with regard to maintainability of the writ petition after execution of a deed of cancellation of an earlier deed of conveyance by the registering authority.

In view of the above discussion, it is held that the unilateral execution of a document of deed of cancellation, cancelling the earlier registered document and registration of the same by the registering authority prior to the amendment can validly be done by the Registering Authority and the aggrieved party can challenge such action, whereas after the amendment the Registering Authority cannot register a document of cancellation without following the amended Rule 26(k) of the Rules.

Regarding the remedy of the parties challenging the deeds of cancellation, it is submitted by the learned counsel for the petitioners that the writ petition is maintainable and drew support from the decision in Ediga Chandrasekar Gowd's case (supra). In the said decision, there was no discussion with regard to maintainability of the writ petition, and merely because a writ petition was allowed by this Court, it cannot be concluded that the writ petition was maintainable as a matter of point of law in all cases. The learned counsel for the petitioners placed reliance on the decisions of this Court A.B.C.INDIA LIMITED VS. THE A.P.INDUSTRIAL INFRASTRUCTURE CORPORATION LIMITED(9) , THOTA GANGA LAXMI, FAZALULLAH KHAN VS. STATE OF ANDHRA PRADESH (10) AND SATYA PAL ANAND VS. STATE OF MADHYA PRADESH(11).

In A.B.C.India Limiteds case (supra), the cancellation of sale deed validly executed by the A.P.Industrial Infrastructure Corporation Limited came up for consideration and a learned single Judge of this Court, who is a party to the majority Judgment of the Full Bench, held that the APIIC has no power or jurisdiction to cancel the allotment which has the effect of nullifying the sale deed and accordingly set aside the cancellation of allotment. In those cases, the petitioners were allotted industrial plots by the APIIC and sale deeds were also executed transferring title deeds in immovable property. The allotment was cancelled after five years on the ground that the conditions of sale and agreements of sale were not adhered to. The learned single Judge dealt with the issue with regard to maintainability of writ petition. He considered the effect of introducing Rule 26(k) of the Rules. He ultimately held that the question involved in the cases was not in relation to a contract, but in relation to the authority, power and jurisdiction of APIIC as vendor to cancel the sale, and accordingly the point raised by the learned counsel for APIIC that since the writ petitions involved disputes arising out of private contract entered into between the public authority and private parties and hence was not amenable to judicial review was negatived. He held that the writ petitions were maintainable and accordingly allowed the same.

9. 2010 (6) ALT 142

10. AIR 2012 AP 163

11. (2015) 15 SCC 263

In Thota Ganga Laxmi's case (supra), the Supreme Court considered the Full Bench decision of this Court in Yanala Malleshwari but held that in cases of registration of deeds of cancellation by the registering authority, directing the aggrieved party to go to Civil Court was held to be not correct. The observations of the Supreme Court are as follows:

> 4. In our opinion, there was no need for the appellants to approach the civil Court as the said cancellation deed dated 04.08.2005 as well as registration of the same was wholly void and non est and can be ignored altogether. For illustration, if 'A' transfers a piece of land to 'B' by a registered sale deed, then, if it is not disputed that 'A' had the title to the land, that title passes to 'B' on the registration of the sale deed (retrospectively from the date of execution of the same) and 'B' then becomes the owner of the land. If 'A' wants to subsequently get the sale deed cancelled, he has to file a civil suit for cancellation or else he can request 'B' to sell the land back to 'A' but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law.

The Supreme Court referred to the unamended Rule 26(i) (k) in the said decision.

A learned single Judge of this Court in Fazalullah Khans case (supra), considered the effect of registering a deed of cancellation cancelling the deed of gift earlier executed and held that Rule 26(k) equally applies to the gift deeds also. While coming to the conclusion, the learned single Judge relied upon by the decision of the Supreme Court in Thota Ganga Laxmis case (supra), which was unreported by then. When his attention was drawn to the decision of VALLURI ANURADHA VS. SUB REGISTRAR, SAROORNAGAR, RANGA REDDY DISTRICT(12) , he held that said decision is no longer good law in view of the decision of the Supreme Court in Thota Ganga Laxmis case (supra). The point involved in the said decision was only the application of Rule 26(k) to cancellation of gift deeds.

In Satya Pal Anand's case (supra), a two Judge Bench of the Supreme Court considered three questions and in view of the disagreement, the matter was referred to a Larger Bench and the Larger Bench decision is available in SATYA PAL ANAND VS. STATE OF MADHYA PRADESH(13) . The said reference came up before the three-Judge Bench of the Supreme Court because one of the two Judges (Dipak Misra, J) in the earlier decision held that the above Appeal challenging the order passed by the Sub Registrar was rightly dismissed by the High Court, whereas the other learned Judge (V.Gopala Gowda, J) allowed the Appeal on the ground that the Registering Authority has no power to register the Extinguishment deed presented by the respondent Society and it was void ab initio. Consequently, the subsequent deeds in respect of the property registered by the Sub Registrar were also held without authority and void ab initio.

12. 2006 (2) ALD 371
13. (2016) 10 SCC 767

The facts in the above case are that one plot was allotted to the mother of the appellant by a Cooperative Society which executed a registered deed of sale on 22.03.1962. She died on 12.06.1988. After her death, the Society unilaterally executed a deed of Extinguishment on 09.08.2001 cancelling the said allotment of plot in favour of the mother of the appellant due to violation of bye-laws of the Society in not raising any construction in the plot so allotted within time. On the basis of the Extinguishment deed, the Society executed another deed of registration in favour of the third party in respect of the same plot. However, the matter was later on compromised among the parties by exchanging money to the extent of loss. In spite of the same, the appellant raised a dispute under Section 64 of the Madhya Pradesh Cooperative Societies Act before the Deputy Registrar challenging the action of unilaterally registering the Extinguishment deed and allotting the plot in favour of the third party and sought a declaration that he continues to be the owner of the plot allotted earlier by the Society to his mother having inherited the same. During the pendency of the said writ petition, the Society permitted transfer of plot in favour of two other parties by Registered deed dated 11.07.2006 (obviously by the third party in whose favour the deed of registration was executed by the Society and whose title was accepted by the appellant by receiving consideration). The purchasers issued a notice on 12.07.2007 asking to refund the consideration amount accepted by him pursuant to the compromise dated 06.07.2004 but the appellant did not pay the amount and pursued multiple proceedings. The Sub Registrar rejected the application of the applicant. When the dispute was pending before the Deputy Registrar of Cooperative Societies, he moved an application before the Sub Registrar (Registration) asking to cancel the registration of Extinguishment deed dated 09.08.2001 and the subsequent two deeds of sale dated 21.04.2004 and 11.07.2006 respectively, by an application dated 04.02.2008. The Sub Registrar (Registration) rejected the said application on 28.06.2008 mainly holding that a dispute was pending between the parties with regard to the same subject matter before the Deputy Registrar of Cooperative Societies and he had no jurisdiction to cancel the registration of the registered document in question. He filed an appeal against the said order to the Inspector General (Registration) under Section 69 of the Registration Act and he also dismissed the Appeal by order dated 19.09.2008. The writ petition filed by him was also dismissed by the Division Bench of the High Court since the dispute was pending before the Deputy Registrar of Cooperative Societies. The same was challenged before the Supreme Court. When the Appeal initially came up before a two-Judge Bench, as stated above, the learned two Judges differed and the matter came up before a three-Judge Bench. The three-Judge Bench noticed that one of the two Judges did not agree with the principle stated in Thota Ganga Laxmis case (supra) in the absence of any specific rule in that behalf. The other learned Judge constituting the two-Judge Bench following Thota Ganga Laxmis case (supra), placing reliance on Section 31 of the Specific Relief Act and in view of the period of limitation contained

in Article 59 of the Limitation Act, 1953, which requires cancellation of any document within three years, held that the unilateral cancellation was impermissible in law. He also placed reliance on Article 300-A of the Constitution of India. He also observed that merely because Extinguishment deed can be challenged by approaching a civil Court, it would not denude the appellant of the relief as sought in the writ petition qua Extinguishment deed dated 09.08.2001, which was void ab initio. He also held that the compromise executed by the appellant cannot stand in his way in getting relief. After hearing the rival submissions and views of the learned two Judges, the Supreme Court framed the following questions in the fact situation of that case, which are as follows:

> 23.1. (a) Whether in the fact situation of the present case, the High Court was justified in dismissing the writ petition 23.2. (b) Whether the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India is duty-bound to declare the registered deeds (between the private parties) as void ab initio and to cancel the same, especially when the aggrieved party (appellant) has already resorted to an alternative efficacious remedy under Section 64 of the 1960 Act before the competent forum whilst questioning the action of the Society in cancelling the allotment of the subject plot in favour of the original allottee and unilateral execution of an extinguishment deed for that purpose 23.3. (c) Even if the High Court is endowed with a wide power including to examine the validity of the registered extinguishment deed and the subsequent registered deeds, should it foreclose the issues which involve disputed questions of fact and germane for adjudication by the competent forum under the 1960 Act 23.4. (d) Whether the Sub-Registrar (Registration) has authority to cancel the registration of any document including an extinguishment deed after it is registered Similarly, whether the Inspector General (Registration) can cancel the registration of extinguishment deed in exercise of powers under Section 69 of the 1908 Act 23.5. (e) Whether the Sub-Registrar (Registration) had no authority to register the extinguishment deed dated 9-8-2001, unilaterally presented by the respondent Society for registration 23.6. (f) Whether the dictum in Thota Ganga Laxmi [Thota Ganga Laxmi v. State of A.P., (2010) 15 SCC 207 : (2013) 1 SCC (Civ) 1063] is with reference to the express statutory Rule framed by the State of Andhra Pradesh or is a general proposition of law applicable even to the State of Madhya Pradesh, in absence of an express provision in that regard

While deciding the issues (a) to (c), the three Judges agreed with the view taken by Justice Dipak Misra with the following observations in para 25.

> 25. It is a well-established position that the remedy of writ under Article

> 226 of the Constitution of India is extraordinary and discretionary. In exercise of writ jurisdiction, the High Court cannot be oblivious to the conduct of the party invoking that remedy. The fact that the party may have several remedies for the same cause of action, he must elect his remedy and cannot be permitted to indulge in multiplicity of actions. The exercise of discretion to issue a writ is a matter of granting equitable relief. It is a remedy in equity. In the present case, the High Court declined to interfere at the instance of the appellant having noticed the above clinching facts. No fault can be found with the approach of the High Court in refusing to exercise its writ jurisdiction because of the conduct of the appellant in pursuing multiple proceedings for the same relief and also because the appellant had an alternative and efficacious statutory remedy to which he has already resorted to. This view of the High Court has found favour with Dipak Misra, J. We respectfully agree with that view.

In support of its reasoning to disagree with the view taken by the other learned Judge constituting two-Judge Bench, the Supreme Court observed as follows:

> 29. In our considered opinion, it would be unnecessary if not inappropriate to examine any other contention at the instance of this appellant as we agree with the view taken by the High Court in summarily dismissing the writ petition with liberty to the appellant to pursue statutory remedy. At best, further observation or clarification would suffice to the effect that the competent forum before whom the dispute has been filed by the appellant shall consider all contentions available to the parties, uninfluenced by the factum of registered extinguishment deed. In that, if the competent forum was to hold that it was open to the Society to cancel the allotment and membership of the member concerned and thereafter to allot the same plot to another person enrolled as a member of the Society, no other issue would arise for consideration. On the other hand, if the competent forum was to answer the relevant fact in favour of the appellant, only then the argument of the effect of unilateral registration of the extinguishment deed followed by compromise deed voluntarily executed by the appellant may become available to the Society and to the subsequent purchasers/ allottees of the subject plot. At their instance, those issues can be examined on the basis of settled legal position. Neither the observation nor the opinion recorded by one of the dissenting Judges of this Court need any further dissection nor would it be appropriate to enlarge the scope of the proceedings before this Court on those aspects. This would subserve the twin requirements. Firstly, to avoid an exposition on matters and questions which do not

arise for our consideration in the fact situation of the present case at this stage; and secondly, also provide an opportunity to the parties to pursue all contentions and other remedies as may be permissible in law.

30. The exposition of the Constitution Bench of this Court in S. Partap Singh [S. Partap Singh v. State of Punjab, AIR 1964 SC 72] adverted to in the dissenting opinion would be attracted in cases where the State Authority acts in bad faith or corrupt motives. Merely because some irregularity has been committed in registration of extinguishment deed unilaterally presented by the Society for registration or in respect of the subsequent deeds registered at the instance of third party without notice to the appellant, that, by itself, will not result in registration of those documents due to corrupt motives of the State Authority. More so, in the present case, the appellant having entered into a compromise deed with the Society and third party (subsequent allottees) in respect of the subject plot, it is doubtful whether it is open to the appellant to question the act of unilateral execution and registration of the stated extinguishment deed being irregular much less void and nullity. Indisputably, the respondent Society is a limited cooperative housing society and is governed by its bye-laws. According to the counsel for the Society, the member is obliged to erect a house on the plot allotted to him within specified time, failing which must suffer the consequence including of cancellation of allotment of plot and removal of his membership. At the time of allotment, the member executes an agreement whereunder he/she undertakes to abide by the conditions specified for erecting a house on the plot allotted to him/her in the manner prescribed therein. Whether the Society is justified in proceeding against the defaulting member by cancelling the allotment of plot as well as membership, is an issue falling within the purview of the business of the Society. The member is bound by the stipulation contained in the agreement executed by him/her and in particular the bye-laws of the Society. Any action by the Society for breach thereof is just or otherwise can be questioned before the statutory forum under the 1960 Act. Those are matters which can and must be answered in the proceedings resorted to by the appellant before the statutory forum. (emphasis supplied)

31. The aforementioned reported decision has noted the subtle distinction between ultra vires act of the statutory authority and a case of a simple infraction of the procedural Rule. The question, whether the Society was competent to unilaterally cancel the allotment of a plot given to its member and to cancel the membership of such member due to default committed by the member,

is within the purview of the business of the Society. Any cause of action in that regard must be adjudicated by the procedure prescribed in that behalf. It is not open to presume that the Society had no authority in law to take a decision in that behalf. The right of the appellant qua the plot of land would obviously be subject to the final outcome of such action. The appellant being the legal representative of the original allottee, cannot claim any right higher than that of his predecessor qua the Housing Society, which is the final authority to decide on the issue of continuation of membership of its member. The right of the member to remain in occupation of the plot allotted by the Society would be entirely dependent on that decision.

The Supreme Court while answering (d) to (f) examined the provisions of the Registration Act in the following terms:

> 34. The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (see Raja Mohammad Amir Ahmad Khan [State of U.P. v. Raja Mohammad Amir Ahmad Khan, AIR 1961 SC 787]). Section 17 of the 1908 Act deals with documents which require compulsory registration. Extinguishment deed is one such document referred to in Section 17(1)(b). Section 18 of the same Act deals with documents, registration whereof is optional. Section 20 of the Act deals with documents containing interlineations, blanks, erasures or alterations. Section 21 provides for description of property and maps or plans and Section 22 deals with the description of houses and land by reference to government maps and surveys. There is no express provision in the 1908 Act which empowers the Registrar to recall such registration. The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter. In absence of any express provision in that behalf, it is not open to assume that the Sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do superintendence of Registration Offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered.
>
> 36. If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. Non-presence of the other party to the extinguishment deed presented by the Society before the Registering Officer by no standard can be said to be a fraudulent action per se. The fact whether that was done deceitfully to cause loss and harm to the other party to the deed,

is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Suffice it to observe that since the provisions in the 1908 Act enables the Registering Officer to register the documents presented for registration by one party and execution thereof to be admitted or denied by the other party thereafter, it is unfathomable as to how the registration of the document by following procedure specified in the 1908 Act can be said to be fraudulent. As aforementioned, some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party aggrieved by such registration of document is free to challenge its validity before the civil court.
(emphasis supplied)

Then the Supreme Court referred to the Full Bench decision of this Court in Yanala Malleshwaris case (supra) in paragraph 40 thereof. Approving the view of the Madras High Court in PARK VIEW ENTERPRISES VS. STATE OF TAMIL NADU(14) , the Supreme Court in para 41 thereof held that the function of the Registering Officer is purely administrative and not quasi judicial. Further, while referring to Thota Ganga Laxmi, it was held that the decision cannot have universal application to all States (other than the State of Andhra Pradesh) and in the absence of any such provision in the State of Madhya Pradesh, it was held that it cannot be labelled as fraudulent or nullity in law. The Supreme Court also held that the error of the Registering Officer can be called an error of procedure and when it was done in good faith, Section 87 of the Registration Act protects such Act. The observations of the Supreme Court are as follows:

> 43. No provision in the State of Madhya Pradesh enactment or the Rules framed under Section 69 of the 1908 Act has been brought to our notice which is similar to the provision in Rule 26(k)(i) of the Andhra Pradesh Registration Rules framed in exercise of power under Section 69 of the 1908 Act. That being a procedural matter must be expressly provided in the Act or the Rules applicable to the State concerned. In absence of such an express provision, the registration of extinguishment deed in question cannot be labelled as fraudulent or nullity in law. As aforesaid, there is nothing in Section 34 of the 1908 Act which obligates appearance of the other party at the time of presentation of extinguishment deed for registration, so as to declare that such registration of document to be null and void. The error of the Registering Officer, if any, must be regarded as error of procedure. Section 87 of the 1908 Act postulates that nothing done in good faith by the Registering Officer pursuant to the Act, shall be deemed invalid merely by reason of any defect in

14. AIR 1990 Mad 251

the procedure. In the present case, the subject extinguishment deed was presented by the person duly authorised by the Society and was registered by the Registering Officer. Once the document is registered, it is not open to any Authority, under the 1908 Act to cancel the registration. The remedy of appeal provided under the 1908 Act, in Part XII, in particular Section 72, is limited to the inaction or refusal by the Registering Officer to register a document. The power conferred on the Registrar by virtue of Section 68 cannot be invoked to cancel the registration of documents already registered.

46. In our considered view, the decision in Thota Ganga Laxmi [Thota Ganga Laxmi v. State of A.P., (2010) 15 SCC 207 : (2013) 1 SCC (Civ) 1063] was dealing with an express provision, as applicable to the State of Andhra Pradesh and in particular with regard to the registration of an extinguishment deed. In absence of such an express provision, in other State legislations, the Registering Officer would be governed by the provisions in the 1908 Act. Going by the said provisions, there is nothing to indicate that the Registering Officer is required to undertake a quasi-judicial enquiry regarding the veracity of the factual position stated in the document presented for registration or its legality, if the tenor of the document suggests that it requires to be registered. The validity of such registered document can, indeed, be put in issue before a court of competent jurisdiction.

The observations of the Supreme Court as highlighted in paragraphs 30 and 31 run contrary to the view taken by the Supreme Court in Thota Ganga Laxmis case (supra) with regard to the procedural non-compliance and maintainability of a writ petition. What can be deduced from the above decision for examining the issue relating to maintainability of a writ petition is that the action of the registering authority in registering the document is only administrative in nature and the case of simple infraction of the procedural rule has to be distinguished from the ultra vires act of the statutory authority in the absence of any remedy in the statute. In the absence of any bad faith or corrupt motive, the party aggrieved by such registration of document can challenge its validity before the civil Court. This is made clear in the observations made in paragraph 36 of the above Judgment. It is also clear from the above that in view of the Rule position prevailing then, the decision of the Full Bench of this Court in Yanala Malleshwaris case (supra) was upheld and found to be correct.

The Full Bench in Yanala Malleshwaris case (supra) specifically examined the point with regard to the maintainability of writ petition for invalidation of a cancellation deed or for cancellation of an instrument, which purports to nullify the sale deed. The Full Bench examined the distinction between private law and public law and held that though the registering authorities are statutory authorities, their functions may or may not

strictly come within public law. Thereafter, it examined the power of judicial review of this Court and observed as follows:

> 85. Judicial Review has its own limitations and all decisions of public bodies are not amenable to this public law power. Nor is it permissible for a reviewing Court to deal with matters which lack adjudicative disposition by reason of prerogative nature of the power exercised by the public authority or exclusive entrustment of powers to a specialised body of the State. As the legislative and executive wings are prohibited from usurping the judicial functions of the State, the judiciary is not expected to discharge legislative and executive functions. The exposition of the principles of judicial review by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service, ((1985) AC 374), has attained the classical status of law of judicial review. While grouping the grounds of judicial review into three broad points, namely, illegality, irrationality and impropriety, the noble Lord observed:
>
> For a decision to be susceptible to judicial review the decision- maker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers, which have one or other of the consequences mentioned in the preceding paragraph. The ultimate source of the decision-making power is nearly always now-a-days a statute or subordinate legislation made under the statute; but in the absence of any statute regulating the subject matter of the decision the source of the decision-making power may still be the common law itself, i.e., that part of the common law that is given by lawyers the label of 'the prerogative'.
>
> 86. In a recent Judgment in State of U.P. v. Johri Mal, ((2004) 4 SCC 714: 2014 AIR SCW 3888 (para 28)), the Supreme Court of India reiterated the scope and limitations of judicial review in the following terms:
>
> 28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi- judicial or administrative. The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the suprema lex to the other organs of the State. Decisions and actions which do not have

adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review, succinctly put, is:

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.

(ii) A petition for a judicial review would lie only on certain well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a court is limited to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a judge should not be invoked as a substitute for the judgment of the legislative bodies. (See Ira Munn v. State of Illinois [94 US 113 : 24 L Ed 77 (1876)]).

87. Apart from the limitations pointed out by the Supreme Court, the power of judicial review is not available when there is an effective alternative remedy to the aggrieved person. When granting redressal involves adjudication of disputed questions of facts, which require adducing of evidence by the parties, then also ordinarily an application for a judicial review is not accepted. See Whirlpool Corporation v. Registrar of Trade Marks, (AIR 1999 SC 2). There is justification for the principle. Clive Lewis in Judicial Remedies in Public Law (first edition 1992, Sweet and Maxwell, pp.229 and 230), explained the rationale for the principle as under.

The rationale for the exhaustion of remedies principle is relevant to the scope of that principle. A twofold justification has been put forward. First, that where Parliament has provided for a statutory appeals procedure, it is not for the Courts to usurp the functions of the appellate body. The principle applies equally to bodies not created by statute which have their own appellate system. Secondly, the public interest dictates that judicial review should be exercised speedily, and to that end it is necessary to limit the number of cases in which judicial review is used. To these reasons can be added the additional expertise that the appellate bodies possess. In tax cases, for example, the appellate body, the General or Special Commissioners, have wide experience of the complex and detailed tax legislation. In employment cases, for example, the system of Industrial and Employment Appeal Tribunals may be better equipped to deal with industrial issues than the High Court.

In the instant cases, there is an alternative remedy of approaching the civil court under

Section 31 of the Specific Relief Act and it cannot be said that such relief is not an effective remedy. But the learned Senior Counsel, Sri V.L.N.G.K.Murthy pointed out that a party aggrieved by an irregular act of a statutory authority cannot be driven to the remedy of civil Court and this Court can exercise its power of judicial review and set aside such act of registration of a deed of cancellation by registering authority. The decision of the three-Judge Bench of the Supreme Court in Satya Pal Anands case (supra) and the observations made therein are sufficient to answer this point.

The facts in these cases are not adverted to as the writ petitions are considered and disposed on the point of law only. Even it is assumed that the action of the registering authority was accentuated by fraud, it has to be proved by specific averments and no such averment is made in these writ petitions and fraud cannot be assumed from a mere registration of a document by the registering authority as observed by the Supreme Court.

At the cost of repetition, it is held that the act of the Registering Authority is only an administrative act and it has no option except to register a document, which was validly presented. The document may be valid at the time of presentation but is required to comply with the Rules at the time of registration and if he violated Rule 26(k) of the Rules, it can be definitely said that he committed procedural irregularity. It is well established rule of administrative law that an authority, which is vested with power, may exercise it rightly or wrongly, but this Court while exercising the power of judicial review, subject to its limitations, would interfere with such actions and one of such limitations for exercising judicial review is availability of alternative remedy and the discharge of public law duty. Merely because the respondent is a State under Article 12, this Court cannot interfere as held by the Supreme Court in JOSHI TECHNOLOGIES INTERNATIONAL INC V. UNION OF INDIA(15). Thus, in order to exercise jurisdiction by this Court, the action of the statutory authorities must be without any alternative authority and in discharge of public law duty. Both of these are absent in the case of execution of deeds of cancellation as no public law duty is involved and Section 31 of the Specific Relief Act gives the relief. Merely because Thota Ganga Laxmis case (supra) reverses the order of this Court dismissing the writ petition relating to cancellation of registration of cancellation of sale deed, it does not follow that the writ petition is maintainable in view of the observations made by three-Judge Bench of Supreme Court in Satya Pal Anands case (supra).

All these writ petitions are accordingly dismissed holding that the writ petitions are not maintainable. Consequently, miscellaneous petitions, if any pending, shall stand closed.

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2017(3) L.S. 108

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
A. Rajasheker Reddy

Marishetty Peda Gangaram ..Petitioner

Vs.

Chukka Hanumandlu & Anr., ..Respondents

CIVIL PROCEDURE CODE, Secs. 10 & 151 and Order XIII Rule 9 - Whether an interim order directing stay of all further proceedings passed by appellate court in appeal or by revisional court in revision, operates as stay in considering the interlocutory application filed in the trial court or bars only from proceeding with the trial of the suit?

Petitioners filed an IA seeking return of original registered sale deeds filed by them to avail bank loans – Trial court dismissed IA on the ground that High Court had granted stay of all further proceedings of suit, till disposal of appeal.

Held – Section 10 of CPC projects only stay of trial of suit in which matter in issue is also directly and substantially in issue in a previously instituted suit between same parties – This provision does not prevent or bars the court from passing incidental orders required to meet the ends of justice – Any incidental orders not affecting trial of the suit nor decides rights of parties conclusively can be passed – Trial court has not exercised its jurisdiction properly – Petitioners are permitted to take original registered sale deeds filed into courts by substituting with the certified copies with an undertaking to produce same as when required by the court – Civil Revision Petition is allowed.

Cases Referred:
1. AIR 1980 KERALA 161
2. (1998) 5 SCC 69

Mr.E.V.V. S.Ravi Kumar, Advocate for the Petitioner.

C O M M O N O R D E R

These civil revision petitions raise interesting question of law. The point that would arise for consideration is whether an interim order directing stay of all further proceedings passed by the appellate Court in appeal or by the revisional Court in revision, operates as stay in considering the interlocutory application filed in the trial Court or bars only from proceeding with the trial of the suit.

2. The petitioners in these revision petitions are plaintiffs in suit OS No.108 of 2014 (old OS No.49 of 2003). The petitioners filed IA Nos.56, 57, 58, 59, 60 & 61 of 2017, respectively, in suit OS No.108 of 2014, under Order 13, Rule 9, r/w. Section 151

CPC seeking return of original registered sale deeds filed by them to avail bank loans. The trial Court by the impugned orders, dismissed the interlocutory applications on the ground that this Court in CRP No.359 of 2008, dated 08-02-2008 allowed IA No.45 of 2006 filed by the petitioners herein, in the instant suit OS No.49 of 2003, granted stay of all further proceedings of the suit, till disposal of the appeal being AS No.62 of 2004. Hence these civil revision petitions.

3. Sri E.V.V.S Ravi Kumar, learned counsel for the petitioners strenuously contended that the order of stay of suit passed in an application filed under Section 10 of CPC operates only in respect of further trial of the suit and there is no bar to consider the interlocutory applications to meet the ends of justice. In support of his contention, learned counsel placed reliance on a decision rendered by Kerala High Court in V.R. BALAKRISHNAN NADAR vs. R.VELAYUDHAN NADAR (1). Though notice is served, none appeared for the respondents.

4. The trial Court dismissed the interlocutory applications purportedly on the ground that passing any orders thereon would amount to conducting proceedings of the suit, which is stayed by this Court in CRP No.359 of 2008. This Court granted stay in the said revision petition at the instance of the petitioners herein in the present suit OS No.108 of 2014 (Old OS No.49 of 2003) having persuaded by the fact that suit OS No.26 of 1997, which was filed for declaration of title and injunction, the suit property therein and the suit property in the present suit being same, observed that the present suit OS No.108 of 2014 (Old OS No.49 of 2003) will have to await the decision in appeal AS No.62 of 2004 pending on the file of this Court, which was filed against the judgment and decree in suit OS No.26 of 1997.

5. It is trite to reproduce Section 10 CPC, which reads as under:-

> No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.
>
> Explanation:-- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."

6. From a plain reading of the above provision, it is understood that Section 10 requires that a suit must be stayed if the matter directly and substantially in issue in it is also directly and substantially in issue in a previous suit that is pending. The criterion for deciding whether the subsequent suit be stayed or not is whether there is identity of the matters directly and

1. AIR 1980 KERALA 161

substantially in issue in the two suits, if there is, the subsequent suit must be stayed and if there is not, it will not be stayed. The object of this provision is to prevent two Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. It is to obviate conflict of decisions of two contradictory decrees being passed in respect of the same subject-matter between the same parties. The words of Section 10 are mandatory and the test to determine whether the matter in issue in the second suit is also directly and substantially in issue in the previously instituted suit and whether if the first suit is determined the matters raised in the second suit and hit by res-judicata by reason of the decision in the prior suit. As a matter of course, it is not necessary that the subject-matter and cause of action should be the same. But what is essential is that there must be substantial identity between the matters in dispute and parties in the earlier and later suits.

7. In this case the petitioners are seeking return of the original registered sale deeds filed by them from the custody of the Court to avail bank loans. The relief sought is incidental relief and has no relation to conduct of trial of the suit. What Section 10 CPC projects is only stay of trial of suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. The provision does not prevent or bars the Court from passing incidental orders required to meet the ends of justice. In other words, any incidental orders, not affecting the trial of the suit nor decides the rights of the parties conclusively can be passed. The Kerala High Court in V.R. Balakrishnan Nadars case (1 supra), relying on a Division Bench decision of the Bombay High Court in Senaji Kapurchand vs. Pannaji Devichands case (AIR 1922 Bombay 276) upheld the order of the trial Court in allowing the petitions to amend the plaint and for appointment of a Receiver, dehors stay of the suit under Section 10 CPC.

8. The Supreme Court in INDIAN BANK vs. MAHARASTHRA STATE CO-OPERATIVE MARKETING FEDERATION LTD(2) , while considering the scope and limits of Section 10 CPC held as under:-

Section 10 of the Code prohibits the court from proceeding with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit provided other conditions mentioned in the section are also satisfied. The word 'trial' is no doubt of a very wide import as pointed out by the High Court. In legal parlance it means a judicial examination and determination of the issue in civil or criminal court by a competent Tribunal. According to Webster Comprehensive Dictionary, International Edition, it means the examination, before a tribunal having assigned jurisdiction, of the facts or law involved in an issue in order to determine that issue. According to Stroud's Judicial Dictionary (5th Edition), a 'trial' is the conclusion, by a competent tribunal, of question in issue in legal proceedings, whether civil or criminal. Thus in its widest sense it would include all the proceedings right from the stage of

2. (1998) 5 SCC 69

institution of a plaint in a civil case to the stage of final determination by a judgment and decree of the Court. Whether the widest meaning should be given to the word 'trial' or that it should be construed narrowly must necessarily depend upon the nature and object of the provision and the context in which it used.

Therefore, the word trial in Section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision and the prohibition to 'proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit'. The object of the prohibition contained in Section 10 is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue. The provision is in the nature of a rule of procedure and does not affect the jurisdiction of the Court to entertain and deal with the later suit nor does it create any substantive right in the matters. It is not a bar to the institution of a suit. It has been construed by the Courts as not a bar to the passing of interlocutory orders such as an order for consolidation of the later suit with earlier suit, or appointment of a Receiver or an injunction or attachment before judgment. The course of action which the Court has to follow according to Section 10 is not to proceed with the 'trial' of the suit but that does not mean that it cannot deal with the subsequent suit any more or for any other purpose. In view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory orders it has to be stated that the word 'trial' in Section 10 is not used in its widest sense. (emphasis supplied)

9. Inasmuch as allowing interlocutory applications would not in any way affect the rights of the parties, muchless determines the rights of the parties or it affects the trial of the suit nor amounts conducing trial, this Court is of the view that the trial Court has not properly exercised its jurisdiction vested in it in deciding the petitions.

10. In the circumstances, civil revision petitions are allowed and the impugned orders are set aside. The petitioners are permitted to take the original registered sale deeds filed into Court by them by substituting with the certified copies with an undertaking to produce the same as when required by the Court. Miscellaneous petitions, if any pending in these cases shall stand disposed of. There shall be no order as to costs.

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2017(3) L.S. 112 (D.B.)

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice Sanjay Kumar &
The Hon'ble Dr.Justice Shameem Akther

Gopu Srinivas Reddy @ Parandamulu ..Appellant

Vs.

The State of A.P., ..Respondent

CRIMINALPROCEDURE CODE, Secs.374(2) and 235(2) – INDIAN PENAL CODE,Sec. 302 – Appellant questioned the judgment of the trial court, where by he is sentenced to undergo imprisonment for life – Instant case is based on circumstantial evidence.

Homicidal death of B. Laxmi by drowning allegedly committed by her son-in-law (appellant) by pushing her into agricultural well since she forced him to reveal whereabouts of her missing daughter, renuka – Appellant was suspected by his wife renuka due to his physical relationship with women of loose character, which in turn made him to get vexed up with her – Appellant is also alleged of killing renuka.

Held – In the cases based on circumstantial evidence, circumstances from which inference of guilt is sought to be drawn, must be cogently and firmly establish the guilt of appellant – Circumstances, taken cumulatively, should form a chain so complete that there is no escape from conclusion that within all human probability the crime was committed by appellant and none else – No such evidence is available on record – Even at the time of inquest, there were no witnesses to identify dead body and under these circumstances, I.O. ought have collected blood samples, soft tissues, hair etc., from dead body and preserved the same and could have sent them to Forensic Science Laboratory to establish the identification of dead body – Investigating officers are required to subject the dead body for its proper identification by following required procedures to conduct DNA test – Prosecution failed to establish complete chain of circumstances beyond reasonable doubt - Appellant is acquitted of the charges framed against him – Criminal appeal is allowed.

Cases referred :

1) (1984) 4 SCC 116 = AIR 1984 SC 1622
2) 2004 (2) ALD (Crl.) 677 (SC)

Smt.A.Gayatri Reddy,Advocate forthe Appellant.

Public Prosecutor,for Respondent.

J U D G M E N T

(per the Hon'ble Mr.Justice Shameem Akther)

This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure,

1973 (for brevity, Cr.P.C.) questioning the judgment dated 13.01.2011, passed by the learned Principal Sessions Judge, Warangal (for brevity, the trial Court) in Sessions Case No.106 of 2008, whereby the trial Court convicted the appellant-accused under Section 235(2) Cr.P.C. for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for brevity, I.P.C.) and sentenced him to undergo imprisonment for life till the rest of his life without any remission and also to pay fine of Rs.10,000/- (Rupees ten thousand only) with a default sentence of simple imprisonment for a period of three and half years.

2. Heard Smt. A.Gayatri Reddy, the learned counsel appearing for the appellant, and the learned Public Prosecutor appearing for the State.

3. The case of the prosecution is as follows:

(a) This is a case of homicidal death of B.Laxmi by drowning allegedly committed by her own son-in-law, who is the appellant herein, on 18.04.2007 at about 4-30 hours by pushing her into an agricultural well near Talla Padmavathi Pharmacy College, Rangashaipet, since she forced him to reveal the whereabouts of her missing elder daughter-Renuka. The appellant hailing from an agricultural family, studied upto 10th Class, worked under a Commission Agent at Kamareddy, married Ms.Venkata Laxmi of Begumpet. The appellant developed physical relationships with several women of lose character and in order to meet the expenses, he resorted to committing thefts which forced his first wife to return back to her parental abode. Later, he fell in love with Ms.Renuka, elder daughter of Smt. B.Laxmi-deceased, married her and stayed with her at Karimnagar, continued to commit theft of vehicles and got arrested by Siddipet Police. After release from jail, he and his wife-Renuka migrated to Bheemaram, Hanamkonda and settled down in a rented house. While so, he came in contact with a tractor driver-B.Raju and he along with his brother-in-law, B.Anjaneyulu and B.Raju started committing theft of several vehicles. His wife-Renuka suspected his fidelity due to his physical relationship with women of loose character and started questioning him about his activities, leading to altercations between them, which made him to get vexed up with her. On 25.08.2006 at about 04-00 hours, he took his wife-Renuka by a car to the outskirts of Ammavaripet, pushed her into a big quarry pit filled with water, concerning Crime No.115 of 2006 of Madikonda Police Station registered under Section 174 Cr.P.C. for the offences punishable under Sections 302 and 201 I.P.C., which ended in his conviction and sentence to imprisonment for life in Sessions Case No.787 of 2007 on the file of the II Additional Sessions Judge, Warangal.

(b) Later, the appellant fell in love with Ms.Haritha of Kesamudram and married her at Tirupathi. Subsequently, he shifted Mrs.B.Laxmi (mother-in-law) and her family from Komuravelli and kept them at Bheemaram. However, B.Laxmi continued to pressurize the appellant to reveal the whereabouts of her missing elder daughter-Renuka and forced him for money as she got indebted to others at Komuravelli village, due to which he decided to do away with her life (B.Laxmi) once for all. On 18.04.2007

at about 04-30 hours, he took B.Laxmi, his mother-in- law by jeep on the pretext that he would give money and see her off at the bus stand but drove the jeep towards Ursu Gutta, got it filled up with fuel on the way by P.W.13-A.Prashanth in filling station, had tea in the hotel of P.W.5-N.Kumara Swamy, took B.Laxmi towards Talla Padmavathi Pharmacy College, stopped the jeep there on the pretext of attending to calls of nature and asked B.Laxmi too to go for urination, but when she alighted from the jeep, he suddenly pounced on her from her behind and pushed her into a nearby agricultural well and visited it on the following day to confirm about her death, found her dead body floating in the water and returned back home and informed P.W.3-B.Sunitha and L.W.6-B.Geetha that their mother went to Komuravelli. On sighting a dead body floating in the well on 27.04.2007, P.W.1-P.Vasundara lodged a report in Ex.P.1 with the Station House Officer, Mills Colony Police Station, about floating of the dead body in the agricultural well of one P.Kanakaiah. On the basis of which, a case in Crime No.120 of 2007 was initially registered under Section 174 Cr.P.C.

(c) P.W.11-Assistant Sub Inspector of Police took up investigation, visited the scene of offence, secured the presence of mediators-P.W.3 and L.W.6-B.Geetha, got the scene of offence photographed, seized one saree, blouse and petticoat from the scene, got the dead body retrieved from the well, photographed the same, conducted an inquest over the dead body and referred the same for postmortem examination. Later, P.W.12-Inspector of Police, Mills Colony Police Station took up investigation, verified the investigation done by P.W.11-Assistant Sub Inspector of Police and while he was making efforts to establish the identity of the dead body, on 10.06.2007 at about 09-00 hours, P.W.9-Sub Inspector of Police, Mulkanoor Police Station arrested the appellant in Crime No.64 of 2007 for the offences punishable under Section 307 r/w 34 I.P.C. of Mulkanur Police Station, Karimnagar District, while checking vehicles at Mulkanur Bus Stand and interrogated him, during which he voluntarily confessed that on 18.04.2007, he killed his mother-in-law B.Laxmi by pushing her into the agricultural well near Padmavathi Pharmacy College, Ursu Gutta, Warangal, as she was insisting him to pay money to clear off her debts and to reveal the whereabouts of her missing elder daughter-Renuka and also confessed commission of other property offences he had committed. On receipt of intimation about the same from P.W.9-Sub Inspector of Police, P.W.12- Inspector of Police, Mills Colony Police Station, Warangal, in turn, altered the Section of Law from 174 Cr.P.C. to Section 302 I.P.C. and issued an express memo to all concerned. Later, he visited Komuravelli and S.R.T.Thota, Ursu Gutta, secured the presence of P.Ws.3 to 5, 13 and L.W.6-Geetha, recorded their statements and showed photographs of the deceased to them and they identified the dead body as that of the mother of P.W.3-B.Sunitha. P.W.10-Dr. K.V.Ramana Murthy conducted postmortem examination on the dead body of B.Laxmi and opined that the cause of her death was due to drowning. Thereafter, the appellant was sent up for remand to judicial custody in this case too on 30.07.2007, by the learned Additional

Judicial Magistrate of First Class, Warangal. After completion of investigation, P.W.12-Inspector of Police filed charge sheet against the appellant for the offence punishable under Section 302 I.P.C.

(d) The learned Additional Judicial Magistrate of First Class, Warangal, took cognizance of the offence punishable under Section 302 I.P.C., registered the charge sheet as P.R.C. No.88 of 2007 and committed the case to the Principal Sessions Court, Warangal, as the case is exclusively triable by the Court of Sessions, where it was registered as Sessions Case No.106 of 2008.

(e) On appearance of the appellant before the trial Court, a charge for the offence punishable under Section 302 I.P.C. was framed against him, read over and explained to him in his language. When questioned, he pleaded not guilty and claimed to be tried. During trial, the prosecution examined P.Ws.1 to 13 and marked Exs.P.1 to P.11. After closure of evidence of the prosecution, the appellant-accused was examined under Section 313(1)(b) Cr.P.C. explaining him the incriminating material appearing against him in the evidence of prosecution witnesses. For which, he pleaded not guilty and stated that he was implicated in a false case. The appellant-accused did not examine any witnesses to defend him before the trial Court.

(f) The trial Court, after perusal of the entire evidence on record and after hearing both sides, held that the appellant- accused is found guilty for the charge under Section 302 I.P.C. and accordingly convicted him under Section 235(2) Cr.P.C. for the said charge and after hearing him on the question of sentence, sentenced him to undergo imprisonment for life till he is alive and he shall not be released from prison till the rest of his life and also to pay fine of Rs.10,000/- (Rupees ten thousand only) with a default sentence of simple imprisonment for a period of three and half (3) years. The trial Court further held that the sentence of imprisonment for life in this case shall run consecutively after his earlier sentence of imprisonment for life in Sessions Case No.787 of 2007 on the file of the II Additional Sessions Judges Court, Warangal. The trial Court has given liberty to the appellant to set off the pre-trial custody already undergone by him in this case from 30.07.2007 to 13.01.2011 under Section 428 Cr.P.C. Questioning the said conviction and sentence imposed, the appellant-accused preferred the present appeal.

4. Learned counsel for the appellant would submit that there are no direct witnesses to the commission of the offence and the case rests on the circumstantial evidence; the prosecution failed to prove the guilt of the appellant by legal and reliable evidence; there is no evidence to believe that the death of B.Laxmi is homicidal; there is no legal and acceptable evidence to believe that the dead body belonged to B.Laxmi; the trial Court erred in relying on the alleged confession of the appellant said to be made before the police, which is inadmissible in evidence; and ultimately, prayed to allow the appeal by setting aside the conviction and sentence awarded in the impugned judgment dated 13.01.2011 passed by the trial Court in Sessions Case No.106 of 2008.

5. On the other hand, learned Public Prosecutor would submit that there is ample evidence on record, more particularly, the evidence of P.Ws.4, 5, 8 and 13, to prove the guilt of the appellant for the offence punishable under Section 302 I.P.C.; the trial Court had rightly convicted and sentenced the appellant; and ultimately, prayed to dismiss the appeal.

6. In view of the contentions putforth by both sides, the point for determination in this appeal is, on 18.04.2007, whether the appellant had caused the death of his mother-in-law by name B.Laxmi by pushing her into an agricultural well near Talla Padmavathi Pharmacy College, Rangashaipet?

7. POINT: Admittedly, the entire case of the prosecution is based on circumstantial evidence. In this regard, it is apt to refer the decision of the Honble Supreme Court rendered in SHARAD BIRDHICHAND SARDA V. STATE OF MAHARASHTRA(1) , wherein it was held as hereunder:

"When a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

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

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

(iii) the circumstances should be of a conclusive nature and tendency;

(iv) they should exclude every possible hypothesis except the one to be proved; and

(v) there must be a chain of evidence so

1) (1984) 4 SCC 116 = AIR 1984 SC 1622

complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

8. The conditions required to prove the guilty of the accused based on circumstantial evidence are enunciated in the following cases:

"1. Hanumant Govind Nargundkar v. State of M.P. : AIR 1952 SC 3442.

2. Sharad Birdhichand Sarda v. State of Maharashtra : (1984) 4 SCC 116 : AIR 1984 SC 1622.

3. C.Chenga Reddy v. State of A.P. : (1996) 10 SCC 193."

9. The case of the prosecution is that the appellant on 18.04.2007 around 4-30 a.m., took his mother-in-law by name Bayyapu Laxmi (deceased) to an agricultural well, situated near Talla Padmavathi Pharmacy College, Rangeshaipet, Warangal, and pushed her into the well and caused her death by drowning her. The motive for commission of such act is that the daughter of the deceased by name G.Renuka fell in love with the appellant and married him, they begot two children and thereafter, G.Renuka was missing, so his mother-in-law-B.Lakshmi, who is said to be deceased in this case, repeatedly insisting the appellant for whereabouts of her daughter-Renuka and also demanding money from him to clear off her debts. To prove the guilt of the appellant, the prosecution examined P.Ws.1 to 13 and got marked Exs.P.1 to P.11. No defence witnesses were examined and no material objects were marked.

10. The evidence of P.W.1-P.Vasundhara, who is de facto complainant in this case, reveals that she is working as 12th Ward Corporator, Municipal Corporation, Warangal; on 27.04.2007, she received information that a dead body of a lady was floating in the agricultural well of Pogaku Kankaiah; on that she went to the said well and found a dead body; immediately, she lodged a complaint with the police under Ex.P.1; and the police examined her and recorded her statement. The evidence of P.W.2-Kota Babu reveals that he is a resident of Veerannakunta; he is doing labour work, on instructions from the police about two years back, he along with L.W.2-V.Yakaiah removed a dead body aged between 45 and 50 years, which was floating in the well of one Pogaku Kankaiah. P.W.3-Bayyapu Sunitha is none other than the daughter of B.Laxmi. Her evidence reveals that after death of their father, they shifted to Komravelli and her mother-B.Laxmi was running a hotel; her elder sister-Renuka fell in love with the appellant and married him, they begot two children and they used to reside at Bheemaram; about one year prior to the death of her mother, the appellant came to her mother and stated that her elder sister-Renuka was missing; and later, he shifted to Hanamkonda and married one Haritha. She further deposed that after some days, they found her mother missing, they searched for her but could not trace her; one month after missing of her mother, the appellant and Haritha came to her and informed her that he would take her to her mother and took her by his motorcycle

during midnight at 2-00 a.m. near a well and pushed her in the well in order to do away her life and left the place thinking that she died; later, she came to know through the police that the appellant had committed murder of her sister-Renuka and her mother-Laxmi; and the police examined her and recorded her statement. The evidence of P.W.4-M.Bala Narsaiah reveals that B.Laxmi was his younger sister. He spoke about the marriage of Renuka with the appellant, missing of Renuka, conducting search for her, and after some time, he found B.Laxmi missing. He further stated that the appellant was arrested by Mulkanoor Police during interrogation, the appellant confessed about the commission of murder of his sister-Laxmi and Renuka.

11. P.W.1-de facto complainant lodged Ex.P.1-report with the police. P.W.2 is the person who removed the dead body of a woman floating in the well. He did not depose about identification of the dead body. P.W.3 is the daughter of the deceased and P.W.4 is the brother of the deceased and they also did not say that they have seen the deceased and the appellant together, but simply they stated that on interrogation, the appellant confessed the commission of the murder of Renuka as well as B.Laxmi. The contention of the prosecution is that P.W.5-N.Kumaraswamy saw the deceased and the appellant together, but this witness did not support the case of the prosecution and turned hostile. In his examination in chief, he has clearly stated that he did not see the appellant at any time. Ex.P.2 is the statement said to be given by P.W.5 to the police. P.W.6-K.Mallesham is a witness for inquest panchanama conducted over the dead body of the deceased. He also did not support the case of the prosecution. His signature (Ex.P.3) on the inquest panchanama was marked.

12. The evidence of P.W.8-P.Mogili reveals that he is a resident of Bheemdevarapalli and he knew L.W.13-S.Bhadraiah; about two years back at 9-00 a.m., police called them to the police, he found the appellant in the custody of police and, on interrogation, the appellant confessed that he had killed the deceased in this case 15 or 20 days prior to arrest at the agricultural well near Talla Padmavathi College by taking the deceased by jeep. He further that the appellant also confessed that he has killed his wife and also tried to kill his sister-in-law (P.W.3) and the police drafted the said confessional panchanama and obtained his signature. Admittedly, there is specific evidence of P.W.8 that he was called to the police station by the police, and on interrogation, the appellant confessed the commission of the offence and other offences. This piece of evidence is inadmissible in evidence. There is no evidence that the appellant voluntarily confessed the commission of offence in his presence. Moreover, the so-called confession is said to have made at the police station in the presence of the police on interrogation. This evidence does not qualify the requirement under Sections 24, 25 and 27 of the Indian Evidence Act, 1872.

13. P.W.9-K.Srinivas, Sub Inspector of Police, Mulkanoor, deposed that he conducted investigation in this case and during investigation, he arrested the appellant in connection with Crime No.64

of 2007 of Mulkanoor Police Station and on interrogation, the appellant voluntarily confessed about commission of the offence in this case. P.W.10-Dr. K.V.Ramana, Assistant Professor, Department of Forensic Medicine, KMC, Warangal, deposed that on 28.04.2007, on a requisition made by the Station House Officer, Mills Colony Police Station, he conducted postmortem examination over an unknown female dead body from 9-15 a.m. to 10-15 a.m. and found no ante-mortem external or internal injuries over the dead body and opined that approximate time of death was three to four days prior to the postmortem examination and the cause of death was due to drowning and he issued Ex.P.5-postmortem examination report. Admittedly, no blood samples were collected from the dead body and no DNA test was conducted. P.W.3-daughter of the deceased and P.W.4-brother of the deceased have not stated anything about identification of the dead body.

14. The evidence of P.W.11-M.Venkateshwarlu, Assistant Sub Inspector of Police, Mills Colony Police Station, Warangal, reveals that on 27.04.2007 at about 2-30 p.m., on receipt of Ex.P.1-report from P.W.1, he registered the same as a case in Crime No.120 of 2007 under Section 174 Cr.P.C. and issued Ex.P.6-F.I.R., sent copies of F.I.R. to all concerned, recorded statement of P.W.1-B.Vasundhara, visited the scene of offence, took photographs of the dead body and got it removed from the well with the help of P.W.2-Kota Babu, L.W.2-Velpula Yakaiah and L.W.4-Kota Sanjeeva, held inquest over the dead body in the presence of P.Ws.6 and 7 under Ex.P.7-inquest panchanama and sent the dead body to MGM Hospital, Warangal for conducting postmortem examination. He also did not speak about the identification of the dead body in this case. The evidence of P.W.12-C.Prabhakar, Inspector of Police, reveals that on 14.06.2007, he took up investigation in this case, visited the scene of offence, re-examined the witnesses, verified the investigation done by P.W.11 and found it on correct lines and on receipt of confessional statement of the appellant, he altered Section of Law from 174 Cr.P.C. to Sections 302 and 201 I.P.C. and Ex.P.8 is the altered F.I.R.

15. The evidence of P.W.13-A.Prashanth reveals that he is a resident of S.R.Nagar, Hyderabad, and working as Security Guard in a private company; earlier, he worked as a Cashier in a petrol bunk in Hanamkonda located on Warangal-Khammam road in Kareemabad locality; in the year 2007, during early hours, one person came by jeep and took diesel in his jeep, he noticed that a woman was present in his jeep; thereafter, the jeep left, they stopped the jeep near a tea hotel, situated near the petrol bunk; ten minutes thereafter, the jeep left the place and proceeded back towards Hanamkonda, at that time, he noticed that only one person who was driving the jeep was present in that jeep, the said person was present in the Court Hall. In the cross-examination, P.W.13 stated that he has no idea about the number of the vehicle, daily 100 vehicles used to come to their petrol bunk for filling petrol or diesel; he cannot identify all those persons, but since it was early hours, he could identify the appellant. He further deposed in his cross-examination that he worked at the

said petrol bunk for a period of three or four months, he did not say how many persons visited the petrol bunk in early hours, he did not say as to whether he issued a receipt or not to the appellant. He further deposed in his cross-examination that there were four persons working in one shift at the petrol bunk, he is a resident of Karimnagar, and the police had shown the appellant in the Court premises on 24.02.2010. He admitted that he did not know the appellant prior to the incident, he saw the appellant on the date of incident and again on 24.02.2010. He denied that the appellant did not come to his petrol bunk on that day. He also denied that he is deposing false. Admittedly, P.W.13, who is said to be the circumstantial witness, simply stated that in the year 2007 in the early hours, the appellant had purchased diesel from his petrol bunk, and he noticed one woman, he did not know the jeep number and he did not give descriptive particulars of the driver of the jeep as well as that woman, simply he stated that after ten minutes, the jeep left the place and proceeded back towards Hanamkonda, at that time, he found driver only in the jeep and he did not give date or month of finding the appellant at petrol bunk or passing by that area. P.W.13 clearly and categorically admitted that he saw the appellant on the date of alleged incident and again only on 24.02.2010. In this case, Ex.P.1 was lodged with the police on 27.04.2007 and the death in question was said to be caused on 18.04.2007 around 4-30 a.m. If that is the case, in the darkness, it is not possible for P.W.13 to identify the person passing in that area. The sole circumstantial evidence relied on by the prosecution is P.W.13. Admittedly, P.Ws.3 and 4, who are daughter and brother of B.Laxmi did not see the appellant and B.Laxmi together before her missing. Both of them came to know about the alleged death of B.Laxmi after the so-called confession made by the appellant to the police. Admittedly, there are no direct witnesses to connect the appellant with the commission of the so-called death of B.Laxmi in this case. The evidence of P.W.3 is shabby and discreditable and it is not free from doubt. P.W.5 is not a reliable witness. The circumstances from which the inference of guilt is sought to be drawn, must be cogently and firmly established the guilt of the appellant. Those circumstances should be of definite tendency unerringly pointing towards guilt of the appellant. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the appellant and none else. The circumstantial evidence, in order to sustain conviction, must be complete and incapable of explanation of any other hypothesis than that of the guilt of the appellant and such evidence should not only be consistent with the guilt of the appellant but should be inconsistent with his innocence. [See: Gambhiriv v. State of Maharashtra (1982) 2 SCC 351 : AIR 1982 SC 1157]. No such evidence is available on record either to hold that the dead body in question belongs to B.Laxmi or the appellant had caused death of B.Laxmi. The trial Court, while determining the charge under Section 302 I.P.C., had relied on the evidence of P.Ws.3 and 4 and the evidence of P.W.8, who is said to be the mediator for confession of

the appellant before the police at the police station. It is inadmissible under Section 24 of the Indian Evidence Act, 1872. The trial Court also believed the evidence of P.W.13, which is inspiring no confidence to act as there was no identification parade of the appellant and he has deposed before the Court after three years of the incident.

16. It is apt to refer the decision of the Honble Supreme Court in DASARI SIVA PRASAD REDDY V. PUBLIC PROSECUTOR, HIGH COURT OF ANDHRA PRADESH(2) , wherein it was held that a strong suspicion, no doubt, may exist against the appellant but such suspicion cannot be the basis of conviction, going by the standard of proof required in a criminal case and the distance between may be true and must be true shall be fully covered by reliable evidence adduced by the prosecution. In the instant case, there is no such proof and standard of evidence. The evidence of P.W.13 is not inspiring confidence to believe the commission of death of B.Laxmi in this case. P.W.13 is not trustworthy witness. Though the defence of the appellant is that he is innocent and denied the incriminating evidence when he was examined under Section 313 Cr.P.C. stating Abaddham (false), in the circumstances of the case, he cannot be called to rebut the same, as required under Section 106 of the Indian Evidence Act, 1872. The prosecution failed to establish the complete chain of circumstances beyond reasonable doubt. There is also no DNA test conducted to prove that the dead body belongs to B.Laxmi. The evidence of P.W.10-doctor reveals only the death of the deceased in this case was due to drowning and there is no oral or documentary evidence to prove the death in question was a homicidal. Further, there is no legally acceptable evidence to hold that the dead body in this case belongs to B.Laxmi. Even the prosecution could not prove the death of B.Laxmi by leading convincing and cogent evidence and so also the commission of alleged murder in this case.

17. In these circumstances, the prosecution failed to prove the charge under Section 302 I.P.C. framed against the appellant and the impugned judgment dated 13.01.2011 passed by the trial Court in Sessions Case No.106 of 2008 is liable to be set aside.

18. In every trial for manslaughter or for the offence of causing hurt to human body, opinions of medical officers are Invited to ascertain the cause of death, injuries, whether the injuries are anti-mortem or post-mortem, the probable weapon used, the effect of injuries, medicines, poisons, the consequences of wounds whether they are sufficient in the ordinary course of nature to cause death, the duration of injuries and the probable time of death and also to identify the dead body. In this regard, DNA test is very helpful. In such trials sometimes the plea of unsoundness of mind or minority is taken by the accused. In trials for offences of kidnapping and rape, the question invariably in dispute is the age of the person kidnapped or of the girl raped. In all such cases the medical opinion is adduced to establish insanity and minority. In rape cases apart from showing the minority of the girl, the medical opinion is tendered to establish the offence of rape.

2) 2004 (2) ALD (Crl.) 677 (SC)

19. The word DNA stands for deoxyribonucleic acid. It is a biological blueprint of life DNA fingerprinting profile is unique to each individual and hence the DNA profiling is used to identify an individual and his lineage. The technological device is used to identify a person in criminal and civil cases. The main advantage of this device is that the test can be done on small samples and can accurately establish their originals with a high degree of certainly. DNA is hardly affected by the environmental factors. DNA is stable and therefore much resistance to degradation caused by the environmental changes. It shows the same genetic pattern irrespective of the biological material like hair, seminal stains fresh blood, soft tissues, hard tissue etc. DNA finger printing can connect the crime scene or a body to another particular individual. Dry blood stains and sperm can also be used for DNA test. These tests are highly useful in various criminal investigations involving offences like rape, murder, kidnapping, exchange of babies, infanticide, abandonment of newborn child, illegal abortion, paternity related disputes, immigration, inheritance, assignation etc. DNA test results are very reliable. Control samples are provided with the main sample to avoid error in test and reporting. However in order to make DNA evidence most successful, there must be a strong and robust legislation and reputed elaboration with standardized operational procedures. The laboratories engaged in DNA testing must be well equipped and technicians must be highly qualified and skilled. DNA test is such a new scientific invention which is used for scientific investigation in criminal case. This technique is particularly much useful in cases where eye witnesses are not available.

20. The whole case is based on circumstantial evidence. A highly decomposed dead body was floating in a well. Even at the time of inquest, there were no witnesses to identify the dead body. Under these circumstances, the investigating officer ought to have collected blood samples, soft tissues, hard tissues, hair, etc., from the dead body and preserved the same and in the course of investigation, could have sent them along with the admitted blood samples, etc., of the relatives, to the Forensic Science Laboratory to establish the identify of the dead body. No such efforts were made in this case. In the cases of similar circumstances, all the investigating officers are required to subject the dead body for its proper identification by following the required procedures to conduct DNA test. The Director General Police shall direct all the Subordinate Officers, particularly the Investigating Officers, to collect the samples from the dead body, i.e., hair, tissues, blood, bloodstains, etc., and send them for DNA test for authentic identification of the deceased persons. The Registry is directed to communicate the copy of judgment to the Director General Police, State of Telangana and the State of Andhra Pradesh, who in turn, shall communicate the same to all their Subordinate Officers including the Investigating Officers for compliance.

21. In the result, the appellant is acquitted of the charge framed against him under Section 302 I.P.C., and consequently, the conviction and sentence recorded against the appellant for the said charge by the

trial Court in Sessions Case No.106 of 2008, vide judgment dated 13.01.2011, is set aside. The Criminal Appeal is allowed accordingly. Since the appellant is on bail, he is directed to report before the Superintendent, Central Prison, Warangal, forthwith to set him free as per the procedure established, if he is not required in any other case.

22. As a sequel, miscellaneous petitions, if any pending in this appeal, shall stand closed.

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2017(3) L.S. 123

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice V.Ramasubramanian

M/s.Lokesh Foundaries Pvt.Ltd. ..Petitioner

Vs.

M/s.Varun Motors & Ors., ..Respondents

CIVIL PROCEDURE, Sec.2(17) and Order XVI Rule 6 – CIVIL RULES OF PRACTICE, Rule 129 – BANKERS BOOK EVIDENCE ACT, Sec.4 – Aggrieved by order passed by trial court, at the instance of first respondent in a suit for specific performance, directing second respondent/ Bank to produce certain documents, appellant preferred present revision.

First respondent filed an application under Rule 129(1) of Civil Rules of Practice, praying for summoning from the bank, the entire correspondence to One Time Settlement proposal between petitioner and the bank – Trial court allowed the application.

Held – Object behind Bankers Book Evidence Act is to ensure that original books of accounts are retained by bank to enable them to carry on their day-to-day transactions – This object is not stultified by production of some correspondence relating to a One Time Settlement proposal between petitioner and the bank - Endeavour of every court should be to find out the truth, to enable the court to render justice – The summoning of documents in question, would certainly enable the court to arrive at the truth –This Court finds absolutely no reasons to interfere with the Order of Trial court - Revision petition is dismissed.

Smt Ch.Laxmi Chaya, Advocate for Appellant.

M/s.Bharadwaj Associates, Advocate for Respondent.

O R D E R

Aggrieved by an order passed by the trial Court, at the instance of the plaintiff in a suit for specific performance, directing the second defendant-bank to produce certain documents, the 1st defendant has come up with the present revision.

2. Heard Mr. S. Satyanarayana Prasad,

learned senior counsel for the petitioner/ 1st defendant and Mr. Vedula Venkata Ramana, learned senior counsel appearing for the 1st respondent/ plaintiff.

3. The 1st respondent herein filed a suit in O.S.No.50 of 2007 for specific performance of an agreement of sale purportedly entered into between the 1st respondent company and the petitioner herein on 21.06.2005. It was recorded in the said agreement of sale that the total sale consideration would be Rs.2,50,00,000/ -; that the 1st respondent-plaintiff paid a sum of Rs.50.00 lakhs in cash as advance at the time of execution of the agreement of sale; that the 1st respondent would also pay a sum of Rs.31.00 lakhs to the 2nd respondent/2nd defendant-bank, by the end of June 2005 in a no lien account; and that since the petitioner had dues to be paid to the 2nd respondent Bank, for the settlement of which, a one time proposal was being worked out, the first respondent/ plaintiff should pay the balance of sale consideration within 6 months from the date of the Bank issuing a letter in this regard.

4. The petitioner/1st defendant filed a written statement completely denying the execution of the agreement of sale. The denial was total without the winking of the eye. But nevertheless, the signatures found in the suit agreement of sale was admitted by the petitioner. In paragraph 32 of the written statement the petitioner claimed (i) that the suit agreement of sale is a fabricated document, (ii) that just for enabling the petitioner to negotiate with the Bank for the OTS proposal, the first respondent/plaintiff kept a deposit off Rs.31 lakhs with the Bank on the understanding that the petitioner would repay the same with interest at 12% per annum; (ii) that at that time many signatures were obtained in blank stamp papers and those signed blank stamp papers had been made use of by the 1st respondent-plaintiff to fabricate an agreement of sale and to institute a suit for specific performance; and (iii) that the Managing Director of the petitioner company did not have the authority to enter into any agreement of sale. Curiously, it was the Managing Director of the petitioner who signed the written statement, calling the suit agreement of sale as fabricated and denying his own authority to execute an agreement of sale. Though I am tempted to comment upon such a defence taken by the petitioner, I refrain from doing so, since it may have a bearing upon the outcome of the suit.

5. In the light of such a stand taken by the petitioner/1st defendant in its written statement, the 1st respondent-plaintiff filed an application under Rule 129 (1) of the Civil Rules of Practice, in I.A.No.252 of 2015 praying for summoning from the Bank, the entire correspondence relating to One Time Settlement proposal between the petitioner and the Bank. The said application was allowed by the trial Court, by an order dated 1-6-2005, but the said order was set aside by a learned Judge of this Court in C.R.P.No.2192 of 2015 by an order dated 16-09-2016. But the learned Judge thought fit to remand the application back to the trial court for a fresh disposal, on the short ground that certain technical aspects had not been considered by the trial Court before allowing the application.

6. Therefore, the application was again taken up for hearing by the trial Court and by an order dated 05-07-2017, the trial Court once again allowed the application. Challenging the said order, the 1st defendant has come up with the above revision once again.

7. Assailing the order of the trial Court, it is contended by Mr. S. Satyanarayana Prasad, learned senior counsel for the petitioner:

(a) that the trial Court has virtually overruled the order of this Court in C.R.P.No.2192 of 2015 by allowing the application once again, taking advantage of the fact that the application was remanded for fresh disposal;

(b) that under the Bankers' Books Evidence Act, 1891, a certified copy of any entry in a Bankers' Book shall be received as prima facie evidence and hence, the Court below ought not to have allowed the application for the production of original document without following the procedure prescribed by the said Act;

(c) that under Rule 129(3) of the Civil Rules of Practice and Circular Orders of the State of Andhra Pradesh/Telangana, no Court shall issue summons unless it considers the production of the original necessary and unless it is satisfied that the application for a certified copy has been duly made, but has not been granted; and

(d) that when the bank itself is a defendant to the suit, the trial Court could not have directed the party to a proceeding to produce a document. 8. I have carefully considered the above submissions. Contention No.1:

9. The first contention of the learned senior counsel for the petitioner is that by allowing the application for summoning the production of the documents, the trial Court has virtually overruled the order of this Court in C.R.P.No.2192 of 2015.

10. But I do not think so. The first order of the trial Court allowing the application under rule 129 of the Civil Rules of Practice was set aside by this Court in C.R.P.No.2192 of 2015, only on a technical ground that the legal parameters were not considered. This Court did not find fault with the order of the trial Court on merits. If it had done so, the matter would not have been remanded back to the trial Court for a fresh consideration.

11. Paragraphs 11 and 12 of the order in C.R.P.No.2192 of 2015, which constitutes the reasoning portion of the order, reads as follows:

> "11. In this factual backdrop the plaintiff filed an application covered by the impugned order passed in I.A. No. 252 of 2015 before the lower court referring to Rule 129 C.R.P to produce the documents referred in the notice to produce under Order XII Rule 8 C.P.C with additional documents, if any. In fact, there is a procedure prescribed by said Rule, which need to be followed before seeking documents from public office to produce as laid down by the two expressions of this court (supra). The

pertinent question to consider is whether the procedure contemplated by Rule 129 C.R.P is followed or not. The provisions of the Bankers' Books Evidence govern the bank to grant any certified copies of the documents, unless those are of any confidentiality saved from production under the Act or under the Right to Information Act and that also require to determine. Once the documents sought for production are with the party to the suit and not from a third party to the suit, even to summon as a witness invoking Order XVI Rule 1 or Rule 6 C.P.C does not arise. Thereby the submission of the learned counsel for the plaintiff of the application before the court below can be treated as under Order XVI Rules 1 & 6 is not tenable. No doubt, Order XVI Rule 7 C.P.C enables the court to call for production, on its own, anybody of any document as a court witness, which is virtually within the power of the court contemplated by Section 165 of the Evidence Act. The trial court did not consider any of the above aspects while passing the order, even to treat the application as part of interrogatories contemplated by Order XI C.P.C, showing that the documents in the custody of the party to be produced and be sought for production under Order XI Rule 14 C.P.C.

12. Having regard to the above, the impugned order per se since unsustainable, same is set-aside and remanded to the lower court to decide afresh and by left open the contentions raised by the parties to raise before the lower court and the lower court therefrom shall determine the application by considering the same as filed under correct provision from prayer in the petition is criteria to determine as to within the four corners of which of the provisions of law, the petition can be entertained to decide, from mere wrong quoting of provision is no way fatal. No order as to costs."

12. The reasoning portion of the order of this Court in the first revision petition extracted above, would show that the contention now raised regarding the Bankers' Books Evidence Act, 1891 and Rule 129 of the Civil Rules of Practice were also raised there, but the learned Judge did not uphold those contentions finally for setting aside the order on merits. The learned Judge merely directed the trial Court to consider all these legal parameters. Hence, the contention that the trial Court has virtually overruled the order passed by this Court in the first revision petition, does not merit acceptance. Contention No.2:

13. The second contention of the learned senior counsel for the petitioner is that there is a procedure prescribed by the Bankers' Books Evidence Act, 1891 and that without following the same, the Court below could not have summoned the production of the documents.

14. Before considering the correctness of the said contention, it may be necessary to have a look at the historical background of the Bankers' Books Evidence Act, 1891. After advent of the British Rule and the establishment of Banking Companies, there

was a spurt in litigation involving Banking Companies. When the Banking Companies were required to produce their books of accounts and records before courts, in evidence of the transactions made by them, the Banking Companies found it difficult to update their entries in the books that were stuck in Courts. Therefore, it was decided to adopt the English Bankers' Books Evidence Act, 1879 and to make the same applicable to British India. This is how the Bankers' Books Evidence Act, 1891 was passed. The primary object of this Act was to relieve the banks of the obligations and burden of producing the original books of accounts in Courts, so that the updating of entries in their books and their day-to-day operations were not hampered.

15. It is true that the expression "Bankers' Books" is defined in Section 2 (3) of the Bankers' Books Evidence Act 1891 to include all records used in the ordinary business of the bank. The definition is as follows:

> "bankers' books" include ledgers, day-books, cash-books, accountbooks and all other records used in the ordinary business of the bank, whether these records are kept in written form or stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism, either onsite or at any offsite location including a back-up or disaster recovery site of both"

16. But to contend that the correspondence between the petitioner/1st defendant and the Bank in relation to a One Time Settlement proposal would come within the purview of Section 2 (3) of the Act, is to make the definition so elastic that the tensile stress of the definition cannot bear.

17. It is needless to emphasis that the provisions of the Bankers' Books Evidence Act are intended to safeguard the Bankers against routine directions from courts for the production of original records. Therefore, if at all anyone can invoke the provisions of the Act in their favour, it is the second respondent Bank. Interestingly, the 2nd respondent–bank in this case, did not choose to come up with a revision as against the impugned order. On the contrary, the 2nd respondent bank has actually complied with the order passed by the trial Court and the bank has also produced the records before the Court. Therefore, I do not think that the petitioner/1st defendant can take advantage of the provisions of the Bankers' Books Evidence Act, 1891, when the 2nd respondent-bank, which is a party to the proceeding, did not have any objection and did not mind producing the original records. It is admitted by the learned senior counsel appearing on both sides that the original records summoned by the Court below under the order impugned in this revision, have already been produced by the bank before the Court below. Hence, in a revision under Article 227 of the Constitution, the petitioner cannot take advantage of the provisions of the Bankers' Books Evidence Act, 1891.

18. In any case, the object behind the Act is to ensure that the original books of accounts are retained by the bank to enable them to carry on their day-to-day

transactions without any hindrance. This object is not stultified by the production of some correspondence relating to a One Time Settlement proposal between the petitioner and the bank. The question of updating any entries in thiscorrespondence may not arise. As a matter of fact, the learnedsenior counsel for the petitioner admitted that the entire dues to the bank have been settled pursuant to the OTS and the account closed. This is perhaps the reason as to why the bank did not have any objection or hesitation to produce the records, which did not require any updating. Hence, the second contention of the learned counsel for the petitioner is also rejected.

Contention No.3:

19. The third contention of the learned senior counsel for thepetitioner revolves around Rule 129 (3) of the Civil Rules of Practice.Rule 129 (3) of the Rules reads as follows:

> "No court shall issue such summons unless it considers the production ofthe original necessary or is satisfied that the application for a certifiedcopy has been duly made and has not been granted. The court shall in every case record its reasons in writing and shall require the applicant to deposit in court, before the summons is issued, to abide by the order of the court, such sum as it may consider necessary to meet the estimatedcost of making a copy of the document when produced."

20. On the face of it, Rule 129 (3) appears to impose a twin obligation upon the Court while dealing with an application for summoning the production of documents. These obligations are: (1)that the Court considers the production of the original as necessary; and (2) that an application for a certified copy had been duly madebut has not been granted.

21. Since Section 4 of the Bankers' Books Evidence Act, 1891makes a certified copy of any entry in a Bankers' Books as primafacie evidence of the existence of such an entry, it is contended bythe learned senior counsel for the petitioner that the 1st respondentought to have applied for a certified copy of the records to the bankand that only upon the failure of the bank to furnish the certifiedcopy, the 1st respondent could have sought the production of theoriginal.

22. In my considered opinion, the above contention of the learned senior counsel is fallacious. Rule 129 of the Civil Rules ofPractice deals with production of records in the custody of a Public Officer other than a Court. The expression "Public Officer"is not defined in the Civil Rules of Practice. However, Rule 2 (n) of the Civil Rules of Practice makes it clear that "all other expressionsused in the Civil Rules of Practice shall have the respective meanings prescribed by the Code or the General Clauses Act, 1897."

23. The expression "Public Officer" is not defined in the General Clauses Act, 1897. But, Section 2 (17) of the Code of Civil

Procedure defines the expression “Public Officer” as follows: “Public officer" means a person falling under any of the following descriptions, namely:-

(a) every Judge;
(b) every member of an All-India Service;
(c) every commissioned or gazetted officer in the military, naval or air forces of the Union while serving under the Government.
(d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the court, and every person especially authorized by a Court of Justice to perform any of such duties:
(e) every person who holds and office by virtue of which he is empowered to place or keep any person in confinement;
(f) every officer of the Government whose duty it is, as such officer, to prevent offences to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
(g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and
(h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty”

24. The Manager of a Bank, in whose custody the correspondence relating to one time proposals lie, will not come within any one of the clauses (a) to (h) of Section 2 (17) of the Code of Civil Procedure, so as to make him a Public Officer within the meaning of Rule 129 of the Civil Rules of Practice. 25. It must be remembered that for the purpose of the Indian Penal Code, the Prevention of Corruption Act and various other enactments including the Banking Regulation Act, a banker may be a “Public servant”. The expressions “Public servant” and “Public officer” are not to be cocktailed with each other. The definition of the expression “Public servant” available in the Prevention of Corruption Act, Indian Penal Code etc., cannot be invoked while giving a meaning to the expression “public officer”, appearing in Rule 129 of the Civil Rules of Practice, especially in view of Rule 2 (n) of the Civil Rules of Practice read with section 2(17) of the Code. Once it is clear that the Manager of the bank having custody of the correspondence relating to one time settlement proposal of a borrower, is not a public officer, within the meaning of Rule 129 read with rule 2 (n) and section 2(17) of CPC, then it follows as a corollary that rule 129 itself will have no application to the petition for summoning the production of a document in the custody of a Bank Manager.

26. The entire scheme of Rule 129 of the Civil Rules of Practice makes it clear that the same is primarily intended to be applied to the officers of the Registration Department, Revenue Department, Legislative Assemblies and Legislative Councils and other Government departments.

27. A more fundamental distinction between the certified copies of public documents dealt with by Rule 129 and certified copies dealt with by Bankers' Books Evidence Act, 1891 has to be kept in mind. Whenever a certified copy of a public document is issued by a Registrar of Assurances or a Tahsildar, the officer issuing the same merely certifies the copy to be a true copy of the original. The public authorities, who issue certified copies of documents, do not certify that the contents of those documents are beyond question. They merely certify that the copy issued by them is a verbatim reproduction of the original.

28. But a certified copy issued by a bank under the Bankers' Books Evidence Act, actually certifies the correctness of the entries that are reproduced in the copy. The expression "certified copy" is defined in Section 2 (8) of the Bankers' Books Evidence Act, 1891 as follows:

> "certified copy" means when the books of a bank,— [2A. Conditions in the printout. — A printout of entry or a copy of printout referred to in sub-section (8) of section 2 shall be accompanied by the following, namely:— (a) a certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager; and (b) a certificate by a person in-charge of computer system containing a brief description of the computer system and the particulars of— (A) the safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorised persons; (B) the safeguards adopted to prevent and detect unauthorised change of data; (C) the safeguards available to retrieve data that is lost due to systemic failure or any other reasons; (D) the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electromagnetic data storage devices; (E) the mode of verification in order to ensure that data has been accurately transferred to such removable media; (F) the mode of identification of such data storage devices; (G) the arrangements for the storage and custody of such storage devices; (H) the safeguards to prevent and detect any tampering with the system; and (I) any other factor which will vouch for the integrity and accuracy of the system. (c) a further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents

correctly, or is appropriately derived from, the relevant data.

29. A careful look at the definition portion extracted above would show that whenever a certified copy is issued by a bank, the same is supposed to contain a footnote to the effect (1) that it is a true copy of such entry; (2) that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business; and (3) that such book is still in the custody of the bank.

30. Another important distinction between the certified copies of documents kept in the custody of a Public Officer other than a Court and the certified copies of the entries made in the books of a banker is that in the case of the former, the same may relate a document to which the Public Officer may not be a party. A SubRegistrar of Assurance is never a party to any sale deed. But he is supposed to keep a record of the transactions and the certified copies issued by him are of documents to which he is not a party. But when a banker issues a certified copy, it is in relation to an entry to which the bank is a party. Therefore, it is clear that Rule 129 (3) has no relevance to the documents sought for by the 1st respondent in his case from the 2nd respondent-bank. But unfortunately, the first respondent indicated their application as one filed under Rule 129. However, it is settled law that the quoting of the wrong provision, will not divest the court of its power to treat the application under the correct provision. In any case, this court has already directed in Para 12 of its order in C.R.P.No.2192 of 2015 to treat the petition as one filed under the correct provision. Therefore, my conclusion that Rue 129 of the Civil Rules of Practice has no application to the petition filed by the first respondent, will not entitle the petitioner to succeed by default.

31. In fact, Order XVI Rule 6 of the Code empowers the court to summon “any person” to produce a document without being summoned to give evidence. The second part of Order XVI, Rule 6 states that any person summoned merely to produce a document shall be deemed to have complied with the summons once he has caused the document to be produced. The second respondent has done this and the provisions of Order XVI Rule 6 have worked themselves out in this case. Therefore, the objections raised by the petitioner cannot but be construed only as a dilatory tactic or as a ruse to prevent the truth about the execution of the suit agreement of sale coming out. Hence the 3rd contention is also rejected. Contention No.4:

32. The fourth contention of the learned senior counsel for the petitioner is that when the bank itself is a party to the proceeding, it is not correct on the part of the Court below to summon the production of the documents in their possession.

33. But, I do not think that the petitioner is entitled to raise this contention. Order XVI, Rule 6 uses the expression “any person”. The rule that a party to a proceeding cannot be compelled to produce a document in their possession, is intended to protect every party to a litigation against being compelled to produce any incriminating material against themselves. But in this

case the documents sought, are not incriminating material against the 2nd respondent-bank. In fact, no relief is sought by the plaintiff as against the Bank in the suit. The Bank is only a formal party to the suit. This is why, the Bank has not come up with any revision. Therefore, the petitioner cannot raise this contention.

34. One last contention raised by the learned senior counsel for the petitioner is that an application for summoning the production of a document should be devoid of vagueness and that it should describe the document sought to be summoned with precision and accuracy. Since the petition filed by the 1st respondent contained a reference to "correspondence" without specifying the date, nature etc., of the same, it is contended by the learned senior counsel for the petitioner that the application ought not to have been allowed.

35. But the above contention does not merit acceptance. The party, who filed the application, knew what they wanted. The 2nd respondent against whom the order has been passed also understood what was summoned and they have produced the summoned documents. If at all any one could have gone to Court and objected to a vague prayer to summon the production of unspecified documents, it was the 2nd defendant. But the 2nd defendant has actually produced the documents summoned by the Court. Hence, this objection is also to be overruled.

36. As rightly contended by Mr.Vedula Venkataramana, the learned Senior Counsel for the first respondent herein (plaintiff), the defence taken by the petitioner/first defendant in the suit is one of total denial. According to him, it is a case of attempting to hide huge a pumpkin in a handful of grains. As per the written statement of the petitioner, the suit agreement of sale was a fabricated document, prepared on blank signed stamp papers given by the petitioner at the time when the plaintiff deposited Rs.31 lakhs with the Bank in a 'no lien' account for considering the one time proposal. In the light of such a stand taken in the written statement, the firstrespondent/ plaintiff was right in seeking the file relating to the OTSproposal and the correspondence, as the same would bring out the truth about the suit agreement of sale. After all, the endeavour of every court should be to find out the truth, to enable the court to render justice. The summoning of the documents in question, in mu considered opinion, would certainly enable the court to arrive at the truth and I do not know whether the petitioner is afraid of facing it. Therefore, I find absolutely no reasons to interfere with the order of the court below.

37. In fine, I find no merits in the revision petition and hence, it is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

–X–

2017(3) L.S. (Madras) 27

IN THE HIGH COURT OF MADRAS
(MADURAI BENCH)

Present:
The Hon'ble Mr. Justice
T.Ravindran

K.Nainar Chettiar
& Ors., ..Appellants

Vs.

Rusabali & Ors., ..Respondents

CIVIL PROCEDURE CODE,Sec.146 and 151 and Order – IX, Rule 13 – Civil Revision – Application preferred by petitioners was not entertained in the Trial court to set aside ex parte preliminary decree and ex parte final decree passed in the suit proceedings.

Petitioners purchased one of the items of suit scheduled properties pendente lite – Petitioner contends that the parties of the suit in collusion, committed fraud by not bringing to the knowledge of the court about alienations made pendente lite.

Held – It is not established by petitioners as to how they could maintain a single application to set aside both ex parte preliminary decree and ex parte final decree passed and petitioners have not stated as to when they came to know about the same – Petitioners should have moved necessary applications to condone delay in filing application to set aside ex parte decrees passed in the suit – Though a transferee pendente lite is entitled to maintain application under Order IX Rule 13 of C.P.C., to set aside ex parte decrees passed against his transferor but the application preferred by petitioners had not conformed the requirements of law – Application laid by petitioners is not maintainable – Civil revision petition is dismissed.

Mr.M.P.Senthil, Advocate Petitioners.
Mr.S.Sivathilakar for R1 & R2 Mr.G.Prabhu Rajadurai for R3 & R4, Advocate Respondents.

O R D E R

In this civil revision petition, the fair and decreetal orders, dated 05.12.2007, passed in unnumbered I.A.No.....of 2007 in O.S.No.251 of 1994, on the file of the Sub Court, Thoothukudi, are being challenged.

2. It is found that the respondents 1 and 2 are the plaintiffs and the respondents 3 and 4 are the defendant in the suit in O.S.No.251 of 1994. It is further found the said suit has been laid for partition. It is further found that the said suit had been contested by the defendants by filing a written statement. However, it is found that in culmination, an ex parte preliminary decree had come to be passed in the suit on 11.08.2003 and thereafter, it is found that the plaintiffs preferred I.A.No.194 of 2004 for passing a final decree in terms of the preliminary decree and accordingly, it is seen that an ex parte final decree had also come to be passed in the suit on 30.09.2005. It is further seen that the

plaintiffs had levied execution proceedings in E.P.No.43 of 2006 for recovery of possession of the properties allotted to them by way of the final decree passed in the suit. While the matter stood thus, it is found that the petitioners, who are third parties to the proceedings, had preferred an application, under Order IX Rule 13 r/w Sections 146 and 151 of the Code of Civil Procedure, mainly contending that the respondents 3 and 4 / defendants, during the pendency of the suit, have alienated the first item of the third schedule properties to one Subramanian Chettiar on 22.06.2001 and accordingly, handed over the possession of the said property to the purchaser Subramanian Chettiar and thereafter, according to the petitioners, they had purchased the above said property for a valid consideration, on 05.02.2007 from Subramanian Chettiar and accordingly, he had delivered the possession of the same to them and inasmuch as the respondents 3 and 4 / defendants knew very well about the conveyance of the title of the said property to Subramanian Chettiar and in turn, Subramanian Chettiar, having conveyed the same in favour of the petitioners, the respondents 3 and 4 should have brought to the notice of the Court about the above said alienations and accordingly, sought permission of the Court to implead the petitioners in the suit proceedings, however, they had deliberately failed to take steps to implead the petitioners and on the other hand, according to the petitioners, the respondents 3 and 4 / defendants, in collusion with the respondents 1 and 2 / plaintiffs schemed to knock away the properties inclusive of the property, which the petitioners had purchased as above stated and in such view of the matter, it is stated that on account of the fraud committed by the parties involved in the suit proceedings and inasmuch as thereby the interest of the petitioners had been seriously affected and the decrees seem to have been obtained by the plaintiffs in collusion with the defendants, without bringing to the knowledge of the Court about the alienations made pendente lite, it is the case of the petitioners that a fraud has been committed by the plaintiffs and the defendants and hence, according to them, the ex parte preliminary and final decrees in the suit are liable to be set aside and hence, the petitioners had come come forward with the above said application, under Order IX Rule 13 r/w Sections 146 and 151 of the Code of Civil Procedure.

3. The above said application of the petitioners was returned by the Court concerned as the final decree had been passed in the suit on 30.09.2005 and further as the petitioners are not parties in the suit and to state how the application is maintainable. The petitioners had re-presented the application contending that Section 151 C.P.C., can be invoked to serve the ends of justice and also to prevent the abuse of process of the Court and inasmuch as they had purchased one of the items of the suit schedule properties as above stated pendente lite and after sale, as the defendants remained ex parte and consequently, ex parte preliminary and final decrees had come to be passed and as the decrees have come to be passed in collusion of the plaintiffs and the defendants and as the Commissioner had also failed to bring it to the notice of the Court about

the petitioners' possession at the time of passing final decree, the Court had also been misled in the proceedings and hence, as fraud has been committed by the parties to the suit, according to the petitioners, the application preferred by them is maintainable as per certain decisions relied upon by them.

4. In view of the above said resistance put forth by the petitioners to the order of return made by the Court, it is found that the Court finally noting that the suit having been filed in the year 1994 and the preliminary decree having been passed on 11.08.2003 and the final decree having been passed on 30.09.2005 and in such view of the matter, inasmuch as the petitioners are not parties in the proceedings, held that the application laid by the petitioners is not maintainable and the decisions relied upon by the petitioners are not applicable to the facts and circumstances and acceptable reasonings have not been given that the decrees had been passed in the suit on account of the fraud and collusion and when the final decree had come to be passed on the basis of the Commissioner's report and further there is a delay of four years in the filing of the application and as the provisions of law relied upon the petitioners are found to be not applicable, rejected the application. Impugning the same, the present civil revision petition has been preferred.

5. It is the contention of the learned counsel for the petitioners that when it is the case of the petitioners that they had purchased one of the items of the suit schedule properties pendente lite as above stated and when the said fact is known to the defendants, the defendants owe a duty to bring the same to the knowledge of the Court and invite the Court's permission to implead the petitioners as parties to the suit proceedings and on the other hand, the defendants have suppressed the same and further as the defendants and the plaintiffs have in collusion obtained the decrees passed in the suit as above stated and by way of the above said decrees, the petitioners having been put to loss and only recently, the petitioners have come to know about the above said developments, they have been necessitated to set aside the ex parte decree passed in the suit. As to the determination of the Court below that the application is not maintainable, it is the contention of the learned counsel for the petitioners that a combined reading of Order IX Rule 13 and Order XXII Rule 10 and Section 146 C.P.C., would go to show that the petitioners having purchased one of the items of the suit properties from the respondents 3 and 4 / defendants, the petitioners in turn should be held to have derived title of the property concerned from the said defendants and accordingly, the defendants having remained ex parte and when according to the petitioners, they had remained ex parte in furtherance of the collusion made with the plaintiffs and thereby, the defendants having failed to bring it to the knowledge of the Court about the purchase of the property concerned by the petitioners and consequently, committed the fraud on the Court, it is the case of the petitioners that in the light of the decision of the Apex Court reported in (2004) 2 SCC 601 (Raj Kumar vs. Sardari Lal and others), their application under Order IX Rule 13 r/

w Section 146 and 151 C.P.C., is maintainable and accordingly, prayed to set aside the impugned order and to the direct the Court below to take the application on file and dispose of the same on merits and in accordance with law.

6. Countering to the above submissions, the learned counsel for the respondents contended that the petitioners being not parties to the suit proceedings are not entitled to maintain the application under Order IX Rule 13 C.P.C., to set aside the decrees passed in the suit and further, there is no material placed to hold that the plaintiffs and the defendants had acted in collusion and thereby, committed a fraud upon the Court and when, according to the petitioners, they had purchased one of the items of the suit properties pendente lite, it is contended that the petitioners being the purchasers pendente lite whatever the decree that would be passed in the suit would equally bind upon them and inasmuch as the petitioners have also not preferred the application in time and as the petitioners have not established their entitlement to maintain the application, it is stated that the Court below has rightly rejected the application and hence, the impugned order does not call for any interference.

7. No doubt, the petitioners are third parties to the suit proceedings. However, it is the case of the petitioners that pendente lite their vendor and subsequently, the petitioners had purchased one of the items of the suit properties from the defendants. Therefore, according to them, the defendants being aware of the same should have apprised to the Court the above said developments and the defendants have suppressed the same and remained ex parte and not contesting the suit laid by the plaintiffs, the inevitable conclusion would be that the decrees had been obtained in suit only pursuant to the collusion made between the plaintiffs and the defendants and in such view of the matter, on account of the purchase of one of the items of the suit properties, the passing of the decrees in the suit would materially affect the interest of the petitioners in respect of the purchased item and hence, they had been necessitated to set aside the ex parte decree passed in the suit. In this connection, strong reliance is placed upon the decision of the Apex Court as cited above. A perusal of the said decision would go to show that the Apex Court, on a combined reading of Section 146, Order XXII Rule 10 and Order IX Rule 13 C.P.C., finally concluded that a lis pendens transferee though not brought on record under Order XXII Rule 10 C.P.C., is entitled to move an application under Order IX Rule 13 to set aside the decrees passed against his transferrer / defendant in the suit. Therefore, it is found that as such the petitioners' case being that they are the purchasers pendente lite, they are entitled to maintain the application under Order IX Rule 13 C.P.C., as per the above said decision of the Apex Court and in such view of the matter, according to them, the order of the Court below in rejecting their application is not sustainable in the eyes of law. Further, the learned counsel for the petitioners also relied upon the decision reported in 2013 (2) CTC 104 [Thomson Press (India) Ltd., vs. Nanak Builders & Investors P. Ltd., and another].

8. In the light of the above cited decision, it is found that on a combined reading of the provisions of law above stated, it is seen that a transferee pendente lite would be entitled to maintain the application under Order IX Rule 13 C.P.C., to set aside the ex parte decrees passed against their transferrer in the suit proceedings. Therefore, prima facie it is found that the transferee pendente lite is entitled to maintain the application under Order IX Rule 13 C.P.C.

9. Now, considering the facts and circumstances of the present case, it is found that the above said application has been preferred by the petitioners to set aside the ex parte preliminary decree and ex parte final decree passed in the suit proceedings. It is found that the preliminary decree had come to be passed on 11.08.2003 and the final decree had come to be passed on 30.09.2005. In such view of the matter, when the decrees above stated have been passed on different dates and in different situations, considering the facts and circumstances of the case prevailing then, it is not established by the petitioners as to how they could maintain a single application to set aside the both ex parte preliminary decree and ex parte final decree passed in the suit. When the cause of action for setting aside the said decrees are found to be different, it is seen that on the above score, the single application laid by the petitioners to set aside the above said decrees passed in the suit is not maintainable.

10. Now, according to the petitioners, as seen from the affidavit filed by them in support of the application, they had come to learn that the plaintiffs have obtained an ex parte preliminary decree on 11.08.2003 and in consequence, they have got an ex parte final decree in the suit proceedings. However, it is not stated as to when the petitioners have come to know about the passing of the ex parte preliminary decree and the ex parte final decree in the suit proceedings. Very vaguely, they have stated that they have come to learn about the same. Subsequently, it is also stated by them that only on 12.11.2007 when the Amin from the Court demanded the vacant possession from them, they had come to know about the suit proceedings. Even with reference to the same, there is no material worthwhile acceptance forthcoming. Therefore, it is found that the petitioners having come forward with an application to set aside the decrees passed in the suit on different dates and the above said decrees having come to be passed on different situations, it is found that when further the petitioners have not established prima facie that they had come to know about the decrees passed in the suit only on 12.11.2007 as stated by them and with reference to their knowledge about the passing of the decrees in the suit, the plea in the application is very vague and the Court below also noted that the applications have not been preferred in time and the petitioners have come forward with the application nearly four years after the passing of the preliminary decree and two years after the passing of the final decree, it is found that the application laid by the petitioners simpliciter for setting aside the ex parte decrees without necessary applications to condone the delay in filing the same is not maintainable.

11. As seen from the contentions of the petitioners, it is found that the petitioners have claimed the right to set aside the ex parte decrees passed in the suit, they being transferees pendente lite, on the footing that they had derived the right to the property purchased by them from the defendants and thereby claim to have right to maintain the application by stepping into the shoes of the defendants. When it is not the case of the petitioners that the defendants have no knowledge about the decrees passed in the suit and the inevitable conclusion being that the defendants have knowledge about the passing of the decrees in the suit and when the petitioners claim right to maintain the application only through the defendants, it is found that on the above ground also, the petitioners should have moved necessary applications to condone the delay in filing the application to set aside the ex parte decrees passed in the suit. It is, thus, found that when obviously there is enormous delay in the filing of the application to set aside the decrees passed in the suit and when no requisite applications having been preferred by the petitioners to condone the delay, it is found that on that score also the application preferred by the petitioners is not maintainable.

12. In view of the foregoing reasons, though it is found that a transferee pendente lite is entitled to maintain the application under Order IX Rule 13 C.P.C., to set aside ex parte decrees passed against his transferrer as per the decision of the Apex Court, as the application preferred by the petitioners had not conformed to the requirements of law, as above discussed, in my considered opinion, the application laid by the petitioners is not maintainable and on the above said grounds, it is found that the application cannot be entertained. Though this Court has come to the conclusion that the application laid by the petitioners is not maintainable on different reasonings, inasmuch as the outcome of the impugned order of the Court below is the rejection of the application laid by the petitioner as not maintainable, for the reasons aforestated, the impugned order of the Court below is confirmed.

13. Resultantly, the civil revision petition is dismissed with costs. Consequently, connected miscellaneous petition is closed.

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2017 (3) L.S. 25 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Chief Justice of India Dipak Misra
The Hon'ble Mr.Justice A.M.Khanwilkar &
The Hon'ble Dr.Justice D.Y.Chandrachud

Parbatbhai Aahir @ Parbatbhai Bhimsnhbhai Karmur & Ors., ..Appellants
Vs.
State of Gujarat & Anr., ..Respondents

CRIMINAL PROCEDURE CODE, Sec.482 – Appellants sought the quashing of a FIR registered against them – Complainant/ Respondent was approached by appellants to purchase his land – When respondent followed up for payment of balance amount from appellants, he was threatened of a forcible transfer of the land.

Appellants advanced a plea before High Court for quashing of FIR on the ground that they amicably settled dispute with complainant, and even complainant had also filed an affidavit to that effect – In the view of High Court, it was not in the interest of society at large to accept settlement and quash the FIR - Prayer to quash FIR has been rejected.

Held – In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of jurisdiction under section 482 of Cr.P.C, by High Court, revolves ultimately on facts and circumstances of each case and nature of offence committed and High Court must evaluate whether ends of justice would justify the exercise of inherent power – There may be criminal cases which have predominant element of civil dispute and they stand on different footing in so far as exercise of inherent power to quash is concerned – Instant case involves allegations of extortion, forgery and fabrication of documents – Supreme Court agrees with the view of High Court – Criminal appeal stands dismissed.

J U D G M E N T
(per the Hon'ble Dr.Justice D.Y.Chandrachud)

Leave granted.

2 By its judgment dated 25 November 2016, the High Court of Gujarat dismissed an application under Section 482 of the Code of Criminal Procedure, 1973. The appellants sought the quashing of a First Information Report registered against them on 18 June 2016 with the City 'C' Division Police Station, District Jamnagar, Gujarat for offences punishable under Sections 384, 467, 468, 471, 120-B and 506(2) of the Penal Code. The second respondent is the complainant.

3 In his complaint dated 18 June 2016, the second respondent stated that certain land admeasuring 17 vigha comprised in survey 1408 at Panakhan Gokulnagar in Jamnagar city was his ancestral agricultural land. The land was converted to non-agricultural use on 21 June 1995 and 5 January 2000 pursuant to orders of the District Collector. One hundred and three plots were carved out of the land. Amongst them, plots 45 to 56 admeasuring 32,696 sq.ft. were in the joint names of six brothers and a sister (represented by the complainant). According to the complainant, a broker by the name of Bachhubhai Veljibhai Nanda approached him with Parbatbhai Ahir, the first appellant stating that he desired to purchase the land. On the next day, the first appellant approached the complainant with his partner Hasmukhbhai Patel (the third appellant) to purchase the land. The complainant was requested to provide a photocopy of the lay out plan of the plot, which he did. On the following day the first appellant is alleged to have gone to the house of the complainant with the second and the third appellants at which point in time, parties agreed that the land would be sold at the rate of Rs 4,221 per sq.ft. and a deal was struck for a consideration of Rs.1,13,58,711/- out of which an amount of Rs 11 lakhs was given in cash to the complainant for plot no.56. The complainant's case is that while the discussion was on, he was requested by the second and the third appellants that since the power of attorney was old and unreadable all the plot holders should give their passport size photographs. Accordingly, a document was reduced to writing by which it was agreed that the sale transaction for plot no.56 would be completed within two months against full payment. According to the complainant, when he demanded the remaining payment for the plot from the second and third appellants, the second appellant provided him seven cheques each in the amount of Rs 6 lakhs in the name of the six brothers (one brother being given two cheques). Thereafter when the complainant followed up for the payment of the remaining amount with the purchasers, the balance was not paid and, on the contrary, the complainant was threatened of a forcible transfer of the land. According to the complainant, when he visited the office of the Sub-registrar about three days before lodging the complaint, it came to his knowledge that a sale deed has been registered not only in respect of the plot in question (which was agreed to be sold) but also in respect of plot nos.45 to 55 on 27 January 2016. It was then that the complainant realised that the purchaser in the sale deed was shown as the fourth appellant, Jayesh Arvindbhai Patel, and the name of the seventh appellant, Jitudan Nankudan Gadhavi, resident of Payalnagar society, Naroda, Ahmedabad was shown as the holder of a power of attorney. The witnesses to the registered sale deed were the fifth appellant, Rabari Hiteshbhai and the sixth appellant, Patel Indravaden Dineshbhai.

4 The complaint came to be lodged on the complainant having realised that the power of attorney in the name of his siblings had

been forged. The complainant stated that neither he nor any of his siblings had given a power of attorney in favour of the seventh appellant. According to the complainant, neither the non-judicial stamp dated 25 January 2016 in the amount of Rs 10,30,000/- nor the judicial stamp dated 27 January 2016 has been purchased by him. In fact, according to the complainant, it was the fourth appellant who had purchased the judicial stamp dated 27 January 2016. 5 According to the complaint, plots no.45 to 55 admeasuring 30,005 sq.ft. are valued at Rs 12.50 crores. It has been alleged that a conspiracy was hatched by the appellants and by the other co-accused resulting into the transfer of valuable land belonging to the complainant and his siblings, on the basis of forged documents.

6 The High Court noted that the fourth appellant had moved Special Criminal Application no.4538 of 2016 which had been rejected by the coordinate bench of the High Court on 3 August 2016. While rejecting the earlier application under Section 482, the High Court had observed thus:

> "19. Primary details revealed the complaint had led this Court examine the papers of the investigation. The evidence so far collected prima facie reveal the involvement of the petitioner.This Court also could notice that it is a case where under the pretext of buying only a particular Plot No.56 from the complainant and his family members, the power of attorney has been forged usurping nearly 10 other plots which value nearly 11 crores and odd by allegedly conniving with each other, and therefore, the payment of Rs 42 lakhs by the cheques to the complainant in relation to one of the plots also would pale into insignificance. This, by no means, even at a prima facie level, can be said to be a civil dispute, given a colour of criminality. It would be in the interest of both the sides for this Court to either, at this stage not to make a roving inquiry or divulge anything which may affect the ongoing investigation. Suffice it to note that, the petition does not deserved to be entertained an the same stands rejected." Before the High Court, the plea for quashing the First Information Report was advanced on the ground that the appellants had amicably settled the dispute with the complainant. The complainant had also filed an affidavit to that effect.

7 On behalf of the prosecution, the Public Prosecutor opposed the application for quashing on two grounds. First - the appellants were absconding and warrants had been issued against them under Section 70 of the Code of Criminal Procedure, 1973. Second, the appellants had criminal antecedents, the details of which are contained in the following chart submitted before the High Court:

1	Parbatbhai Bhimsinhbhai Karmur	a. City "A" Division Jamnagar CR No 1-251/2010	P.1
2	Ramde Bhikha Nanadaniya	a. City "A"Division Jamnagar Cr.No. 1-135/2016 b.City "A" Division Jamnagar CR No.1-105/2016 c.City "A" Division Jamnagar CR No.1-251/2010	P.2 2 2
3	Hasmukh Hansrajbhai Patel	a. Gandhinagar M-Case No.1/2014 b. City "A" Division Jamnagar CR No.1-105/2016	P.3
4	Indravadan Dineshbhai Patel	a. City "A: Division Jamnagar CR No.1-105/2016	P.6
5	Jitendra Somabhai Modi	a. City "A" Division Jamnagar CR No.1-105/2016 b. Odhav Police Station CR No.I-180/2015	P.7
6	Vishnu @ Toto Rabari	a. Gandhinagar M-Case No.1/2014 b. City "A: Division Jamnagar CR No.I-105/2016	

The High Court observed that it had been given "a fair idea" about the modus operandi adopted by the appellants for grabbing the land, in the course of which they had opened bogus bank accounts. The High Court held that the case involves extortion, forgery and conspiracy and all the appellants have acted as a team. Hence, in the view of the High Court, it was not in the interest of society at large to accept the settlement and quash

the FIR. The High Court held that the charges are of a serious nature and the activities of the appellants render them a potential threat to society. On this ground, the prayer to quash the First Information Report has been rejected.

8 On behalf of the appellants, reliance has been placed on the decisions rendered by this Court in GIAN SINGH V STATE OF PUNJAB (2012) 10 SCC 303 AND IN NARINDER SINGH V STATE OF PUNJAB (2014) 6 SCC 466. Learned counsel submitted that the dispute between the complainant and the appellants arose from a transaction for the sale of land. It was urged that the dispute is essentially of a civil nature and since parties have agreed to an amicable settlement, the proper course for the High Court would have been to quash the FIR in exercise of the jurisdiction conferred by Section 482 of the Code of Criminal Procedure, 1973.

9 On the other hand, learned counsel appearing on behalf of the state

has supported the judgment of the High Court. Learned counsel emphasised the circumstances which weighed with the High Court, including (i) the seriousness of the allegations; (ii) the conduct of the appellants who were absconding; and (iii) the criminal antecedents of the appellants. Hence, it was urged that the appellants were not entitled to the relief of quashing the FIR merely because they had entered into a settlement with the complainant. 10 Section 482 is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any court; or (ii) otherwise to secure the ends of justice. In Gian Singh (supra) a bench of three learned Judges of this Court adverted to the body of precedent on the subject and laid down guiding principles which the High Court should consider in determining as to whether to quash an FIR or complaint in the exercise of the inherent jurisdiction. The considerations which must weigh with the High Court are:

> "61 …the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the

> victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society.

Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding." 11 In Narinder Singh (supra), Dr Justice A K Sikri, speaking for a bench of two learned Judges of this Court observed that in respect of offences against society, it is the duty of the state to punish the offender. In consequence, deterrence provides a rationale for punishing the offender. Hence, even when there is a settlement, the view of the offender and victim will not prevail since it is in the interest of society that the offender should be punished to deter others from committing a similar crime. On the other hand, there may be offences falling in the category where the correctional objective of criminal law would have to be given more weightage than the theory of deterrence. In such a case, the court may be of the opinion that a settlement between the parties would lead to better relations between them and would resolve a festering private dispute. The court observed that the timing of a settlement is of significance in determining whether the jurisdiction under Section 482 should be exercised:

> "29.7…Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/ investigation.

It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits…" This Court held, while dealing with an offence under Section 307 of the Penal Code that the following circumstances had weighed with it in quashing the First Information Report:

> "33. We have gone through the FIR as well which was recorded on the basis of statement of the complainant/ victim. It gives an indication that the complainant was attacked allegedly by the accused persons because of some previous dispute between the parties, though nature of dispute etc. is not stated in detail.However, a very pertinent statement appears on record viz., "respectable persons have been trying for a compromise up till now, which could not be finalized". This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the accused on the complainant. In this context when we find that the elders of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is yet to be led in the Court. It has not even started. In view of compromise between parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. Even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be remote. It would, therefore, be unnecessary to drag these proceedings..."

12 In State of Maharashtra v Vikram Anantrai Doshi (2014) 15 SCC 29, a bench of two learned Judges of this Court explained the earlier decisions and the principles which must govern in deciding whether a criminal proceeding involving a non-compoundable offence should be quashed. In that case, the respondents were alleged to have obtained Letters of Credit from a bank in favour of fictitious entities. The charge-sheet involved offences under Sections 406, 420, 467, 468, and 471 read with Section 120-B of the Penal Code. Bogus beneficiary companies were alleged to have got them discounted by attaching fabricated bills. Mr Justice Dipak Misra (as the learned Chief Justice then was) emphasised that the case involved an allegation of forgery; hence the

court was not dealing with a simple case where "the accused had borrowed money from a bank, to divert it elsewhere". The court held that the manner in which Letters of Credit were issued and funds were siphoned off had a foundation in criminal law:

> "... availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly exposits fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the chargesheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominatingly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation." The judgment of the High Court quashing the criminal proceedings was hence set aside by this Court.

13 The same principle was followed in Central Bureau of Investigation v Maninder Singh (2016) 1 SCC 389 by a bench of two learned Judges of this Court. In that case, the High Court had, in the exercise of its inherent power under Section 482 quashed proceedings under Sections 420, 467, 468 and 471 read with Section 120-B of the Penal Code. While allowing the appeal filed by the Central Bureau of Investigation Mr Justice Dipak Misra (as the learned Chief Justice then was) observed that the case involved allegations of forgery of documents to embezzle the funds of the bank. In such a situation, the fact that the dispute had been settled with the bank would not justify a recourse to the power under Section 482:

> "…In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved."

14 In a subsequent decision in State of Tamil Nadu v R Vasanthi Stanley (2016)1 SCC 376 , the court rejected the submission that the first respondent was a woman "who was following the command of her husband" and had signed certain documents without being aware of the nature of the fraud which was being perpetrated on the bank. Rejecting the submission, this Court

held that:

> "... Lack of awareness, knowledge or intent is neither to be considered nor accepted in economic offences. The submission assiduously presented on gender leaves us unimpressed. An offence under the criminal law is an offence and it does not depend upon the gender of an accused. True it is, there are certain provisions in Code of Criminal Procedure relating to exercise of jurisdiction Under Section 437, etc. therein but that altogether pertains to a different sphere. A person committing a murder or getting involved in a financial scam or forgery of documents, cannot claim discharge or acquittal on the ground of her gender as that is neither constitutionally nor statutorily a valid argument. The offence is gender neutral in this case. We say no more on this score…" "…A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the load on the system…" 15 The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

16 Bearing in mind the above principles which have been laid down in the decisions of this Court, we are of the view that the High Court was justified in declining to entertain the application for quashing the First Information Report in the exercise of its inherent jurisdiction. The High Court has adverted to two significant circumstances. Each of them has a bearing on whether the exercise of the jurisdiction under Section 482 to quash the FIR would subserve or secure the ends of justice or prevent an abuse of the process of the court. The first is that the appellants were absconding and warrants had been issued against them under Section 70 of the Code of Criminal Procedure, 1973. The second is that the appellants have criminal antecedents, reflected in the chart which has been extracted in the earlier part of this judgment. The High Court adverted to the modus operandi which had been followed by the appellants in grabbing valuable parcels of land and noted that in the past as well, they were alleged to have been connected with such nefarious activities by opening bogus bank accounts. It was in this view of the matter that the High Court observed that in a case involving extortion, forgery

and conspiracy where all the appellants were acting as a team, it was not in the interest of society to quash the FIR on the ground that a settlement had been arrived at with the complainant. We agree with the view of the High Court. The present case, as the allegations in the FIR would demonstrate, is not merely one involving a private dispute over a land transaction between two contesting parties. The case involves allegations of extortion, forgery and fabrication of documents, utilization of fabricated documents to effectuate transfers of title before the registering authorities and the deprivation of the complainant of his interest in land on the basis of a fabricated power of attorney. If the allegations in the FIR are construed as they stand, it is evident that they implicate serious offences having a bearing on a vital societal interest in securing the probity of titles to or interest in land. Such offences cannot be construed to be merely private or civil disputes but implicate the societal interest in prosecuting serious crime. In these circumstances, the High Court was eminently justified in declining to quash the FIR which had been registered under Sections 384, 467, 468, 471, 120-B and 506(2) of the Penal Code.

17 We do not, for the above reasons, find any merit in the appeal. The Criminal Appeal shall accordingly stand dismissed.

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2017 (3) L.S. 35 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Adarsh Kumar Goel

The Hon'ble Mr.Justice
Uday Umesh Lalit

M/s.Meters & Instruments Pvt.Ltd., ..Appellants

Vs.

Kanchan Mehta ..Respondents

NEGOTIABLE INSTRUMENTS ACT, Secs.138, 139 & 143 - CRIMINAL PROCEDURE CODE,Sec.258 and 357(1)(b) – Question as to how proceedings for an offence U/Sec. 138 of NI Act can be regulated, where the accused is willing to deposit cheque amount – Whether in such a case, proceedings can be closed or exemption granted from personal appearance or any other order can be passed.

Respondent filed complaint alleging that appellants were to pay a monthly amount to her under an agreement – Cheque was given in discharge of legal liability but the same was returned unpaid for want of sufficient funds – In spite of service of legal notice amount was not paid.

Held – The object of Sec.138 of NI Act was described to be both punitive

as well as compensatory – Complainant could be given not only cheque amount but double the amount so as to cover interests and costs – The Law Commission in its 213th Report, noted that out of total pendency of 1.8 crores cases in the country, 38 lakh cases about (20% of total pendency) are related to section 138 of NI Act – Where cheque amount with interest and costs as assessed by the court is paid by a specified date, the court is entitled to close proceedings in exercise of its powers U/S 143 of NI Act read with 258 Cr.P.C – It is open to court to explore possibility of settlement and consider provisions of plea bargaining – Trial can be on day to day basis and endeavour must be to conclude it within six months.

J U D G M E N T

(per the Hon'ble Mr.Justice Adarsh Kumar Goel)

1. Leave granted. These appeals have been preferred against the order dated 21st April, 2017 of the High Court of Punjab and Signature Not Verified Haryana at Chandigarh in CRLM Nos.13631, 13628 and 13630 of Digitally signed by MADHU BALA Date: 2017.10.06 05:24:42 IST Reason: 2017. The High Court rejected the prayer of the appellants for compounding the offence under Section 138 of the Negotiable Instruments Act, 1881 (the Act) on payment of the cheque amount and in the alternative for exemption from personal appearance.

2. When the matters came up for hearing before this Court earlier, notice was issued to consider the question "as to how proceedings for an offence under Section 138 of the Act can be regulated where the accused is willing to deposit the cheque amount. Whether in such a case, the proceedings can be closed or exemption granted from personal appearance or any other order can be passed." The Court also appointed Mr. K.V. Viswanathan, learned senior counsel to assist the Court as amicus and Mr. Rishi Malhotra, learned counsel to assist the amicus. Accordingly, learned amicus has made his submissions and also filed written submissions duly assisted by S/Shri Rishi Malhotra, Ravi Raghunath, Dhananjay Ray and Sidhant Buxy, advocates. We place on record our appreciation for the services rendered by learned amicus and his team.

3. Few Facts: The Respondent Kanchan Mehta filed complaint dated 15th July, 2016 alleging that the appellants were to pay a monthly amount to her under an agreement. Cheque dated 31 st March, 2016 was given for Rs.29,319/- in discharge of legal liability but the same was returned unpaid for want of sufficient funds. In spite of service of legal notice, the amount having not been paid, the appellants committed the offence under Section 138 of the Act. The Magistrate vide order dated 24th August, 2016, after considering the complaint and the preliminary evidence, summoned the appellants. The Magistrate in the order dated 9 th November, 2016 observed that the case could not be tried summarily as sentence of more than one year may have to be passed and be tried as summons case. Notice of accusation dated 9th November, 2016 was served under Section 251 Cr.P.C.

4. Appellant No.2, who is the Director of appellant No.1, made a statement that he was ready to make the payment of the cheque amount. However, the complainant declined to accept the demand draft. The case was adjourned for evidence. The appellants filed an application under Section 147 of the Act on 12 th January, 2017 relying upon the judgment of this Court in Damodar S. Prabhu versus Sayed Babalal H.(2010) 5 SCC 663 The application was dismissed in view of the judgment of this Court in JIK Industries Ltd. versus Amarlal versus Jumani (2012) 3 SCC 255 which required consent of the complainant for compounding. The High Court did not find any ground to interfere with the order of the Magistrate. Facts of other two cases are identical. Hence these appeals.

5. We have heard learned counsel for the parties and learned amicus who has been duly and ably assisted by S/Shri Rishi Malhotra, Ravi Raghunath, Dhananjay Ray and Sidhant Buxy, advocates. We proceed to consider the question.

6. The object of introducing Section 138 and other provisions of Chapter XVII in the Act in the year 1988 Vide the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 was to enhance the acceptability of cheques in the settlement of liabilities. The drawer of cheque is made liable to prosecution on dishonour of cheque with safeguards to prevent harassment of honest drawers. The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 to amend the Act was brought in, inter-alia, to simplify the procedure to deal with such matters. The amendment includes provision for service of summons by Speed Post/ Courier, summary trial and making the offence compoundable.

7. This Court has noted that the object of the statute was to facilitate smooth functioning of business transactions. The provision is necessary as in many transactions cheques were issued merely as a device to defraud the creditors. Dishonour of cheque causes incalculable loss, injury and inconvenience to the payee and credibility of business transactions suffers a setback Goa Plast (P) Ltd. v. Chico Ursula D'Souza (2004) 2 SCC 235 At the same time, it was also noted that nature of offence under Section 138 primarily related to a civil wrong and the 2002 amendment specifically made it compoundable Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.(2008) 2 SCC 305. The offence was also described as 'regulatory offence'. The burden of proof was on the accused in view of presumption under Section 139 and the standard of proof was of "preponderance of probabilities" Rangappa v. Sri Mohan (2010) 11 SCC 7 R. Vijayan v. Baby (2012) 1 SCC 260 . The object of the provision was described as both punitive as well as compensatory. The intention of the provision was to ensure that the complainant received the amount of cheque by way of compensation. Though proceedings under Section 138 could not be treated as civil suits for recovery, the scheme of the provision, providing for punishment with imprisonment or with fine which could extend to twice the amount of the cheque or to the both, made the intention of law clear. The complainant could be given not only the cheque amount but double the amount so as to cover interest and costs. Section 357(1)(b) of the Cr. P.C. provides for payment of compensation for

the loss caused by the offence out of the fine. Where fine is not imposed, compensation can be awarded under Section 357(3) Cr.P.C. to the person who suffered loss. Sentence in default can also be imposed. The object of the provision is not merely penal but to make the accused honour the negotiable instrumentsLafarge Aggregates & Concrete India (P) Ltd. v. Sukarsh Azad (2014) 13 SCC 779 .

8. In view of the above scheme, this Court held that the accused could make an application for compounding at the first or second hearing in which case the Court ought to allow the same. If such application is made later, the accused was required to pay higher amount towards cost etcDamodar S. Prabhu (supra) . This Court has also laid down that even if the payment of the cheque amount, in terms of proviso (b) to Section 138 of the Act was not made, the Court could permit such payment being made immediately after receiving notice/ summons of the court(2006) 6 SCC 456, (2007) 6 SCC 555. The guidelines in Damodar (Supra) have been held to be flexible as may be necessary in a given situation Para 23 in Madhya Pradesh State Legal Services Authority versus Prateek Jain and Anr. (2014) 10 SCC 690 . Since the concept of compounding involves consent of the complainant, this Court held that compounding could not be permitted merely by unilateral payment, without the consent of both the parties.Rajneesh Aggarwal v. Amit J. Bhalla (2001) 1 SCC 631**.**

9. While the object of the provision was to lend credibility to cheque transactions, the effect was that it put enormous burden on the courts' dockets. The Law Commission in its 213 th Report, submitted on 24th November, 2008 noted that out of total pendency of 1.8 crores cases in the country (at that time), 38 lakh cases (about 20% of total pendency) related to Section 138 of the Act. This Court dealt with the issue of interpretation of 2002 amendment which was incorporated for simplified and speedy trials. It was held that the said provision laid down a special code to do away with all stages and processes in regular criminal trial Mandvi Cooperative Bank Ltd. v.Nimesh B. Thakore(2010) 3 SCC 83, paras 25, 26. This Court held that once evidence was given on affidavit, the extent and nature of examination of such witness was to be determined by the Court. The object of Section 145(2) was simpler and swifter trial procedure. Only requirement is that the evidence must be admissible and relevant. The affidavit could also prove documents Para 41, ibid . The scheme of Sections 143 to 147 of the Act was a departure from provisions of Cr.P.C. and the Evidence Act and complaints could be tried in a summary manner except where the Magistrate feels that sentence of more than one year may have to be passed. Even in such cases, the procedure to be followed may not be exactly the same as in Cr.P.C. The expression "as far as possible" in Section 143 leaves sufficient flexibility for the Magistrate so as not to affect the quick flow of the trial process. The trial has to proceed on day to day basis with endeavour to conclude the same within six months. Affidavit of the complainant can be read as evidence. Bank's slip or memo of cheque dishonour can give rise to the presumption of dishonour of the cheque, unless and until that fact was disproved.

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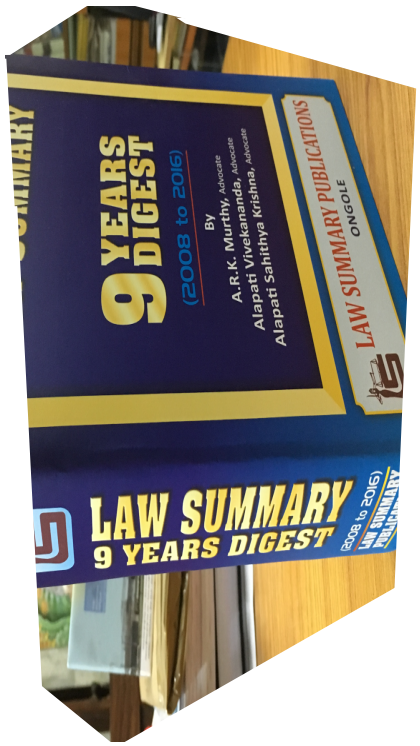

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