Regd.No.PRAKASAM/13/2015-2017 R.N.I.No.APENG/2004/15906

Pages:1 to 84

Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

2017 Vol.(3) Date of Publication 30-11-2017 PART - 22

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MODE OF CITATION: 2017 (3) L.S

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NRI MARRIAGES - ISSUES AND CHALLENGES WITH SPECIAL REFERENCE TO CUSTODY OF CHILDREN

By
Y.SRINIVASA RAO,M.A (English)., B.Ed., LL.M,
Assistant Sessions Judge, Avanigadda,
Krishna District.

The glory of woman in the West is wifehood whereas the glory of woman in the East is motherhood.

——*Swami Vivekananda*

Introductory :

As of 2017, over 30 million NRIs live all over the world. 'NRI marriages are heterogeneous and problematic group, involving sensitive and intricate issues of law as well as facts'.

> In a philosophical sense, a *marriage is a union of two individuals as husband and wife, and is recognized by law. In Hinduism, a marriage joins two individuals for life, so that they can pursue duty (dharma), possession (artha), physical desires (kama), and ultimate spiritual release (moksha) together.*

Non-Resident Indian (NRI) marriage is a family related issue and is mostly well-planned personal decision in life. The term Non-Resident Indian is a new coinage of post-independence era. In the past, Indians migrated to foreign lands for different reasons and acquired citizenship of the country of their domicile. These people are no called as Overseas Citizens of India (OCI). During British period, Indians went abroad for higher education but mostly came back to settle in India. But, after independence, started migrating for personal or professional reasons and were subjected to cross-cultural influences.

Meaning of the word 'NRI'

The abbreviation 'NRI' stands for Non-Resident Indian. ''NRI" means an individual, being a citizen of India or a person of Indian origin who is resident outside India. **Section 2 of Foreign Exchange Management Act, 1999 (Act 42 of 1999)** (FEMA) only defines ''*a person resident in India*'' and also define ''*a person resident outside India*''. But, it does not define the word 'Non-Resident Indian'.

Meaning of the word ''PIO''

The word **'**PIO' stands for 'Person of Indian Origin'. It means a foreign citizen who any time held an Indian passport; or he/she or either of his/her parents or grandparents or great grandparents was born in India and was permanently resident in India or that he/she is spouse of a Indian citizen or Indian Origin.'

Meaning of the word ''OCI''

The word 'OCI' stands for 'Overseas Citizens Of India'. These 'Persons Of Indian Origin–PIOs' are now called 'Overseas Citizens Of India (OCI)' as defined under Citizenship (Amendment) Act, 2005.

Between whom Non-Resident Indian marriage can be performed?

Non Resident Indian marriages may be between following five categories.

1. **Non-resident Male** and **an Indian Female**
2. **Non-resident female** and an **Indian male**
3. **Both Indian spouses** who later on migrate to a foreign land either together or separately
4. **Both non-resident Indian spouses** who marry under Indian marriage laws either in India or in a foreign country
5. **An Indian spouse, male or female**, marrying **a foreign spouse** under Indian marriage laws either in India or in a foreign country.

Two Contrasting issues relating NRI marriages.

1. NRI marriages are transforming the living standard and economic welfare of most families.
2. These are creating disastrous problems for many families for which there seems to be no easy remedy either in law or in civil society.

Other Issues and Challenges relating to NRI marriages:

1. Multiple marriages by NRI youths: They are leaving their wives in lurch, in many cases with children. Now, it is called as ' *Run away marriages*', '*Short Liaison*', '*Holiday-Wife-Syndrome*'.

2. **Culture**:Western Countries do not discourage splitting of marriages. Obtaining divorce in USA, Europe and foreign countries is very easy. Most of our Indian are living in those countries.

3. **Leaving NRI in India**:- After a short, honey moon, the husband had gone back, promising to soon send her ticket that never came. In many instances, the woman would already have been pregnant when he left and so both she and the child (who was born later) were abandoned. The husband never called or wrote and never came back again.

4. **NRI wife and children are subjected to cruelty in abroad**: Woman who went to her husband's home in a foreign country only to be brutally battered, assaulted, abused both mentally and physically, ill fed, and ill-treated by him in several other ways. She was therefore either forced to flee or was forcibly sent back. NRI wife was not allowed to bring back her children along. The children were abducted or forcibly taken away from the woman.

5. **Huge Dowry**: Woman who was herself or whose parents were held to ransom for payment of huge sums of money as dowry, both before and after the marriage.

6. **Bigamy**: Woman who learnt on reaching the country of her NRI husband's residence that he was already married in the other country to another woman, whom he continued to live with.

7. **Denial of maintenance**: Woman who was denied maintenance in India on the pretext that the marriage had already been dissolved by the Court in another country

8. **Technical legal obstacles**: NRI wife has to face obstacles related to jurisdiction of courts, service of notices or orders, or enforcement of orders.

9. **Trial of criminal case held up:** Woman who sought to use criminal law to punish her husband and in-laws for dowry demands and/or matrimonial cruelty and found that the trial could not proceed as the husband would not come to India and submit to the trial or respond in any way to summons, or even warrant of arrest.

10. **Indian Courts have limited jurisdiction**: Woman who was coaxed to travel to the foreign country of the man's residence and get married in that country, who later discovered that Indian courts have even more limited jurisdiction in such cases.

11. **VISA problems**: In USA, NRI spouses on H4 or F2 visa are prohibited from any employment. Some countries impose employment restrictions on spouses of overseas Indians who are on work/student visa. According to Immigration Laws in USA, H4 dependant-visa holders are not eligible for a social security number. Without this number, the individual faces great difficulties in opening a bank account or to secure a driver's license and cannot be gainfully employed either.

12. **Fraudulent NRI marriages**: 1. *Broken marriage*. All broken marriages are not fraudulent marriages. Here, Dowry expectation, bigamous intention, incapability of spouse to cope with mutual differences etc. 2. *Fraudulent marriage.* Concealment of material facts about marital status, education, age, medical/health conditions etc.

13. **Citizenship**: Law Commission of India in its 65th Report has proposed that the domicile of woman should be determined independently of that of husband, in conformity with the spirit of the Indian Constitution. Our Constitution does not permit dual citizenship or dual nationality except for minors where the second nationality was involuntarily acquired. Under Section 5 (1)(c) of Citizenship Act, 1955, a woman married to a citizen of India does not automatically become an Indian citizen, though she may make an application and be registered as a Citizen of India.

Child custody: Issues and Challenges:

As to child custody is concerned, in general sense, looking at the role of mother in past towards children and taking primary responsibility for their health, safety, education and overall welfare; which parents deal with mundane but necessary arrangements of their lives - clothing, haircuts, extracurricular activities, gifts for friends, doctors' and dentists' appointments, contact with their extended family; and mother has the best perception of the emotional needs of the children specifically female child. The local law of our country is to determine as to what is best for the welfare of the children. As per *Hague Convention on the Civil Aspects of International Child Abduction*, children who have been "wrongfully taken" or "wrongfully retained" overseas should normally be returned promptly to their country of habitual residence. In Karan Singh Bajwa vs Jasbir Singh Sandhu And Others, CRWP No.1432 of 2012, Dt. on 3 September, 2012, in the interest of children and the family, the Hon'ble High Court of Punjab and Haryna imposed nine (9) conditions regarding NRI child custody. An issue of **International children abduction** is considered in this case. And it was observed that in custody and access cases, the welfare of the child whose future is at stake is of paramount consideration.

Australian State practice:- Giving importance to best interest for child welfare must be sine qua non to govern the issues relating to child custody. As to this issue, Australian State practice provide important tips in determining the welfare of the child. Some tips are:

1. When children are progressing well in a reasonable secure environment, court will require good reasons for ordering a different placement. See. Curr vs. Curr, 1979 FLR 90-611.
2. Siblings should not be separated.
3. Children's wishes should be respected.
4. Family Law Act provides that the wishes of a child of 14 years as to custody/access will prevail unless court thinks otherwise. (Family Law Act & 64 (i) (b) Court may also give considerable weight to the wishes of the younger children who have certain degree of maturity and understanding of the situation (Schmidt vs. Schmidt, 1979 FLC 90-685).

5. Young children, especially girls are normally best placed in the care of their mother's.

7. Generally speaking , access should be ordered as aspect of children's welfare and not as a 'consolation prize' for the parents who loses custody unless, it poses, some fairly demonstrable risk to the child.

6. Examining the feasibility of invoking the provisions of Extradition Act,1962. Section 20 provides for return of any person accused of or convinced for an extradition offence, from the foreign country to India.

What Laws are applicable to NRI marriages?

1. The NRI marriages may be solemnized under either,

a). the Hindu Marriage Act, 1955,
b). the Special Marriage Act, 1954,
c). the Foreign Marriage Act, 1969 or
d). any other personal law governing the spouses.

The law under which the parties have married will determine the law that will be applicable to the couple. It will also affect their children in respect of rights relating to inheritance and succession, as also the couple's right to adopt, to be guardians or to obtain custody of children.

2. (a) **Hindu Law:** Under section 2 of The Hindu Marriage Act, 1955, it requires that both the parties who are getting married must be Hindus. So that if a non-Hindu wants to marry a Hindu under the Hindu Marriage Act, 1955, the non-Hindu partner will have to get converted to Hinduism before their marriage can take place. *This marriage can be registered under the same Act under Section 8 or even under the Special Marriage Act, 1954 under Section 15 but such registration by itself does not confer on the spouses all the rights guaranteed under the Special Marriage Act, 1954. The Special Marriage Act, 1954 is a secular Act where religion or caste of the spouses is legally not relevant, as Section 4 has used the words "any two persons".* The concept of marriage under the Special Marriage Act is monogamous, that is union for life, dissolvable by judicial authority of law only. Even succession to the property of such persons is also not governed by their personal law i.e. by the law of the community to which the party belongs; it will be governed by Indian Succession Act, 1925.

(b) **Muslim Law**:- The Muslim law, on the other hand, as applied in India permits a Muslim marriage between two Muslims or between a Muslim man and a Christian/Parsi woman but not a Hindu/Budhist or Sikh woman.

(c) **Christian Law**: The Christian law of marriage permits a marriage between any two Christians or even a Christian and a non-Christian under it.

3. The word “Special” be dropped from the title of the Special Marriage Act, 1954 and it be simply called “The Marriage Act, 1954” or “The Marriage and Divorce Act, 1954”. The suggested change will create a desirable feeling that this is the general law of India on marriage and divorce. See. Law Commission of India’s 212the Report.

4. A provision be added to the application clause in the Special Marriage Act, 1954 that ‘’*all inter -religious marriages except those within the Hindu, Buddhist, Sikh and Jain communities, whether solemnized or registered under this Act or not shall be governed by this Act*’’.

4A. The Foreign Marriage Act, 1969, which is just an extension of The Special Marriage Act, 1954 provides that facility for an Indian national to marry abroad with another Indian national or a national of another country or with a person domiciled in another country. Under this Act, a marriage may have been solemnized in India or before a marriage officer in a foreign country. Under this Act, bigamy is void and punishable under Section 19.

5. Section 29 of Hindu Marriage Act, 1955 gives statutory recognition to customary marriages and divorces. This aspect is very important as far as a certain category of Indian immigrants are concerned those men who have migrated abroad from parts of rural India and have subsequently remarried after divorcing their Indian wives by pleading customary divorce. Before permanent settlement can be obtained by the Indian immigrant, who has subsequently remarried a woman of foreign origin and extraction, the immigration authorities will require evidence regarding the legal validity of the customary divorce obtained in India.

6. For the application of Hindu Marriage Act, 1955 as well as Special Marriage Act, 1954, the parties must be domiciled in India at the time of marriage while the question of domicile is not relevant under The Foreign Marriage Act, 1969.

7. Every Hindu domiciled in India shall be governed by the Hindu Marriage Act, 1955 and those whose marriage has been solemnized under the Special Marriage Act, 1954 would be governed by the Special Marriage Act, 1954.

8. **Two situations**: 1. Parties marrying under their personal law in a foreign country are governed by the law in force in that country in respect of such marriage for matrimonial relief.
2. Parties marrying in a foreign country according to the civil law of that country, relief can be claimed in India under Sub-Section (1) of Section 18 of the Foreign Marriage Act, 1969.

9. Section 17 (6) of the Foreign Marriage Act, 1969 being a deeming provision, makes the provisions of the Special Marriage Act, 1954 applicable to all marriages performed under the Foreign Marriage Act, 1969 for purposes of matrimonial relief.

10. A marriage solemnized under British Marriage Act, 1949, between a Muslim husband and a Hindu wife in 1966 is a foreign marriage within the meaning of Foreign Marriage Act, 1969.

11. If NRIs contract civil marriages abroad under foreign laws without solemnizing ceremonial marital customary rites simultaneously either in India or abroad nor register their marriage under any of the Indian marriage laws, such marriages do not come within the ambit of Indian law in any way.

12. But, if the NRI couple, in addition take the precaution of solemnizing their marriage under the Foreign Marriage Act, 1969 in any Indian diplomatic office abroad, such a marriage can come under the jurisdiction of Indian courts.

13. Alternatively, NRI spouses may have to choose either their foreign nationality law or their domicile law abroad to resolve their marital disputes in accordance with such laws.

14. Before permanent settlement can be obtained by the Indian immigrant, who has subsequently remarried a woman of foreign origin and extraction, the immigration authorities will require evidence regarding the legal validity of the customary divorce obtained in India.

15. The Special Marriage Act, 1954 provides for a civil form of marriage, which can be availed of by any one domiciled in India irrespective of the religion, through registration as provided in Chapter II of the Special Marriage Act, 1954, by fulfilling the conditions laid down in clause (a) to (e) of Section 4 of the said Act. It is now clear that the Hindus availing of Chapter II of the Special Marriage Act, 1954 i.e. Sections 4 to 14 would be outside the pale of the Hindu Marriage Act, 1955.

16. As was held in Mariamonia P. v Padmanabham, AIR 2001 Mad. 350, customary divorce was recognized both before and after passage of Hindu Marriage Act, 1955, it is not necessary for the parties in such a case to go to Court to obtain divorce on grounds recognized by custom.

17. For the application of Hindu Marriage Act, 1955 as well as Special Marriage Act, 1954, the parties must be domiciled in India at the time of marriage while the question of domicile is not relevant under The Foreign Marriage Act, 1969.

18. It was held in Vinaya Nair v. Corporation of Kochi, AIR 2006 Ker.275 that Hindu Marriage Act, 1955 has extra-territorial operation and applies to all Hindus even if they reside in different parts outside India.

19. only those Hindus having permanent residence in India will be covered by the Hindu Marriage Act, 1955. There cannot be a Hindu marriage between a Hindu and a Christian. See. Jacintha Kamath v. Padmanabha K., AIR 1992 Kant 372.

20. As was pointed in Sanjay Mishra v. Eveline Joe, AIR 1993 MP 54, as a Hindu marriage between a Hindu and a Christian is invalid and issuance of a certificate of marriage does not cure the invalidity.

How to use the existing legal mechanism to solve issues relating to nri marriages.

1. Validity of NRI marriages will be decided in two ways: Generally, the under the following two ways, NRI marriages will be judged.

a). Whether a religious or civil ceremony has been observed; whether due formalities under the relevant marriage Act have been complied with. The rule is that the law of the place where the ceremony takes place (lex loci celebrationis) will be seen.

b). The rule of personal laws of parties. This is called 'the law of domicile'. See. Apex Court ruling in Lakshmi Sanyal v. S.K. Dhar, AIR 1972 Goa 2667

Section 8(5) of Hindu Marriage Act, 1955 specifically lays down that failure to register a Hindu marriage does not affect its validity. The formal validity of marriage is not as vital as the essential validity to a particular society. Non-observance of any formality renders a marriage voidable only, not void.

1. The existing legislation for bilateral agreements is available on the basis of reciprocity. To say explicitly, these are, Section 44A of Code of Civil Procedure, 1908, Section 3 of Maintenance Orders enforcement Act,1921 and Section 13 of CPC. These laws enable recognition and enforcement of foreign divorce decree, maintenance orders, and child custody etc.

2. In 2012, Section 10(3) of Passport Act was introduced to confiscate passports of people having suspicious marital records.

3. Initiating action under section 3 and other relevant provisions of IPC/Cr.P.C such as Section 188 Cr.P.C; Section 82 (Proclamation for person absconding); Section 83 Cr.P.C (Attachment of property of person absconding);

4. Initiating action against parents and relatives who intentionally refuses to or feign ignorance on the whereabouts of their son, etc.

5. In the event of initiation of any criminal proceedings against the accused NRI husband or his relatives, the provisions of section 285 (3) of Criminal Procedure Code,1973 can be put into action.

6. The guidelines for initiating action may also include application of section 18 of Hindu

Adoption and Maintenance Act,1956 application for a stay on husband's property- whether in his name or ancestral properties and the right of the women to matrimonial home which includes the right to reside with her in laws.

7. In Ajay Aggarwal v. Union of India Justice K.Ramaswamy in his separate judgment held that sanction under Section 188 is not a condition precedent to take cognizance of the offence. If need be it could be obtained before trial begins.

8. Section 188 Cr.P.C operates where an offence is committed by a citizen of India outside the country. Requirements are, therefore, 1. - commission of an offence; 2. - by an Indian citizen; and 3. - that it should have been committed outside the country.

9. Substantive law of extra-territory in respect of criminal offences is provided for by Section 4 of IPC and the procedure to inquire and try it is contained in section 188 Cr.P.C.

10. Effect of these sections is that an offence committed by an Indian citizen outside the country is deemed to have been committed in India. Proviso to Section 188 Cr.P.C. however provides the safeguard for the NRI to guard against any unwarranted harassment by directing, "that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government".

11. Since the proviso begins with a non obstante clause its observance is mandatory. But it would come into play only if the principal clause is applicable, namely, it is established that an offence as defined in Clause (n) of Section 2 of the Cr.P.C. has been committed and it has been committed outside the country. *See. Vijaya Saradhi Vajja vs Devi Sriropa Madapati And Anr., 2007 CriLJ 636.*

12. Section 44 of Evidence Act:- This section gives to any party to a suit or proceeding the right to show that the judgment which is relevant under Section 41" was delivered by a court not competent to deliver it, or was obtained by fraud or collusion". Fraud, in any case bearing on jurisdictional facts, vitiates all judicial acts whether in rem or in personam. See. R. Viswanathan vs Rukn-Ul-Mulk Syed Abdul Wajid, (1963) 3 SCR 22 at p. 42. It was held: "a judgment of a foreign court to be conclusive between the parties must be a judgment pronounced by a court of competent-' jurisdiction and competence contemplated by Section 13 of the Code of. Civil Procedure is in an international sense and not merely by the law of foreign State in which the Court delivering judgment functions".

13. *What, if a foreigner commits offence within India?* It is implicit under Section 3 of the Penal Code that a foreigner who commits an offence within India is guilty and can be punished as such without any limitation as to his corporeal presence in India at the time. For if it were not so, the legal fiction implicit in the phrase "as if such act had been committed within India" in Section 3 would not have been limited to the supposition that

such act had been committed within India, but would have extended also a fiction as to his physical presence at the time in India. See. Mobarik Ali Ahmed Vs. State of Bombay, 1957 AIR 857, 1958 SCR 328.

There is no legislative law in India compared to 'Private International Law.

There is no legislative law in India compared to 'Private International Law' or Conflict of Laws as in some western countries. In family and marriage cases involving NRI spouses, Our Indian Courts interprets and rely upon

1. Sections 13 and 14 of the Civil Procedure Code, 1908;

2. Section 44 A of the Civil Procedure Code, 1908.

Sections 13 and 14 CPC deal with the competence to adjudicate and jurisdiction of a foreign Court as to their conclusiveness, Section 44-A CPC deals with presumption of a decree by a foreign Court for its execution.

Section 13 of the Civil Procedure Code, 1908 is the part of procedural law followed in Indian Courts. It concerns with recognition of the foreign decree only. The decree holder has to proceed before an Indian Court by filing a regular suit as the first stage of the enforcement proceedings. The Court after hearing the suit proceedings, may pass a judgment for its enforcement through an execution petition. Thus, a foreign decree is converted into a domestic judgment for its enforcement.

Section 14 lays presumptions as to Foreign Judgments. The Court shall presume upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on

Section 44-A CPC deals with the execution of decrees passed by courts in reciprocating territory. Where a certified copy of a decree of any of the superior courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.

In Vishwanathan v. Abdul Wajid, AIR 1963 SC 1-58, it was observed that a foreign judgment is conclusive as to any matter thereby adjudicated upon and cannot be impeached for any error either (1) of fact; or (2) of law". Thus, a foreign judgment can be examined from the point of view of competence but not of errors. Hence, the Indian Court cannot go into the merits of the original claim.

In Gour Gopal Roy v. Sipra Roy, AIR 1978 Cal 163, the Apex court, as to section 44 A of Civil Procedure Code, 1908 that mere production of a Photostat copy of a decree of foreign Court is not sufficient. It is required to be certified by a representative of the Central Government in America.

In Rajiv Tayal v. Union of India and Others, (2005) 124 DLT 502. is another judgment, which shows that the wife also has an available remedy under Section 10 of the Passport Act 1967 for impounding and/or revocation of the passport of her NRI husband if he failed to respond to the summons by the Indian Courts.

In Venkat Perumal v. State of AP, (1998) II DMC 523. is a judgment passed by the Andhra Pradesh High Court in an application filed by an NRI husband for quashing of the proceedings of the wife's complaint in Hyderabad under Section 498A of the Indian Penal Code 1860 against matrimonial cruelty meted out to her. The Court rejected the plea of NRI husband.

Latest case-law on NRI marriage issues:

1. Marriage held in India. Wife was tortured in Abroad: NRI husband married a woman in India and subjected her to cruelty in abroad. The Superior Court declined quash the FIR. *See. Satnam Puri And Anr vs State Of Punjab And Anr Judgment dated 15 September, 2014.*

2. In 1994, ***Dhanwanti Joshi Vs. Madhav Unde*** *the wife found the husband in abroad with his first wife. Then, she left her husband and returned to India. Hon'ble Supreme Court held that their child, who is 35 days old, shall stay under the custody of the mother subject to visitation rights. Here, the loophole of NRI marriage was marrying the second time without telling the second wife.*

3. **Smt. Seema Vs. Aswini Kumar**, Tr. P. (C) No. 291 of 2005, Judgment dt. 14-02-2006, the Supreme Court of India issued certain directions to the Central and the State Governments.

- *Marriages of Indian citizens should compulsorily be registered.*
- *The procedure for registration should be notified by the States within three months*

It is incumbent upon the States to provide for registration of NRI marriages taking place in India.

4. *In 2010, as seen from the* ***Mrs Rachna Shah's case****, she was married NRI residing in Singapore. She found that her husband was not an Engineer, which he claimed earlier, but husband was employed in an insignificant temporary job. She was tortured in abroad. However, after suffering a great deal at his hands, she was finally saved by local police and she was taken to the Indian Embassy and sent back to India.*

5. Recently, in 2017, **Chepuri Hanumantha Raio, S/O Late ... vs Chepuri Uma Bala,** CRIMINAL REVISION CASE No.79 OF 2016 , Judgment dated 27 February, 2017. Maintenance for NRI divorce wife has been discussed in the light of Apex Court Badsha's case. Section 18 of Hindu Adoptions and Maintenance Act, sections 125 and 127 of Cr.P.C were discussed.

6. Venkat Perumal v State of Andhra Pradesh, the Hon'ble High Court declined to quash the criminal proceedings against NRI husband holding the the offence under section 498-A IPC is a continous offence.

7. The Supreme Court had shown concerns regarding this through its judgment, in cases like *Neeraja Sharaph vs. Jayant V. Saraph* and has emphasised the need to consider legislative safeguarding of the interests of women and also suggested the following specific provisions:

1. Marriage between an NRI and an Indian woman which has taken place in India may not be annulled by any foreign court.

2. In the case of divorce, adequate alimony should be paid to the wife out of the property of the husband.

3. The decree of Indian court should be made executable in foreign courts both on the principle of comity by entering into reciprocal agreements and notify them under section 44A of the Civil Procedure Code which talk about binding nature of foreign decree i.e.; it is executable as it would have been a decree passed by that court.

Conclusion:

It must be recognized that failure of NRI marriages may be due to a variety of reasons and that both men as well as women are responsible for such failures. The absolving of all women from blame is unjustified. The notion that every case of abandoned bride is due to harassment/dowry demands is over simplistic. Sometimes people marry for purely pragmatic reasons, sometimes called a 'marriage of convenience' or 'sham marriage'. Over-seas Citizenship of India is not a full-fledged citizenship of India. Acquisition of citizenship of another country by a citizen of India results in the termination of his Indian Citizenship. Our country announced the Government's intention to give dual citizenship to Persons Of Indian Origin (PIOs) domiciled in any country (except Pakistan & Bangladesh). This has since been given legal backing after the Indian Parliament approved the Citizenship (Amendment) Act, 2005. The amended Act enables the Central Government to register, as an Overseas Citizen of India (OCI). The Government should also consider bringing in a comprehensive regulation/legislation to ensure that all protection be accorded by law to Indian women, with regard to marriage, divorce, maintenance, inheritance and custody of children etc.

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2017(3) L.S. 195

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

Malik Patel, ..Petitioner

Vs.

Penubothu Padmaja ..Respondent

CIVIL PROCEDURE CODE, Sec.47 - RENT CONTROL ACT, Sec. 32(b) - Civil Revision by Tenants/ Petitioners – Challenging the dismissal of their applications filed in the course of execution of the Orders of Eviction passed by the Rent Controller.

Ground on which eviction was sought was that petitioners were guilty of willful default in payment of monthly rents for several months – Petitioners made new pleadings which were not made by them in counter statements to the eviction petitions.

Held – It is fundamental that a person, who was a party to the original proceedings and who set up a different case in the original proceedings, cannot plead new facts in an Application under Section 47 of CPC and claim that the decree was nullity on the basis of new facts so pleaded - Civil Revision Petitions are dismissed.

CRP.Nos.1740/2017 etc., Date:21-09-2017

Mr. L. Ravichander, Senior Counsel, Advocate for the Petitioner.

Mr. V.S.R. Anjaneyulu Learned counsel, Advocate for Respondents 1 to 4.

C O M M O N O R D E R

These Civil Revision Petitions are filed by tenants, challenging the dismissal of their applications filed under Section 47 of the Code of Civil Procedure, 1908, in the course of execution of the orders of eviction passed by the Rent Controller.

2. Heard Mr. L. Ravichander, learned senior counsel appearing for the petitioners and Mr. V.S.R. Anjaneyulu, learned counsel appearing for the respondent-landlady.

3. The respondent-landlady filed separate petitions for eviction in R.C.C.Nos.8, 9, 10, 11, 13 and 14 of 2007, against the petitioners herein, praying for eviction under the provisions of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. The petitions for eviction were hotly contested by the petitioners herein and eventually the Rent Controller passed orders of eviction on 22-03- 2011.

4. It is pertinent to note that the petitioners in these revision petitions were represented by counsel before the Rent Controller and they contested the rent control proceedings, by effectively participating in the proceedings and adducing documentary evidence.

5. It is relevant to note that the ground on which eviction was sought, was that the petitioners herein were guilty of wilful default in payment of monthly rents for several

months. The petitioners herein contested the eviction proceedings by claiming that the monthly rents were paid regularly to the brother of the respondents husband, who was a joint owner of the entire property; that the brother of the respondents husband was also residing in the same building; that the brother of the respondents husband by name Pardhasaradhi was issuing rental receipts; that there are disputes between the respondent, her husband and his brother and that the respondent was not at all the owner of the property so as to seek eviction.

6. In other words, the defence taken by the petitioners herein in the eviction proceedings was two fold namely a) that they were paying the rents to the joint owner of the property and were taking the receipts and (2) that the respondent was not the owner of the petition schedule property.

7. After taking a positive defence that they have been paying the rents regularly to the respondents husbands brother, the petitioners, for reasons best known to them, failed to get into the witness box. The petitioners did not adduce any oral evidence. On the other hand, the petitioners filed 3 documents as exhibits on their side. None of these documents had any relevance to the defence taken by them in the counter.

8. In an interesting twist, the petitioners, after claiming in the counter statement that they were paying the rents to Pardhasaradhi (brother of the respondents husband), started claiming in the course of arguments that they were paying the rents to one Mr. Vangaveeti Mohana Ranga Rao, who had allegedly filed a suit for specific performance. But the petitioners did not even choose to examine the said Vangaveeti Mohana Ranga Rao as a witness on their side.

9. Therefore, the Rent Controller ordered eviction and the petitioners appear to have filed a regular appeal with a delay. The delay was not condoned, and hence, orders of eviction attained finality. Thereafter, the respondent filed petitions for execution of the decrees of eviction, in E.P.Nos.46, 47, 48, 49, 50 and 51 of 2012. The petitioners seem to have employed all kinds of tactics during the execution proceedings. If the original proceedings for eviction had taken 4 years from 2007 to 2011 to come to a conclusion, the execution proceedings have now taken 5 years and the curtain could not still be drawn.

10. In the execution proceedings, the petitioners set up one Mr. V. Mohana Ranga Rao (to whom the petitioners claimed to have paid rents) to file a petition under Section 23 (7) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961. But the Rent Controller dismissed the same on 30-04-2015. The said V. Mohana Ranga Rao filed a revision in C.R.P.No.3200 of 2015 and obtained stay of execution of the decree in the first instance. But, ultimately, the C.R.P. was dismissed by an order dated 06-10-2015.

11. As against the order of the single Judge, Mr. V. Mohana Ranga Rao filed S.L.P. (Civil) No.38 of 2016. The Supreme Court dismissed the S.L.P. after recording an undertaking from V. Mohana Ranga Rao that he would vacate the premises within

3 months. The undertaking given by V. Mohana Ranga Rao on 25-03-2016 worked itself out, after the expiry of 3 months.

12. Therefore, the Rent Controller ordered delivery and issued delivery warrant. Thereafter, the petitioners jumped into the fray and filed applications in E.A.Nos.109, 110, 111, 112, 114 and 135 of 2916 under Section 47 CPC praying for the dismissal of the execution petitions, on the ground that the Rent Controller did not have jurisdiction to entertain the eviction petitions in the first instance. Finding the applications under Section 47 CPC to be an abuse of process of Court, the Executing Court dismissed those applications. Therefore, the tenants have come up with the above revisions.

13. The only ground raised by the petitioners in their applications under Section 47 CPC is that the respondent and her husband respectively purchased the northern and southern sides of the petition schedule property along with the old structures standing thereon, under a sale deed dated 13-10-1999 and that the respondent as well as her husband got constructed a building by joining both portions together in the year 2000 and that in view of Section 32 (b) of the Rent Control Act, the provisions of the Act could not be invoked in respect of a building constructed within a period of 15 years.

14. In other words, the contention of the petitioners is that the building in question was constructed only in the year 2000 and that therefore, in the year 2007, the building continued to be a building exempted from the applicability of the provisions of the Rent Control Act.

15. But even admittedly, the above contention that the respondent and her husband bought two sites in the year 1999 and put up a construction in the year 2000, was not raised in the counter filed by the petitioners herein before the Rent Controller. As stated earlier, the petitioners neither pleaded this nor sought to establish this in evidence. The petitioners pleaded in their counter statement that they were paying rents to one Pardhasaradhi, the brother of the respondents husband. But in the course of trial, the petitioners pleaded that they were paying rents to one V. Mohana Ranga Rao, who had filed a suit for specific performance.

16. After the dismissal of the eviction petitions, the petitioners did not pursue the matter further. On the contrary they set up the said V. Mohana Ranga Rao to file a claim petition. He went up to the Supreme Court, filed an affidavit of an undertaking before the Supreme Court and threw his hands up. Thereafter, the petitioners have come up with a new pleading, in the applications under Section 47 CPC.

17. Placing heavy reliance upon the decision of the Supreme Court in Sushil Kumar Mehta v. Gobind Ram Bohra , it is contended by the learned senior counsel for the petitioners that if a decree is passed by a Court, which inherently lacked jurisdiction to entertain the suit, the said decree can be assailed even in execution. In paragraph- 26 of the judgment, the Supreme Court held that a decree passed by a Court, which inherently

lacked jurisdiction, is a nullity and that the invalidity of such a decree can be set up whenever it is sought to be enforced or executed.

18. I have carefully considered the only ground on which the petitioners filed applications under Section 47 CPC and I have also considered the purport of the judgment of the Supreme Court in Sushil Kumar Mehta. But, I do not think that the petitioners can be heard to raise all the above contentions.

19. As I have pointed out earlier, the respondent filed petitions for eviction on the simple ground of wilful default in payment of rents. The petitioners herein filed counter statements in all the eviction petitions merely contending that they were paying rents to the brother of the respondents husband. Admittedly, the respondent was estranged from her husband and the petitioners first wanted to encash upon the same. Therefore, they pleaded that rents were paid to the brother of the respondents husband. The date of construction of the portions let out to the petitioners was never in issue before the Rent Controller. The averments pleaded in the affidavit filed by the petitioners in support of their applications under Section 47 CPC, to the effect that the respondent and her husband purchased the two sites along with old structures under a sale deed dated 13-10-1999 and that they demolished the same and put up a construction in the year 2000, were not pleaded by the petitioners in their counter.

20. It is true that the provisions of the Rent Control Act would not apply to newly constructed buildings for a period of 15 years. It must be pointed out that the Rent Control Act is a beneficial legislation in favour of tenants. The law makers, in their wisdom, wanted to keep newly constructed buildings out of the purview of the Rent Control Act, not with a view to confer a benefit upon the tenants, but with a view to enable the landlords to enjoy the property without any statutory indictment.

21. Section 32 (b) of the Rent Control Act is actually an exemption. If the Rent Control Act is a beneficial legislation in favour of the tenant, the exemption under Section 32 (b) is a benefit conferred upon the landlord. Therefore, it is natural that a landlord would certainly take advantage of the exemption under Section 32 (b) of the Act to go to civil Court for recovery of possession, if the building was less than 15 years old. For getting an order of eviction before the Rent Controller, the landlord has to prove any one of the preconditions. The rigours of the Rent Control Act are so heavy that a landlord, who is entitled to the benefit of exemption, will naturally take advantage of the same. In a Civil Court, all that is required to be established is the compliance with Section 106 of the Transfer of Property Act, 1882.

22. Keeping the above fundamental principles in mind, if we come back to the case on hand, it could be seen that the entire contention of the petitioners revolves around new pleadings. These pleadings were not

made by the petitioners in their counter statements to the eviction petitions. The question whether the Rent Controller inherently lacked jurisdiction or not, cannot be determined independent of the facts now newly pleaded. The decision of the Supreme Court in Sushil Kumar Mehta will apply to cases where, without any enquiry, one can come to a conclusion that the Court inherently lacked jurisdiction. But in the case on hand, it is not possible to come to the conclusion that the Rent Controller inherently lacked jurisdiction.

23. It is only if the new facts now pleaded by the petitioners in their applications under Section 47 CPC are taken on record and evidence is adduced and a decision taken afresh, that the question of applicability of Section 32 (b) of the Rent Control Act could be decided.

24. It is fundamental that a person, who was a party to the original proceedings and who set up a completely different case in the original proceedings, cannot plead new facts in an application under Section 47 CPC and claim that the decree was a nullity, on the basis of the new facts so pleaded. Therefore, the Executing Court was right in rejecting the petitions under Section 47 CPC.

25. More over, there are certain disturbing facts in this batch of revisions. The petitioners herein filed counter statements and contested the original proceedings for eviction, without questioning the jurisdiction of the Rent Controller and without even raising points that may lay the foundation for questioning the jurisdiction of the Rent Controller. The Rent Controller ordered eviction way back on 22-03- 2011. The petitioners filed appeals, but the same were rejected in 2012. Execution Petitions were filed by the respondent as early as in the year 2012. Despite service of notices, the petitioners kept quiet and it was one Mr. V. Mohana Ranga Rao, who filed an application in the execution proceedings claiming to be in possession of the petition building. Interestingly, the name of V. Mohana Ranga Rao found a place in the original order of eviction, since it was claimed by the petitioners during trial that they were paying the rents to him, as he had filed a suit for specific performance of an agreement of sale. But the rent controller rejected the theory of payment of rents to Mohana Ranga Rao. This Mohana Ranga Rao, whose name was mentioned by the petitioners herein during the trial of the eviction proceedings, suddenly surfaced at the time of execution and filed an application. His application was dismissed in the year 2015. The Civil Revision Petition filed by him was dismissed by this Court and in the Supreme Court, he filed an affidavit of undertaking. After the period stipulated in the affidavit of undertaking expired, the petitioners jumped into the band wagon and filed the present applications under Section 47 CPC.

26. Therefore, it is a clear case of the petitioners attempting to play a fraud upon this Court and also on the Supreme Court through a proxy litigation for 5 years by

setting up V. Mohana Ranga Rao. In fact, the said V. Mohana Ranga Rao is clearly guilty of contempt of the Honble Supreme Court, since he gained 3 months time from the Supreme Court by filing an affidavit of undertaking to the effect that he is in possession and that he would deliver vacant possession in 3 months. The petitioners may also be guilty of contempt of the honble Supreme Court, for attempting to either to sub-serve the cause of V. Mohana Ranga Rao or to subserve their own cause by setting up Mohana Ranga Rao.

Therefore, the Civil Revision Petitions are dismissed with costs of Rs.10,000/- (Rupees ten thousand only) in each of these revisions. The Executing Court is directed to take all steps to deliver vacant possession of the property to the respondent and file a report before this Court by 16-10-2017.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

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2017(3) L.S. 200

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

Present:
The Hon'ble Mr.Justice
Challa Kodanda Ram

Deep Industries Ltd., ..Petitioner
Vs.
Oil and Natural Gas
Corporation Ltd., & Anr., ..Respondents

CONSTITUTION OF INDIA, Articles, 14 and 226 - Petitioner has participated in the tender process and became the successful bidder – Contract agreement was also executed in favour of petitioner.

A show cause notice was issued against the petitioner alleging hat the contract was awarded based on a misrepresentation, and it is liable to be terminated - Petitioner was directed by the respondent to remit certain sum on account of alleged excess payments - Respondent contended that petitioner is seeking to enforce contractual terms under Article 226 of Constitution of India, which is impermissible as there is a specific dispute resolution mechanism provided in the contract agreement.

Held – When State has acted in an arbitrary and unreasonable manner, infringing the fundamental

W.P.No.28527/2017 Date:19-09-2017

rights of a petitioner, Writ is maintainable – Party to the contract cannot be a judge of his own case determining the amounts payable – Writ petition is allowed.

Mr.Vedula Venkata Ramana, Senior Counsel , Advocate for the Petitioner.
Mr.D.Prakash Reddy, Senior Counsel , Advocate for the respondents

Cases referred:

1.(1987) 2 Supreme Court Cases 160
2.(2011) 5 Supreme Court Cases 697
3.(2003) 2 Supreme Court Cases 107
4.(2006) 10 Supreme Court Cases 236
5.(2010) 11 Supreme Court Cases 186
6.(2004) 3 Supreme Court Cases 553
7.(1996) 6 Supreme Court Cases 22
8.2004(4) ALD 682 (DB)
9.(2015) 9 Supreme Court Cases 433

O R D E R

The brief facts, for the purpose of disposal of the Writ Petition, are stated as under:-

2) Pursuant to a notification issued by the 1st respondent Oil and Natural Gas Corporation Limited (hereinafter referred to as Oil Company) for the execution of work under the title Hiring of Gas Dehydration System for Five production installations at Rajahmundry Assets (hereinafter referred to as Gas Dehydration Work), the petitioner has participated in the tender process and become the successful bidder. A contract agreement dated 24.06.2015 was also executed in favour of the petitioner. The term of the contract is for 3 years and the petitioner is required to mobilize and install the necessary equipment within 120 days and accordingly, it has commenced the work within the stipulated period. A show cause notice dated 28.04.2017 was issued against the petitioner alleging that it had claimed the experience of M/s Craft production systems inc. Texas, (CPS), which, in fact, did not have the relevant experience and as the contract dated 24.06.2015 was awarded based on a misrepresentation, it is liable to be terminated. The petitioner claims that necessary replies were submitted. After considering the said explanations submitted by the petitioner and after exchange of correspondence, finally, the contract agreement came to be terminated by the order dated 31.07.2017. However, the petitioner was directed to carry on the operations for a further period of 300 days. Simultaneously, by letter dated 03.08.2017, he was also prohibited from participating in future tenders. Challenging the said proceedings, the petitioner filed Writ Petition No.26400 of 2017, wherein an interim order was passed by this Court on 08.08.2017, which, on Appeal (Writ Appeal No. 1149 of 2017), came to be modified by the Division Bench of this Court on 21.08.2017 restricting the scope of blacklisting.

3) While things stood thus, vide impugned proceedings dated 17.08.2017, the petitioner was directed to remit a sum of Rs.66.95 crores, on account of alleged excess payments received up to 31.05.2017 and further, the respondents proposed to pay a lower rate based on the rates quoted by the petitioner in subsequent tenders.

Aggrieved by the said decision of the respondent corporation dated 17.08.2017, challenging the same as illegal and contrary to the contract agreement, the petitioner filed the present Writ Petition.

4) Learned Senior Counsel Sri Vedula Venkata Ramana appearing for the petitioner contends that the action of the respondents in unilaterally determining that they had made excess payments, is totally impermissible, as the same is like - a party to the contract unilaterally determining the damages, which are payable, though there is a specific mechanism for determination of the damages. Placing reliance on the judgments of the Supreme Court in STATE OF KARNATAKA V. SHREE RAMESHWARA RICE MILLS(1) , UNION OF INDIA V. TANTIA CONSTRUCTION PRIVATE LIMITED(2) , HARBANSLAL SAHNIA V. INDIAN OIL CORPN. LTD(3). AND NOBLE RESOURCES LTD. V. STATE OF ORISSA(4) , the learned Senior Counsel submits that such unilateral determination is illegal and impermissible. By placing reliance on ZONAL MANAGER, CENTRAL BANK OF INDIA V. DEVI ISPAT LIMITED (5), ABL INTERNATIONAL LTD. V. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LTD(6). the respondent Corporation being a State, within Article 12 of the Constitution of India, cannot act arbitrarily in total derogation of the contractual terms and in those circumstances learned senior counsel for the petitioner prays for Writ of mandamus declaring the action of the respondents in issuing the impugned communication dated 17.08.2017 as illegal, arbitrary and unconstitutional.

5) Sri D. Prakash Reddy, learned Senior Advocate instructed by Sri K. Venkata Rao for respondent company opposes the very entertainment of the Writ Petition. The learned Senior Counsel submits that the very writ affidavit itself discloses that, in essence, the petitioner is seeking to enforce the contractual terms under Article 226 of the Constitution of India, which is impermissible. As, admittedly, there is a specific dispute resolution mechanism provided in the contract agreement, dated 24.06.2015 the Writ Petition is not maintainable and the same is liable to be dismissed in limini. According to the learned Senior Counsel, the action taken against the petitioner is justified to protect the revenues of the State organisation. But for the experience and expertise of the collaborator, which the petitioner had claimed, it would not have been eligible to participate in the tender process and quote the rates at which the contract came to be awarded. As it is found that the petitioner had misrepresented and thereby breached Clause 34 Integrity Pact, the action of the respondents is justified and at any rate, the Writ Petition is not maintainable and hence, prays for dismissal of the Writ Petition. To support his contention, the learned Senior Counsel places reliance on STATE OF U.P. V. BRIDGE & ROOF COMPANY (INDIA) LTD.(7) , U.P.S.R.T.C.

1.(1987) 2 Supreme Court Cases 160
2.(2011) 5 Supreme Court Cases 697
3.(2003) 2 Supreme Court Cases 107
4.(2006) 10 Supreme Court Cases 236
5.(2010) 11 Supreme Court Cases 186
6.(2004) 3 Supreme Court Cases 553
7.(1996) 6 Supreme Court Cases 22

V. K.L. HI-TECH SECURE PRINT LTD., HYD(8) AND STATE OF KERALA V. M.K. JOSE(9). The learned Senior Counsel submits that in two Division Bench judgments of this Court, after taking into consideration the judgment of the Supreme Court in ABL International Case (cited supra), categorically held that in cases where there is arbitration clause, the Writ Petition is not maintainable and the High Court should refuse to entertain the Writ Petition.

6) After hearing the submissions made by the learned Senior Counsel on either side and after going through the writ affidavit and the other relevant material documents placed before the Court, including the Contract agreement dated 24.06.2015, the question that falls for consideration is : whether the impugned letter dated 17.08.2017 proposing to pay the petitioner at a lower rate than what has been agreed to in the contract and further demanding Rs.66.95 crores, is arbitrary, illegal and liable to be interfered with in exercise of the jurisdiction under Article 226 of the Constitution of India.

7) After going through the various judgments rendered by the Supreme Court, cited supra by both the learned Senior Counsel, no manner of doubt is left in the mind of this Court that a Writ Petition is maintainable albeit in certain circumstances. It is not necessary for this Court to extract portions of the judgments referred to supra, as it would be burdening the record and creating more confusion. The sum and substance and the ratio of the judgments cited by both the learned Senior Counsel can be summed up as under:

1) Normally a Writ Court shall not interfere in cases involving contracts, particularly where there are disputed questions of fact, and interpret the contractual terms.

2) Further, even in cases where there is a specific dispute resolution mechanism by way of arbitration, as a rule, there is no bar, but the Writ Court would be slow in entertaining a Writ Petition.

3) On appreciation of the material placed before it, if the Writ Court comes to a conclusion that the State has acted in an arbitrary and unreasonable manner, infringing or likely to infringe the Fundamental Rights of a petitioner before it, a Writ is maintainable. The Writ Court, while exercising the writ jurisdiction, is required to examine the facts of each case and then decide to proceed or not.

8) Keeping the above guiding principles in mind, the undisputed facts of the present case are required to be examined, for which purpose, a reference to certain clauses in the contract may be examined.

6.2 Entire Agreement:

The CONTRACT constitutes the entire agreement between the ONGC and the CONTRACTOR with respect to the subject matter of the CONTRACT and supersedes

8.2004(4) ALD 682 (DB)
9.(2015) 9 Supreme Court Cases 433

all communication, negotiations and agreement (whether written or oral) of the parties with respect thereto made prior to the date of this agreement.

7.0 REMUNERATION AND TERMS OF PAYMENT:

7.1 CORPORATION shall pay to CONTRACTOR for the services, to be provided by the CONTRACTOR as per the Scope of Work (Annexure-III), as per the price Schedule at Annexure-A. The rates payable, shall be firm during the entire CONTRACT period, including extension period, if any.

7.5. In the event of any dispute in a portion or whole of any invoice, the CORPORATION shall make payment of undisputed portion and shall promptly notify the CONTRACTORs representative in writing for the remaining portion in CONTRACT to mutually resolve the dispute and if resolved in part or full, payment shall be made to the CONTRACTOR within 30 days of such settlement.

7.6. ONGCs right to question the amounts claimed:

> Payment of any invoice shall not prejudice the right of the Corporation to question the allowability under this Agreement of any amounts claimed therein, provided ONGC, within one year beyond the expiry of each CONTRACT year, delivers to CONTRACTOR, written notice identifying any item or items which it questions and specifying the reasons therefor. Should ONGC so notify CONTRACTOR, such adjustment shall be made as the parties shall agree. These provisions shall be reciprocal for similar rights to the CONTRACTOR.

The CONTRACTOR shall provide on demand a complete and correct set of records pertaining to all costs for which it claims reimbursement from ONGC and as to any payment provided for hereunder, which is to be made no the basis of CONTRACTORs costs.

27. ARBITRATION

28. CONTINUANCE OF THE CONTRACT:

Notwithstanding the fact that settlement of dispute(s) (if any) under arbitration may be pending, the parties hereto shall continue to be governed by and perform the work in accordance with the provisions under this CONTRACT.

9) By the impugned proceedings, the 1st respondent decided to deprive the petitioners of the contractually-agreed price for the work to be done. Clause 7.1 referred to above does not permit any unilateral right for variation of the prices. In the event of dispute, there is also no unilateral deduction permissible, as is evident from Clause 7.6. This is clear from the methodology provided in Clause 7.6 with respect to the claims of the respondent company, assuming the nature of the claims that are being made by the respondent fall within the said clause

of the Contract. Clauses 7.5 and 7.6 provide for settlement through mutual negotiations. Though Clause 27 provides for arbitration, the clause, as read in whole, can be resorted to only after exhausting settlement through mutual discussions. Further, Clause 28 mandates respective parties to adhere to the contractual terms. In the light of the above, the proposed action of the respondent Corporation cannot be said, in any way, fair and justifiable and the consequences of the arbitrary and unilateral action of the said respondent would have deleterious effect on the finances of the petitioner depriving them of cash flows which would also affect its operations. It may also be noted that as of date, the respondents themselves have to depend on the petitioner and they desired the petitioner to continue to carryout the work for a further period of 300 days even after the termination of the contract. This would indicate the indispensable nature of the services of the petitioner at least for a period of 300 days. Viewed from that angle also, the action of the respondents cannot be termed to be in public interest. Even with respect to the demands on the petitioner, the principle that a party to the contract cannot be a judge of his own case determining the amounts payable / damages, would squarely apply in the present facts of the case. Prima facie, the demands, which are made by the respondents, at best would qualify as unascertained claims, but not the claims determined in an adjudication proceedings. The judgment cited by the learned Senior counsel appearing for the petitioner squarely applies to the same.

10) The observations made above are only for the limited purposes of this Court coming to a prima facie conclusion whether the action of the respondents is arbitrary and also the same is condonable keeping in view of the public interest and shall not be construed as interpreting any of the clauses of the agreement expressing a firm opinion. However, as the Court is obliged to appreciate and judge in a given case whether the allegation of arbitrariness is made out, a prima facie opinion has been expressed.

11) In those circumstances, the Writ Petition is allowed setting aside the impugned communication dated 17.08.2017, declaring the same as arbitrary, illegal and violative of the rights of the petitioner under Article 14 of the Constitution of India. There shall be no order as to costs.

12) Miscellaneous Petitions, if any, pending in the Writ Petition, shall stand closed.

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2017(3) L.S. 206 (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 Mr.Justice
Shameem Akther

Konakala Ramakrishna
@ Ramu & Ors. ..Appellants

Vs.

State of A.P. ..Respondent

INDIAN PENAL CODE, Secs.- 148, 149, 302, 324 and 326 – Instant appeal preferred against Judgment passed by trial court whereby, A1 to A5 were found guilty of murdering M. Sheshulu.(D1) and M. Venkata Satyanarayana (D2) - Two incidents occurred, one culminating in death of D1 and D2 and the other, where A1 to A5 sustained injuries.

Held – Relying on *MoharRaivs State of Bihar*, where Apex Court held that non- explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which Court can draw inference that prosecution has suppressed the genesis and not presented true version or witnesses who have denied injuries on accused persons are lying or in case there is a defence version which explains the injuries on the person of accused, it is rendered probable so as to throw doubt on the prosecutions case - Prosecutions case was fraught with inconsistencies and weaknesses and it failed to present the origin and genesis of the occurrence in its full form - Criminal Appeal filed by the accused is allowed.

Cases Referred:

1. 2016(3) ALT 505 (DB) (AP)
2. AIR 1976 SC 2263
3. AIR 1968 SC 1281
4. (2013) 2 SCC 541
5. 2017 SCC OnLine SC 152

Mr.P.Prabhakar Reddy, Advocate for the Appellants.

Public Prosecutor, Advocate for the Respondent.

J U D G M E N T

(per the Hon'ble Mr.Justice Sanjay Kumar)

This appeal under Section 374(2) CrPC is directed against the judgment dated 21.02.2011 passed by the learned Family Judge- cum-Additional Sessions Judge at Khammam in Sessions Case No.560 of 2008. By the said judgment, the Sessions Court held A1 to A5 guilty under Section 148 IPC; A1 and A5 were held guilty under Section 302 IPC for the murder of M.Sheshulu (D1); A2 to A4 were also held guilty under Section 302 IPC read with Section 149 IPC for the murder of D1; A1 to A4 were found guilty under Section 302 IPC for the murder of M.Venkata Satyanarayana (D2), the son of D1; A3 and

A5 were held guilty under Section 326 IPC for causing grievous hurt with a dangerous weapon to Mareedu Srinivasa Rao (P.W.8); A1, A2 and A4 were held guilty under Section 324 IPC read with Section 149 IPC for having caused hurt with a dangerous weapon to Mareedu Srinivasa Rao (P.W.8); and A5 was acquitted of the charge under Section 427 IPC. Pursuant to the aforestated convictions, the following sentences were imposed by the Sessions Court:

A1 to A5 were sentenced to undergo rigorous imprisonment for a period of one year for their conviction under Section 148 IPC; A1 and A5 were sentenced to imprisonment for life apart from paying a fine of Rs.500/- each, in default of which they were to undergo simple imprisonment for two months each, for their conviction under Section 302 IPC in so far as the murder of D1 was concerned; A2 to A4 were sentenced to imprisonment for life and payment of fine of Rs.500/- each, in default of which they were to undergo simple imprisonment for two months each, for their conviction under Section 302 IPC read with Section 149 IPC for the murder of D1; A1 to A4 were sentenced to imprisonment for life and payment of a fine of Rs.500/- each, in default of which they were to undergo simple imprisonment for two months each, for their conviction under Section 302 IPC for the murder of D2; A3 and A5 were sentenced to undergo rigorous imprisonment for two years each apart from payment of a fine of Rs.200/- each, in default of which they were to undergo imprisonment for two months each, for their conviction under Section 326 IPC; A1, A2 and A4 were sentenced to undergo imprisonment for one year each for their conviction under Section 324 IPC read with Section 149 IPC. All the sentences were to run concurrently.

Aggrieved by the convictions and sentences visited upon them, A1 to A5 are in appeal.

The case of the prosecution, in brief, was as under: The Sub-Inspector of Police, Kalluru Police Station (P.W.14), received Ex.P1 report from P.W.1 on 28.02.2007 at about 12.00 noon. He thereupon registered a case in Crime No.24 of 2007 under Sections 302 and 307 IPC read with Section 149 IPC. Ex.P30 is the printed FIR. He sent the injured to the Government Hospital, Sathupalli. The Circle Inspector of Police, Sathupalli (P.W.15), thereupon took up investigation. He examined and recorded the statement of P.W.1. He visited the scene of the offence and having secured the presence of mediators, P.W.9 and Venukonda Koteswar Rao (L.W.14), he observed the scene of the offence and drew up a rough sketch, in their presence. Ex.P2 is the Crime Details Form along with the sketch of the scene. He seized blood-stained earth and controlled earth from the scene of the offence and conducted an inquest over the body of D1 in the presence of P.W.9 and Venukonda Koteswar Rao (L.W.14) from 1.15 PM to 3.45 PM. During the inquest, he examined and recorded the statements of P.Ws.2 to 5, Mareedu Venkatakrishna (L.W.6), P.W.6 and P.W.7. He then conducted an inquest over the body of D2 in the presence of P.W.9 and Venukonda Koteswar Rao (L.W.14). He got the scene of the offence and the dead bodies photographed by P.W.10. He also recorded the statement of P.W.10 to this effect. He

then forwarded the bodies of D1 and D2 to Penuballi Government Hospital for post-mortem examination. He examined P.W.8, Anabothu Seethamma (L.W.10) and Naidu Krishna (L.W.11) and recorded their statements. During the course of the investigation, he found that A1, A2, A3 and A5 had received injuries and sent them to Penuballi Government Hospital along with P.W.14. On 07.03.2007, P.W.15 received reliable information that A1, A2, A3 and A5 were discharged from the hospital and arrested them at V.M.Banjar bus stand. He interrogated them in the presence of mediators, P.W.11 and Adala Venkateshwar Rao (L.W.16). The accused then took them to the place where they had concealed the weapons and in the presence of the mediators aforestated, A1 produced M.O.1 axe, A2 produced M.O.2 axe and M.O.4 knife, A3 produced M.O.3 stick and A5 (wrongly mentioned as A4) produced M.O.5 crowbar. The weapons were seized in the presence of the mediators. P.W.15 then produced A1, A2, A3 and A5 before the Judicial First Class Magistrate, Sathupalli. On 30.03.2007 at 1500 hours, P.W.15 apprehended A4 and A6 at Singarayapalem Village. They also confessed to commission of the offence. P.W.15 produced A4 before the Judicial First Class Magistrate, Sathupalli. As A6 was a minor, she was produced before the Juvenile Court, Khammam. The seized material objects were forwarded to the Forensic Science Laboratory, Warangal, through the Judicial First Class Magistrate, Sathupalli. Apart from the recovered case properties, the towel and dhoti of D1 (M.O.10) and the lungi, shirt, banian and cut-drawer of D2 (M.O.11) were also forwarded to the Laboratory. Ex.P31 is the report furnished by the Laboratory after examination. Exs.P28 and P29 are the post-mortem examination reports of D1 and D2 respectively. Ex.P27 is the wound certificate of P.W.8. Upon completion of the investigation, P.W.15 laid a charge-sheet against A1 to A5 under Sections 147, 148, 302, & 307 IPC r/w Section 149 IPC.

Upon committal, the Sessions Court framed these charges: In the manner stated above, you A.1 to A.5 formed into an unlawful assembly, as such, I took the cognizance u/s 148 IPC.

As you A.5 sprinkled chilli powder on D.1 and D.2, I took the cognizance u/s.427 IPC.

As you A.1 and A.5 committed murder of D.1, I took the cognizance u/s. 302 IPC.

As you A.2 to A.5, with the common intention and common object, committed murder of D-1, I took the cognizance u/s 302 R/w. 149 IPC.

As you A.1 to A.4 caused grievous hurt and committed murder of D-2, I took the cognizance u/s. 302 IPC.

As you A.3 and A.5 caused grievous bleeding injuries to LW-9, I took the cognizance u/s. 326 IPC.

As you A.1, A.2 and A.4 with common intention and common object, caused grievous injuries to D.1 and D.2 and LW-9, I took the cognizance u/s. 324 r/w. 149 IPC.

And I hereby direct that you be tried on the above said charges.

A1 to A5 denied the charges and claimed to be tried. Thereupon, the prosecution examined 15 witnesses and marked in evidence 31 exhibits. The accused did not adduce any oral evidence but marked in evidence Exs.D1 to D4. Case properties were marked as M.Os.1 to 11.

At this stage, it may be noted that D1 is the father of D2 and A1 to A6 are all closely related. A2 is the father and A4 is the mother of A1, A3 (sons) and A5 (daughter). A6 is the daughter of A4s sister.

Salient points emerging from the evidence may now be noted. P.W.1 is the nephew of D1. He stated that D1 was his fathers brother and D2 and P.W.8 were the sons of D1. He said that after completion of his degree course, he attended to agricultural works. D1s daughter, Venkamma, worked as a coolie and her daughter was Nagamma. D2 was brought up by Venkamma and the family members decided to perform the marriage of Nagamma with D2. Venkamma met the expenditure relating to D2 with the view that his marriage should be performed with her daughter. The house of the accused was very near the house of D1 and D2 and D2 fell in love with A5. In the year 2002, a panchayat was held with reference to their love affair and the elders performed their marriage in a temple at Nemali Village but none of the family members of D1 attended the marriage of D2 with A5. After their marriage, D2 lived with A5 at his in-laws house and he lived there happily for some time. As his education was not completed, D2 requested A2 to advance him some money. A2 refused and sent D2 away from his house. D2 then went to the house of his father, D1. A5 lodged a complaint against D1, D2 and four others under Section 498A IPC with the Station House Officer, Kalluru Police Station. Coming to the fateful day, 28.02.2007, P.W.1 stated that while he was going to the tailor, P.W.8, to bring his new clothes at 10.00 AM, he witnessed a galata at a distance of ten yards in front of the house of D1 and D2 and he saw D1, D2 and A1 to A5 and a relative of the accused, Vijaya (A6). He said that the accused and D1 and D2 quarreled. A1 to A5 were stated to have entered into the house of D1 and D2, armed with chilly powder, axes, a crowbar (gaddapara), a toddy-tapper knife (geethakathi) and a stick. He said that Vijaya (A6) sprinkled chilly powder in the eyes of D1 and D2, that A1 hacked D1 on the head with an axe and A5 hit the forehead of D1 with a crowbar and as a result of the injuries, D1 fell down and when D2 tried to abscond from the scene of the offence, A2 hacked him on the head with an axe and A2 also hacked D2 on the right leg. He said that A4 hacked D2 with a toddy-tapper knife on the face and as a result of these injuries, D2 fell down. He said that A3 hit D2 on the head with a stick when he fell down and A1 to A5 murdered D1 and D2 in the said manner. He said that they raised their arms and proclaimed that they would kill if anyone interfered. P.W.1 said that the villagers also witnessed the murders of D1 and D2 and in the meanwhile, P.W.8, the other son of D1, came to the scene of the offence and A1 and A2 attacked him and he received two injuries and fled from the

scene. He said that after attacking P.W.8 and after raising cries, armed with their respective weapons, the accused fled from the village towards Venkatapuram. P.W.1 said that as he witnessed the same, he presented a complaint to the police (Ex.P1). He said that he himself scribed Ex.P1 and signed on it. In his cross-examination, P.W.1 stated that P.W.2 was the daughter-in-law of D1, while P.W.3 was his own brother. He denied that P.W.4 was the brother of D2 by courtesy and that D1 was his fathers brother. He said that D1s eldest son was Venkatakrishna (L.W.6), whose son was P.W.5, and P.W.8 was the second son of D1. He denied that his house was at a distance of half a kilometer from the house of D1 and D2. He added that the distance was 300 metres. He said that dwelling houses, 300 in number, were located between his house and D1s house. He denied that his house was located in old Venkatapuram, while D1s house was in new Venkatapuram. He said that he did not know whether D1 and A1 to A5 belonged to CPI (M). He denied that he served as a worker of CPI (M). He denied that he and A1 to A5 worked for CPI (M) and relinquished their membership three years ago. He said that D2 served as a teacher in Chinakorukondi Village before his death. He denied that D2 discontinued his employment as a teacher. He denied that D2 had misbehaved with female students and was therefore removed from service. He said that A5 and D2 fell in love but he did not know whether A5 had conceived and was in the fourth month of pregnancy with D2s child. He said that he did not know whether A5, with four months pregnancy, got married to D2 in Nemali temple. He denied that D1 and D2 had harassed A5 to bring dowry and that she was necked out from the house, whereupon she gave a complaint to the Station House Officer, Kalluru, on 07.08.2003. He admitted that D2 figured as the accused in Crime No.46 of 2003 and Mareedu Venkatakrishna (L.W.6) and Mareedu Tulasamma, the wife of D1, also figured as accused therein. He denied that D1 and D2 and their relatives harassed A5 to give a divorce to D2. He denied that at 10.00 AM, when A5 was at the drinking well, D1 and D2 along with P.W.8 outraged her modesty, forcing her to accept for a divorce and they tore her blouse and tried to remove her saree. He denied that when A1 to A4 interfered so as to rescue A5, D1, D2 and P.W.8 attacked them and that 50 or 60 persons intervened when D1 and D2 attacked A1 and A2. He denied that the villagers advised A1 to give a complaint to the police. He denied that the villagers attacked D1 and D2 and not the accused. He denied that P.Raja Ram and his followers and the aggrieved villagers, whose daughters modesty was outraged by D1 and D2, attacked D1 and D2. He denied that taking advantage of A5s love affair, a false case was foisted against A1 to A5. He denied that when A5 was with four months pregnancy, D2 took her to Tiruvur on the pretext that she was suffering from fever and got her pregnancy aborted. He said that D2 and A5 were minors and may have approached Vanaja doctor at Tiruvur and Dr.Vanaja might have aborted the pregnancy of A5. He denied that under the influence of the MLA and his son, Ex.P1 was brought into existence and a case was registered though A5 had presented a complaint earlier but the same was

registered later in Crime No.25 of 2007 under Section 354 IPC. He denied the suggestion that he had not witnessed the incident and that he did not go to the tailor at the time of the galata. He denied the suggestion that he purchased readymade garments and did not wear stitched garments. He denied that P.W.8 was a ladies tailor. He denied the suggestion that the MLAs son got Ex.P1 executed and he himself presented it to the Station House Officer, Kalluru Police Station. He admitted that he had not mentioned the weapons used by the accused in Ex.P1. He added that due to fear, he failed to mention them. He also admitted that he had not stated their independent overt acts in Ex.P1. He stated that he gave evidence against Vijaya (A6) in C.C.No.249 of 2007. Upon being recalled for further examination, P.W.1 stated that he had deposed in C.C.No.249 of 2007 as P.W.1. He denied that he had stated in the said case that all the accused were armed with chilly powder. He admitted that he had stated in the said case that A4 was armed with a toddy-tapper knife (geethakathi) and caused injuries to D1 and that A3 beat P.W.1 with a stick. He stated that he had deposed in C.C.No.249 of 2007 that A1 beat D2 on his left leg with the toddy-tapper knife and caused bleeding injuries. He admitted that he also stated that A5 beat D2 on his thigh and all over the body with sticks and many people witnessed the same and that A5 had caused injuries to P.W.8 with a crowbar. He said that he did not depose that he came to the scene of the offence and telephone the neighbouring doctor to verify whether the injured were alive or dead. He said that he stated in C.C.No.249 of 2007 that he drafted ExP1 in the Police Station. He said that the accuseds family owns 6 acres of land but added that he did not know how much land was owned by them. He said that he did not know whether the accused owned 6 acres and leased out an extent of Ac.1.50 cents. He said that his brothers name was Venkateswarlu and that his brothers land abutted the lands of the accused. He again stated that his brothers land was not abutting the lands of the accused. He denied that he was deposing falsely though his brothers lands were abutting the lands of the accused. He denied the suggestion that they had set fire to the house of the accused at Thalluru. He denied the suggestion that in the absence of the accused, they sold away three cows worth Rs.60,000/- and a she- buffalo worth Rs.30,000/-. He denied the suggestion that D1 and D2 beat all the accused and as a result of the bleeding injuries, they were admitted in Penuballi Hospital and A4 was admitted in the Government Hospital as she sustained a head injury. He denied that he was deposing falsely to grab the property of the accused.

P.W.2 is the daughter-in-law of D1 and sister-in-law of D2. She is the wife of Mareedu Venkatakrishna (L.W.6). She said that D1 had four sons and one daughter and D2 was the fourth son. She said that D2 lived at the house of D1 and did his degree course. D1s daughter, Venkamma, helped D2 in his studies. Nagamma was the daughter of Venkamma. The family members of D1 decided to perform the marriage of D2 with Nagamma and as such, Venkamma helped D2 in his studies. She said that A1 to A5 lived in the house abutting the house of D1, and D2 fell in love with A5. A panchayat

was held and at the intervention of elders, D2 got married with A5 but his family members did not attend the marriage. She said that thereafter, D2 lived in the house of A5. D2 and A5 lived happily for two days. She said that D2 demanded money from A1 and A4 but they failed to advance money and sent D2 back to his parents house and as such, D2 started living with his parents. She said that A5 lodged a complaint under Section 498A IPC against D1 and D2 and their family members. She said that two or three houses intervened between her house and D2s house. On the date of the incident, she said that she was going along with she-buffalos to graze them. A1 to A5 were stated to have attacked D1 in front of D1s house on the road. A1 hacked D1 on the back with an axe and he fell down and when D2 tried to abscond from the scene, Vijaya (A6) sprinkled chilly powder on him and A1 to A4 caused injuries with an axe and a crowbar. She said that A1 to A4 were armed with weapons and hacked D1 and D2 indiscriminately and they died instantaneously due to the injuries. She said that D2 died at a short distance from D1. When P.W.8 interfered, the accused also caused injuries to him and he sustained injuries on his head and his left palm. She said that A1 to A5 raised cries, armed with their weapons, and fled towards Venkatapuram. She said that she also hid due to fear as A1 to A5 proclaimed that they would kill anyone who interfered. She said that the accused influenced D1 and D2 to admit that they had committed an offence under Section 498A IPC and the accused also demanded for a divorce and if D2 failed to give a divorce, A1 to A5 proclaimed that they would kill D1 and D2. In her cross-examination, P.W.2 stated that P.W.1 and P.W.8 were her brothers-in-law. She said that her husband, Mareedu Venkatakrishna (L.W.6), figured as an accused in C.C.No.1924 of 2003 on the file of the Judicial First Class Magistrate, Sathupalli, under Section 498A IPC, registered by Kalluru Police on the complaint of A5. She admitted that she deposed in C.C.No.249 of 2007 that D1 asked her to take she-buffalos and she was taking them for grazing. She admitted that she deposed in C.C.No.249 of 2007 that the crowbar was meant to tie the buffalos and belonged to D1. She admitted that she did not state their independent overt acts as she was not asked by the prosecutor. She admitted that Vishnu, son of the deceased, was the Vice President of CPM party. She denied that she and her family members belonged to CPIM party. She denied the suggestion that D1, D2 and Srinivasa Raju tried to outrage the modesty of A5 in front of her house and that the villagers intervened and beat up D1 and D2 and they had foisted a false case against her. She denied knowledge of A5 being in the fourth month of pregnancy when her marriage was performed with D2 in a temple at Nemali. She denied knowledge of D2 taking A5 to Vanaja Hospital, Tiruvur, and getting her pregnancy aborted. She denied that she and other family members demanded A5 to bring additional dowry and necked her out from the house. She denied that D1, D2 and Srinivasa Rao went to the house of A5 and demanded that she should give a divorce to D2 and that they beat her. She said that the accused were threatening her. She said that she did not know whether the house of the accused was set on fire

along with their agricultural crops. She denied the suggestion that she was not an eye-witness to the murders of D1 and D2.

P.W.3 stated that on 28.02.2007, he started from his house to go to his agricultural lands at about 10.00 AM. He stated that the house of A1 was en route and he witnessed a galata at that time in front of the said house. He said that he saw A1 and A2 armed with axes. A4 was armed with a toddy-tapper knife, while A5 was armed with a crowbar and their relative, Vijaya (A6), was also present along with them. He said that he saw A2 hitting D1 with an axe on the back of his head and A1 also hit D1 on the back of his head with an axe and they also beat D2 and as a result of the injuries, they fell down. After witnessing the incident, he said that he fled. He said that the accused, armed with respective weapons, threatened the villagers and fled towards Venkatapuram. He said that he saw the bodies of D1 and D2. In his cross-examination, P.W.3 denied that his house was situated at a distance of one kilometre from the scene of the offence. He said that P.W.1 was his cousin brother. He said that P.W.4 was his babai (uncle) by courtesy. He said that the house of the accused and his house were situated in the same street. He admitted that fifteen houses were situated on the rear side of the street between his house and the house of the accused. He said that he gave evidence in C.C.No.249 of 2007 but did not state in that case that his house was at a distance of one kilometre from the scene of the offence. He admitted that he had stated in C.C.No.249 of 2007 that he heard the galata while he was eating and came out. He also admitted that he stated that A3 beat D2 with a stick but he did not state that he ran away from the place. He denied the suggestion that he had not witnessed the incident and that the accused did not beat D1 and D2. He denied the suggestion that he was deposing falsely under the influence of CPIM party to grab the property of the accused. He denied the suggestion that D1 and D2 tried to rape A5 and the villagers beat them up and not the accused.

P.W.4 stated that he was an agriculturist residing at Thalluru. He said that D1 and D2 were murdered about three years back and that he knew A1 to A5. He said that during morning time on the fateful day, while he was at his house, he heard cries from outside and came out immediately. He said that he saw that the villagers were hacking and rushed there. He said that he saw the incident from a distance of 100 yards. He said that A2 was armed with an axe and hacked on the back side of D1 and A1 was armed with an axe and hit on the left cheek of D1 and as a result of these injuries, D1 fell down. He said that A1 was armed with an axe and hacked D2 on the forehead and A2 also hacked on the back side of the head of D2. He said that A4 hit D1 on the left side of the forehead with a toddy- tapper knife and when P.W.8 interfered, A3 hit him on the hand with a stick and after receiving the said injury, P.W.8 ran away from that place and the accused also fled from the place with their arms. He said that they proclaimed that they would hack if anybody interfered. He said that when he cried aloud, P.W.1, P.W.2 and P.W.3 also came there and witnessed the offence. He said that there was a love affair between A5 and D2

and that was the motive for the offence. In his cross-examination, P.W.4 stated that his younger brother had contested on behalf of CPIM for the post of Ward Councilor but was defeated. He denied the suggestion that he had not witnessed the attack, causing injuries to D1 and D2. He denied the suggestion that he had not stated to the police the independent overt acts of the accused with reference to D1. He denied the suggestion that he had not stated to the police that A1 and A2 attacked D1 with axes. He said that he also deposed in C.C.No.249 of 2007 but denied the suggestion that he had not stated that the accused had caused injuries to D1. He said that P.W.1 was his brother by courtesy as D1 was his paternal uncle by courtesy and D2 was his younger brother by courtesy and P.W.2 was his sister-in-law by courtesy and P.W.3 was also his brother by courtesy. He admitted that he had not stated in C.C.No.249 of 2007 that P.W.3 was his brother and that P.W.1s family and his family were related. He said that he saw ten persons at the scene of the offence and denied the suggestion that fifty persons witnessed the incident. He admitted that he had stated in C.C.No.249 of 2007 that A1 hit on the back side head of D1 with a pestle. He denied the suggestion that D1, D2 and Srinivas went to the house of A5 and tried to undress her and outrage her modesty, whereupon villagers attacked them. He denied the suggestion that the attackers of D1 and D2 were CPM party workers and that a false case was foisted against A1 to A5 taking advantage of the enmity owing to the love affair between D2 and A5. He denied the suggestion that A1 to A5 earlier belonged to CPM but left the party later and therefore CPM leaders bore a grudge and foisted a case upon them.

P.W.5 was aged 14 years at the time of his examination. He was administered oath by the Sessions Court. The Sessions Court recorded that he was capable of giving evidence before allowing him to do so. He stated that he was a resident of Thalluru and that P.W.2 is his mother. He said that about three years back at 10.00 AM, he was returning from school to his house to get his notes as he had forgotten to take them along with him. He said that he witnessed D1 and the accused quarreling and A1, A2, A3, A4, A5 and their relative, Vijaya, were present. Vijaya sprinkled chilly powder on D1 and the remaining accused killed him. He said that the accused were armed with axes, a crowbar and sticks and the accused also chased D2 with arms and A2 to A5 and Vijaya murdered him. He said that A3 and A5 beat P.W.8 when he tried to interfere and he ran away from the place with injuries and the offence was also witnessed by P.Ws.1 to 3. He said that the accused threatened that they would kill anyone who interfered and A1 to A5 then absconded from the place. In his cross-examination, P.W.5 stated that P.Ws.1 and 3 were his paternal uncles. He said that his fathers name was Venkatakrishna (L.W.6). He said that there was another road from his school to his house but he used to go in front of the house of D1. He denied the suggestion that on the date of the incident, he did not go to school nor did he forget his book. He denied the suggestion that he did not witness how D1 and D2 were murdered. He denied the suggestion that he was deposing falsely

upon the request of his relations. He denied the suggestion that D1, D2 and P.W.8 attacked A1 to A5 and they filed a complaint with the police but the same was suppressed and a false case was registered against A1 to A5.

P.W.6 said that he was a coolie residing at Thalluru and his house was at a distance of 100 metres. He said that on 28.02.2007 while he was going to his agricultural land at about 10.00 AM, A1 to A5, armed with deadly weapons, were quarreling with D1 and D2 in front of the houses of the accused and D1 and D2. He said that when they were quarreling with each other, he thought that it was their habit to quarrel and therefore went to his agricultural field and thereafter, he came to know from the villagers that A1 and others had murdered D1 and D2. He said that he immediately rushed to the house of D1 and saw the bodies of D1 and D2. He said that he also saw an injury on the back side of the head of D2 caused with an axe and an injury on the back side of the head of D1. In his cross- examination, P.W.6 said that he did not state before the police that the accused and D1 and D2 were habituated to quarreling to one another. He said that P.W.1 was not related to him but belonged to his caste. He denied the suggestion that D1, D2 and P.W.1 belonged to CPM. He denied the suggestion that A1 to A5 belonged to CPM but came out of the party and therefore a false case was foisted against them. He denied the suggestion that D1, D2 and P.W.8 beat A5 and they filed a case against D1, D2 and others.

P.W.7 runs a kirana shop in Thalluru. He said that on 28.02.2007, when he was returning from Venkatapuram village to his village at about 10.30 AM, he witnessed A1, A2, A3, A4 and A5, armed with deadly weapons, coming from the opposite direction proclaiming that they would kill if anyone stopped them and saying so, they proceeded. Soon after his return to his house, he enquired with villagers and came to know about the galata and he saw the bodies of D1 and D2. He said that he saw A1 armed with an axe at Anjaneyaswamy temple, A3 armed with a stick, A2 armed with an axe, A5 armed with a crowbar and A4 armed with a toddy-tapper knife while they were proceeding. In his cross-examination, P.W.7 said that he was the Vice-Sarpanch between the years 1996 and 2000. He said that he was elected as a Ward Member from CPM party. He disclaimed knowledge of A5 and A1 to A4 having filed a case against D1, D2 and P.W.8, as they had tried to commit rape upon A5 and caused injuries to A1 to A4. He denied the suggestion that he had not witnessed A1 to A5 at Anjaneyaswamy temple and he was deposing falsely as A1 to A5 had come out from CPIM party.

P.W.8 stated that D1 was his father and D2 was his brother. He said that on 28.02.2007 while he was stitching clothes in his house and D1 and D2 were releasing cattle for grazing, A1 to A5 and Vijaya (A6), armed with weapons and chilly powder, came there and they sprinkled chilly powder upon his father and A1 hacked his father on the head, A5 hit on D1s forehead with a crowbar and as a result of the injuries, his father fell down and when his brother D2 tried to abscond from the scene, A1

hacked on his right cheek and A2 hacked him on the back side of the head and on the right leg, A3 hit D2 with his stick on his right thigh. P.W.8 stated that he cried out aloud and A5 hit him on the right hand with a crowbar and A3 hit him on the right hand fingers and also on his head and due to fear, he ran away from the place. He said that P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and Anabothu Seethamma (L.W.10) also came to the scene raising cries. He said that the accused proclaimed that if anybody interfered, they would kill them and, raising their weapons, they went towards Venkatapuram. The weapons with which they were armed at the time of the offence were identified as M.Os.1 to 5. M.Os.1 and 2 are axes, M.O.3 is a stick, M.O.4 is a geethakathi and M.O.5 is a crowbar. In his cross-examination, P.W.8 denied the suggestion that A3 sustained injuries in a road accident and that his body was paralyzed from the waist down. He admitted that D2 had fallen in love with A5 and she conceived and thereafter, their marriage was performed in a temple at Nemali. He denied the suggestion that he, D1 and D2 forcibly got aborted A5s pregnancy with a doctor at Vanaja Hospital, Thiruvur. He denied the suggestion that he, along with D1 and D2, tarnished the image of A5 and also harassed her for dowry. He denied the suggestion that he, along with D1 and D2, harassed A5 for additional dowry and she filed C.C.No.1924 of 2003 on the file of the Judicial First Class Magistrate, Sathupalli, under Section 498A IPC along with Sections 3 & 4 of the Dowry Prohibition Act, 1986. He denied the suggestion that he, along with D.1 and D2, went to the house of A5 and they outraged her modesty by tearing her blouse and tried to commit rape upon her and that when she raised cries, he along with D1 and D2 beat her and that she filed a complaint with the Police. He denied that the FIR disclosed that he along with D1 and D2 tried to outrage the modesty of A5 and that D2 beat her with a crowbar on her right hand, while he and D1 tried to hack her with an axe and in the mean time, A5s father, mother and brother interfered and he along with D1 and D2 caused injuries to the parents of A5 and villagers attacked them and as a result of the injuries inflicted by the villagers, D1 and D2 died and he also suffered injuries. He admitted that he belonged to CPM and the accused also belonged to CPM. He denied the suggestion that they did not belong to CPM. He denied the suggestion that CPM party workers beat him along with D1 and D2. He denied the suggestion that he and his family members set fire to the house of the accused. He denied the suggestion that to grab the property of the accused, they foisted a false case. He admitted that the accused were agriculturists and not toddy tappers. He denied the suggestion that he had not witnessed the offence and was deposing falsely. He denied the suggestion that upon the influence of elders, they foisted a false case against the accused.

P.W.9, a resident of Venkatapuram, stated that he knew D1 and D2 and their family members and also A1 to A5. He said that he went to see the bodies of D1 and D2 at Thalluru and also found the police at the scene. He was requested by the police to act as a panchwitness to the Crime Details Form and the police observed the scene

of the offence and drew up a rough sketch. Ex.P2 was the Crime Details Form with the rough sketch. He said that he also signed on Ex.P2 and the police seized controlled earth and blood- stained earth from near the bodies of D1 and D2. He admitted that he also acted as an inquestdar along with Venukonda Koteswar Rao (L.W.14) and that Exs.P3 and P4 were the inquest reports. He said that he was of the opinion that the deceased had died due to the injuries. In his cross-examination, P.W.9 stated that Thalluru was at a distance of one kilometre from Venkatapuram. He denied that he was a follower of CPM and stated that he had no membership in CPM. He admitted that he contested for the post of Sarpanch at Venkatapuram but was defeated. He denied the suggestion that he was a follower of the then MLA and his son. He said that the contents of Exs.P2 to P4 were read over and explained to him but he however did not remember the recitals in Ex.P3 inquest report.

P.W.10, a photographer, stated that on 28.02.2007 he was requested by Kalluru Police to photograph the bodies of the deceased at the scene of the offence at Thalluru. He identified Exs.P5 to P21 as the photographs and Ex.P.22 as negatives.

P.W.11 was a panchwitness for the recoveries. He said that he was an agriculturist residing at Lingala in Kalluru Mandal. He said that he knew A1 to A5. He said that on 07.03.2007, when he was at the bus stand of VM Banjara, police called him to act as a panchwitness along with Venukonda Koteswar Rao (L.W.14). A1 to A3 and A5 were in the custody of the Police and in the presence of the Police, A1 to A3 and A5 led them to trace out the weapons at Venkatapuram tank. The accused produced from the bushes axes (M.Os.1 and 2), a stick (M.O.3), a toddy-tapper knife (M.O.4) and a crowbar (M.O.5). He said that M.O.1 axe was seized upon the confessional statement of A1 under Ex.P23, M.O.2 axe and M.O.4 knife were seized upon the statement of A2 under Ex.P24, M.O.3 stick was seized upon the statement of A3 under Ex.P25 and M.O.5 crowbar was seized under Ex.P26 upon the confessional statement of A5. He said that he signed on Exs.P23 to P26. In his cross-examination, P.W.11 said that Chennur was at a distance of five kilometres from Lingala. He denied the suggestion that he was a member of CPM. He denied that he was a follower of the MLA. He stated that he gave evidence in C.C.No.249 of 2007 that M.O.3 was seized from A2. He denied the suggestion that A1 to A3 and A5 never confessed to the crime nor did they lead them to trace out the weapons and the same were never seized under Exs.P23 to P26. He denied the suggestion that he had signed on Exs.P23 to P26 in the Police Station.

P.W.12, a Civil Assistant Surgeon at Penuballi Civil Hospital, stated that she examined P.W.8 on 28.02.2007 and found the following injuries:

1. Lacerated wound 2 x 1 cm on right little finger simple in nature caused by sharp edged weapon.

2. Contusion 4 x 1 cm on left fore arm simple in nature caused with a blunt object.

3. Contusion 4 x 1 cm on left fore arm simple in nature caused by blunt object.

4. Contusion 4 x 5 cm on left arm region simple in nature caused by blunt object.

5. Lacerated wound 1 x 1 cm on right side scalp region simple in nature.

6. Swelling of 2 x 3 cm on left wrist region simple in nature caused by blunt object.

She confirmed that Ex.P27 was the wound certificate issued by her. In her cross-examination, P.W.12 stated that she and one Kiran acted as Duty Medical Officers in Penuballi Civil Hospital and on 28.02.2007, they were on duty and no other doctors were working in the hospital. She said that she examined P.W.8 at 12.30 PM but did not mention the time of her examination in Ex.P27 and no identification marks were mentioned therein. She denied the suggestion that she intentionally failed to mention the time on Ex.P27. She admitted that on 28.02.2007, A1, A2, A3 and A5 also came to the hospital with injuries and were examined by her. She said that they were referred through Police Constable 207. She said that she did not mention the time in the wound certificate given to them also. She denied the suggestion that under the influence of the police, she failed to mention the time not only in Ex.P27 but also in the wound certificate given to A1, A2, A3 and A5, in relation to Sessions Case No.470 of 2008 on the file of the learned Assistant Sessions Judge, Sathupalli. She denied the suggestion that under the influence of the police, she failed to mention the time of examination of the accused. She denied the suggestion that on 28.02.2007, she did not examine P.W.8 in Penuballi Civil Hospital. She admitted that she did not bring the Medico-Legal Case Register relating to P.W.8. She said that she remembered that she examined him at 12.30 PM, after completion of O.P. She said that the MLC Register disclosed the presence of patients. She admitted that she deposed in C.C.No.249 of 2007 as P.W.10 and she remembered deposing that her examination was at 12.30 PM. She denied the suggestion that she was deposing falsely under the influence of the police to suit the prosecutions case.

P.W.13, a Medical Officer at Government Hospital, Penuballi, stated that he conducted the post-mortem examination over the body of D2 and found the following external injuries:

1. A chap wound of 3 x 1.5 x 1.5 cm over the right eye.
2. Chap wound of 15 x 7 x 3 cm over left mandible.
3. Chap wound of 15 x 4 x 2 cm over occipital region.
4. chop wound of 12 x 3.5 x 5 cm over the left foot.
5. contusion of 3 x 2 cm over left thigh.

He said that injuries 1, 2 and 4 were likely with a sharp-edged weapon like M.O.1 and injury 5 was possible with a blunt object like M.O.3. He said that upon internal examination, he found fracture of the right frontal and occipital bones and there was massive intra- cranial hemorrhage. He opined that the deceased died due to cardio-respiratory failure caused by massive intra-

cranial hemorrhage due to chap wounds on frontal and occipital regions of the head. He said that the deceased might have died about 24 to 36 hours prior to the examination. He identified Ex.P28 as the post-mortem examination report of D2. He then spoke of the post-mortem examination of D1 and stated that he found the following external injuries upon him:

1. Chap wound of 15 x 5 x 5 cm over occipital region of head.
2. Chap wound of 2 x 2 x 2 cm over right frontal region.

Upon internal examination, he said that he noticed the right occipital and right frontal bones fractured. He opined that the deceased died due to cardio-respiratory failure caused due to massive intra-cranial hemorrhage due to chap wounds on the frontal and occipital regions of the head. He said that the injuries might have been caused with M.Os.1, 2 and 4 and that the deceased died about 24 to 36 hours prior to his examination. He identified Ex.P29 as the post-mortem examination report of D1. In his cross-examination, P.W.13 stated that he went through the inquest reports of both deceased but did not notice any chilly powder on any of part of the dead bodies of both the deceased. He said that he could not say whether the injuries were possible with M.Os.1, 2 and 4.

P.W.14, the Sub-Inspector of Police, Kalluru Police Station, spoke of registration of Crime No.24 of 2007 in his examination-in- chief. In his cross-examination, he stated that he registered the said case at 12.00 hours on that day. He said that Sathupalli Magistrates Court was at a distance of 30 kilometres from Kalluru Police Station. He said that he sent the injured to the hospital on the same day but he did not remember the time at which he sent him. He denied the suggestion that he deliberately suppressed the time of his sending the injured to the Hospital. He said that on the same day evening, one amongst A1 to A5 lodged a complaint, basing upon which he registered Crime No.25 of 2007, to his remembrance, for offences under Sections 324 and 506 IPC. He said that on that day itself, he sent the injured in that case also to the Government Hospital. He said that he did not remember with whom he sent the injured in that case to the hospital on the complaint in Crime No.25 of 2007 lodged by one amongst A1 to A5. He said that he did not remember who figured as the accused in the complaint lodged by one amongst A1 to A5. In his further cross-examination, P.W.14 stated that he did not mention specifically about the weapons of offence in the hands of particular accused. He admitted that there was no mention as to a particular accused beating a particular person with a particular weapon. He admitted that there was no mention of motive for committing the offence in Ex.P1 report. He admitted that the names of P.Ws.3, 4, 5 and 8 were not shown as eye-witnesses in Ex.P1 complaint. He admitted that in the complaint, A1 to A5 and some others were stated to have been involved in the offence. He admitted that there was no mention in Ex.P1 about P.W.8 witnessing the incident. He admitted that he had not mentioned as to who beat up P.W.8. P.W.14 perused the case diary relating to Crime No.46 of 2003 under Section 498A IPC and stated that the date of the offence in the

said crime was 07.08.2003 at 2000 hours. He admitted that A5 in this case was the complainant in Crime No.46 of 2003, D2 was A1 in Crime No.46 of 2003 and the relations of D1 and D2 were the other accused therein. He said that Ex.D1 was the certified copy of the FIR in Crime No.46 of 2003 on the complaint given by A5, Ex.D2 was the certified copy of the charge-sheet along with Memo of Evidence in Crime No.46 of 2003 and Ex.D3 was the certified copies of the FIR, complaint along with charge-sheet with Memo of Evidence in Crime No.25 of 2007 vide Sessions Case No.470 of 2008 on the file of the learned Assistant Sessions Judge, Sathupalli. He admitted that D1, D2 and P.W.8 were the accused in the said case. He admitted that he investigated the said case and filed the charge-sheet. He admitted that in the Crime Details Form at Col.9, he mentioned that he had visited the scene of the offence at 11.30 AM. He volunteered that by oversight the time was wrongly mentioned. He denied the suggestion that he mentioned the wrong time intentionally and deliberately and not by oversight. He admitted that he referred A5, A2, A3, A1 and A4 to the Government Hospital, Penuballi. He admitted that he did not mention the time of his referring the injured to the hospital in his requisition. He denied the suggestion that he intentionally did not mention the time. He denied the suggestion that they managed the doctor so that she would also not mention the time of the examination. He said that Ex.D4 was the certified copy of the Crime Details Form and four wound certificates in Crime No.25 of 2007. He stated that in Crime No.25 of 2007, A5 had stated before him that D2 caused an injury to her left hand with a crowbar and her brother-in-law (P.W.8) and her father-in-law (D1) tried to hack her. He admitted that the incident took place in front of the house of A5. He said that as per Ex.D3 complaint of A5, the time of that offence was mentioned as 10.00 AM. He admitted that he did not mention the time as approximately 10.00 AM in Col.No.3(a) of the FIR No.25 of 2007. He said that he registered the case at 12.30 PM and in the present case, he registered the crime at 12.00 noon. He denied the suggestion that he recorded the time of registration of the murder case (Crime No.24 of 2007) at 12.00 noon and the case in Crime No.25 of 2007, which was given earlier, as 12.30 PM deliberately. He denied the suggestion that A1 to A5 were not concerned with the murder case and with a view to implicate them and to avoid registration of the case against the husband and father-in-law, he delayed the registration. He admitted that A2 in Crime No.24 of 2007 was cited as a witness. He admitted that none of the eye-witnesses in Crime No.24 of 2007 were cited as witnesses in Crime No.25 of 2007. He admitted that Rajulapati Laxmaiah (P.W.7) was cited as a panchwitness in the Crime Details Form in Crime No.25 of 2007 and he was also shown as a circumstantial witness and was examined as P.W.7 in Crime No.24 of 2007. He said that he did not know the scribe of the complaint in Crime No.24 of 2007. He denied the suggestion that at the instance of the then MLA, he foisted a false case against the accused in this case. He denied the suggestion that the deceased were killed by the people belonging to the followers of the then MLA and in order to save them, this case was foisted falsely against the

accused. In his re-examination by the prosecution, P.W.14 stated that the houses of the accused and the deceased were situated side by side. In his further cross-examination by the defence, P.W.14 denied the suggestion that he had not mentioned that the houses of the accused and the deceased were situated side by side. He volunteered that he had mentioned it in the Crime Details Form.

P.W.15, the Circle Inspector of Police, spoke of the steps taken by him during the investigation. In his cross-examination, P.W.15 stated that he did not enquire about the school in which D2 worked. He admitted that P.Ws.1 to 5 stated that they saw the dead bodies for the first time after their death. He admitted that the witnesses, including the inquest panchwitness, did not state that D2s right leg was on the left leg. He admitted that he did not examine the elders, T.Seshagiri Rao and K.Ajay Kumar, as they were politicians and it was not necessary. He said that the distance between Pocharam and Thalluru Venkatapuram was four kilometres. He admitted that the father of Ajay Kumar was the then MLA. He admitted that in Ex.P1 report, it was stated that some other persons attacked with deadly weapons like axe, crowbar, knife, stick and chilly powder. He stated that he did not consider some other persons for the investigation. He denied that the real culprits were some other persons and they committed the offence in the presence of the then MLA. He admitted that P.W.3, P.W.4, P.W.5 and Anabothu Seethamma (L.W.10) were not cited as witnesses. He admitted that there was no specific mention about the weapons used by A1 to A5. He admitted that the specific place where the offence took place in the village was not mentioned in Ex.P1 and no motive was mentioned therein. He stated that the name of the scribe of Ex.P1 was not mentioned therein. He denied the suggestion that he included the list of injuries after preparing the inquest report. He denied the suggestion that there was a difference in writing in the inquest panchanama and the injuries list included. He denied the suggestion that after receiving the post-mortem report, he included the list of injuries to implicate A1 to A5 at the instance of the MLA. He denied the suggestion that he obtained the signatures of panchas at the Police Station at the instance of the MLA. He admitted that in Ex.P3, it was stated that for the first time he saw the dead body of D1 after the death of the deceased. He denied the suggestion that he had not investigated regarding the two chappals and also that the chappals did not belong to the accused and as such, they were suppressed and not produced before the Court. He denied that M.O.3 was not recovered from A3 and that A3 met with an accident at Bombay and his spinal cord was damaged, whereby he was unable to move from the bed and as such, recovery of a stick from him did not arise. He however admitted that A3 could not move without the help of a stick. He admitted that in Ex.P1, there was no mention about the offence which was witnessed by P.W.2. He admitted that P.W.1 did not state before him about the intended marriage between Nagamma and D2 and D2s request to A2 to advance money and A2s refusal to do so whereupon D2 was sent to D1s house. He admitted that P.W.8 was not mentioned

as tailor Srinivas. He added that his name was mentioned as Anna Srinivas and not tailor Srinivas as he was the brother of P.W.1. He admitted that Section 161 CrPC statement did not record that the offence took place in front of the house of D1 and D2 and that P.W.1 in his Section 161 CrPC statement did not state that he was the scribe of Ex.P1. He added that as he himself was the scribe, he did not mention so. He admitted that he did not examine R.Krishnaiah, R.Padma, Raja Ram, and P.Laxmaiah as he felt that it was not necessary. He admitted that in Crime No.46 of 2003, A5 was the complainant, while D2 was A1 and his relations were the other accused and in Crime No.25 of 2007, A5 was the complainant and D2 was A1, while P.W.8 was A2 and D1 was A3. He denied the suggestion that suppressing the said case, he foisted a false case against the accused at the instance of the MLA. He denied the suggestion that the offence took place in front of the house of the accused. He denied the suggestion that by suppressing the case in Crime No.25 of 2007, they foisted a false case against the accused as the incident took place much earlier in Crime No.25 of 2007 to the present case. He admitted that P.W.2 stated in her Section 161 CrPC statement that the incident took place in front of the house of P.W.8. He admitted that P.W.3 did not state in Section 161 CrPC statement that the incident took place in front of the house of D1. He admitted that 15 houses were situated between the houses of P.W.1 and P.W.3 but none were examined and P.W.3 did not state in his Section 161 CrPC statement that while he was taking lunch, he heard a galata. He admitted that P.W.4 did not state in his Section 161 CrPC statement that upon hearing his hue and cry, P.W.1 came. He admitted that he and P.W.14 went to the scene of the offence at 9.00 AM. He denied that he registered this case as the first case and the first case as the second case. He denied the suggestion that the MLA and his son came to the Police Station and lodged the complaint. He said that he did not know whether the MLA came to the Police Station as deposed by P.W.1 in some other case in Hyderabad. He denied the suggestion that at the instance of the MLA, they implicated the accused. He denied the suggestion that no offence took place in front of the house of D1 and D2 and the accused were not related to this case.

Upon considering the above evidence, the Sessions Court believed the eye-witness accounts of P.Ws.1 to 5 and the injured eye- witness, P.W.8. On the strength thereof, the Sessions Court recorded convictions and sentences, leading to filing of this appeal.

Heard Sri P.Prabhakar Reddy, learned counsel for the appellants/A1 to A5, and the Public Prosecutor, State of Telangana.

At this juncture, it may be noticed that A5 moved an application in Crl.A.M.P.No.1748 of 2015 in this appeal to declare her a juvenile as on the date of commission of the offence and to release her. By order dated 13.06.2016 passed therein, this Court took note of the report dated 01.06.2016 submitted by the learned Judge, Family Court-cum-VII Additional District and Sessions Judge, Khammam, to the effect

that A5 was born on 08.05.1990 and was therefore aged 16 years 9 months 20 days as on 28.02.2007, the date of the alleged offence, and was therefore a juvenile in conflict with the law in terms of the Juvenile Justice (Care and Protection of Children) Act, 2007 (for brevity, the Act of 2007). This Court therefore confirmed the conviction of A5 and directed her to be released forthwith as she had served the maximum sentence of three years under the Act of 2007. The criminal appeal therefore stood disposed of in so far as appellant No.5/A5 was concerned.

It may however be noted that though the conviction of A5 was confirmed, it was only on the strength of the fact that she had already completed the maximum sentence that could have been imposed upon her under the Act of 2007. Confirmation of her conviction was therefore not based on merits and does not weigh against the other appellants/A1 to A4. It may also be noted that by order dated 28.11.2016 passed in this appeal, this Court granted conditional bail to A1 to A4 following the guidelines laid down in BATCHU RANGA RAO V/s. STATE OF ANDHRA PRADESH (1).

At the outset, it may be noticed that there were two incidents, one culminating in the death of D1 and D2 and the other, whereby A1 to A5 sustained injuries. Crime No.24 of 2007 was registered in connection with the homicidal death of D1 and D2. Ex.P30 is the FIR. Crime No.25 of 2007 was registered upon the complaint of A5 under Sections 324, 354 and 506 IPC. Ex.D3 is the FIR. Perusal of Ex.P30 FIR and Ex.D3 FIR reflects that the occurrence of the offence in each of them was at 10.00 AM on 28.02.2007. There is some controversy as to which party submitted their complaint first leading to registration of these FIRs, but the same may not be of consequence as both record that the offences in question took place at 10.00 AM on that day. The distance between the Police Station and the Court was stated to be 30 kilometres. Significantly, Ex.P30 FIR was received by the Magistrate at 8.50 PM on 28.02.2007, while Ex.D3 FIR was received by the same Magistrate on 01.03.2007 at 1.30 AM. When Ex.P30 FIR was registered at 12.00 noon on 28.02.2007 and was dispatched at 1.00 PM on that day and Ex.D3 FIR, which was registered at 12.30 PM was sent at 12.35 PM on that day, there is no explanation as to why it reached the Magistrate so much later than Ex.P30 FIR. Surprisingly, the Magistrate recorded that both the FIRs were received through the same police constable, being PC No.344 of Kalluru Police Station. Considering the distance, it is not possible that he made two trips. The only inference that can be drawn is that he delayed service of Ex.D3 FIR intentionally. The registration and dispatch of these FIRs to the Magistrate is therefore fraught with suspicious circumstances. Added to this, the fact that most of the eye- witnesses in relation to the offence in Ex.P30 FIR were not cited as witnesses in S.C.No.470 of 2008 in relation to the offence in Ex.D3 FIR also causes doubt. Given the quick succession in lodging of the complaints by both parties and registration of the two FIRs, it is most probable that it was one single and continuous transaction which resulted in

1. 2016(3) ALT 505 (DB) (AP)

injuries to A1 to A5 and culminated in the death of D1 and D2. The prosecution would however claim it not to be so. According to A5, who lodged the complaint which led to registration of Ex.D3 FIR, her marriage with D2 took place about four years back and after getting her pregnancy aborted, D2 necked her out and she was residing with her parents. D2 was pestering her for a divorce and on the fateful day at 10.00 AM, when she was washing clothes in her parents house, D1, D2 and P.W.8 came there and pestered her for a divorce threatening to rape her and they tore her blouse and pulled her saree and D2 hit her with a crowbar while D1 and P.W.8 tried to attack her, whereupon she raised cries and her family members came out. In the altercation which occurred, her family members suffered injuries. Be it noted that A5 would have been all of 12 years of age when she got pregnant and married D2! On the other hand, the version of the prosecution in the case on hand is that A1 to A5 themselves, of their own volition, caused an attack upon D1 and D2 when they were about to free their cattle for grazing at 10.00 AM on that day. No explanation is given as to why A1 to A5 would resort to such a murderous attack, when A5 and D2 had been living separately for so long after their marriage fell apart. All the witnesses for the prosecution spoke of only the alleged attack by A1 to A5 and Vijaya (A6) upon D1, D2 and P.W.8, but nothing was stated by them as to the other incident, whereby A1to A5 suffered injuries. When the entire incident seems to have been one single transaction and was split into two cases, it was for the prosecution to build the bridge between the two so that a comprehensive and complete case could be presented before the Court. However, no such attempt was made by the prosecution which, for some strange reason, projected the cases separately.

In this regard, reliance is placed by Sri P.Prabhakar Reddy, learned counsel, on LAKSHMI SINGH V/s. STATE OF BIHAR (2). This was also a case where two persons had been murdered allegedly by a group of persons and one of the accused also suffered injuries in the course of the altercation. The Supreme Court observed that it was the bounden duty of the prosecution to give a reasonable explanation for the injuries sustained by the accused in the course of the occurrence but found that, not only had the prosecution not given an explanation, but some of the witnesses said that they did not even see any injuries on the person of the accused. The Supreme Court found that the so-called eye-witnesses, who gave graphic details of the assault on the deceased, deliberately suppressed the injuries on the accused, and held that this was an important circumstance to discredit the entire case of the prosecution. The Supreme Court observed that in a murder case, if one of the accused is proved to have sustained injuries in the course of the same occurrence, the non- explanation of such injuries by the prosecution is a manifest defect and shows that the origin and genesis of the occurrence had been suppressed, leading to the irresistible conclusion that the prosecution had not come out with a true version of the occurrence.

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2. AIR 1976 SC 2263

Reference was made by the Supreme Court to its earlier judgment in MOHAR RAI V/ s. STATE OF BIHAR(3) , wherein both the accused had sustained many injuries and the said injuries were noticed by the police when they were produced. It was held that the version of the accused that they sustained injuries at the time of the occurrence was highly probablised and under the circumstances, the prosecution had a duty to explain those injuries. The Supreme Court held that the failure of the prosecution to offer any explanation in that regard showed that the evidence of the prosecution witnesses relating to the incident was not true, or at any rate, not wholly true. The Supreme Court therefore held that the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

1. that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

2. that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable; and

3. that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecutions case.

Dealing with the consistent testimony of the so-called eye- witnesses, the Supreme Court observed that where all the witnesses enter into a conspiracy to implicate innocent persons in a murder case, then the backbone of the prosecution is broken and it would be difficult for the Court to rely on such evidence to convict an accused, particularly when the prosecution does not give any explanation for the injuries on the person of the accused. The Supreme Court observed that it would not be possible in such a case to disengage the truth from falsehood, to sift the grain from the chaff, as the truth and falsehood are so inextricably mixed together, it is difficult to separate them, indeed, if one tries to do so, it would amount to reconstructing a new case for the prosecution which cannot be done in a criminal case.

Sri P.Prabhakar Reddy, learned counsel, also placed reliance on MOHD.KHALIL CHISTI V/s. STATE OF RAJASTHAN(4) , wherein the prosecution failed to explain the injuries on the accused and therefore, the Supreme Court held that the prosecution had failed to prove the genesis of the incident and had suppressed the same.

The principles adumbrated by the Supreme Court in the aforestated decisions apply on all fours to the case on hand. There is no explanation forthcoming from the prosecution or its witnesses as to how A1 to A5 suffered injuries. Though the learned Public Prosecutor would attempt to pass off the said injuries by stating that they were simple injuries, the fact still remains that A5 suffered as many as four such injuries with a blunt object, A2 suffered a laceration on his head

3. AIR 1968 SC 1281

4. (2013) 2 SCC 541

with a sharp-edged weapon, A3 suffered two abrasions with a blunt object, A1 suffered a laceration with a sharp- edged object and an abrasion with a blunt object while A4 suffered two lacerated wounds and an abrasion caused by a blunt object. Irrespective of whether these wounds suffered by A1 to A5 were simple or grievous in nature, the fact remains that the prosecution made no endeavour whatsoever to explain their origin. The version put forth by the accused under Ex.D3 FIR however offers a reasonable explanation for these injuries. It is therefore very much possible that D1, D2 and P.W.8 initiated the exchange by going to the house of A2 and having an altercation with A5. It is brought out in the evidence that the crowbar in question belonged to D1 himself and there is no reasonable explanation forthcoming from the prosecution as to how A1 to A5 came into possession thereof. It is more probable that D1 himself took the crowbar along with him when they went to the house of A2 and caused an attack upon A5 with the same. A5 specifically stated that D2 hit her on the left arm with a crowbar and the wound certificate bears out the said fact. It may be possible that consequent upon this attack upon A5, her family members came out and suffered injuries in the further altercation that took place between the two groups and thereupon, D1 and D2 along with P.W.8 fled as they were outnumbered, leaving the crowbar behind.

At this stage, two versions are possible. On the one hand, because of the attack upon A5, a young girl, by three men, whereupon her blouse was torn and her saree was pulled off, as per the suggestions put to witnesses, villagers themselves attacked the perpetrators of this crime, i.e., D1, D2 and P.W.8. The other possible version could be that A5s family members themselves took hold of weapons and chased D1, D2 and P.W.8, resulting in a further altercation which culminated in the death of D1 and D2. Ex.P2 Crime Details Form along with the rough sketch demonstrates that the house of A2 is separated from the house of P.W.8 by a road and next to the house of P.W.8 is the house of D1. Therefore, in the context of both possible versions, if D1, D2 and P.W.8 were being chased and attacked by the villagers or by the accused, P.W.8 would naturally have escaped the said attack with the least amount of injuries by running into his own house and locking the door. D1 and D2, on the other, would have had to run further to reach safety and in that process, may have been caught by the attackers, whoever they may have been. However, it was for the prosecution to present the correct case before the Court. Once it failed to do so, the very origin and genesis of the occurrence stood suppressed and what was presented before the Court was an inchoate and inconclusive version of what had happened, which would not be sufficient in itself to convict anyone for this gruesome offence.

Significantly, suggestions were put to each and every witness that there was political intervention as A1s family earlier affirmed its allegiance to a particular political party but thereafter withdrew the same, leading to animosity on the part of that partys elders. There was also no explanation from the prosecution as to the two chappals at

the scene of the offence, clearly visible in the photographs. These chappals were not even seized by the police and marked in evidence.

Even otherwise, the so-called testimony of the eye-witnesses in the case on hand does not inspire confidence. On the one hand, P.W.1 stated that he witnessed D1 and D2 freeing their cattle for grazing when the attack by the accused ensued upon them whereas, P.W.2, the daughter-in-law of D1, stated that she was taking the cattle for grazing herself when the attack took place. P.W.4, another eye-witness, claimed that when he cried out aloud after witnessing the attack upon D1 and D2 by the accused, P.W.1, P.W.2 and P.W.3 came there and witnessed the offence along with him. There is therefore no consistency in these three eye-witness accounts. If P.W.2 was already there at the scene and was herself taking the cattle for grazing, the question of P.W.1 and P.W.4 failing to mention the same did not arise. Further, P.W.4 claimed that P.W.2 came on to the scene only after he cried out aloud upon seeing the attack. Significantly, P.W.1, P.W.2, P.W.3, P.W.5 and P.W.8 all belong to the family of D1 and D2. They were therefore interested witnesses. With great precision they spoke of the individual overt acts of each of the accused in the course of their attack upon D1 and D2. Had they really witnessed the said attack, they would not have failed to mention the injuries upon the accused, had they already been caused, or in the event they were caused during the said altercation. However, they remained silent on this crucial aspect.

The evidence of P.W.7 to the effect that when he was returning from Venkatapuram Village to Thalluru, he saw A1 to A5 armed with deadly weapons coming from the opposite direction proclaiming that they would kill if anyone stopped them and that he saw them at Anjaneyaswamy temple, is also fraught with suspicion. The house of A1 to A5 was right next to the house of P.W.8. If they committed the offence with such impunity, totally uncaring for the presence of the villagers, they would have returned to the safety of their own home rather than parade the weapons used by them by walking around the village. No explanation has been put forth by the prosecution as to why the accused would march to the temple with their weapons. It is not brought out that these weapons were recovered from the vicinity of the temple but from Venkatapuram tank. No evidence was let in as to how far this tank is from the temple. This account therefore smacks of improbability.

The other crucial weakness in the case of the prosecution is that all the so-called eye witnesses asserted that Vijaya (A6) and the others threw chilly powder upon D1 and D2. However, P.W.13, the doctor who conducted the post-mortem examination of the bodies of D1 and D2, categorically stated that he did not notice any chilly powder on any part of the bodies of the two dead persons. This was despite the fact that P.W.13 had read the inquest reports. This single fact is enough to completely discredit the eye-witness testimony of P.Ws.1 to 5 and 8 to this effect. There is no evidence that any chilly powder was found at the scene of the offence, as the controlled and

blood-stained earth, which were examined by the Forensic Science Laboratory, were only tested for blood and there is no mention in Ex.P31 report of the Laboratory as to the presence of chilly powder.

The learned Public Prosecutor relied upon JAGMAL V/s. STATE OF RAJASTHAN(5) , wherein the Supreme Court found that the plea of the accused that they had acted in exercise of their right of private defence was acceptable and accordingly convicted the accused under Section 304 Part-I IPC, setting aside their conviction under Section 302 IPC. We however find that it was never the case of A1 to A5 that they exercised their right of private defence and thereby caused the death of D1 and D2. On the other hand, their version was that villagers had killed D1 and D2 and injured P.W.8, consequent upon their attack on and molestation of A5.

Given the strong possibility of political intervention and the glaring inconsistencies in the prosecutions case, including registration and dispatch of the two FIRs, giving rise to a strong likelihood of manipulation of the case by the police, the version of the prosecution as put forth opens the door to doubt and suspicion. That apart, the prosecution failed to present the genesis and origin of the occurrence in its entirety, as not even an explanation has been offered for the injuries suffered by the accused, which must have been during or at the same time of the occurrence which led to the death of D2 and D2. The very foundation of the prosecutions case is therefore rendered shaky and wholly unworthy of acceptance.

On the above analysis, this Court finds that the prosecutions case was fraught with inconsistencies and weaknesses, the fundamental defect being its failure to present the origin and genesis of the occurrence in its full and true form. Further, the eye-witness accounts of P.Ws.1 to 5 and 8 are shown to be unworthy of credibility on counts more than one. Benefit of doubt would therefore have to be extended to the accused as the prosecution failed to establish beyond reasonable doubt that they were responsible for the homicidal deaths of D1 and D2. Brushing aside all these crucial aspects, the Sessions Court convicted and sentenced the accused on various charges.

The judgment dated 21.02.2011 passed by the learned Family Judge-cum-Additional Sessions Judge at Khammam in Sessions Case No.560 of 2008 holding to this effect is therefore set aside. The criminal appeal is allowed. A1 to A4 shall report before the Superintendent, Central Prison, Warangal, for completion of necessary formalities in accordance with the due procedure for their discharge in the light of their acquittal. The bail bonds furnished at the time of their securing conditional bail shall stand discharged. The fine amounts, if any, paid by them shall be refunded.

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5. 2017 SCC OnLine SC 152

2017(3) L.S. 229

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

Union of India & Ors., ..Petitioner

Vs.

K.Ravinder Reddy & Ors., ..Respondents

LAND ACQUISITION ACT, Secs. 4(1) and 18 & 54 - Petitioner sent a requisition for acquisition of lands to the District Collector for the benefit of petitioner laboratories – Having not satisfied with the award passed by Land Acquisition Officer, land owners sought for reference under Section 18 of the Act and the Civil Court enhanced the compensation – Writ Petitioner has challenged the Judgment passed by the Trial Court.

Held - Proceedings under Article 226 of the Constitution are limited to the grounds available for judicial review, whereas the appeal under Section 54 of the Act enables the Appellate Court to go through the evidence adduced before the Civil Court or available with it in the light of evidence already adduced and examine whether the enhancement of compensation is proper or not – Alternative remedy and the scope of enquiry in the appeal is much wider than the discretionary remedy of Article 226 of the Constitution – Writ Petitions are dismissed, giving liberty to petitioners to avail remedy of appeal under Section 54 of the Act and time spent for these proceedings can be exempted for condoning the delay.

Cases referred:
1. AIR 1980 SC 1118
2. (1995) 2 SCC 326
3. (2015) 5 SCC 423
4. 2014(6) ALT 405
5. 1987 MLJ 189

Mr.K.Lakshman, Asst.Solicitor General, for Petitioner.
Mr.Harender Pershad Advocate for Respondent Nos.1 to 6.
Smt. M. Siva Jyothi Advocate for Respondent No.8.
GP for Land Acquisition (TG), Advocate for respondent No.9.

C O M M O N O R D E R

These two Writ Petitions are being disposed of by this common order, as they involve a common point of law.

W.P.No.20896 of 2017 was filed challenging the judgment and decree in L.A.O.P.No.100 of 2011 dated 09.02.2016 passed by the learned II Additional District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad, whereas W.P.No.23946 of 2017 was filed by the same petitioners challenging the judgment and decree in L.A.O.P.No.1123 of 2010 dated 06.02.2017 passed by the

learned Special Sessions Judge for trial of Cases under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act-cum-VII Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar, Hyderabad.

The facts in the two writ petitions are that the second petitioner sent a requisition for acquisition of lands of an extent of 4000 to 4500 acres in various villages of Ranga Reddy District vide its letter dated 05.11.2004 to the District Collector, Ranga Reddy District for the benefit of the petitioner Laboratories. Accordingly, a notification was issued under Section 4(1) of the Land Acquisition Act, 1894 (for short the Act) on 06.07.2006 and a declaration was published on 06.07.2007. The Land Acquisition Officer, 9th respondent passed an Award on 10.04.2008 awarding a compensation of Rs.600/- per sq. yard for the lands under acquisition, but having not satisfied with the said Award, the land owners sought reference under Section 18 of the Act and the same was numbered as L.A.O.P.No.100 of 2011. The Civil Court enhanced the compensation from Rs.600/- per sq. yard to Rs.1250/- per sq. yard by its order dated 09.02.2016. Challenging the said order, W.P.No.20896 of 2017 was filed.

The petitioners in W.P.No.23946 of 2017 are also covered by the same notification, declaration and Award. However, their reference was numbered as L.A.O.P.No.1123 of 2010 and the compensation was enhanced from Rs.600/- to Rs.4000/- per sq. yard by the Civil Court by its judgment and decree dated 06.02.2017. Challenging the said judgement, W.P.No.23946 of 2017 was filed.

This Court, by order dated 30.06.2017, while issuing notice before admission in W.P.No.20896 of 2017, granted interim suspension of the operation of the judgment and decree dated 09.02.2016 in L.A.O.P.No.100 of 2011 for a period of six weeks and later on it is coming up for hearing. No counter affidavit is filed by the Land Acquisition Officer, but the other respondents filed an affidavit seeking vacation of the said order and the averments made in the counter affidavit are not being dealt with since this Court is disposing of these two Writ Petitions on the issue of maintainability and availability of alternative remedy.

Learned counsel for the petitioners submits that the Writ Petitions are maintainable and in the absence of any notice to the Requisitioning Authority, the Petitioners, the judgements of the reference courts are liable to be set aside.

Learned counsel for the land owners, on the other hand, submitted that after numbering the reference by the Civil Court, though intimation was given by the Land Acquisition Officer on 19.04.2014 to the third petitioner to take necessary steps for impleading and protecting the interest of the Government, no steps were taken by the third petitioner and hence the judgements of the Civil Courts are valid.

In the light of the above rival contentions, the points framed for consideration in the present Writ Petitions are; (1) Whether it is obligatory on the part of the Civil Court to issue a notice to the beneficiaries of the land acquisition in the case of a reference to the Civil Court at the instance of the land owners who were not satisfied with the

award of the Land Acquisition Officer?

(2) Whether the Writ Petitions are maintainable challenging the judgements of the reference courts?

(3) To what relief.

The land of an extent of Ac.55.03 gts., situated in Survey Nos.1 to 8, 11 to 19, 21 to 25, 27, 30 and 31 of Roshanudowla village, Saroornagar Mandal, Ranga Reddy District is involved in the two writ petitions. The land was acquired for establishing Research facilities and security strip around the boundaries of DRDL (Defence Research and Development Laboratory). The lands of the unofficial respondent land owners are covered by the award of the Land Acquisition Officer and hence there is no dispute on facts. In L.A.O.P.No.100 of 2011 the learned II Additional District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad enhanced the compensation from Rs.600/- per sq. yard to Rs.1250/- per sq. yard, whereas in L.A.O.P.No.1123 of 2010 the learned VII Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar, Hyderabad enhanced the compensation from Rs.600/- per sq. yard to Rs.4000/- per sq. yard. Thus, the judgements passed by the reference courts are challenged in the present Writ Petitions by the petitioners.

Admittedly, the petitioners were not put on notice and on that ground the validity of the Awards are under challenge.

Sections 18 to 21 of the Act read as follows.

18. Reference to Court :- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken.

Provided that every such application shall be made:-

(a) if the person making it was present or represented before the Collector at the time when he made his award within six weeks from the date of the Collector's award;

(b) in other cases, within six months of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

19. Collector's statement to the Court:- (1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand,

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;
(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11
(cc) the amount paid or deposited under sub-section (3A) of section 17; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a Schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

20. Service of notice :- The Court shall thereupon cause a notice, specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely: -

(a) the applicant;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

(c) If the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

21. Restriction on scope of proceedings:- The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

A Division Bench of this Court in M/s. Orient Cement v. State of A.P., (W.P.No.17532 of 1988 dated 07.10.1994), by relying on a decision reported in HIMALAYA TILES & MARBLE (P) LIMITED V. F.V. COUTINHO(1) and interpreting Section 20(b) of the Act held that it is mandatory for the Court of reference to cause a notice served on the beneficiary for whom the land was acquired before proceeding to determine the compensation.

In U.P. AWAS EVAM VIKAS PARISHAD V. GYAN DEVI (DEAD) BY LRS(2) , a Constitution Bench of the Honble Supreme Court by its majority judgment held as follows.

To sum up, our conclusions are :

1. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation.

2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will be taken up.

3. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.

4. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the

1. AIR 1980 SC 1118

2. (1995) 2 SCC 326

acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

5. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

6. The local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

7. In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the court.

8. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court the local authority, the should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.

9. Since a company for whom land is being acquired has the same right as a local authority under Section 50(2), whatever has been said with regard to a local authority would apply to a company too.

10. The matters which stand finally concluded will, however, not be reopened.

The said Constitution Bench decision is holding the field and the decision of the Division Bench is binding on me. A reading of the above decisions would make it clear that the beneficiary has a right to appear in the acquisition proceedings before the Collector and the reference Court and adduce evidence for the purpose of determining the amount of compensation. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court, but the beneficiary cannot seek a reference on its own. It can challenge the award of the Collector or the judgement of the reference Court in proceedings under Article 226 of the Constitution as well as the remedies available under the Land Acquisition Act. Even after issuing a notice to the beneficiary, it is open to the beneficiary to challenge the Award in proceedings under Article 226 of the Constitution on grounds on which judicial review is permissible. The beneficiary is a proper party. In the case of enhancement of compensation by reference Court, if the government does not file an appeal, the beneficiary can file an appeal against the judgement of the civil court in the High Court after obtaining leave of the Court.

Learned counsel for the respondents relied on a decision reported in RADHEY SHYAM V. CHHABI NATH(3) and submitted that the judicial orders of the Civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution and those orders can be challenged only by way of statutory appeal or revision or under Article 227, but not by way of Writ Petition under Articles 226 or 32. The said decision did not arise

3. (2015) 5 SCC 423

out of the provisions of the Land Acquisition Act and it is only a decision of three Judge Bench. In fact the said decision was considered by me in PERVARAM RAMULU V. GOVERNMENT OF ANDHRA PRADESH (4) , and followed the ratio since the said case related to the exercise of civil jurisdiction by the court. When there is a Constitution Bench decision directly arising under the provisions of the Land Acquisition Act and holding that the Writ Petition is maintainable under Article 226 challenging the award passed by the Land Acquisition Officer or of the Civil Court, the said decision cannot be made applicable to the facts of the present case.

Thus, the point Nos.1 and 2 above have to be held in favour of the petitioners.

Coming to the relief to be granted in the present Writ Petitions, when this Court pointed out that the scope of enquiry in a proceeding under Article 226 of the Constitution are circumscribed by the grounds of judicial review and a regular appeal under Section 54 of the Act would better serve the purpose of the petitioners, learned counsel for the petitioners submitted that the petitioners would be spectators in an appeal preferred before this Court, by relying on a decision reported in INDIAN RARE EARTHS LIMITED V. THE SUB COLLECTOR, LAND ACQUISITION OFFICER, PADMANABHAPURAM (5), Thuckalay, Kanyakumari District . The observations of the Division Bench in the said case are no longer good law, in view of the Constitution Bench decision of the Honble Supreme Court in U.P. Awas Evam Vikas Parishads case (supra). The said decision is correct only to the extent of entitlement of the beneficiary for a notice and maintainability of a Writ Petition, but the observations relating to the scope of enquiry under Article 226 in the place of an alternative remedy available under the Act are not correct.

It is settled principle of law that the proceedings under Article 226 are limited to the grounds available for judicial review, whereas the appeal under Section 54 of the Act enables the appellate Court to go through the evidence adduced before the civil Court or available with it in the light of the evidence already adduced and examine whether the enhancement of compensation is proper or not. The alternative remedy and the scope of enquiry in the appeal is much wider than the discretionary remedy of Article 226 of the Constitution.

In the circumstances, both the Writ Petitions are dismissed giving liberty to the petitioners to avail the remedy of appeal under Section 54 of the Act and the time spent for these proceedings can be exempted for condoning the delay, if any. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any pending in these Writ Petitions, shall stand closed.

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4. 2014(6) ALT 405
5. 1987 MLJ 189

2017(3) L.S. (Madras) 65

IN THE HIGH COURT OF MADRAS

Present:
The Hon'ble Mr. Justice
M.S. Ramesh

Rakesh P. Sheth
& Ors., ..Appellants

Vs.

State and Ors. ..Respondent

CRIMINAL PROCEDURE CODE, Secs.250 & 482 - INDIAN PENAL CODE, Secs.34, 403, 406 & 415 - Petitioners challenging and seeking to quash the FIR registered against them.

Held – Whenever there are sufficient materials to indicate that a complaint manifestly discloses a civil dispute, the inherent powers of High Court under Section 482 of Cr.P.C. can be invoked – Likewise, when the complaint prima-facie discloses that the transaction is for recovery of money due on a commercial transaction, the police cannot be transformed into a collection agent by spicing a criminal colour to the complaint – It is not just to permit the police to continue with the investigation and the same is quashed – Criminal Original Petitions are allowed.

Mr.A.L. Somaiyaji, Sr. Counsel for Nithyaesh&Vaibhav, For Appellant.
Mr.C. Iyyapparaj, Additional Public Prosecutor, Advocate for Respondents.

O R D E R

1. These petitions have been filed by the petitioners challenging the FIR registered in Cr. No. 180 of 2016 dated 13.07.2016 on the file of the first respondent police (in both the petitions) and to quash the same.

2. The case of the prosecution is as follows:

The second respondent herein, got acquainted with the petitioners 1 & 2 herein when they were earlier engaged for an interior design work of her apartment. When she intended to purchase a property for investment purpose, she had approached the petitioners 1 & 2 herein, along with one Mr. PremsaiChundur/third petitioner herein, who was the director of M/s. Karismaa Foundations Private Limited, in which the petitioners 1 & 2 are also the directors. On the suggestion of the petitioners 1 & 2 and Mr. PremsaiChundur, the second respondent had entered into a construction agreement on 10.11.2014 for constructing a residential house at the rate of Rs. 4 Crores and accordingly, transferred a sum of Rs. 1.50 Crores from her savings bank account to the account of the first petitioner herein. Since the first petitioner had advised her that the proposed property to be purchased was not worth the money and that the market conditions were not stable, the second respondent had dropped the plan. According to the second respondent, the first petitioner has assured to transfer the advance amount of Rs. 1.50 Crores to her account. However, since the amount was not repaid, after repeated request, the first petitioner had paid a sum of Rs. 15 lakhs alone on various dates. Since the

petitioners were evading payment of the balance amount, the second respondent had given a complaint on 13.07.2016, which came to be registered in Cr. No. 180 of 2017 for offences under Section 420 r/w.34 IPC. According to the prosecution, the petitioners herein had taken advantage of the second respondent's situation that she is a single woman and cheated her. The said investigation pending in Cr. No. 180 of 2016, is under challenge in the present petitions.

3. Heard Mr. A.L. Somayaji, learned Senior counsel for the petitioners in Crl.O.P. No. 18099 of 2016, Mr. J. Jawahar, learned counsel for the petitioner in Crl.O.P. No. 19020 of 2016 and Mr. AR.L.Sunderasan, learned Senior counsel for the second respondent in both petitions as well as Mr. C. Iyyapparaj, learned Additional Public Prosecutor appearing for the first respondent in both petitions.

4. The learned Senior counsel appearing for the petitioners submitted that the entire transaction between the petitioners and the second respondent was civil in nature and therefore, there is no element of criminal act involved. Relying on the agreement dated 10.11.2014 entered into between M/s. Karismaa Foundations Private Limited and the second respondent herein, the learned Senior counsel submitted that the transaction is civil in nature and as such, the first respondent police are not justified in continuing with the investigation. By relying on Section 420 IPC, he submitted that the complaint does not disclose the basic ingredients of the offence and in the absence of any criminal acts, the FIR needs to be quashed. In support of his submissions, the learned Senior counsel relied on various judgments of the Hon'ble Apex Court as well as this Court. I have referred to these judgments in the later part of my order.

5. Mr. AR.L. Sunderasan, learned Senior counsel on the other hand vehemently opposed the arguments and submitted that the offences of cheating, criminal breach of trust and misappropriation have been clearly made out from the statements made in the complaint. It is the submission of the learned Senior counsel that if at all, the petitioners are of the view that the ingredients of criminal offence has not been made out, it can only be elicited after a fair and impartial investigation and therefore, the present petition filed under Section 482 Cr.P.C., seeking to quash the criminal complaint is pre-mature. By placing strong reliance on the judgment of the Hon'ble Apex Court in Indian Oil Corporation V. NEPC India Ltd., and others in MANU/SC/3152/2006 : 2006 (4) CTC 60, the learned Senior counsel submitted that the powers under Section 482 Cr.P.C., should be exercised very sparingly and in the rarest of rare cases. Since the second respondent had entrusted the money with the petitioners herein in over draft account and the same was utilised for settling certain personal bank dues of the petitioners, this overt act not only amounts to criminal breach of trust, but is also an offence of dishonest misappropriation of property as well as cheating. According to the learned Senior counsel, the first petitioner never disclosed that his account to which the amount was requested to be transferred, was an over

draft account and that the amount was transferred to meet his own personal liabilities without the knowledge of the second respondent herein. In fine, it is the submission that the entire averments in the complaint does constitute a cognizable offence and since the matter requires a detailed investigation, this Court should not exercise its powers under Section 482 Cr.P.C., for quashing the FIR.

6. Mr. C. Iyyaparaj, learned Additional Public Prosecutor appearing for the first respondent (in both petitions) also submitted that the complaint prima facie reveals the commission of cognizable offences and therefore, the investigating officer was justified in registering the same. According to the learned Additional Public Prosecutor, the ingredients of the offence of cheating has been clearly spelt out in the complaint and that since the investigation is now pending, it would not be appropriate to interfere with the same at this pre-mature stage.

7. I have given careful consideration to the submissions made by the respective counsels.

8. The prime question that needs to be addressed in the present case is whether the ingredients of Section 420 have been made out or not. The Hon'ble Apex Court in a judgment in HridayaRanjan Prasad Verma V. State of Bihar reported in MANU/SC/0223/2000 : 2000 (4) SCC 168 had laid down the ingredients to constitute an offence under Section 420 to include deception of any persons; fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property; and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

9. Section 415 of the IPC defines "Cheating" mean:

"415. Cheating: Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

10. The corresponding punishment Section 420 is as follows:

"420. Cheating and dishonestly inducing delivery of property: Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

In the light of the sections and the judgment of the Hon'ble Apex Court, the second respondent's complaint was examined.

11. According to the second respondent, she and the petitioners 1 & 2 were friends

for the past five years, prior to entering into the construction agreement. As a matter of fact, she had engaged the services of the second petitioner as an interior designer and entrusted her work with M/s. Clover Design Studio. During the course of her acquaintance with the second petitioner, she was introduced to the first petitioner also, who is the husband of the second petitioner. The second petitioner's earlier contract for the interior design was done to her satisfaction and thereby all of them became good friends. Subsequently, when the second petitioner intended to purchase a property, she had approached the petitioners and the other named person in the FIR for constructing a residential house at the rate of Rs. 4 Crores. From these facts, it is seen that when the second respondent had intended to construct a residential house, she had voluntarily engaged the services of the petitioners herein.

12. It is not the case of the second respondent that the petitioners had made a false or misleading representation for the purpose of entering into a construction agreement. When the decision to engage the services of the petitioners was taken by the second respondent, she had voluntarily entered into the construction agreement by way of contract and as per the terms of the contract, she had also paid the advance amount of Rs. 1.50 Crores. Till this stage, there were neither deception nor dishonest inducement on the part of the petitioners' to make the second respondent part with her money. Therefore, it cannot be said that the petitioners had cheated the second respondent either to enter into a contract or to part with the advance amount of Rs. 1.50 Crores. In the absence of such dishonest inducement, there cannot be any act of deception. Since the second respondent had voluntarily engaged the services of the petitioners herein, the ingredients to constitute the offence of cheating has not been made out.

13. In order to constitute the criminal offence of cheating as defined under Section 415 IPC, it has to be clearly established that from the inception of the transaction itself, the petitioners had a fraudulent or dishonest intention to cheat the second respondent. There is nothing on record to show that there was an ulterior motive on the part of the petitioners to enter into a contract and thereby misappropriating the advance amount. Hence, it can only be said that the facts of the case leading to entering into a contractual terms with the petitioners was done by and between all the parties, with an intention of concluding the terms of the contract.

14. Pursuant to the execution of the construction agreement, it is alleged by the second respondent that the proposed purchase of the property was dropped on the advice of the petitioners herein. I am unable to comprehend as to how this act would again constitute a criminal offence. What needs to be kept in mind at this point of time when the decision was taken to drop the proposed purchase of property, is that, the petitioners 1 & 2 and the second respondent were good friends and the earlier interior design work was also completed by the second petitioner, admittedly to the satisfaction of the second respondent

herein. When the parties were in a cordial relationship, there could have been a possibility that such an advice to drop the deal could have been suggested with a good and bona-fide intention. It is not the case of the second respondent that the purchase of proposed property for construction was advised to be dropped by the petitioners 1 & 2, was for the purpose of misappropriation of the advance amount. None of the averments in the complaint, suggests so.

15. The real grievance of the second respondent commences after dropping the idea of construction of the proposed property and when the petitioners failed to return the advance amount of Rs. 1.5 Crores. What had transpired thereafter is that, on the request of the second respondent, the first petitioner had repaid a sum of Rs. 15 lakhs and subsequently, handed over the cheque for the balance amount of Rs. 1.35 Crores. Since the said cheque came to be dishonoured on 22.09.2015, the first petitioner had given four more cheques which also were dishonoured on 29.10.2015 and 30.10.2015. From these developments, it is seen that the transaction was purely a breach of the terms of the agreement, since the advance amount paid under the construction agreement was required to be refunded in view of the construction of proposed property is being dropped. Though the second respondent has made various allegations against the petitioners in her complaint, her main grievance was that the petitioners were evading and delaying the payments. However, the fact remains that the petitioners had indeed acknowledged their liability and handed over the aforesaid cheques for the amount claimed by the second respondent. Here again, the ingredients of offence of cheating is conspicuously absent.

16. The learned Senior counsel for the second respondent submitted that since the cheques given by the petitioners were dishonoured, the offence of Section 420 is made out. It would not be out of place to mention here that pursuant to the dishonour of the cheques, the second respondent had issued a statutory notice dated 05.10.2015 under Section 138 of the Negotiable Instruments Act, 1881 as well as for prosecuting the petitioners for an offence under Sections 420 and 415 IPC. The averments made in the said notice has been reiterated in the second respondent's complaint. On receipt of the notice, the petitioners herein had given a reply dated 19.10.2015, wherein they had categorically denied their liability to pay Rs. 1.35 Crores. On the other hand, the circumstance under which the cheques for Rs. 1.35 Crores was issued has been substantiated as one under coercion and duress. As a matter of fact, the reply notice also had a counter claim against the second respondent in connection with the dues of M/s. Clover Design. I do not intend to go into the averments made in the notices exchanged between the parties.

17. It is made clear that I have not expressed any of my views with regard to the validity of the claims and counter claims made therein. What would be relevant for the purpose of this case is that, the liability and the quantum is under dispute. I am unable to appreciate as to how the investigating officer can go into this mixed set of facts over claims and counter claims and file a final report based on the statements of witnesses or other evidences. It would

be pertinent to mention here that the petitioners herein had also sent an e-mail on 11.08.2015 to the second respondent informing her that their cheque for Rs. 1.35 Crores would no longer be valid in the light of the earlier cheques issued to her. After the e-mail, the cheque came to be deposited on 22.09.2015 and the notice of dishonour was sent on 05.10.2015. Incidentally, no complaint under Section 138 of the Negotiable Instruments Act was filed. Subsequently, the second respondent had chosen to wait for almost one year and thereafter preferred the present criminal complaint before the first respondent police. These facts needs to be necessarily proved after due trial by a civil Court by letting in oral and documentary evidence and by no stretch of imagination, can the investigating officer render a finding on such mixed question of facts and breach of contractual terms. As such, the ingredients of cheating as defined under Section 415 IPC is conspicuously absent in the complaint. In the result, it is held that the criminal offence of cheating under Section 420 has not been made out from the averments made in the complaint.

18. Mr. AR.L. Sundaresan, learned Senior counsel for the second respondent submitted that apart from the offence of cheating, there is also ingredients of the offences of criminal breach of trust and misappropriation.

19. For the sake of brevity, those sections are extracted hereunder:

"403. Dishonest misappropriation of property: Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

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

In both the aforesaid Sections, the vital ingredients to constitute an offence is that there must be a dishonest intention for the purpose of misappropriating the money. As discussed in the earlier paragraphs, the complaint does not disclose or suggests that there was a dishonesty in the course of the transaction.

20. The arguments advanced by the learned Senior counsel for the second respondent was that the petitioners had diverted the funds transferred through RTGS to meet their personal liabilities and therefore, it amounts to misappropriation is also unfounded. The terms of the construction agreement does not spell out as to for what purpose the advance amount of Rs. 1.50 Crores had to be utilised by the petitioners. Assuming for a moment, the petitioners have utilized the funds to meet their personal liabilities, it may not amount to misappropriation as such. What was required in the construction agreement was that the petitioners had to complete the

construction within the agreed time-frame. Hence there is no illegality amounting to a criminal offence from the alleged conduct of the petitioners herein. In the absence of the ingredients of dishonest intention and misappropriation, the offence of misappropriation punishable under Section 403 cannot be made out.

21. Likewise, in order to constitute the offence of criminal breach of trust, one of the ingredients is that the person should be entrusted with the property or any dominion over the property. The contract agreement does not speak about refundable advance. On the other hand, since the amount of Rs. 1.5 Crores has been termed as an advance, it can only be deemed to be an advance paid. While that being so, the payment of this advance amount cannot be said to have been entrusted with the petitioners herein.

22. The other ingredients to constitute an offence of criminal breach of trust is again dishonest intention and misappropriation. I have elaborately discussed that the complaint does not make out the ingredients of dishonest intention, misappropriation or entrustment and therefore, none of the provisions would constitute the criminal offence of misappropriation, criminal breach of trust or cheating. Hence, it can only be concluded that the second respondent's complaint manifestly discloses the entire transaction to be purely civil in nature and the first respondent police may not be justified in investigating into a civil transaction.

23. I shall now discuss the various judgments referred to by the respective counsels.

a) In one of the earliest judgments of the Hon'ble Supreme Court in Hari Prasad Chamaria V. Bishun Kumar Surekha and others reported in MANU/SC/0112/1973 : 1973 (2) SCC 823, had found that a mere breach of contract cannot give raise to criminal prosecution since the remedy is before the Civil Court.

"3. The complaint came up for hearing before the Subdivisional Magistrate Samastipur and on August 6, 1968 he took cognizance of the offence under Section 420 Indian Penal Code. It was directed that the process should issue against the respondents. The respondents thereafter approached the High Court under Section 561A of the Code, of Criminal Procedure. The High Court was of the view that the case of the appellant was based upon contract. Mere breach of contract, in the opinion of the High Court, could not give rise to criminal prosecution. The appellant, it was further observed, had a remedy in the Civil Court and he could not be allowed to fight the matter in Criminal Court. In the result, the criminal proceedings against the respondents were quashed.

4. We have heard Mr. Mafte-shwari on behalf of the appellant ar are of the opinion that no case has been made out against the respondents under Section 420 Indian Penal Code. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct Even after making that allowance, we find that the complaint does not disclose the commission. of any offence on the part of the respondents under Section 420 Indian Penal Code. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the

time the appellant parted with Rs. 35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating."

b) The same proposition has been reiterated in the following judgments also:

i) In HridayaRanjan Prasad Verma and others v. State of Bihar and another reported in MANU/SC/0223/2000 : 2000 (4) SCC 168, the relevant portion of the judgment is as under:

"15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

ii) In Alpic Finance Ltd., v. P. Sadasivan and another reported in MANU/SC/0106/ 2001 : 2001 (3) SCC 513, the relevant portion of the decision is as follows:

"10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under Section 420 I.P.C. and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents

made any willful misrepresentation. Even according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception."

iii) In Indian Oil Corporation v. NEPC India Ltd., and others reported in MANU/SC/3152/ 2006 : 2006 (6) SCC 736, wherein it has held as under:

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged. In G. SagarSuri v. State of UP [MANU/SC/0045/2000 : 2000 (2) SCC 636], this Court observed : "It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.

c) While refusing to interfere with the judgment in quashing an FIR, the Hon'ble Apex Court in R. Kalyani v. Janak C. Mehta and others reported in MANU/SC/8183/2008 : 2009 (1) SCC 516 held as follows:

"32. Allegations contained in the FIR are for commission of offences under a general statute. A vicarious liability can be fastened only by reason of a provision of a statute

and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in-charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created."

d) In N. Anbuselvam, G.A. Poongodi, M. Gokulapriya and G.A. Pavithra v. State by Inspector of Police, Thudiyalur Police Station, Coimbatore District and V. Selvam reported in MANU/TN/3295/2014 : 2015 (1) MWN (Cr.) 147, this Court has held as under:

"10. The learned counsel for the petitioners also relied on the judgment of the Hon'ble Supreme Court reported in MANU/SC/0223/2000 : (2000) 4 SCC 168 (HridayaRanjan Prasad Verma and others v. State of Bihar and another), wherein, the Apex Court is pleased to hold that there is fine distinction between mere breach of contract and the offence of cheating and it depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct and mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time, when the offence is said to have been committed and therefore, it is the intention, which is the gist of the offence and to hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning that is, when he made the promise cannot be presumed.

11. Such observation of the Hon'ble Supreme Court is squarely applicable to the facts of the present case, wherein, there is nothing to show that the petitioners have had any fraudulent or dishonest intention at the inception and with such intention induced the defacto complainant to part with money. On other hand, the conduct of the petitioners would show that the first petitioner has genuinely repaid the amount in all the possible means and his failure to make to pay the entire amount will amount to mere failure to keep up his promise and nothing more, as such, the petitioners has no intention of cheating, which is manifest by the subsequent conduct of the parties in repaying the amount, as held by the learned brother judge of this Court in the decision reported in 2001 (1) MWN (Cr.) 191 (Dr. K. Jagadeesan and another v. Inspector of Police, Central Crime Branch, Egmore, Chennai-8).

12. Thus, considering the nature of the transactions between the parties and subsequent conduct of the parties, this Court is of the firm view that the allegations raised in the FIR would disclose that the dispute between the parties is more of civil in nature and there is no fraudulent or dishonest intention on the part of the petitioners to attract the offences under sections 420 and 406 IPC.

e) In the well laid down judgment of the Hon'ble Apex Court in the State of Haryana v. BhajanLal and others [1992 Supp (1) SCC 335], it was held that the inherent powers under Section 482 Cr.P.C., is for the purpose of meeting the ends of justice. The learned Senior counsel for the

respondent by relying on a judgment in Indian Oil Corporation v. NEPC India Ltd., and others reported in MANU/SC/3152/2006 : 2006 (4) CTC 60 submitted that just because the complaint relates to a commercial transaction or breach of contract or civil remedy is available, the same may not be itself be a ground to quash the criminal proceedings. The relevant portion of the Hon'ble Supreme Court is as follows:

"(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

The aforesaid extract is a portion of the principles laid down by the Hon'ble Supreme Court in various judgments which came to be considered in the judgment cited by the learned Senior counsel for the respondent. When these principles that came to be analysed in the said judgments is read in toto, it may not be of much help to the respondent since these principles also indicates that when the complaint does not prima facie constitute any offence or where it is the clear abuse of process of Court or it is a purely a civil wrong, the same can be quashed. What is applicable to a complaint will also be equally applicable to an FIR. The following paragraphs of the said judgment of the Hon'ble Supreme Court is extracted hereunder:

"9. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - MadhavraoJiwajiRaoScindia v. SambhajiraoChandrojiraoAngre [MANU/SC/0261/1988 : 1988 (1) SCC 692], State of Haryana v. Bhajanlal [1992 Supp (1) SCC 335], RupanDeol Bajaj v. Kanwar Pal Singh Gill [MANU/SC/0080/1996 : 1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., [MANU/SC/0622/1996 : 1996 (5) SCC 591], State of Bihar v. RajendraAgrawalla [MANU/SC/1429/1996 : 1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [MANU/SC/0155/1999: 1999 (3) SCC 259], Medchl Chemicals &Pharma (P) Ltd. v. Biological E. Ltd. [MANU/SC/0128/2000 : 2000 (3) SCC 269], HridayaRanjan Prasad Verma v. State of Bihar [MANU/SC/0223/2000 : 2000 (4) SCC 168], M. Krishnan v. Vijay Kumar [MANU/SC/0630/2001 : 2001 (8) SCC 645], and Zandu Pharmaceutical Works Ltd. v. Mohd.SharafulHaque [MANU/SC/0932/2004 : 2005 (1) SCC 122]. The principles, relevant to our purpose are :

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be

examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/ malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

24. In the light of the aforesaid judgments, it can only be held that whenever there are sufficient materials to indicate that a complaint manifestly discloses a civil dispute, the inherent powers of this Court under Section 482 Cr.P.C., can be invoked. Likewise, when the complaint prima-facie discloses that the transaction is for recovery of money due on a commercial transaction, the police cannot be transformed into a collection agent by spicing a criminal colour to the complaint.

25. In view of the foregoing reasonings, I do not find any justification to permit the first respondent police to continue with the investigation. In the result, the Criminal Original Petitions stand allowed. Consequently, the investigation in Cr. No. 180 of 2016 dated 13.07.2016 on the file of the first respondent police is quashed. Connected Miscellaneous Petitions are closed.

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2017 (3) L.S. 75 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
Hon'ble The Chief Justice of India
Dipak Misra &
The Hon'ble Mr.Justice
A M Khanwilkar Mohan &
The Hon'ble Mr.Justice
M Shantanagoudar

J.Vasanthi & Ors., ..Appellant
Vs.
N. Ramani Kanthammal
(D) Rep. by LRs. & Ors ..Respondents

TAMIL NADU COURT FEES AND SUIT VALUATION ACT, Secs.25 & 40 - CIVIL PROCEDURE CODE,Sec.115 and Or.VII, Rule 11 – Valuation of Court Fee.

Held – Proper valuation of the suit property stands on a different footing than applicability of a particular provision of an Act under which court fee is payable and in such a situation, it is not correct to say that it has to be determined on the basis of evidence and it is a matter for the benefit of the revenue and the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action – Civil Appeal is allowed.

C.A.No.3396/17 Date:10-8-2017

J U D G M E N T

(Hon'ble The Chief Justice of India Dipak Misra)

This appeal, by special leave, is at the instance of the appellants calling in question the legal propriety of the judgment and order dated 16th March, 2016 passed by the High Court of Judicature at Madras, Bench at Madurai in C.R.P. (MD) No. 847 of 2015 (PD), whereby the High Court has affirmed the order passed by the Principal District Judge, Dindigul in I.A. No. 94 of 2014 in Original Suit No. 20 of 2014 rejecting the prayer of the applicant/defendant for dismissal of the Original Suit on the ground of payment of inadequate court fee by placing reliance on a wrong provision of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 (for brevity, "the Act").

2. The facts in a nutshell are that the "A Schedule property", as appended to the plaint, was purchased by the plaintiff's father, late Raja Chidambara Reddiyar from one Balasundara Iyyer on 12.08.1943 through document No. 412/1943 and also "B schedule property" was purchased by him from one Swaminatha Iyyer on 09.08.1943 through document No. 238/1943. After the purchase, he got the patta transferred in his name and paid the government taxes and enjoyed the properties. On 21.02.1948 through document No. 596/1948 plaintiff's father made a sale of the A and B Schedule properties along with some other properties

in favour of Sellammal w/o Rangoon Krishnasamy Reddiyar. As averred in the plaint, the A and B schedule properties and other properties which were sold, were again purchased by the father of the plaintiff on 19.04.1948 through document No. 1469/1948 from Sellammal and, thereafter, changed the patta in his name bearing patta Nos. 621, 705, 2032 and 2133, and held the suit A and B Schedule properties during his life time. As pleaded, the plaintiff's father died on 07.10.1986 leaving behind the plaintiff and her sister Gowri as his legal heirs. The 1st defendant is the son of the plaintiff. The 2nd defendant is the husband of the 3rd defendant and the 4th defendant is their son. The 5th defendant is the father of 3rd and 6th defendants and father-in-law of the 2nd defendant. The suit was basically filed for seeking declaration that the sale deeds dated 30.08.1991, 23.03.1993, 04.01.1994, 10.06.2002 and 11.03.2004 as per document Nos. Document Nos.922/1991, Document No.330/1993, Document No.2395/1994, Document No.1239/2002 and Document No. 214/2004, respectively as null and void and for permanent injunction.

3. The further narration of the factual score is that as regards the "A Schedule property", the plaintiff asked for a loan of Rs. 1 lakh from the 2nd defendant, Janakiraman, who in turn, suggested that an agreement for sale should be made in favour of his brother-in-law, the 6th defendant, Saravanaprabhu. The plaintiff agreed to make an agreement for sale as proposed by the 2nd defendant. As per the said agreement an amount of Rs. 50,000/- was received by the plaintiff and her son, the 1st defendant and executed an agreement for sell.

4. It is claimed that at that time, the 2nd defendant obtained signatures in blank papers. Since the document was for security which was made in favour of the 6th defendant on the request of the 2nd defendant, no action was taken regarding document No. 805/91. It is further contended that the A and B Schedule properties were maintained by the plaintiff and her sister in the name of their father only. When the plaintiff was making arrangements for partition of the A and B Schedule properties on 10.03.2011, it came to their knowledge that the defendant Nos. 2 to 6 had created fabricated documents on the basis of the document No.805/91. It is urged in the plaint that the 2nd defendant was a Sub-Registrar and taking advantage of his position the sale agreement made in favour of the 6th defendant, who is the brother-in-law of the 2nd defendant, fabricated sale deeds were created by the defendant Nos. 2 to 6 as if the plaintiff had executed the sale deed in favour of the 6th defendant.

5. The defendants filed I.A. No.94 of 2014 in O.S. No.20 of 2014 praying for directing the plaintiff to pay the court fees under Section 40 of the Act failing which to reject the plaint since the plaint was highly undervalued. The said application for rejection of the plaint preferred under Order

VII Rule 11 of the Code of Civil Procedure was dismissed by the Principal District Judge, Dindigul, as mentioned hereinbefore. The trial Judge, while dismissing the I.A., relied upon the decisions in ***G. Seethadevi*** *v.* ***R. Govindaraj & Ors. [(2011) 6 MLJ 399]***, ***P. Thillai Selvan*** *v*. ***Shyna Paul & Anr. [(2014) 7 MLJ 732],*** and ***Siddha Construction (P) Ltd. Rep. By its Power Agent, Anjay Sharma, No.32 Guruswamy Road, Chetpet, Chennai - 600031*** *v.* ***M. Shanmugam & Ors. [(5) CTC 255 : (2006) 4 MLJ 924]***. Be it clarified that the original plaintiff died during the pendency of the case, i.e., on 15.01.2015, and her legal heirs have been brought on record.

6. Being dissatisfied with the aforesaid order, the appellants preferred C.R.P. (MD) No. 847 of 2015 (PD). It was contended before the High Court that the learned trial Judge has completely erred by rejecting the prayer inasmuch as the plaintiff was seeking declaration for cancellation of the sale deeds and hence, she was liable to pay the court fee under Section 40 of the Act and not under Section 25 (d) of the said Act. It was also urged that the trial court has completely erred by placing reliance on ***Siddha Construction*** (supra). The said stand of the revisionists was resisted by the opposite parties contending, *inter alia*, that when a plea had been advanced that she had not executed any sale deed and the documents were fabricated, then the court fee is payable as per Section 25(d) and Section 40 of the Act is not attracted. That apart, it was also urged that the payment of the court fee is a mixed question of fact and law and, therefore, the plaint was not liable to be rejected by entertaining a petition as regards evaluation of the suit property. It is worthy to mention here that the issue of limitation was raised before the trial court which was not accepted as a ground for rejection of the plaint and the High Court concurred with the same. We do not intend to address the issue of limitation as that can be dealt with at the stage of trial of the suit.

7. The High Court, as the impugned judgment would show, referred to the averments in the plaint which were to the effect that the sale deeds were not executed by their 7 predecessor-in-interest and she had not received consideration and, therefore, the principle enunciated in ***G. Seethadevi*** (supra) is squarely applicable to them. The High Court further observed that on a perusal of the plaint, it is manifest that the plaintiff had denied execution of the sale deeds and in that context the court fee payable could be under Section 25(d) and not under Section 40 of the Act.

8. Ms. V. Mohana, learned senior counsel appearing for the appellants submits that the court fees has to be paid under Section 40 of the Act when the plaintiff has sought declaration for treating the documents as null and void, which basically amounts to seeking the relief of cancellation of the said documents. It is urged by her that when the requisite court fees as payable under

the Act is not paid, the court has no other option but to reject the plaint and the said factum is obvious from the assertions in the plaint.

9. Mr. G. Gowthaman and Mr. P. Soma Sundaram, learned counsel for the respondent Nos. 1, 5, 6, 7 and 9 to 14 in support of the order passed by the High Court contend that the reasons ascribed by the High Court are absolutely impregnable and in a case of the present nature, court fee has to be paid under Section 25(d) of the Act. It is further submitted by the learned counsel for the respondents that the sale deeds executed in favour of the defendants were fraudulent ones, for they were never executed by the original plaintiff and hence, the court fees is required to be paid under Section 25(d) of the Act.

10. Section 40 of the Act reads as under:

"40. **Suits for cancellation of decrees, etc.**— (1) In a suit *for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit*, and such value shall be deemed to be-

if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed;

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.

(2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less.

Explanation.— A suit to set aside an award shall be deemed to be a suit to set aside a decree within the meaning of this section."

[Emphasis added]

11. The singular issue that gains significance in this case is that the original plaintiff was a party to the transaction. Section 40 of the Act, as we notice, provides that in a suit for cancellation of a document, the court fee has to be computed on the value of the subject-matter of the suit and such value shall be deemed to be the whole decree or other document which is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed. It also spelt out that a part of the decree or other document is to be cancelled, such part of the amount or value of the property. On a careful scrutiny of the provision, it is limpid

that it refers to the decree or other document and in that context, it uses the word "value". The stand of the respondents before the High Court as well as before this Court is that the documents were sought to be declared as null and void on the ground of fraud and, therefore, Section 40 of the Act would not be attracted. In this regard, we may notice certain decisions of the High Court of Madras.

12. In ***Siddha Construction*** (supra), the learned single Judge has opined that for the value of the Court Fee payable by the plaintiff the averments in the plaint alone are to be considered. In the said case, it was observed that the plaintiffs had not executed the sale deed and did not receive any sale consideration and they had not alienated the property in favour of any one. In the said case, the third defendant was the petitioner in the revision petition. The suit was filed to declare that the sale deed executed by the first defendant in favour of the third defendant was null and void. The High Court referred to the decision in ***Alamelu v. Manickammal [1979 (II) M.L.J. 8]*** wherein it has been held that the plaintiff is not a party to the sale deed and when he seeks only a declaration that the impugned sale deed is null and void, it is subject to the value of the suit under Section 25(d) of the Act. The learned single Judge also quoted a passage from ***Gnanambal Ammal v. Kannappa Pillai [1959(I) M.L.J. 353]*** wherein it has been held:

"Where a plaintiff's case is that a document is sham and nominal, it need not be set aside, and the suit for relief on that footing is not one for cancellation, so as to attract the application of Section 40 of the Madras Court-fees and Suits Valuation Act, 1955. But even in such a case, if the plaintiff sues for cancellation he would have to pay Court-fee on that relief, whether it is necessary to have the deed cancelled or not."

13. The learned counsel for the appellant would submit that the said decision is distinguishable as in the said case the plaintiffs were not parties to the impugned sale deed.

14. In ***G. Seethadevi*** (supra), the High Court followed the principle stated in ***Siddha Construction*** (supra) and held thus:

"In the case on hand, it is to be seen that the case of the Petitioner is that she has not executed Power of Attorney in favour of one Bhaskaran so as to execute the sale deed in favour of third parties. That apart, it is contended that the said Bhaskaran is unknown to the Petitioner and he is an employee of the first Respondent in his petrol bunk. When such statement has been made in the plaint, the court fee that has to be payable on the relief that has been sought for by the Petitioner viz., for declaration that the sale deed dated 25.04.2008 is null and void and not binding on the Petitioner, under Section 25(d) of the Act and not under Section 40 of the

Act. The Petitioner has not admitted the execution of Power of Attorney. The court below is not justified in directing the Petitioner to pay the court fee under Section 40 of the Act. In the case relied on by the Respondents, the Power of Attorney was admitted by the Respondents/Plaintiffs therein and hence, this Court in the said decision has directed the party to pay the Court Fee under Section 40 of the Act."

15. In ***K. Palaniswamy and another v. S.B. Subramani and another [2007 (1) CTC 300]***, the learned single Judge took note of the facts that the plaintiff had filed a suit for declaring the sale deeds executed by the first defendant in favour of the second and third defendants as null and void and unenforceable and would not bind the plaintiff and for consequential permanent injunction and an application under Order VII Rule 11 of Civil Procedure Code (CPC) was filed as proper court fee had not been paid and the suit was not properly valued and it deserved to be rejected. In the said case, the second respondent was the power of attorney of the first respondent and after revocation of power of attorney, he had executed the sale deed in favour of the defendants. The High Court took note of the fact that when the first respondent was not a party to the document, the relief sought for in the suit would not come under Section 40 of the Act and accordingly, dismissed the civil revision.

16. ***Chellakannu v. Kolanji [AIR 2005 Mad 405]***, dealt with a civil revision that was filed by the plaintiff assailing the order of the trial court directing the plaintiff to pay the court fee under Section 40 of the Act. The narration of the facts in the plaint was adverted to by the High Court and for proper appreciation of the controversy that has been raised in the instant case, we may reproduce the same:

"… the Suit Property belonged to his Father-Pichamuthu. Pichamuthu had two wives, through whom he had Three Sons. Earlier, there was Partition in the family of the Plaintiff on 04.08.1971 wherein the Plaintiff and the Sons through the First Wife have partitioned the family properties. There was further partition between the Plaintiff and his Brothers in 1977. Item 1 of the Suit Property was allotted to one Poomalai. Items 2 and 4 - S.Nos.155/3 and 339/13A were allotted to the Plaintiff. First Defendant is the Wife of Shanmugam. Third Defendant has been keeping the First Defendant as his concubine. The Third Item was allotted to the Plaintiff's Sister. The Third Defendant is the Third Party. With the help of the First Defendant, the Third Defendant secured the Suit Properties - Item Nos.1 to 3 under a false representation that the Plaintiff is executing a Will in favour of the First Defendant. On that mis-representation, Plaintiff's thumb impression was obtained and two Sale Deeds dated 05.06.1995 and 23.08.1995 are said to have been obtained. Those Sale Deeds obtained from the Plaintiff under false representation is not binding on

the Plaintiff. Hence, the Plaintiff has filed the Suit for Declaration that the Sale Deeds are not binding on him and for Permanent Injunction, restraining the Defendants from in any way interfering with the Plaintiff's peaceful possession and enjoyment of the Plaint Schedule Items I, II and IV."

17. The further stand taken by the plaintiff was that the sale deeds were obtained from him under fraud and hence, suit had been filed for declaration that the sale deeds were not binding on the plaintiff and since the suit was not filed for cancellation of the sale deeds, the defendants could not insist the plaintiff to pay the court fee under Section 40 of the Act. The trial court recorded a find that the sale deeds had been executed by the plaintiff himself and *prima facie* the sale deeds were binding on the executants and when there is a prayer to declare the sale deeds as invalid, it tantamounts to seeking cancellation of sale deeds and therefore, court fee payable would be governed by Section 40 of the Act.

18. The High Court posed two questions, namely, (i) whether in the Suit filed for Declaration that the Sale Deeds are invalid, Court Fee paid under Section 25(d) of the Act is incorrect and (ii) whether the impugned order directing the Plaintiff to pay the Court Fee under Section 40 of the Act suffers from any infirmity warranting interference. Dealing with the factual matrix, the High Court observed:

"Thus, the Plaintiff himself is a party to the Sale Deed; when the Party himself seeks to get rid of the Sale Deeds in substance it amounts to Cancellation of Decree. The Plaintiff might seek to avoid the Sale Deeds if he is not a party to the Sale Deeds. But, since the Plaintiff himself is a party to the Sale Deeds before he is suing for any relief, the Plaintiff must first obtain the cancellation of the Sale Deeds."

And again:

"The word "Cancellation" implies that the persons suing should be a party to the document. Strangers are not bound by the documents and are not obliged to sue for cancellation. When the party to the document is suing, challenging the document, he must first obtain cancellation before getting any further relief. Whether cancellation is prayed for or not or even it is impliedly sought for in substance, the Suit is one for cancellation. in the present case, when the Plaintiff attacks the Sale Deeds as having been obtained from him under fraud and mis-representation the Plaintiff cannot seek for any further relief without setting aside the Sale Deeds.

x x x x x

The allegation on the Plaint in substance mounts to cancellation of the document. Though the prayer is couched in the form of seeking declaration that the document is not valid and not binding, the relief in substance indirectly amounts to seeking

for cancellation of the Sale Deed. Learned District Munsif was right in ordering payment of Court Fee under Section 40 of the Act. This Revision Petition has no merits and is bound to fail."

Being of this view, the High Court dismissed the civil revision and directed the plaintiff to pay court fee with further stipulation that unless paid, plaint would stand rejected.

19. To appreciate the decision in ***P. Thillai Selvan*** (supra), we have carefully gone through the same and we find the High Court has referred to Order VII Rule 11 CPC, adverted to the issue of payment of court fee both as a question of fact and law and opined that the trial court has rightly rejected the petition. Thus, the said decision does not really deal with Section 40 of the Act.

20. In this context, we may profitably refer to the pronouncement of this Court in ***Suhrid Singh alias Sardool Singh v. Randhir Singh and others [(2010) 12 SCC 112]***. In the said case, the Court referred to several elaborate prayers contained in the plaint and summarized the same. The Court took note of the fact that the issue had come before the trial court which had come to hold that prayers relating to the sale deeds amounted to seeking cancellation of the sale deeds and, therefore, *ad volerem* court fee was payable on the sale consideration in respect of the sale deeds. The said view was affirmed in the revision. The Court addressed the core issue pertaining to court fee payable in regard to the prayer for a declaration that the sale deeds were void and not "binding on the coparcenary", and for the consequential relief of joint possession and injunction. After referring to the provisions of the Court Fees Act, 1870 as amended in Punjab (as the controversy arose from the High Court of Punjab and Haryana), the Court held:

"Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to *A* and *B*, two brothers. *A* executes a sale deed in favour of *C*. Subsequently *A* wants to avoid the sale. *A* has to sue for cancellation of the deed. On the other hand, if *B*, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by *A* is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If *A*, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If *B*,

who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(*iii*) of the Second Schedule of the Act. But if *B*, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(*iv*)(*c*) of the Act.

Section 7(*iv*)(*c*) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (*v*) of Section 7."

21. On the basis of the aforesaid analysis, the Court opined that the view expressed by the trial court and the High Court was not justified in holding that the court fee is required to be paid on the sale consideration mentioned in the sale deeds.

22. In ***Shailendra Bhardwaj and others v. Chandra Pal and another [(2013) 1 SCC 579],*** the Court was dealing with an issue whether suit filed seeking a declaration that a will and a sale deed are void resulting in their cancellation fell under Section 7(iv-A) of the Court Fees Act, 1870 as amended by the U.P. Amendment Act (Act 19 of 1938) or Article 17(iii) of Schedule II of the Court Fees Act, 1870 for the purpose of valuation. Be it noted, in the said case the trial court had taken the view that the court fee had to be paid under Section 7(iv-A) and the High Court has concurred with the same. The two-Judge Bench took note of the provisions of the Court Fees Act, 1870 as amended by the U.P. Amendment Act (Act 19 of 1938) and after referring to the same in detail, held thus:

"On comparing the abovementioned provisions, it is clear that Article 17(*iii*) of Schedule II of the Court Fees Act is applicable in cases where the plaintiff seeks to obtain a declaratory decree without any consequential relief and there is no other provision under the Act for payment of fee relating to relief claimed. Article 17(*iii*) of Schedule II of the Court Fees Act makes it clear that this article is applicable in cases where the plaintiff seeks to obtain a declaratory decree without consequential reliefs and there is no other provision under the Act for payment of fee relating to relief claimed. If there is no other provision under the Court Fees Act in case of a suit involving cancellation or adjudging/declaring void or voidable a will or sale deed on the question of payment of court fees, then Article 17(*iii*) of Schedule II shall be applicable. But if such relief is covered by any other provisions of the Court Fees Act, then Article 17(*iii*) of Schedule II will not be applicable. On

a comparison between the Court Fees Act and the U.P. Amendment Act, it is clear that Section 7(*iv-A*) of the U.P. Amendment Act covers suits for or involving cancellation or adjudging/declaring null and void decree for money or an instrument securing money or other property having such value."

23. The Court took note of the fact that the suit was filed after the death of the testator and, therefore, on that basis observed that the suit property covered by the will was required to be valued. The Court further opined that since Section 7(*iv-A*) of the U.P. Amendment Act specifically provides that payment of court fee in case where the suit is for or involving cancellation or adjudging/declaring null and void decree for money or an instrument, Article 17(*iii*) of Schedule II of the Court Fees Act would not apply. The U.P. Amendment Act, therefore, is applicable in the said case, despite the fact that no consequential relief has been claimed. Consequently, in terms of Section 7(*iv-A*) of the U.P. Amendment Act, the court fees have to be computed according to the value of the subject- matter and the trial court as well as the High Court have correctly held so. The two-Judge Bench distinguished ***Suhrid Singh***'s case by expressing thus:

"10. We are of the view that the decision of this Court in *Suhrid Singh (supra)* is not applicable to the facts of the present case. First of all, this Court had no occasion to examine the scope of the U.P. Amendment Act. That was a case in which this Court was dealing with Sections 7(*iv*)(*c*), (*v*) and Schedule II Article 17(*iii*), as amended in the State of Punjab. The position that we get in the State of Punjab is entirely different from the State of U.P. and the effect of the U.P. Amendment Act was not an issue which arose for consideration in that case. Consequently, in our view, the said judgment would not apply to the present case.

11. The plaintiff, in the instant case, valued the suit at Rs 30 lakhs for the purpose of pecuniary jurisdiction. However, for the purpose of court fee, the plaintiff paid a fixed court fee of Rs 200 under Article 17(*iii*) of Schedule II of the Court Fees Act. The plaintiff had not noticed the fact that the abovemen21 tioned article stood amended by the State, by adding the words "not otherwise provided for by this Act". Since Section 7(*iv-A*) of the U.P. Amended Act specifically provides for payment of court fee in case where the suit is for or involving cancellation or adjudging/ declaring void or voidable an instrument securing property having money value, Article 17(*iii*) of Schedule II of the Court Fees Act shall not be applicable."

24. The decisions in ***Suhrid Singh*** (supra) and ***Shailendra Bhardwaj*** (supra) have to be understood in their proper perspective. There was U.P. Amendment in ***Shailendra Bhardwaj*** (supra). In ***Suhrid Singh*** (supra) the Court was dealing with a different situation. Be that as it may, the valuation of a suit and payment of court fee shall depend upon the special provision in a State if provided for. The view taken by the Madras High Court in ***Chellakannu*** (supra), in our considered opinion, is the correct exposition of law.

25. Another aspect needs to be noted. As we notice from the impugned judgment, the High Court has expressed the view that payment of the court fee is a mixed question of fact and law and that has to be decided on the basis of evidence.

26. In this context, we have been commended to the decision in ***A. Nawab John and others v. V.N. Subra maniyam [(2012) 7 SCC 738]***. On a careful perusal of the said decision, we find that the said authority nowhere addresses the issue that is involved in the case at hand. Proper valuation of the subject matter or under valuation is an aspect which can be contested by the defendant, but the said contest is limited. In this regard, the two-Judge Bench has reproduced two passages from ***Rathnavarmaraja v. Vimla [AIR 1961 SC 1299]*** which we think seemly to reproduce:

"*The Court Fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action*. By recognising that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter in issue between him and the plaintiff and by entertaining petitions preferred by the defendant to the High Court in exercise of its revisional jurisdiction against the order adjudging court fee payable on the plaint, all progress in the suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court fee on his plaint. *Whether proper court fee is paid on a plaint is primarily a question between the plaintiff and the State*. How by an order relating to the adequacy of the court fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate. Again, the jurisdiction in revision exercised by the High Court under Section 115 of the Code of Civil Procedure is strictly conditioned by clauses (*a*) to (*c*) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the subordinate court or assumption of jurisdiction which the court does not possess or on the ground that the court has acted illegally or with material irregularity in the exercise of its jurisdiction. The defendant who may believe and even honestly that proper court fee has not been paid by the plaintiff has still no right to move the superior courts by appeal or in revision against the order adjudging payment of court fee payable on the plaint. But counsel for the defendant says that by Act 14 of 1955 enacted by the Madras Legislature which applied to the suit in question, the defendant has been invested with a right not only to contest in the trial court the issue whether adequate court fee has been paid by the plaintiff, but also to move the High Court in revision if an order contrary to his submission is passed by the court. Reliance in support of that contention is placed upon sub-section (2) of Section 12. That subsection, insofar as it is material, provides:

x x x x

But *this section only enables the defendant to raise a contention as to the proper court fee payable on a plaint and to assist the court in arriving at a just decision on that question*. Our attention has not been invited to any provision of the Madras Court Fees Act or any other statute which enables the defendant to move the High Court in revision against the decision of the court of first instance on the matter of court fee payable in a plaint. The Act, it is true by Section 19 provides that for the purpose of deciding whether the subject-matter of the suit or other proceeding has been properly valued or whether the fee paid is sufficient, **the court may hold such enquiry as it considers proper and issue a commission to any other person directing him to make such local** or other investigation as may be necessary and report thereon. The anxiety of the legislature to collect court fee due from the litigant is manifest from the detailed provisions made in Chapter III of the Act, but those provisions do not arm the defendant with a weapon of technicality to obstruct the progress of the suit by approaching the High Court in revision against an order determining the court fee payable."

(emphasis supplied)

27. On a perusal of the decision in ***Rathnavarmaraja*** (supra), we find the controversy had arisen with regard to proper valuation and the stand of the defendant was that the court fee had not been properly paid and in that context, the Court has held what as we have reproduced hereinabove. The issue being different, the said decision is distinguishable. We may reiterate that proper valuation of the suit property stands on a different footing than applicability of a particular provision of an Act under which court fee is payable and in such a situation, it is not correct to say that it has to be determined on the basis of evidence and it is a matter for the benefit of the revenue and the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. It is because the Act empowers the defendant to raise the plea of jurisdiction on a different yardstick.

28. In the ultimate anlaysis, we arrive at the conclusion that the appeal is to be allowed, the impugned orders passed by the trial court and the High Court, being unsustainable are to be set aside and we so direct. The trial court is directed to grant three months time to the plaintiff to pay the requisite court fee. There shall be no order as to costs.

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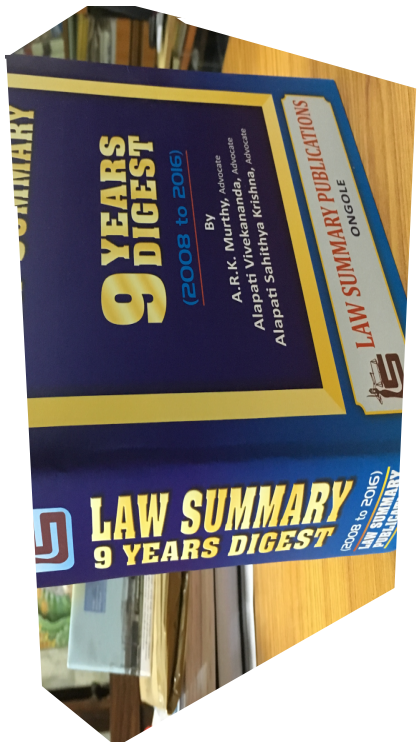

Printed, Published and owned by **Smt.Alapati Sunitha,**

Printed at: Law Summary Off-Set Printers,Santhapeta Ext., Ongole - 523001, Prakasam District. (AP)

Editor: **A.R.K. Murthy,** Advocate.