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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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HON'BLE JUDGES OF HIGH COURT OF ANDHRA PRADESH

THE HON'BLE ACTING CHIEF JUSTICE SRI C.PRAVEEN KUMAR

Born on 26.02.1961 at Hyderabad. Had his school education (Class-I to Class-X) at Little Flower High School, Hyderabad. Passed intermediate from Little Flower Junior College and B.Sc from Nizam College, Hyderabad. Obtained Law degree from University College of law, Osmania University, Hyderabad. Enrolled as an Advocate on the rolls of Bar Council of Andhra Pradesh on 28.02.1986 and joined the office of Sri C.Padmanabha Reddy. Actively practiced on criminal side and also in Constitutional matters. Had developed independent practice in short span. Elevated as Additional Judge of A.P. High Court on 29.06.2012. Appointed as Judge of High Court of Andhra Pradesh and assumed charge as such on 04.12.2013. Appointed as Acting Chief Justice of Andhra Pradesh and assumed charge as such on 1.1.2019.

HON'BLE JUDGES OF HIGH COURT OF ANDHRA PRADESH

Hon'ble Sri Justice
S.V.Bhett

Born in the year 1962 at Madanapalle, Chittoor District, to Sri Ramakrishnaiah and Smt.Annapurnamma. Had his primary education at Giri Rao Theosophical High School, Madanapalle and is a Graduate in Commerce from Beasant Theosophical College, Madanapalle. Did his Bachelor's Degree in Law from Jagadguru Renukacharya College, Bangalore. Sworn in as an Additional Judge of the High Court of A.P on 12th April, 2013. Appointed as Judge of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and assumed charge as such on 08.09.2014.

Hon'ble Sri Justice
A.V.Sesha Sai

Born in the year 1962 in an Agricultural and Freedom Fighters' family at Bhimavaram, West Godavari District. Had his primary education in Municipal Elementary School, Bhimavaram and Higher Education in Luthern High School, Bhimavaram and Intermediate in K.G.R.L. College, Bhimavaram and graduation in D.N.R. College, Bhimavaram and B.L. Degree in Sir C.R. Reddy College, Eluru, West Godavari District (Andhra University). Enrolled as an Advocate on the rolls of the Bar Council of Andhra Pradesh on 03.07.1987. Elevated as Additional Judge of High Court of Andhra Pradesh and sworn in on 12.04.2013. Appointed as Judge of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and assumed charge as such on 08.09.2014.

HON'BLE JUDGES OF HIGH COURT OF ANDHRA PRADESH

Hon'ble Sri Justice
M. Seetharama Murti

Hails from a family of Lawyers of Kakinada of East Godavari District. He is a third-generation Lawyer in the hierarchy and had actively practiced for 12 years, until his selection as a District Judge. On his direct appointment in December, 1996 as a District Judge Gr. II in the Andhra Pradesh Higher Judicial Services. He was appointed as Additional Judge of the High Court of Andhra Pradesh and sworn in as Additional Judge of the High Court on 23.10.2013. Appointed as Judge of High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and assumed charge as such on the afternoon of 02-03-2016.

Hon'ble Sri Justice
U.Durga Prasad Rao

Born in Advocates' family on 12.08.1962. Paternal grand father Sri Upmaka Narayana Murthy was a reputed lawyer and Sathavadhani in Parvathipuram, Vizianagaram District. Maternal grand father Sri Voleti Kameswar Rao and his brothers Sri Seetharam Murthy and Sri Laxmoji Rao were also Lawyers. Selected as Additional District Judge (Direct Recruitment) in 1998. Elevated as Additional Judge of the High Court of Andhra Pradesh and sworn in on 23rd October, 2013. Appointed as Judge of High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and assumed charge as such on the afternoon of 02-03-2016.

HON'BLE JUDGES OF HIGH COURT OF ANDHRA PRADESH

Hon'ble Sri Justice
T.Sunil Chowdary

Born on 04th February, 1957 to Sri Venkatadri and Smt.Veeramma. Enrolled as an Advocate on 02.3.1984 and joined the Office of Sri P.Venkatadri at Chirala. Shifted practice to High Court in 1988 and joined the chamber of Sri Justice J.Chelameshwar. Appointed as District & Sessions Judge in the year 1998. Elevated as Additional Judge, High Court of Andhra Pradesh, Hyderabad on 23.10.2013. Appointed as Judge of High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and assumed charge as such on the afternoon of 2-3-2016.

Hon'ble Sri Justice
M.Satyanarayana Murthy

Born on 14th June, 1960, at Machilipatnam in a middleclass family. Had studies at Machilipatnam up to his graduation. Did his graduation in Commerce from Andhra Jatiya Kalasala, Machilipatnam. Studied law degree in Sir C.R.Reddy Law College, Eluru, and enrolled as a member on the rolls of the Bar Counsel of Andhra Pradesh and started practice at Machilipatnam. Appointed as Standing Counsel for Machilipatnam Municipality in the year 1991 and worked as such till his appointment as District & Sessions Judge, Grade-II, by direct recruitment. Apintteed as Additional Judge, High Court of Andhra Pradesh, Hyderabad, and sworn in as such on 23-10-2013. Appointed as Judge of High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and assumed charge as such on the afternoon of 02-03-2016.

HON'BLE JUDGES OF HIGH COURT OF ANDHRA PRADESH

Hon'ble Sri Justice
G.Shyam Prasad

Born on 27th September, 1958, at Guntur to Sri late G.Mallikharjuna Rao and Smt. G.Savitramma. Enrolled as a member on the rolls of the Bar Council of Andhra Pradesh and started practice at Guntur. Joined in judicial service as District Munsif on 07-10-1985. Promoted as Senior Civil Judge. On further promotion, served as II Additional District Judge, Karimnagar; Appointed as Judge, High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and sworn in as such and assumed charge on the forenoon of 20-05-2016.

Hon'ble Ms Justice
J. Uma Devi

Born on 26.9.1959 at Ananthapur in Andhra Pradesh State to late Sri Javalakar Gnanoba Rao and late Smt. Javalakar Thulasibai. Enrolled in Bar Council of Andhra Pradesh as an Advocate on 6.9.1986 and practised in District Courts, Ananthapur from 1987 onwards having been attached to the office of Senior Advocate Mr. Varada Rao. Selected and appointed as District Judge on 14.12.1996. Appointed and sworn as Judge of High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh on 17.1.2017.

Hon'ble Mrs. Justice
T. Rajani

Born on 06.11.1958 in Annambhotlavari palem, Prakasam District to Smt.Ramathulasamma and Venkatappaiah. Prosecuted School and College studies at Guntur. Joined in Andhra University for Law in 1977 and completed Law in 1980. Got enrolled for law practice in April, 1981. Practised Law in Guntur from 1981 till getting selection as District Judge in August, 2002. After 4½ months of training at Judicial Academy, posted as II Additional District Judge in Karimnagar and later worked as I Additional District Judge, Karimnagar; Judge Mahila Court, Hyderabad; Economic Offences Court, Hyderabad; District Judge, Medak; and Metropolitan Sessions Judge, Hyderabad. Elevated to High Court on 17.01.2017

HON'BLE JUDGES OF HIGH COURT OF ANDHRA PRADESH

Hon'ble Sri Justice
D.V.S.S.Somayajulu

He was born on 26.09.1961 in a family of lawyers. His father, late Sri D.V.Subba Rao, was the third generation of a family of distinguished lawyers and a leading Advocate of repute at Visakhapatnam in the State of Andhra Pradesh, holding positions as Chairman, Bar Council of India, Mayor of Visakhapatnam, President, Andhra Cricket Association. He was enrolled as an Advocate on the Roll of Bar Council of Andhra Pradesh and practiced law at Visakhapatnam. He was appointed as Judge of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and sworn-in on 21.09.2017. He is the first Advocate from a mofussil Bar in Andhra Pradesh who is directly elevated as Judge of a High Court.

Hon'ble Mrs. Justice
K.Vijaya Lakshmi

Born on 20th September, 1960 to Late Sri Gullapalli Venkateshwara Rao and Late Smt. Gullapalli Sita Rathnam. Enrolled at the then Bar Council of Andhra Pradesh on 12th July 1985. Joined the office of Sri Justice S. Parvatha Rao Garu. Worked as Assistant Government Pleader from 1991 to 1995 and as Government Pleader from January 1996 to May 2004. Worked as Government Pleader, attached to the office of the then Additional Advocate General, High Court of Andhra Pradesh, Sri Justice Jasti Chelameswar Garu. Assumed charge as Permanent Judge of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh on 21st September 2017.

Hon'ble Sri Justice
M.Ganga Rao

He was born on 08-04-1961 at Guntakal Village and Mandal, Anantapuramu District, Andhra Pradesh. He is the eldest son of Late Sri M.Chinthamani and Smt.M.Govindamma. Enrolled on the rolls of the Bar Council of Andhra Pradesh on 05.02.1988 and joined as junior in the Chambers of Sri Justice B.S.A.Swamy, when he was an Advocate, worked for three years and later worked in the Chambers of Sri Justice C.V.Ramulu, when he was Senior Central Government Standing Counsel in the High Court of Andhra Pradesh. Elevated to the Bench as a Judge of the High Court of Judicature for the State of Telangana and for the State of Andhra Pradesh and assumed charge with effect from 21.09.2017.

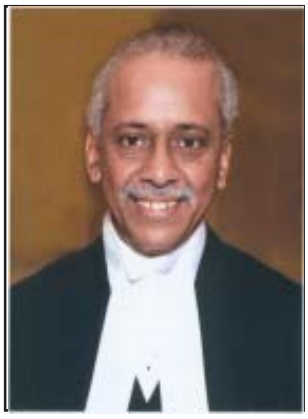
HON'BLE JUDGES OF HIGH COURT OF TELANGANA

THE HON'BLE SRI CHIEF JUSTICE THOTTATHIL B. RADHAKRISHNAN,

Sri.Thottathil B. Radhakrishnan was sworn-in as permanent Judge of the High Court of Kerala on 14th October, 2004. He is the son of late N. Bhaskaran Nair and late K. Parukutty Amma, both Advocates, who practised at Kollam. Born on 29th April, 1959. Enrolled on 11th December, 1983, he practised at Thiruvananthapuram as junior to Advocate late P. Ramakrishna Pillai and thereafter shifted to High Court of Kerala in 1988 as junior to Senior Advocate late P. Sukumaran Nayar. He was the Acting Chief Justice of the High Court of Kerala from 13.05.2016 to 1.8.2016 and from the afternoon of 16.2.2017 till he was sworn in as Chief Justice of the Chhattisgarh High Court in the forenoon of 18.3.2017. He was the Chief Justice of the Chhattisgarh High Court from 18.3.2017 to 6.7.2018. He was sworn in as Chief Justice of the High Court of Judicature at hyderabad for the States of Telangana and Andhra Pradesh on 7-7-2018.

HON'BLE JUDGES OF HIGH COURT OF TELANGANA

The Hon'ble Sri Justice
Raghvendra
S. Chauhan



The Hon'ble Sri Justice
V.Ramasubramanian

HON'BLE JUDGES OF HIGH COURT OF TELANGANA

The Hon'ble Sri Justice
P.V.Sanjay Kumar

Born on 14th August, 1963 to late Sri P.Ramachandra Reddy and Smt.P.Padmavathamma. Late Sri P.Ramachandra Reddy was the Former Advocate General of Andhra Pradesh. Enrolled as a member on the rolls of the Bar Council of Andhra Pradesh in August, 1988. Was attached to the Office of his father and gained exposure to various branches of law. Elevated to the Bench as Additional Judge, High Court of Andhra Pradesh, Hyderabad, on 8th August, 2008. Assumed charge as Permanent Judge of High Court of Andhra Pradesh on 20.01.2010.

The Hon'ble Sri Justice
M.S.Ramachandra Rao

He was born on 7-8-1966 at Hyderabad. He enrolled as an Advocate on 7-9-1989. He secured LL.M from the University of Cambridge, U.K. in 1991. His father Justice M.Jagannatha Rao was a former Judge of the Supreme Court of India (1997-2000) and a former Chairman of Law Commission of India. His grand father M.S. Ramachandra Rao was also a Judge of the High Court of Andhra Pradesh from 1960-61. His grandfather's-brother Justice M.Krishna Rao was a Judge of the High Court A.P. from 1966-1973. His Lordship Sri Justice M.S. Ramachandra Rao was elevated as Addl. Judge of the High Court of Andhra Pradesh on 29-6-2012. Appointed as Judge of High Court of Andhra Pradesh and assumed charge as such on 04.12.2013.

HON'BLE JUDGES OF HIGH COURT OF TELANGANA

Hon'ble Sri Justice
A. Rajasheker Reddy

Born on 04.05.1960 in an agricultural family at Sirsangandla Village, Peddavoora Mandal of Nalgonda District. His parents are Sri A. Ramanuja Reddy and Smt. A. Jayaprada. He was enrolled in Bar Council of Andhra Pradesh in April, 1985. He was elevated as Additional Judge of the High Court of Andhra Pradesh and sworn-in on 12.04.2013. Appointed as Judge of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and assumed charge as such on 08.09.2014.

The Hon'ble Sri Justice
Ponugoti Naveen Rao

He was born in an agricultural family of Nandi Myadaram village, Dharmaram mandal, Karimnagar District to late Sri Ponugoti Muralidhar Rao and Smt Vimala. Did his graduation from Nizam College, Hyderabad and obtained law degree from University of Delhi in the year 1986. Enrolled as advocate in the year 1986. Elevated as Additional Judge, High Court of Andhra Pradesh on 12th April, 2013. Appointed as a permanent Judge of High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh on 8thSeptember, 2014.

HON'BLE JUDGES OF HIGH COURT OF TELANGANA

The Hon'ble Sri Justice
Challa Kodanda Ram

Born in 1959 at Challavaripalli Village, Tadipatri Taluq, Anantapur District. Enrolled as an Advocate on 24.06.1988 in the Bar Council of Andhra Pradesh. Was trained by Sri A. Venkata Ramana, Senior Advocate and Government Pleader and later by Sri S. Parvatha Rao (who became Judge of High Court of A.P). Elevated as an Additional Judge of High Court of Andhra Pradesh on 12.04.2013. Appointed as Judge of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and assumed charge as such on 8.9.2014.

The Hon'ble Dr. Justice
B.Siva Sankara Rao

Dr. Siva Sankara Rao was born on 29.03.1959 (recorded date of birth is-10-04-1957) at Sakurru Village of Amalapuram Mandal, East Godavari District. Dr.Rao's late parents are Sri Gavarraju (Ex.Sarpanch) and Smt.Suryakantham of Agricultural family. Enrolled as an Advocate in March,1984. Entered the Judicial Service in the year,1996 as District & Sessions Judge. Elevated as Addl. Judge, High Court of Andhra Pradesh w.e.f. 17-10-2013 and sworn in on 23-10-2013. Appointed as Judge of High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and assumed charge as such on the afternoon of 02-03-2016.

The Hon'ble Dr. Justice
Shameem Akther

Born on 1st January, 1961 at Nalgonda to late Smt. Raheemunnisa Begum and late Sri Jan Mohammed. Studied B.Com in Nagarjuna Government Degree College, Nalgonda, obtained Law Degree from University College of Law, Nagpur, completed L.L.M. from P.G.College of Law, Basheerbagh, Hyderabad in the year 1996, obtained Doctorate from Osmania University in the year 2006. Practiced on Civil, Criminal and Revenue side actively in Nalgonda District from 1986 to 2002. Appointed as District and Sessions Judge in the year 2002. Appointed as Judge of the High Court of Judicature at Hyderabad and assumed charge on 17.01.2017.

HON'BLE JUDGES OF HIGH COURT OF TELANGANA

The Hon'ble Sri Justice
P.Keshava Rao

Born on 29th March, 1961 to Sri Potlapalli Prakash Rao and Smt. Potlapalli Jayaprada. Did his graduation in Sciences from Kakatiya Degree College, Warangal. Secured Law Degree from Kakatiya University in the year 1986 and enrolled as a Member on the rolls of Bar Council of Andhra Pradesh in April, 1986. Elevated to the Bench as a Judge of the High Court of Judicature for the State of Telangana and the State of Andhra Pradesh and assumed charge with effect from 21.09.2017.

Hon'ble Sri Justice
Abhinand Kumar Shavili

He was born on 08.10.1963 to late Dr. Subba Rao Shavili and late Smt. Sangam Yashoda Shavili. Had School education from St. John's Grammar School, Secunderabad, Intermediate from Nrupatunga Junior College, Hyderabad, B.Sc., Degree from Nizam College (Osmania University, Hyderabad), and LL.B., from Osmania University Campus Law College. Enrolled as an Advocate on 31.08.1989 in the Bar Council of Andhra Pradesh. Initially joined the Chambers of Sri D. Linga Rao, Advocate, and later the Office of former Justice Nooty Rama Mohana Rao when His Lordship was practicing as an Advocate, on 02.02.1993, and gained exposure to various branches of law. Elevated as Judge of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh on 21.09.2017.

Hon'ble Mrs. Justice
T.Amarnath Goud

He was born on 01-03-1965 at Secunderabad to Sri T.Krishna and Smt.Savitri. Enrolled as Advocate on 22-09-1990 in the Bar Council of A.P. Joined the Chambers of Hon'ble Sri Justice V.Eswaraiah (then was Advocate). Served A.P. High Court Advocates Bar Association, Hyderabad as Vice President, Joint Secretary, Treasurer and also as Executive Committee Member. Was a Lion for the last 18 years in Lions Clubs International (Lions Club of Secunderabad Millennuium Disc 320C) and Trustee of Heart & Eye Foundation, Trustee of Lions Bhavan, Hyderabad. Served as Region Chairperson, Zonal Chairperson and District Chairperson in Lions Clubs International. Elevated as Judge of High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh on 21-09-2017.

Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

PART - 1 (15TH JANUARY 2019)

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SUBJECT - INDEX

CIVIL PROOCEDURE CODE, O.VII R.11 - Respondent/Plaintiff has filedSuit for Specific performance of Agreement to Sell - Appellant/Defendants have filed an application under Order7, Rule11(d) of CPC to reject the plaint on the ground that suit is barred by limitation – Trial Court allowed the application, which was later set aside by the High Court - Appellants /Defendants preferred present appeal aggrieved by Judgment and Decree of High Court.

Held - Merits and demerits of matter cannot be gone into, while deciding an application filed under O.VII R.11 of the CPC - At this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint, it cannot be said that suit is barred by limitation - Even assuming that there is inordinate delay and laches on the part of the Respondent/Plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC – Appeal stands dismissed. **(S.C.)** ***4***

CONSTITUTION OF INDIA - Contempt Case filed by appellant alleging wilful disobedience to the judgment of this Hon'ble Court by 2nd respondent - Registration of suomotu contempt case clearly sets out charge to effect that 2nd Respondent interfered with administration of justice by placing the order, before this Court which, on the face of it, appeared to be antedated - This Court is of the opinion that niceties may not be reason enough to set at naught the suomotu contempt case when 2nd Respondent was made fully aware of the substance of the charge against him, even if it was not couched as a formal charge - Original record produced before this Court does not even contain the 'Note File', which, in itself, is a suspicious circumstance, and what is available therein does not help in clarifying the issues arising in these contempt proceedings - 1st Respondent-Tahsildar is exonerated for delay on his part in complying with order giving him the benefit of doubt, duly accepting the reasons set out by him for the said delay - Second respondent - Tahsildar is however guilty

of committing civil and criminal contempt and is sentenced to imprisonment for six months, and shall also pay fine. **(Hyd.)** ***4***

CRIMINAL PROCEDURE CODE - Question of sentence -Commuting death sentence awarded to the appellant into one of life sentence - No material whatsoever to come to the conclusion that the gravity of crime caused revulsion in the society or that it had materially disturbed normal life in the society.

Held - Socio-economic factors concerning a convict must be taken into consideration while taking a decision on whether to award a sentence of death or to award a sentence of imprisonment for life - There are number of cases where convicts have been on death row for more than six years and if a standard period was to be adopted, perhaps each and every person on death row might have to be given the benefit of commutation of death sentence to one of life imprisonment - Long delays in courts must be taken into account, but what is needed is a systemic and systematic reform in criminal justice delivery rather than ad hoc or judge-centric decisions. **(S.C.)** ***19***

CRIMINAL PROCEDURE CODE, Secs.397 & 482 – Petitioner suffered injustice due to errors committed by staff of trial Court.

Held - Non-obstante clause gives strength to inherent power of High Court to make such orders which are necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure ends of justice - This Court under its inherent power can pass an order which it cannot while exercising u/Sec.397 Cr.P.C. - Criminal Petition stands allowed. **(Hyd.)** ***1***

CRIMINAL PROCEDURE CODE, Sec.482 – whether High Court should have quashed the criminal proceedings on the grounds that the appellant had withdrawn an earlier complaint without assigning reasons.

Held - No provision in Criminal Procedure Code or any other statute which debars a complainant from making a second complaint on the same allegations, when the first complaint did not lead to conviction, acquittal or discharge - Clear allegations of fraud and cheating which prima facie constitute offences u/Sec.420 of the Indian Penal Code - Correctness of the allegations can be adjudged only at the trial when evidence is adduced - At this stage, it was not for High Court to enter into factual arena and decide whether allegations were correct - Appeal stands allowed.

(S.C.) **10**

MOTOR VEHICLES ACT,Sec.50 - Petitioner contended that a failure to intimate the transfer of ownership of vehicle will only result in a fine u/Sec.50(3) but will not

invalidate transfer of vehicle.

Held - Merely because vehicle was transferred does not mean that such registered owner stands absolved of his liability to a third person - So long as his name continues in RTO records, he remains liable to a third person - Appeal stands dismissed.

(S.C.) ***i***

(INDIAN) PENAL CODE, Secs.34, 406, 420 467, 468, 471, 504 and 506 – Appellants aggrieved by denial to quash criminal prosecution against them preferred instant CriminalAppeal.

Held -Executive Magistrate has no role to play in directing the police to register an F.I.R. on basis of a private complaint lodged before him - If a complaint is lodged before the Executive Magistrate regarding an issue over which he has administrative jurisdiction, and Magistrate proceeds to hold an administrative inquiry, it may be possible for him to lodge an F.I.R. himself in matter – A reading of present F.I.R. reveals that police has registered F.I.R on directions of b Sub-Divisional Magistrate which was clearly impermissible in law - Sub-Divisional Magistrate does not exercise powers u/Sec/156(3) of the Code - FIR stands quashed - Appeal stands allowed.

(S.C.) ***17***

(INDIAN)PENAL CODE, Sec.420 – Petition to Quash Criminal Proceedings against petitioner. Held - In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that representation was false to knowledge of the accused and was made in order to deceive complainant - Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction - Criminal Petition stands allowed.

(Hyd.) 49

PETROLEUM AND MINERALS PIPELINE ACT, 1962 - Writ Petitioners seeking issuance of a writ of mandamus declaring action of the respondents in proposing to lay the natural gas pipeline through their lands without issuing any notice, as illegal and improper and consequently direct the respondents to change the alignment of the proposed gas pipeline to other Government lands - Petitioners claim to be owners and possessors of theland, eking out their livelihood by doing cultivation.

Held – Petitionersparticipated at the time of preparation of panchanama - Delay of 2 months in making the second Gazette publication, which caused no prejudice - Land is being listed for public good - Entire process of acquisition is completed, pipelines are laid and award proceedings came to be passed, compensation is paid to 90% of landholders - Writ Petition is dismissed. **(Hyd.)** ***26***

PREVENTION OF CORRUPTION ACT, Secs.13(1)(e) & 13(2) – Public Servant – Whether petitioner who is working as Paid Secretary in Primary Agriculture Co-Operative Society, is a 'Public Servant' as defined under Section 2(c) of P.C. Act – If, petitioner is a 'Public Servant' as defined under Section 2(c) of P.C. Act, whether the sanction is valid - If not, whether the proceedings against this petitioner on this ground are liable to be quashed.

Held - Petitioner is public servant within meaning of Sec.2(c) of P.C. Act and also under Section 21 of IPC– When there is a question as to whether previous sanction is required to be given by Central or State Government or any other authority, such sanction shall be given by the Government or authority which would have been competent to remove public servant from his office at time when offence was alleged to have been committed – Criminal petition is dismissed, while permitting to raise the issue of validity and legality of the sanction, and also about receipt of financial aid during trial.

(Hyd.) ***34***

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LAW SUMMARY
2019(1)
JOURNAL SECTION

Latest trends in Succession among Hindus

By
Y. SRINIVASA RAO,
M.A (English Litt.)., B.Ed., LL.M.,
(Ph.D) Research Scholar in Torts.
Senior Civil Judge cum Assistant
Sessions Judge, Avanigadda

"*A certain amount of common sense must be applied* in construing statutes.'' – Lord Goddard C.J in Barnes v. Jarvis

'A joint family property continues to retain its joint family character so long as the joint family property is in existence and is not partitioned amongst the co-sharers.'

Introduction:-

Before Amendment in 2005, is now being a latest trend in succession among Hindus, we are all aware of Section 29-A (as inserted w.e.f. 5-9-1985 by A.P. Amendment Act No.13 of 1986). Then, the question was whether married daughter is entitled to a share in coparcenary property under the amended provision or not. In V. Rajamma v. A. Rami Reddi and others – 2011 (2) ALT 551, it was observed that equal right with son conferred on the daughter in a coparcenary would be of no avail to reopen a partition effected prior to amendment. The Hindu Succession Act, 1956 is an important Act enacted in India to amend and codify the law relating to intestate or unwilled succession, among Hindus, Buddhists, Jains, and Sikhs. The Act lays down a uniform and comprehensive system of inheritance and succession into one Act. This Act abolished Hindu woman's limited estate. Under this Act, one person is said to be an ''agnate'' of another if the two are related by blood or adoption wholly through males. (See. Sec. 3 (a)). One person is said to be a ''cognate'' of another if the two are related by blood or adoption but not wholly through males. (See. Sec. 3 (c)). This Act explains the word 'heir'. According to sec. 3 (f), "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Act. As per sec. 3 (g) of Act,''intestate'' means, a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect. Under sec. 27 of this Act, if any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate. This enactment makes it clear that No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever. (Sec. 28). If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the government; and the government shall take the property subject to all the obligations and liabilities to which an heir would have been subject as per section 29 of the Hindu Succession Act.

1. Coparcenary is known as a joint heirship.
2. Property under Hindu law may be divided into two classes, viz., 1. Joint-family property or coparcenary property; and 2. Separate property or self-acquired

property.
3. Joint family property is to be distinguished from separate or self-acquiredproperty. Even if a Hindu is a member of a joint family, he may possess separateproperty.
4. Property which is not joint is called separate or self-acquired property.
5. Joint-family property or coparcenary property indicates the property in which all the coparceners have community of interest and unity of possession. Such property may be –1. Ancestral property;2. Property jointly acquired by the members of the joint family;
3. Separate property of a member "thrown into the common stock";
4. Property acquired by all or any of the coparcener with the aid of joint family funds.
6. The legal position is well settled that on mere severance of status of joint family, the character of any joint family property does not change with such severance. It retains the character of joint family property till partition. See. Para 14 in
Bhagwant P. Sulakhe v. Digambar Gopal Sulakhe & Ors. - AIR 1976 SC 79.
7. Further, the principle of law is that a joint family property continues to retain its joint family character so long as the joint family property is in existence and is not partitioned amongst the co-sharers.

On the question whether self-acquired property bequeathed by a Hindu father to his son is the separate property of the son or whether it is ancestral in his hands as regards his sons, there is a difference of opinion between the different High Courts, which is referred to by their Lordships of the Judicial Committee in Lalram Singh v. Deputy Commissioner, Pratapgarh AIR 1923 PC 160. The question cannot be said to be absolutely settled as their Lordships of the Judicial Committee declined in that case to settle the difference of opinion, but deferred it to a later occasion.

'That view is that it is left to the father to determine whether the property which he gives shall be ancestral or self-acquired, and further, that unless there is any expression of intention or wish that the property should be deemed to be self-acquired, it must be held that the property is to be enjoyed as ancestral property. – In Nagalingam Pillai v. Ramachandra Tevar (1901) 24 Mad 429.' (In 1936, this proposition was followed in Majeti Kasi Viswesra Rao Vs. Pulletikurti Varahanarasimham and Ors.).
It is also a settled law that if A inherits property, whether movable or immovable, from his father or father's father, father's father's father, it is ancestral property as regards his male issue. If A has no son, son's son, or son's son's son in existence at the time when he inherits the property , he holds the property as absolute owner thereof and he can deal with it as he pleases. – Dipo Vs. Wassan Singh – AIR 1983 SC 846.

1. Agnates of the deceased last male holder are not entitled to claim succession as nearest reversionary as was held in V. Venkata Reddy & Others. Vs. G. Venkareddy & Others., 1989 (3) ALT (NRC) 26.2 (DB).
2. It is the very factum of birth in a coparcenary that creates the coparcenary, therefore the sons and daughters of a coparcener become coparceners by virtue of birth. - Danamma @ Suman Surpur and another Vs. Amar and others - - 2018 (2) ALT (SC) 22 (DB).

To whom this Act apply?
Sec. 2 (1) This Act applies—
(a) to any person, who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj;
(b) to any person who is a Buddhist, Jaina or Sikh by religion; and

(c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any

custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed. Explanation.—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:—

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(b) any child, legitimate or illegitimate one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged;

(c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.
It has been provided that not withstanding the religion of any person as mentioned above, the Act shall not apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Indian Constitution unless the Central Government by notification in the Official Gazette, otherwise directs. See. Surajmani Stella Kujur Vs. Durga Charan Hansdah.

"Full blood", "half blood" and "uterine blood":-

3 (e) "full blood", "half blood" and "uterine blood"—
(i) two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but; by different wives;
(ii) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands.
(Sec. 18 says, as to full blood preferred to half blood, that heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.)

1. If two or more heirs succeed together to the property of an intestate, they shall take the property,— (a) save as otherwise expressly provided in this Act, per capita and not per stirpes; and (b) as tenants-in-common and not as joint tenants. (See. Sec. 19).
2. A child who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate. (See. Sec. 20).
3. Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other then, for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder. (See. Sec. 21).

4. The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder: Rule 1.— Of two heirs, the one who has fewer or no degrees of ascent is preferred. Rule 2.— Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent. Rule 3.— Where neither heirs is entitled to be preferred to the other under Rule 1 or Rule 2 they take simultaneously. (See. Sec. 12).
5. Property of a female Hindu to be her absolute property.— (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act. (2) Nothing contained in sub- section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award

prescribe a restricted estate in such property. (See. Sec. 14).

Rules of succession in the case of males:-

Class I heirs are sons, daughters, widows, mothers, sons of a pre-deceased son, widows of a pre-deceased son, son of a, pre-deceased sons of a predeceased son, and widows of a pre-deceased son of a predeceased son.

1. The property of a Hindu male dying intestate, or without a will, would be given first to heirs within Class I. If there are no heirs categorized as Class I, the property will be given to heirs within Class II.
2. If there are no heirs in Class II, the property will be given to the deceased's agnates or relatives through male lineage.
3. If there are no agnates or relatives through the male's lineage, then the property is given to the cognates, or any relative through the lineage of females.
4. If there is more than one widow, multiple surviving sons or multiples of any of the other heirs listed above, each shall be granted one share of the deceased's property. Also if the widow of a pre-deceased son, the widow of a pre-deceased son of a pre-deceased son or the widow of a brother has remarried, she is not entitled to receive the inheritance.

Class II heirs are categorized as follows and are given the property of the deceased in the following order:

1.Father
2.Son's / daughter's son
3.Son's / daughter's daughter
4.Brother
5.Sister
6.Daughter's / son's son
7.Daughter's / son's daughter
8.Daughter's / daughter's son
9.Daughter's /daughter's daughter
10.Brother's son
11.Sister's son
12.Brother's daughter

(Sec. 8 of the Act deals with general rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter— (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule; (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule; (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and (d) lastly, if there is no agnate, then upon the cognates of the deceased.)

Rules of succession in the case of females:-

The property of a Hindu female dying intestate, or without a will, shall devolve in the following order:

1. upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband,
2. upon the heirs of the husband.
3. upon the father and mother
4. upon the heirs of the father, and 5. upon the heirs of the mother.

(Sec. 15 of the Act prescribes general rules of succession in the case of female Hindus. — (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,— (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband; (b) secondly, upon the heirs of the husband; (c) thirdly, upon the mother and father; (d) fourthly, upon the heirs of the father; and (e) lastly, upon the heirs of the mother.

Sec. 15(2) of the Act says that notwithstanding anything contained in sub-section (1),— (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre- deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.)

Exceptions:-

1.If a relative converts from Hinduism, he or she is still eligible for inheritance. The descendants of that converted relative, however, are disqualified from receiving inheritance from their Hindu relatives, unless they have converted back to Hinduism before the death of the relative.

2. Any person who commits murder is disqualified from receiving any form of inheritance from the victim.

The Hindu Succession (Amendment) Act,2005:-

Under this Amendment Act, 2005 (Act No. 39 OF 2005), Section 4, Section 6, Section 23, Section 24 and Section 30 of the Hindu Succession Act, 1956 were amended. It revised rules on coparcenary property, giving daughters of the deceased equal rights with sons, and subjecting them to the same liabilities and disabilities. The amendment essentially furthers equal rights between males and females in the legal system. In section 4 of the Hindu Succession Act, 1956 (30 of 1956), sub-section (2) has been omitted.

1. Any property possessed by a Hindu female is to be held by her absolute property and she is given full power to deal with it and dispose it of by will as she likes. Parts of this Act was amended in 2005 by the Hindu Succession (Amendment) Act, 2005

Substitution of new section for section 6.:-

'6. Devolution of interest in coparcenary property.-(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,- (a) by birth become a coparcener in her own right in the same manner as the son; (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a referen ce to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004. (2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.
(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-

(a) the daughter is allotted the same share as is allotted to a son; (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such pre-deceased daughter; and (c) the share of the pre- deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre- deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.
Explanation.- For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great- grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt: Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect- (a) the right of any creditor to proceed against the son, grandson or great- grandson, as the case may be; or (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.-For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005. (5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004. Explanation.- For the purposes of this section "partition" means any partition made by execution of a deed of

partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.'.

Amendment of Schedule:-

-In the Schedule to the principal Act, under the sub-heading "Class 1", after the words "widow of a pre-deceased son of a pre-deceased son", the words "son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son" shall be added.

Latest trends:-

1. Notional partition theory as provided in Explanation – I in sec. 6 before 2005 Amendment:- ''Gurupad Khandappa Magdum vs Hirabai Khandappa Magdum And Ors - 1978 AIR 1239". When a Hindu dies a partition is to be effected thinking as if he alive. Then he is allotted share in partition between him and his other coparceners. Such persoanl share is divided among his Class- I heirs.
2. The ratio laid down in ''Gurupad Khandappa case, 1978 AIR 1239'' is approved in State of Maharashtra Vs.Narayana Rao Sham Rao Deshmukh and Ors. The theory observed in this judgment was continued till 2005 Amendment.
3. Based on the *ratio decidendi* in ''Gurupad Khandappa case'', Raj Rani Vs Chief Settlement Comm.'s (1984 AIR 1234) case, Sathyapremam mamnjunatha Gowda Vs Controller of Estate Duty Karnataka - (1997) 10 SCC 684; Addl. Commissioner of Income Tax , Lucknow Vs.Maharani Raj Laxmi Devi - AIR 1997 SC 1343, Commissioner of Wealth Tax, Kanpur Vs Chander Sen - 1986 AIR 1753; State of Maharasntra Vs. Narayan Rao Sham Rao Deshmukh - 1985 AIR 716, P.S.Sairam Vs. P.S.Rama Rao Pisey - AIR 2004 SC 1619, Anar Devi and Ors. Vs. Parmeshwari Devi and Ors - AIR 2006 SC 3332, Sugalabai Vs. Gundappa A.Maradi - 2008 (2) KarLJ 406, Basavarajappa Vs. Gurubasamma - (2005) 12 SCC 290, Balijiner Singh Vs. Ram Kala, Y.Nagaraj Vs. Jalajakshi - (2012) 2 SCC 161; Ram Jivan Vs, Phoola - 1976 AIR 844 were decided.
4. If any judgment contra to the ratio laid down in Gurupad Khandappa's case is not bdinding precedent. Example Sheela Devi and others Vs. Lal Chand and another - 2006 (8) SCC 581, Bhanwar Singh Vs. Puran and others - (2008) 3 SCC 87 ; G.Sekar Vs. Geetha and others - 2009 (6) SCC 1999; M.Yogendra and Ors Vs. Leelamma N and others - 2009 (15) SCC 184. These are not binding precedents.

Judgments after 2005 Amendment:-

1. The effect of 2005 amendment was considered in **Ganduri Koteshwaramma & Anr vs Chakiri Yanadi & Anr ((2011) 9 SCC 788)** which was decided in 12-10-2011. In this case, the Apex Court held that the new section 6 provides for a parity of rights in the coparcenary property among male and female memberd of a join Hindu family on and from 09-09-2005. In this case, the object of the Act was observed. In Rohit Chauhan Vs. Surinder Singh and Others - ((2013) 9 SCC 419) case, new section 6 was discussed. Shasidhara Vs Ashwin Uma Mathad case (Civil Appeal No. 324 OF 2015 (Arising Out of SLP(C) No.14024/2013, dated 13-01-2015) was not decided finally becaused the matter was remanded. In Balhar Singh Vs. Sarwan Singh and others - LAWS(SC)-2015-2-150, the Court relied on Chander sen case. But, Chander Sen case was relating to separated father property. When matter was referred to Larger Bench, the matter was withdrwan by the parties as the parties moved a memo for withdrawal. In Prakash and Ors Vs. Phulavati and Ors - (2016) 2 Supreme Court Cases 36 , it was held that daughter must alive and the father must be alive to apply the new section 6. The finding in Phulavati's case that ''father was alive'' is agaisnt the ratio laid down in Ganduri and Shashidhar cases. This Judgment displaced the daughters of Andhra Pradesh, Tamil naud, Karnataka and Maharashtra

because unmarried daughters were already coparceners and after 2005 amendment, they lose that the character as per such finding. This was not the intention of the Parliament in amending section 6. To say in short, Ganduri Koteswaramma's case is binding on the Court. Therefore, Prakash and others Vs Phulavathi's case is not laying binding law because it was decided on the principle that ''vesting and no divesting'' and that it was decided relying on Sheela Devi's case and other series of rulings which were decided under the belief of ''coparcenary abolished after 1956 and all those rulings are against the ratio laid down in Gurupadappa Khandappa's case. In Uttam Vs. Saubhag Singh and others - 2016(2) RCR (Civil) 309, it was observed that new amendned section 6 is not applicable. From the above , it is clear that Ganduri Koteswaramma case bdinds all till the matter is settled by the Larger Bench of the Hon'ble Supreme Court.

Conclusion:-

Coparcenary gets right by birth. One of the incidents of coparcenary is the right of a coparcener to seek a severance of status. In Sheela Devi's case, there was no discussion about application of amended section 6. In Anardevi's case, there was no claim by daughters. In Bhanwar Singh's case, it was observed as succession was opened in 1989, the amendment provision is not applicable, a fortiori, the object of 2005 Amendment was not discussed in this ruling and that it was decided on the principle of law that ''once vested cannot be divested.''. See also. Satrughan Isser Vs Sabujpari's - (1967 AIR 272) case which was decided on 04-08-1966. In Anand Prakash Vs Narayan Das - AIR 1931 All 162, (decided on 12-11-1930), the Privy Council held that the share is indefinite and fluctuating in extent. The ownership of the coparcenary property is vested in the whole body of coparcerners. No individual member casn claim that he has a definite share. In Controller of Estate Duty, Madras, Vs. Alladi Kuppiswamy - 1977 AIR 2069, Satugharn Isser case (AIR 1967 SC 272) was referred to., and it was observed that the interest conferred on a Hindu widow arose by statutory substitution and the Act of 1937 introduced changes wheich were alien to the structure of a Hindu Coparcenary . In that sense, it was held that ''the Act in investing the widow of a member of a coparcenary with the interest which the member had at the time of his death has introduced changes which are alien to the structure of a coparcenary. The interest of the widow are not inheritance nor by survivorship but by statutory substitution.'' G.Sekhar's case was deat reagrding section 23 of Hindu Succession Act but there was no discussion about section 6. Although amended sec. 6 was discussed in M.Yogendra's case, it was held that the son born after 1956 is not a coparcener. In fact, the ratio laid down in Sheela Devi's case was considered in M.Yogendra's case and therefore it is not a binding precedent. To say in short, Ganduri Koteswaramma's case is binding on the Court. Therefore, Prakash and others Vs Phulavathi's case is not laying binding law because it was decided on the principle that ''vesting and no divesting'' and that it was decided relying on Sheela Devi's case and other series of rulings which were decided under the belief of ''coparcenary abolished after 1956 and all those rulings are against the ratio laid down in Gurupad Khandappa's case. In Uttam Vs. Saubhag Singh and others, it was observed that new amended section 6 is not applicable. From the above , it is clear that Ganduri Koteswaramma case bdinds all till the matter is settled by the Larger Bench of the Hon'ble Supreme Court.

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LAW SUMMARY

2019 (1)

State of Telangana and the State of Andhra Pradesh High Court Reports

2019(1) L.S. 1 (Hyd.)

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

Present:
The Hon'ble Mr.Justice
U. Durga Prasad Rao

Vemuri Venkataswamy ..Petitioner
Vs.
N.V. Sankara Srinivasa Rao & Anr., ..Respondents

CRIMINAL PROCEDURE CODE, Secs.397 & 482 – Petitioner suffered injustice due to errors committed by staff of trial Court.

Held - Non-obstante clause gives strength to inherent power of High Court to make such orders which are necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure ends of justice - This Court under its inherent power can pass an order which it cannot while exercising u/Sec.397 Cr.P.C. - Criminal Petition stands allowed.

Crl.Petition No.7048/2012 Date:22-10-2018

Mr.B. Nalin Kumar, Advocates for the Petitioner.
Public Prosecutor (AP), Advocate for the Respondents R2.

J U D G M E N T

1. Perhaps, this is one of the classic examples where the High Court is bound to locomote its plenary power under Section 482 Cr.P.C. to secure ends of justice to the petitioner who suffered injustice due to the errors obviously committed by the staff of trial Court i.e. V Additional Munsif Magistrate, Guntur. The injustice in the words of Principal District and Sessions Judge, Guntur who in his order dated 03.08.2012 in Criminal Revision Petition No.86 of 2012 though emphatically narrated, however refused to set right since the order impugned before him was interlocutory and there was interdict in the form of Section 397(2) Cr.P.C, is thus:

Para-29: After closure of evidence of petitioner as DW1 on01.07.2010, the petitioner filed a petition in Crl.M.P.No.3836 of 2010 on 14.07.2010 under Section 45 of Indian Evidence Act for referring the questioned documents to FSL, Hyderabad, the same was allowed and sent the documents to State F.S.L. After returning and resubmitting the documents and while waiting for report the trial Court closed the

evidence of petitioner on 01.02.2011. But, on 22.03.2011 the petitioner filed Crl.M.P.No.980 of 2011 under Section 45 of Indian Evidence Act for referring the questioned documents to Government Examiner of Questioned documents, Director of Central FSL, Hyderabad, but to the utter dismay, the same was allowed and questioned documents were sent to Central FSL on 07.06.2011. On 23.06.2011 the trial Court received a letter from Central FSL, Hyderabad wherein a fresh DD was sought on its Directors name and also specimen signaturesof petitioner on 5 to 7 sheets along with admitted signatures, thereby on 11.07.2011 the petitioner complied the same. Here the staff exhibited sheer negligence in discharging their official duties and sent the specimen signatures of petitioner and demand draft to State FSL instead of Central FSL which leads to waiting for another five months for State FSL to return the documents seeking some more admitted signatures without even looking at the DD, but the trial Court forgetting the letter sent by State FSL against ordered on 15.02.2012 to write a letter to State FSL to send its report and only on 19.03.2012 the trial Court took notice of the letter sent by State FSL. At this point of time, on 04.04.2012 the petitioner sought time to produce some signatures, but the trial Court refused and passed order closing the evidence of petitioner, aggrieved by the same the petitioner filed Crl.M.P.No.1945 of 2012 and the same was dismissed by the impugned order, which is challenged in this revision."

2. The above tragedy of errors occurred in C.C.No.767 of 2008 on the file of V Additional Junior Civil Judge, Guntur wherein the petitioner faces trial for the offence under Section 138 of Negotiable Instruments Act. Aggrieved by the order in Crl.M.P.No.1945 of 2012, the petitioner filed Crl.R.P.No.86 of 2012 in the Court of Sessions Judge, Guntur and as stated supra, though learned Sessions Judge found fault with the staff of the trial Court which remitted the documents to State FSL in stead of Director of Central FSL, Hyderabad but, however, declined to pass an order in favour of the petitioner since the order impugned was an interlocutory order which is not amenable for revision in view of bar engrafted under Section 397(2) Cr.P.C. Hence, instant petition by the petitioner/accused under Section 482 Cr.P.C.

3. In view of obvious mistake committed by the Court staff in remitting the required documents containing specimen signature of the petitioner to State FSL instead of Central FSL, there is no demur that the petitioner was severely prejudiced and in the absence of a report from Central FSL, his defence will be at peril. In fact, the tone and terrorem of the order of the learned Sessions Judge would divulge that the trial Court instead of initiating action against the errant staff attributed the delay in the progression of trial to the petitioner and ultimately dismissed the petition.

Thus, in deed, petitioner deserves real justice.

a) It is also pertinent to note that learned Sessions Judge observed that though he cannot exercise power under revisionary jurisdiction due to the interdict in the form of Section 397(2) Cr.P.C. to set aside the impugned order, however, same can be interfered with by the High Court in a petition filed under Article 227 of Constitution of

India exercising supervisory jurisdiction and in that regard he quoted the judgment of High Court of Himachal Pradesh rendered in Dwarka Dass vs. State of Himachal Pradesh (1980 Crl.L.J 1018). However, it should be noted, the petitioner has not filed writ petition under Article 227 but filed Crl.P. under Section 482 Cr.P.C. Hence, the point of jurisprudential interest at this juncture is, whether this Court can press into service its inherent power to undo the injustice caused to the petitioner when such an action is barred under Section 397(2) Cr.P.C.

4. Section 482 Cr.P.C. being the enabling provision reads thus: "

Section 482: Saving of inherent powers of High Court.Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

A plain interpretation of the section would give an understanding that the non-obstante clause gives strength to the inherent power of the High Court to make such orders which are necessary to give effect any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. So, to secure the ends of justice it would appear, this Court under its inherent power can pass an order which it cannot while exercising under Section 397 Cr.P.C.

5. My view gets fortified by the decision of the Honourable Apex Court in Madhu Limaye vs. The State of Maharashtra (AIR 1978 SC 47 = MANU/SC/0103/1977) which reads thus: "

Para-11:

xx xx xx

On a plain reading of Section 482,however, it would follow that nothing in the Code, which would include Sub-section (2) of Section 397 also, -

shall be deemed to limit or affect the inherent powers of the High Court –

But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in Sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing

contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly."The Apex Court thus observed that in spite of order assailed is purely an interlocutory one, however, if it brings about the situation which is either in abuse of process of the Court or for the purpose securing the ends of justice interference of the High Court is absolutely necessary, then nothing contained in Section 397(2) Cr.P.C. can limit or affect the exercise of the inherent power by the High Court. Needless to emphasize that the above decision applies with all its fours to the case on hand.

6. In Raj Kapoor and others vs. State and others (AIR 1980 SC 258 = MANU/SC/0210/1979) the Apex Court happened to discuss Madhu Limayes case (2 supra). It observed thus:"

> Para—9: In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extra-ordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face.
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> xx xx

7. In the result, this Criminal Petition is allowed and the impugned order dated 03.08.2012 in Crl.R.P.No.86 of 2012 on the file of Sessions Judge, Guntur is set aside and consequently Crl.M.P.No.1945 of 2012 on the file of V Additional Munsif Magistrate is allowed and the trial Court is directed to reopen the matter and permit the petitioner to adduce his evidence.

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

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2019(1) L.S. 4 (Hyd.) (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
T. Amarnath Goud

Tammisetti Venu Gopal ..Petitioner
Vs.
Chennaiah &Anr., ..Respondents

CONSTITUTION OF INDIA - Contempt Case filed by appellant alleging wilful disobedience to the judgment of this Hon'ble Court by 2nd respondent - Registration of suomotu contempt case clearly sets out charge to effect that 2nd Respondent interfered with administration of justice by placing the order, before this Court which, on

the face of it, appeared to be antedated - This Court is of the opinion that niceties may not be reason enough to set at naught the suomotu contempt case when 2nd Respondent was made fully aware of the substance of the charge against him, even if it was not couched as a formal charge - Original record produced before this Court does not even contain the 'Note File', which, in itself, is a suspicious circumstance, and what is available therein does not help in clarifying the issues arising in these contempt proceedings - 1st Respondent-Tahsildar is exonerated for delay on his part in complying with order giving him the benefit of doubt, duly accepting the reasons set out by him for the said delay - Second respondent - Tahsildar is however guilty of committing civil and criminal contempt and is sentenced to imprisonment for six months, and shall also pay fine.

Mr.P.S.P. Suresh Kumar, Advocates for the Petitioner.

G.P. for Revenue (TG), Advocate for the Respondents.

C O M M O N O R D E R

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

Contempt Case No.1231 of 2016 was filed by Tammisetti Venu Gopal, the appellant in W.A.No.1043 of 2014, alleging willful disobedience to the judgment dated 25.07.2014 passed therein. By the said judgment, a Division Bench of this Court comprising the then Hon'ble The Chief Justice and one of us, SK,J, noted that the learned single Judge had not decided anything while disposing of W.P.No.23318 of 2003, vide order dated 11.04.2014, as he had only remanded the matter to the Tahsildar, Hanamkonda, for taking a decision afresh, and directed the said authority to also decide the question of the locus of Pindi Rama Krishna Reddy, the first respondent in the writ appeal/the writ petitioner. Leaving all points open, the Division Bench further directed the authority to decide the matter within three months from the date of communication of the judgment.

Historical narrative, pertinent to note, is that Tammisetti Venu Gopal had secured pattadar passbooks from the Tahsildar, Hanamkonda, in respect of the land admeasuring Ac.2.00 guntas in Sy.No.118/D of Enumamula Village. Aggrieved thereby, Pindi Rama Krishna Reddy appealed to the Revenue Divisional Officer, Warangal, who allowed the appeal. In revision by Tammisetti Venu Gopal, the Joint Collector, Waqqrangal, reversed the said appellate order. This order was subjected to challenge in W.P.No.23318 of 2003 before this Court. The writ petition was allowed by a learned Judge of this Court on the ground that Pindi Rama Krishna Reddy was not put on notice by the Tahsildar, Hanamkonda, while accepting the plea of Tammisetti Venu Gopal for issuance of pattadar passbooks and the matter was remanded for fresh consideration. It is in this milieu that the writ appeal filed by Tammisetti Venu Gopal was disposed of directing the Tahsildar, Hanamkonda, to also decide the locus of Pindi Rama Krishna Reddy.

According to Tammisetti Venu Gopal, though the Division Bench directed the Tahsildar to dispose of the matter within

three months from the date of receipt of the judgment and the said judgment was dispatched on 05.08.2014 and received by the authority, no steps were taken immediately. He made a representation to the Tahsildar, Hanamkonda, as well as the Joint Collector, Warangal, seeking implementation of the judgment and on 25.07.2014, the Joint Collector, Warangal, directed the Tahsildar, Hanamkonda, to strictly comply with the judgment in the writ appeal. Thereupon, by Memo dated 18.02.2015, the Tahsildar, Hanamkonda, directed the Additional Revenue Inspector and the Village Revenue Officer, Hanamkonda, to visit the spot and submit a status report. The Additional Revenue Inspector and the Village Revenue Officer then visited the spot. Revenue summons dated 20.03.2015 was issued by the Tahsildar, Hanamkonda, calling upon Tammisetti Venu Gopal and Pindi Rama Krishna Reddy to appear in person on 24.03.2015 with original documents. Tammisetti Venu Gopal made a representation on 23.03.2015 to the Tahsildar, Hanamkonda, requesting him to pass appropriate orders but there was no progress. He asserted that despite repeatedly approaching the Tahsildar and requesting him to implement the judgment, no action was taken. At that point of time, the then Tahsildar, Hanamkonda, the first respondent in C.C.No.1231 of 2016, was transferred and a new incumbent, the second respondent in C.C.No.1231 of 2016, took charge. The successor Tahsildar issued a notice on 22.07.2015 to Tammisetti Venu Gopal calling upon him to appear before him on 01.08.2015. Tammisetti Venu Gopal claims that he did so and submitted reply dated 01.08.2015. His complaint in C.C.No.1231 of 2016 was that despite the same, no orders were passed by the new incumbent, who was dragging on the matter one way or the other. C.C.No.1231 of 2016 was filed in January, 2016. The Registry raised an objection as to the maintainability of this contempt case on the ground of limitation. However, by order dated 05.07.2016, this Court overruled the office objection as the issue of limitation required to be examined on the judicial side. The contempt case was accordingly directed to be numbered if it was otherwise found to be in order. Notice before admission was then ordered in the contempt case on 27.08.2016. On 13.10.2016, the contempt case was adjourned to 03.11.2016 for counter. On 03.11.2016, this Court noted that despite taking time to file a counter, the respondents had not chosen to do so and as the Court, prima facie, found that the judgment passed in W.A.No.1043 of 2014 had not been complied with, the contempt case was admitted and posted for appearance of the second respondent on 01.12.2016. On 01.12.2016, the second respondent was present in person and the learned Government Pleader representing him informed the Court that the record would indicate that Tammisetti Venu Gopal was well aware of the final order passed by the second respondent as long back as on 20.11.2015. The presence of the second respondent was dispensed with and the matter was adjourned to 15.12.2016 for his counter.

In his counter affidavit dated 14.12.2016, the second respondent- Tahsildar stated that pursuant to the judgment passed by this Court in W.A.No.1043 of 2014, he followed the due procedure by issuing notices calling for objections and passed an order, vide proceedings dated 20.11.2015,

directing the parties to approach the competent civil Court to resolve their disputes over the subject land. He further stated that the first respondent-Tahsildar, who held office before him, issued notices to both parties on 20.03.2015 after receipt of the judgment passed by this Court and in response thereto, both the parties submitted documentary evidence along with their replies. However, the matter was kept pending as the first respondent-Tahsildar was transferred and he, in turn, assumed charge only on 27.04.2015. He stated that after assuming charge and on verification of the records, including the letter dated 21.12.2014 of the Joint Collector, Warangal, he directed the Mandal Revenue Inspector to conduct a spot inspection to note the physical features and submit a report. He also issued revenue summons to both parties on 22.07.2015 to appear before him on 01.08.2015 along with their documents. After hearing both parties, he stated that he issued an order, vide proceedings dated 20.11.2015, and the same was furnished to Tammisetti Venu Gopal on 21.11.2015. He alleged that Tammisetti Venu Gopal went through the order and having signed the same, he struck off his signature thereafter and then filed a contempt case. He stated that after passing of the order, vide proceedings dated 20.11.2015, copies thereof were served on both parties, but Tammisetti Venu Gopal was denying the passing of the said order with the malafide intention of falsely implicating him in contempt proceedings. He concluded by stating that he assumed charge as the Tahsildar, Hanamkonda Mandal, on 27.04.2015 and the delay in compliance with the judgment passed by this Court was due to his being busy with election duties. He stated that he had the highest regard and respect for the orders of this Court and would never violate such orders, either willfully or wantonly. He further stated that he never intended to violate any order of this Hon'ble Court and tendered his unconditional apology for the delay in passing the order. A copy of the proceedings dated 20.11.2015 was appended to the said counter affidavit.

On 15.12.2016, as the aforestated counter affidavit was filed, the matter was adjourned to 20.01.2017 for reply, if any.

In his reply affidavit dated 19.01.2017, Tammisetti Venu Gopal stated that in response to the revenue summons dated 22.07.2015, he alone appeared before the second respondent-Tahsildar on 01.08.2015. He contended that Pindi Rama Krishna Reddy had not at all appeared on the said date and, as per his information, Pindi Rama Krishna Reddy was not even in India on that date as he was in the United States of America. He asserted that there was no question of the second respondent-Tahsildar hearing Pindi Rama Krishna Reddy on that day. He also denied passing of the order, vide proceedings dated 20.11.2015, and alleged that the order was subsequently brought on record after the filing of the contempt case. He alleged that the same was never served on him and a false story was cooked up by the second respondent-Tahsildar. He further stated that in terms of the judgment passed by this Court, the second respondent-Tahsildar had to conduct an enquiry to decide the locus of Pindi Rama Krishna Reddy but the so-called proceedings dated 20.11.2015 did not demonstrate any such consideration. He pointed out that if he had really affixed his signature and thereafter struck off the same,

nothing prevented the second respondent-Tahsildar from sending him the said proceedings by registered post. He pointed out that though the contempt case was filed in January, 2016, the second respondent-Tahsildar did not file a counter till the matter was posted for his personal appearance. He further claimed that on 06.08.2016, he had approached the Joint Collector, Warangal, and made a detailed representation seeking implementation of the judgment in W.A.No.1043 of 2014 and the Joint Collector made an endorsement thereon, calling upon the second respondent-Tahsildar to implement the same. He asserted that this fact clinched the issue and proved that no order had been passed by the second respondent-Tahsildar till August, 2016.

Perusal of the letter dated 06.08.2016 addressed by Tammisetti Venu Gopal to the Joint Collector, Warangal, demonstrates that he complained therein that no action had been taken to implement the earlier order dated 21.12.2014 of the Joint Collector, Warangal, directing compliance with the judgment. He therefore requested the Joint Collector, Warangal, to see that the High Court judgment was implemented. Thereupon, the Joint Collector, Warangal, endorsed to the Tahsildar, Hanamkonda, to implement the High Court order. His signature therein bears the date: 06.08.2016.

On 23.01.2017, in the light of the aforestated reply affidavit averments, the learned Government Pleader for Revenue sought time. On 30.01.2017, this Court directed the learned Government Pleader for Revenue to produce the original file relating to the proceedings dated 20.11.2015 of the second respondent-Tahsildar. The matter was adjourned to 06.02.2017 for the said purpose. However, on 06.02.2017, the learned Assistant Government Pleader sought time till 13.02.2017 and on that day, an adjournment was sought to the next day. The record was produced. On 14.02.2017, after perusing the record, this Court directed both the respondents-Tahsildars to remain present on the next date of hearing and adjourned the case to 28.02.2017. On 28.02.2017, both the respondents- Tahsildars were present. The learned Government Pleader sought liberty to file additional affidavits on their behalf and asked for the original record, which had been produced, to be returned. This Court however permitted the respondents-Tahsildars to file additional affidavits, if any, basing on the record available with them but did not accede to the request for return of the original record.

The first respondent-Tahsildar then filed counter affidavit dated 10.03.2017 stating as follows: He worked as the Tahsildar, Hanamkonda, from 01.07.2014 to 20.04.2015. He proceeded on leave with effect from 20.04.2015 and is 2working as the Revenue Divisional Officer at Huzurabad, Karimnagar District. He stated that upon receipt of the judgment in W.A.No.1043 of 2014 and the letter dated 21.12.2014 from the Joint Collector, Warangal, he issued Memo dated 18.02.2015 to the Village Revenue Officer and the Additional Revenue Inspector, Hanamkonda, to visit the spot and submit a detailed report. After submission of the said report by them, he issued notice to both parties to attend on 24.03.2015. Tammisetti Venu Gopal thereupon submitted a representation on 28.03.2015 but as he proceeded on long leave from 20.04.2015, he took no further

steps. He stated that the second respondent-Tahsildar assumed charge on 27.04.2015. He accounted for the delay on his part while he was in office stating that he was busy with major works introduced by the Government in relation to Samagra Kutumba Survey, Aasara Pensions, New Food Security Cards and regularization of unobjectionable encroachments in Government lands.

On 27.03.2017, the presence of the first respondent-Tahsildar was dispensed with but the second respondent-Tahsildar was directed to remain present. The matter was adjourned to 30.03.2017 for production of the original record of the Joint Collector, Warangal, relating to the case. On 30.03.2017, the matter was again adjourned to 04.04.2017 for production of the said record. The record of the Joint Collector, Warangal, was then produced. On 06.04.2017, the Joint Collector, Warangal, who had made an endorsement on 06.08.2016 on the representation of Tammisetti Venu Gopal, was directed to file an affidavit explaining as to what steps were taken upon his making such an endorsement.

The Joint Collector, Warangal, filed affidavit dated 17.04.2017 admitting that Tammisetti Venu Gopal submitted a representation to him seeking implementation of the High Court judgment and having gone through the same, he endorsed to the Tahsildar, Hanamkonda, to implement the said judgment. He stated that the said representation was sent to the Tahsildar, Hanamkonda, but there was no correspondence from the Tahsildar, Hanamkonda, thereupon.

On 20.04.2017, this Court took note of the affidavit dated 17.04.2017 filed by the Joint Collector, Warangal, and adjourned the matter to 09.06.2017 to give the second respondent-Tahsildar a last opportunity to come clean by filing an affidavit disclosing the full particulars in the light of what had been stated in his affidavit by the Joint Collector, Warangal.

The second respondent-Tahsildar then filed additional affidavit dated 07.06.2017 reiterating that he had passed an order, vide proceedings dated 20.11.2015, and that Tammisetti Venu Gopal struck off his signature in the office copy, having acknowledged receipt thereof, and then complained to the Joint Collector, Warangal, that there was no compliance with the judgment in W.A.No.1043 of 2014. He further stated that as Tammisetti Venu Gopal had not furnished his full address anywhere in his application, his office could not serve a copy of the said proceedings upon him by post. He further stated that after passing of the order, vide proceedings dated 20.11.2015, Tammisetti Venu Gopal filed a representation before the Joint Collector, Warangal, to implement the High Court judgment and the same was forwarded to his office, but due to heavy work and lack of sufficient staff he could not concentrate on the matter, as the same was already closed. He further claimed that after passing of the order, vide proceedings dated 20.11.2015, Pindi Rama Krishna Reddy filed a caveat petition against Tammisetti Venu Gopal in December, 2015, and asserted that this strengthened his claim that he had passed the order, vide proceedings dated 20.11.2015, and that it was not ante-dated. He again tendered an unconditional apology for the delay in compliance with the

judgment passed in W.A.No.1043 of 2014.

Tammisetti Venu Gopal filed counter affidavit dated 21.06.2017 to the aforestated additional affidavit of the second respondent-Tahsildar. Therein, he again denied that the second respondent-Tahsildar had passed an order, vide proceedings dated 20.11.2015. He pointed out that he complained in the matter to the Joint Collector, Warangal, long after filing of this contempt case but despite the same, the second respondent-Tahsildar did not choose to inform either this Court or the Joint Collector, Warangal, till December, 2016, about the so-called proceedings dated 20.11.2015. He reiterated his allegation that the second respondent-Tahsildar had purposefully fabricated the ante-dated order only to get over the contempt case.

On 05.07.2017, the learned Government Pleader for Revenue sought time to file an additional counter affidavit. He also sought permission to allow the respondents and their counsel to peruse the record which had been given to the Court. The matter was accordingly adjourned to 26.07.2017 and it was left open to the second respondent-Tahsildar and his counsel to approach the Registrar (Judicial) for availing an opportunity to peruse the record which was kept in the custody of the Registrar (Judicial).

The second respondent-Tahsildar then filed additional affidavit dated 25.07.2017. Therein, he stated that the judgment in W.A.No.1043 of 2014 was communicated to the office of the Tahsildar, Hanamkonda Mandal, on 16.08.2014 and the period stipulated therein expired on 15.11.2014. He pointed out that he was not the Tahsildar, Hanamkonda, at that point of time as he assumed charge of that office only on 27.04.2015 and continued as such till 09.10.2016. Upon coming to know of the pendency of the matter, he stated that he issued notice on 22.07.2015 fixing the date of hearing as 01.08.2015. He admitted that Tammisetti Venu Gopal appeared on the said date and requested for issuance of title deeds and pattadar pass books by duly validating the gift deed dated 01.10.1969 under which he claimed rights in the land admeasuring Ac.2.00 guntas in Sy.No.118/D of Enumamula Village. On behalf of Pindi Rama Krishna Reddy, one N.Venugopal Reddy, GPA Holder, appeared and the matter was adjourned to 22.08.2015 and again to 29.08.2015. On 29.08.2015, Tammisetti Venu Gopal and N.Venugopal Reddy appeared and the matter was heard, whereupon orders were reserved by him. He claimed that he then passed the order, vide proceedings dated 20.11.2015, directing the parties to approach the competent civil Court to resolve their inter se disputes over the subject land. He again asserted that Tammisetti Venu Gopal, having acknowledged receipt of the said order, struck off his signature therein. In the light of this act on his part, the Village Revenue Officer was asked to serve a copy of the order on Tammisetti Venu Gopal but the Village Revenue Officer, Enumamula Village, informed him that Tammisetti Venu Gopal was not residing in the given address and a copy of the order was affixed at the land on 25.11.2015 in the presence of witnesses, D.Raju and Melakanti Ranjit Kumar. He alleged that Tammisetti Venu Gopal intentionally failed to furnish his full address in his application due to which, he could not be served a copy of the order by post. Pursuant to the setting aside of the

regularisation granted by the then Mandal Revenue Officer in favour of Tammisetti Venu Gopal, proceedings were issued on 24.07.2015 cancelling the pattadar pass books and title deeds already issued to him. He further asserted that by suppressing the passing of the orders on 24.07.2015 and 20.11.2015, Tammisetti Venu Gopal made a representation on 06.08.2016 to the Joint Collector, Warangal, seeking implementation of the judgment in the writ appeal and the same was forwarded to his office by the said Joint Collector. He claimed that due to heavy work and lack of sufficient staff, he could not concentrate on the matter as the same was already disposed of and no communication was sent to the office of the Joint Collector, Warangal. He further stated that upon enquiry, it was revealed that after passing of the order on 20.11.2015, Pindi Rama Krishna Reddy filed a caveat petition against Tammisetti Venu Gopal in December, 2015 which demonstrated that the order dated 20.11.2015 was not ante-dated. He further claimed that due to communication gap, he could not file a counter-affidavit in time before this Court as to the compliance with the order in the writ appeal. He again reiterated the reasons already set out by him in his earlier affidavits as to why there was a delay on his part in complying with the order. He tendered his unconditional apology for the said delay and for not taking steps to seek extension of time. According to him, as the learned Single Judge has already held that Pindi Rama Krishna Reddy had interest in the subject land and as the matter was relegated to the competent civil Court at the threshold, locus of Pindi Rama Krishna Reddy was not specifically doubted. He stated that the contempt case was barred by limitation and was not maintainable. He pointed out that the judgment in the writ appeal was passed on 25.07.2014 directing disposal of the matter within three months and as the said order was communicated to his office on 16.08.2014, the matter had to be disposed of by 15.11.2014. The one year stipulated by law for filing of a contempt case, according to him, expired on 15.11.2015 and therefore, the contempt case, which was filed on 06.01.2016, was barred by limitation. He stated that he had great respect and regard for this Court and the orders passed by it and asserted that he had not violated any order of this Court wilfully or deliberately. He again tendered an unconditional apology for the delay in compliance.

Tammisetti Venu Gopal filed reply affidavit dated 01.08.2017 in response to the aforestated additional affidavit dated 25.07.2017 of the second respondent-Tahsildar. Therein, he pointed out that neither in the alleged proceedings dated 20.11.2015 nor in his earlier counter-affidavit, the second respondent-Tahsildar had stated that N.Venugopal Reddy, the GPA holder, appeared on behalf of Pindi Rama Krishna Reddy and it was only when he asserted that Pindi Rama Krishna Reddy had not even appeared on 01.08.2015, that the second respondent-Tahsildar took the present stand that he was represented by his GPA holder, N.Venugopal Reddy. He pointed out that even in the alleged proceedings dated 20.11.2015, the second respondent-Tahsildar had noted that Pindi Rama Krishna Reddy had appeared before him. He further stated that it was absolutely false to state that he was not residing in his given address. He asserted that he had given his door number and address correctly and it was only with a view to cover up

his lapse that the second respondent-Tahsildar claimed otherwise. Be it noted that Tammisetti Venu Gopal misunderstood the statement made by the second respondent-Tahsildar as to the filing of a caveat and asserted that he had not filed any such caveat as he needed to file a civil suit and not a caveat in terms of the alleged proceedings dated 20.11.2015. He also contested the claim of the second respondent-Tahsildar as to why there was a delay on his part. Pointing out that no documents had been filed to prove that he was involved in and was busy with official duties, he asserted that the contempt case was filed well within limitation as the second respondent- Tahsildar had continued to hear the case till August, 2015 but failed to pass any order. He therefore claimed that limitation began only from August, 2015 and that the contempt case filed in January, 2016 was not time-barred. The second respondent-Tahsildar then filed affidavit dated 20.11.2017. Therein, he pointed out that in his reply affidavit dated 19.01.2017, Tammisetti Venu Gopal stated that he had not passed an order on 20.11.2015 and that the same was ante-dated to avoid the contempt case. Para 5 of Tammisetti Venu Gopal's reply affidavit was extracted by him and the same reads as under:

'The present counter affidavit was filed by creating a false and non-existing order alleged to have been passed on 20.11.2015. No such orders were passed on 20.11.2015 and I am specifically denying the same.

….All these clearly shows that a false and ante-dated orders were brought into picture only to avoid this Contempt Case.'

He then went on to state that when the matter came up for hearing on 05.10.2017, Tammisetti Venu Gopal had submitted that he had passed an ante-dated order to avoid the contempt case and emphasised the averments made in his reply affidavit. He further stated that this Court had taken cognizance of the aforestated statement made by Tammisetti Venu Gopal and issued notice for initiation of suo motu criminal contempt proceedings, being of the opinion that the order passed on 20.11.2015 was, prima facie, ante-dated. He claimed that the order dated 20.11.2015 was served on Tammisetti Venu Gopal on 23.11.2015 by the concerned Senior Assistant in his office and his signature was also obtained on a copy of the said order. However, Tammisetti Venu Gopal struck off his signature on the office copy of the order and left the office hurriedly along with his copy. Thereupon, the concerned Senior Assistant handed over a copy of the order to the Village Revenue Officer, Enumamula, to serve the same upon Tammisetti Venu Gopal. However, as Tammisetti Venu Gopal was not available in his given address, the order was affixed at the subject land and the same was reported to the office of the Tahsildar. He further stated that S.Vinod Kumar, Senior Assistant of the Tahsildar Office, was aware of these facts and had sworn to an affidavit affirming the same. He concluded by asserting that the averments made by Tammisetti Venu Gopal in his affidavit dated 19.01.2017 were false and incorrect and amounted to abuse of process. He prayed that Tammisetti Venu Gopal should be punished for filing a false affidavit before this Court under the provisions of the Contempt of Courts Act, 1971 (for brevity, 'the Act of 1971').

The affidavit dated 20.11.2017 of Sreepada

Vinod Kumar, Senior Assistant and In-charge of 'B' Section (Land matters), office of the Tahsildar, Hanamkonda, was appended thereto, wherein Sreepada Vinod Kumar deposed to the effect that the second respondent-Tahsildar passed an order, vide proceedings dated 20.11.2015; that Tammisetti Venu Gopal came to the office and met him on 23.11.2015; that he informed him of the passing of the order by the second respondent-Tahsildar on 20.11.2015; that the copy of the order marked to Tammisetti Venu Gopal was handed over to him in the presence of B.Rajaiah, Village Revenue Assistant, Hanamkonda, by taking his signature on the office copy of the order; that Tammisetti Venu Gopal perused the order, spoke to somebody on his mobile phone and immediately struck off his signature on the office copy of the order; that Tammisetti Venu Gopal hurriedly left the office along with his copy of the order; that B.Rajaiah, Village Revenue Assistant, witnessed the incident; that in view of the non-availability of the correct address, the order was handed over to G.Mahender, Village Revenue Officer of Enumamula, where the subject land was located, for the purpose of serving the same to Tammisetti Venu Gopal; that the Village Revenue Officer reported that due to non-availability of Tammisetti Venu Gopal at his given address, he affixed the order copy at the subject land in the presence of two witnesses, D.Raju and N.Ranjit Kumar, on 25.11.2015; and that the same was reported to his office and was part of the file relating to the subject land.

In response to the aforestated affidavits, Tammisetti Venu Gopal filed reply affidavit dated 23.11.2017. Therein, he denied all the allegations made in the affidavit dated 20.11.2017. He asserted that the second respondent- Tahsildar had created a new theory that he had gone to his office and that the Senior Assistant had served a copy of the proceedings dated 20.11.2015 upon him on 23.11.2015. He pointed out that this plea had not been taken in the original counter-affidavit filed in December, 2016. He pointed out that as per the initial counter-affidavit, the second respondent-Tahsildar had claimed that the order dated 20.11.2015 were served upon him on 21.11.2015 but his present claim was that the same was served upon him on 23.11.2015. He further pointed out that in the initial counter-affidavit, there was no mention that he had personally visited the office of the second respondent-Tahsildar. As regards the affidavit deposed to by the Senior Assistant, office of the Tahsildar, Hanamkonda, he denied the contents thereof and asserted that the version put forth was highly improbable. He pointed out that a Government servant of the rank of Senior Assistant would not allow a party to strike off his signature in the order after speaking to someone over the mobile phone and asserted that the story put up by the second respondent- Tahsildar and his Senior Assistant was false.

The second respondent-Tahsildar filed additional affidavit dated 15.12.2017. Therein, he stated that he had filed the counter-affidavit dated 14.12.2016, wherein he had averred that the proceedings dated 20.11.2015 were communicated to Tammisetti Venu Gopal on 21.11.2015 instead of 23.11.2015 by inadvertence and that it was a clerical mistake. He further stated that the said mistake may not have any bearing on the issue as to whether the proceedings were passed on 20.11.2015 or were ante-dated.

C.A.No.174 of 2017 was filed by Tammisetti Venu Gopal seeking to produce documents, 21 in number, as additional material papers. According to him, these were the documents which had been filed in W.A.No.1043 of 2014. However, as this Court is not concerned with the merits of the claim of Tammisetti Venu Gopal against Pindi Rama Krishna Reddy in the present contempt proceedings, these documents are of no relevance, being prior in point of time to the judgment passed in the writ appeal from which this contempt case arises. The application is accordingly dismissed.

Tammisetti Venu Gopal thereupon filed I.A.No.1 of 2018 seeking the leave of the Court to produce the caveat copy dated 21.12.2015 filed by Pindi Rama Krishna Reddy before the Court. In the affidavit filed in support thereof, he stated that during the pendency of the contempt case filed by him, this Court had initiated suo motu contempt proceedings, vide Suo Motu C.C.No.128 of 2018, and in the said case, the second respondent-Tahsildar had produced the Caveat Register of the Warangal Court contending that a caveat had been filed by Pindi Rama Krishna Reddy against him, lending credibility to his claim that the proceedings were passed on 20.11.2015. He further stated that as the caveat affidavit was not filed and only the Caveat Register, he should be permitted to file a copy of the same. A copy of the caveat petition filed by Pindi Rama Krishna Reddy in the Court of the Principal Senior Civil Judge at Warangal was appended thereto. The I.A. is ordered and the document is taken on record. Perusal thereof reflects that the said caveat petition was filed on 21.12.2015 but no mention was made therein of any proceedings having been passed by the Tahsildar, Hanamkonda, on 20.11.2015. Therein, it was merely stated as under:

'1. The Caveator submits that he is the owner and possessor of the land to an extent of Ac. 2-00 guntas out of Survey No. 118/D situated at Enumamala Village, Mandal, Warangal District and he is enjoying peaceful and continuous possession over the same.

2. The Caveator submits that the respondent is having no right or no interest over the suit schedule property trying to interfere in his peaceful possession over the schedule property. Recently he came to know that the respondent having no right or interest over the same trying to obtain exparte orders from the Hon'ble Court by fabricating some documents showing the schedule land. The Caveator submits that he is intending to contest the suit and interlocutory application, which are going to be filed by the respondent.

It is therefore prayed that the Hon'ble Court may be pleased to order notice to the Caveator before granting any Interim Orders in favour of the respondent in relating to the schedule property or any part of the schedule property annexed hereto in the event of filing of any suit or interlocutory application by him against the Caveator in respect of schedule property in the interest of justice.'

The affidavit filed in support of the petition reiterated the same facts.

It may be noted that by order dated

05.10.2017, this Court took note of the facts and circumstances which, prima facie, indicated the possibility of ante-dating of the proceedings dated 20.11.2015 and directed the Registry to issue a notice to the second respondent-Tahsildar as to why he should not be proceeded against for having committed criminal contempt by interfering with the administration of justice by placing before this Court the proceedings dated 20.11.2015 which, on the face of it, appeared to be ante-dated. The second respondent-Tahsildar was given liberty to respond, if he so chose, to the said notice by the next date of hearing. On 26.10.2017, the learned Special Government Pleader appearing for the second respondent-Tahsildar informed this Court that the notice as to the alleged criminal contempt had been served and sought time to file his response thereto. On 18.01.2018, this Court passed the following order:

'Respondent No.2 is present.

In the light of the order dated 05.10.2017 passed by this Court requiring the Registry to initiate proceedings against respondent No.2 for alleged criminal contempt, the Registry is directed to follow the procedure prescribed under Rule 8(2) of the Contempt of Court Rules, 1980 framed by this Court and number a separate suo motu contempt case so that the same may be taken up along with this contempt case.

Post on 29.01.2018.'

Thereupon, Suo Motu Contempt Case No.128 of 2018 was registered against the second respondent-Tahsildar. The petition therein reads as under:

'By order dated 05-10-2017 passed in C.C.No.1231 of 2016 the Hon'ble Court directed the Registry to issue notice to the Respondent 2 therein (Contemnor herein) as to why he should not be proceeded against for having committed criminal contempt by interfering with the administration of justice in terms of placing before this Hon'ble Court an order dated 20-11-2015, which on the fact of it, appeared to be antedated.

Hence, this suo motu Contempt Case.'

The second respondent-Tahsildar, being the sole respondent therein, filed affidavit dated 23.02.1018. Therein, he stated that while working as the Tahsildar, Hanamkonda, he had passed the order, vide proceedings dated 20.11.2015. He again asserted that Tammisetti Venu Gopal came to his office and met Sreepada Vinod Kumar, Senior Assistant, on 23.11.2015. He again reiterated his version as to how Tammisetti Venu Gopal acknowledged receipt of a copy of the said proceedings by affixing his signature on the office copy but thereafter struck off the same after speaking to someone on his mobile phone. He again repeated that he could not communicate a copy of the said order by post due to non-availability of the address of Tammisetti Venu Gopal and that G.Mahender, Village Revenue Officer, Enumamula, affixed a copy of the order at the subject land in the presence of witnesses, P.Raju and N.Ranjit Kumar, on 25.11.2015. He further stated that as the matter involved an ownership and title dispute, he had directed the parties to approach the civil Court by way of his order, vide proceedings dated 20.11.2015, and that Pindi Rama Krishna Reddy, the other party, filed Caveat Application No.1029/2015 dated

30.12.2015, through C.Vidyasagar Reddy, Advocate, before the District Court, Warangal, against Tammisetti Venu Gopal. He claimed that this evidenced his passing the order on 20.11.2015 and proved that the same was not ante-dated. The affidavit dated 20.11.2017 of Sreepada Vinod Kumar, Senior Assistant, was appended to this affidavit along with a copy of the Caveat Register, wherein an entry was made on 30.12.2015 that Pindi Rama Krishna Reddy had filed a caveat petition against Tammisetti Venu Gopal in relation to the agricultural land admeasuring Ac.2.00 guntas in Sy.No.118/D of Enumamula Village.

Thereafter, affidavit dated 23.02.2018 of Sri C.Vidyasagar Reddy, Advocate, was filed, wherein he stated that Pindi Rama Krishna Reddy had instructed him to file a caveat petition in anticipation that Tammisetti Venu Gopal may file a suit pursuant to the order passed by the Tahsildar, Hanamkonda Mandal, on 20.11.2015. He further stated that after perusing the said order, he filed a caveat petition before the Principal District and Sessions Court, Warangal, and that the same was entered in the Caveat Register on 30.12.2015, bearing Nos.7729/15 and 1029/15. He stated that he had filed similar caveat petitions before the Principal Senior Civil Judge's Court and the Principal Junior Civil Judge's Court at Warangal.

B.Rajaiah, Village Revenue Assistant, Hanamkonda, filed affidavit dated 09.03.2015 in the suo motu contempt case stating that on 23.11.2015, he visited the office of the Tahsildar, Hanamkonda, to meet Sreepada Vinod Kumar, Senior Assistant, in connection with office work and at that time Tammisetti Venu Gopal came to the Senior Assistant and enquired about his case. He further stated that the Senior Assistant informed Tammisetti Venu Gopal that the Tahsildar had passed an order on 20.11.2015 and a copy of the said order was given to him by taking his signature on the office copy of the order. He asserted that after reading the said order, Tammisetti Venu Gopal spoke on his mobile and immediately struck off his signature on the office copy of the order and suddenly left the office with the copy given to him. He claimed that he witnessed the aforestated incident and that he was filing an affidavit to that effect.

G.Mahender, Village Revenue Officer, Enumamula Village, filed affidavit dated 09.03.2018 stating that the Tahsildar, Hanamkonda Mandal, passed an order on 20.11.2015 in relation to the land admeasuring Ac.2.00 guntas in Sy.No.118/D of Enumamula Village in the case between Tammisetti Venu Gopal and Pindi Rama Krishna Reddy. He further stated that in view of insufficient postal address, the Senior Assistant in the office of the Tahsildar, Hanamkonda, directed him to affix the order at the land in question in the process of serving and he accordingly affixed the order at an appropriate place on the land on 25.11.2015 in the presence of two witnesses, D.Raju and Ranjit Kumar. He asserted that the same was reported to the office of the Tahsildar, Hanamkonda, and was part of the proceedings on the file.

This profuse and multiple exchange of affidavits was permitted so as to enable this Court to ascertain the truth underlying the various issues and allegations that arose in and during the course of the contempt proceedings.

Basing on the above pleadings, Sri

P.S.P.Suresh Kumar, learned counsel for Tammisetti Venu Gopal, would contend that C.C.No.1231 of 2016 was filed well within the period of limitation as the second respondent- Tahsildar continued to hear the matter till August, 2015 and as he failed to pass an order even thereafter, the said contempt case was filed in January, 2016. He would assert that the contempt case was filed within the period of one year therefrom in terms of Section 20 of the Act of 1971. He would also point out that initiation of the suo motu contempt proceedings was equally within time as this Court took note of the affidavit dated 19.01.2017 filed by Tammisetti Venu Gopal indicating for the first time that the second respondent-Tahsildar had brought on record the proceedings dated 20.11.2015 by ante-dating the same and formed a prima facie opinion only after the Joint Collector, Warangal, filed his affidavit dated 17.04.2017. Learned counsel would further assert that the facts brought on record through various affidavits clearly demonstrate that the second respondent-Tahsildar failed to abide by the directions of this Court in its order dated 25.07.2014, not only in terms of the time frame fixed thereunder but also in the context of the enquiry that was to be undertaken consequent thereto. He would point out that though there was a specific direction to determine the locus of Pindi Rama Krishna Reddy, the second respondent-Tahsildar failed to look into that issue and baldly claimed that the same was found to be unnecessary in the light of the observations made by the learned Judge in his order dated 11.04.2014 passed in W.P.No.23318 of 2003.

Per contra, Sri K.Ramakrishna Reddy, learned senior counsel representing Sri B.Mahender Reddy, learned counsel who entered appearance for the second respondent-Tahsildar during the course of these proceedings, would contend that both the contempt cases are time-barred. According to him, as the order which is the subject matter of C.C.No.1231 of 2016 was passed on 25.07.2014 fixing a time frame which expired on 15.11.2014, the contempt case, which was not filed within one year from the said date, as it was admittedly filed only in January, 2016, is time-barred. Learned senior counsel would also point out that the order, vide proceedings dated 20.11.2015, could have been the subject matter of suo motu contempt proceedings only within one year therefrom but the said suo motu Contempt Case No.128 of 2018 was registered only on 22.01.2018. On the merits of the matter, learned senior counsel would argue that the sequence of events, as narrated in the affidavits filed by and on behalf of the second respondent-Tahsildar, clearly demonstrated that the second respondent-Tahsildar passed an order, vide proceedings dated 20.11.2015, in due compliance with the judgment dated 25.07.2014 in the writ appeal and therefore such compliance, albeit with delay, was sufficient to set at naught C.C.No.1231 of 2016.

In the written submissions filed by the second respondent-Tahsildar, the following aspects were raised:

As the time stipulated in the order dated 25.07.2014 passed in the writ appeal expired on 15.11.2014 and as on that date, the second respondent-Tahsildar was not even in the picture, disobedience to the said order in the context of the time frame would

only be attributable to the first respondent-Tahsildar. Copy of the order, vide proceedings dated 20.11.2015, was filed by the second respondent-Tahsildar along with his first counter on 15.12.2016. As the time stipulated expired by 15.11.2014, the period of one year stipulated under Section 20 of the Act of 1971 expired in November, 2015, but C.C.No.1231 of 2016 was filed only in January, 2016. It is therefore not maintainable on the ground of limitation. The ground of limitation would be equally applicable to initiation of the suo motu contempt proceedings as the order, vide proceedings dated 20.11.2015, was placed before this Court on 15.12.2016 but the suo motu contempt case was registered only in January, 2018, well beyond the period of one year. Reference was made to the evidence affidavits filed by Sreepada Vinod Kumar, Senior Assistant; G.Mahender, Village Revenue Officer; Enumamula, B.Rajaiah, Village Revenue Assistant, Hanamkonda; and C.Vidyasagar Reddy, Advocate, Warangal; which support the claim of the second respondent- Tahsildar that he passed the order, vide proceedings dated 20.11.2015, and that the same was served upon Tammisetti Venu Gopal immediately thereafter. As the second respondent-Tahsildar passed the said order in exercise of power under Section 5A of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971, he was under no legal obligation to communicate a copy of the same to the Joint Collector, Warangal. Therefore, no adverse inference can be drawn from his failure in forwarding a copy of the said order to the Joint Collector, Warangal. As the suo motu contempt proceedings were initiated for criminal contempt, the required burden of proof would be on par with that required in a criminal case and therefore, mere inferences would be insufficient to hold against the second respondent- Tahsildar on that count. Unless there is a clear cut case of obstruction of administration of justice, Section 15(1) read with Section 2(c) of the Act of 1971 would not be satisfied. No cause is therefore made out for exercise of contempt jurisdiction on the ground that there was any attempt by the second respondent-Tahsildar to interfere with the due course of justice within the meaning of Section 13(a) of the Act of 1971.

As regards the issue of limitation, it may be noted that in **PALLAV SHETH V/s. CUSTODIAN** (2001) 7 SCC 549), the Supreme Court observed that action for contempt is divisible into two categories, namely, that initiated suo motu by the Court and that instituted otherwise than on the Court's own motion and the mode of initiation in each case would necessarily be different. It was pointed out that while in the case of suo motu proceedings, it is the Court itself which must initiate by issuing a notice, in the other case initiation can only be by a party filing an application. The Supreme Court opined that the proper construction to be placed on Section 20 of the Act of 1971 is that action must be initiated, either by filing of an application or by the Court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed. The same principle was applied by a Division Bench of this Court in **DR.SUBHENDU SEN V/s. PRADEEP KUMAR (**2011 (3) ALD 404 (DB). More recently, in **MAHESHWAR PERI V/s. HIGH COURT OF JUDICATURE AT ALLAHABAD** (2016) 14 SCC 251), reliance was placed by the Supreme Court on **PALLAV SHETH1** and initiation of suo motu contempt

proceedings on 28.04.2015 in relation to publication of an article on 10.11.2008 was held to be hit by the limitation of one year prescribed under Section 20 of the Act of 1971.

It may be noted that the plea of limitation in relation to C.C.No.1231 of 2016 was not raised by the second respondent-Tahsildar in his first counter-affidavit filed on 15.12.2016. Similarly, the counter-affidavit filed on 23.02.2018 in the suo motu contempt case was also silent on the issue of limitation. In the counter-affidavits filed in June and July, 2017, the issue was raised for the first time in the context of C.C.No.1231 of 2016.

However, as the issue of limitation would go to the root of the matter, this Court is of the opinion that the same requires to be considered on its own merits. Be it noted that in **BINOD BIHARI SINGH V/s. UNION OF INDIA** (1993) 1 SCC 572), the Supreme Court observed that if a claim is barred by limitation and such a plea is raised specifically, the Court cannot straight away dismiss the plea simply on the score that such plea is ignoble. It was further observed that the bar of limitation must be considered even if such plea has not been specifically raised. Again, in **STATE OF GUJARAT V/s. KOTHARI AND ASSOCIATES** (2016) 14 SCC 761), the Supreme Court observed that Section 3 of the Limitation Act, 1963 provides that every suit, appeal or application made after the prescribed period should be dismissed, although limitation has not been set up as a defence and therefore, it is incumbent upon the Court to satisfy itself that the action is not barred by limitation, regardless of whether such a plea has been raised by the parties.

It may be noted that the cause for filing of C.C.No.1231 of 2016 was the complaint of Tammisetti Venu Gopal that no order had been passed pursuant to the judgment dated 25.07.2014 passed in the writ appeal. The said judgment fixed a time frame for passing an order. Therefore, not only failure to adhere to the time frame but also the failure in passing an order would amount to disobedience. Expiry of the stipulated time frame on 15.11.2014 is therefore relevant only for the purpose of reckoning the disobedience in failing to abide by such time frame and has no bearing on compliance with the direction to pass an order on fresh consideration. The failure to pass an order would give rise to a continuing contempt as long as no order is passed. Filing of the contempt case in January, 2016, complaining that no order had been passed till then was therefore within time, despite the expiry of the stipulated time frame in November, 2014. The alternative plea advanced by Sri P.S.P. Suresh Kumar, learned counsel, is equally meritorious. The second respondent-Tahsildar admittedly heard the case till August, 2015 and therefore, the contempt case filed in January, 2016, complaining that he had not passed any order thereafter is not beyond the period of one year therefrom. C.C.No.1231 of 2016 is therefore not barred by limitation.

Having failed to seek extension in relation to the time frame as per the judgment dated 25.07.2014 passed in the writ appeal, the second respondent-Tahsildar cannot take advantage of his own failure to abide by such time frame at least after he assumed office. Be it noted that despite this Court fixing time limits as a matter of course in

almost all its orders, the State and its officials do not even pay lip service to the same by at least making an attempt to adhere to such time frames. Compliance with this Court's orders, if and when reported, normally after initiation of contempt proceedings in most cases, is invariably with some amount of delay and inevitably beyond the time frames fixed by this Court. It would therefore be wholly unrealistic to be sanctimonious about the time frame of three months fixed by this Court in its judgment dated 25.07.2014 passed in the writ appeal and hold that failure to abide by the said time frame would allow the contemnors to go scot-free as the contempt proceedings were initiated more than one year thereafter. Further, if this Court were to take such time frames seriously, it would be, but unavoidable, that in each and every case the authorities would have to be hauled up for contempt. As already pointed out supra, compliance with time frames fixed by this Court is not even a rarity as compliance with delay is the norm. The second respondent-contemnor cannot therefore claim that he was under no duty to pass an order as directed by this Court after the expiry of the stipulated time frame.

Similarly, initiation of the suo motu contempt proceedings was upon this Court forming a prima facie opinion only on 05.10.2017 that the second respondent-Tahsildar may have ante-dated the order, vide proceedings dated 20.11.2015, and that the same amounted to obstruction or interference with the administration of justice. This opinion was formed upon filing of the affidavit dated 19.01.2017 by Tammisetti Venu Gopal; the consequential calling for the record from the office of the Joint Collector, Warangal; the filing of an affidavit by him on 17.04.2017; and the last explanation offered by the second respondent-Tahsildar. Initiation of the suo motu contempt proceedings is therefore not barred by limitation as the same were initiated on 05.10.2017 and were registered in January, 2018, well within one year from the date of formation of such opinion. The date of the purported order passed by the second respondent-Tahsildar, vide the proceedings dated 20.11.2015, is of no relevance as the limitation begins to run only from the date of formation of a prima facie opinion by this Court that he may have ante-dated the said order.

At this stage, it would be apposite to take note of other precedential edicts on contempt jurisdiction. In **MANINDERJIT SINGH BITTA V/s. UNION OF INDIA** (2012) 1 SCC 273), the Supreme Court observed as under:

'19. Under the Indian law the conduct of the parties, the act of disobedience and the attendant circumstances are relevant to consider whether a case would fall under civil contempt or criminal contempt. For example, disobedience of an order of a court simpliciter would be civil contempt but when it is coupled with conduct of the parties which is contemptuous, prejudicial and is in flagrant violation of the law of the land, it may be treated as a criminal contempt. Even under the English law, the courts have the power to enforce its judgment and orders against the recalcitrant parties.

20. In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and wilful violation of the orders of the court, even to constitute a civil contempt. Every party to lis before the court,

and even otherwise, is expected to obey the orders of the court in its true spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution. The government departments are no exception to it. The departments or instrumentalities of the State must act expeditiously as per orders of the court and if such orders postulate any schedule, then it must be adhered to. Whenever there are obstructions or difficulties in compliance with the orders of the court, least that is expected of the government department or its functionaries is to approach the court for extension of time or clarifications, if called for. But, where the party neither obeys the orders of the court nor approaches the court making appropriate prayers for extension of time or variation of order, the only possible inference in law is that such party disobeys the orders of the court. In other words, it is intentionally not carrying out the orders of the court. Flagrant violation of the court's orders would reflect the attitude of the party concerned to undermine the authority of the courts, its dignity and the administration of justice.'

It was further observed in the above decision that it was not the offence of contempt which gets altered by the passive/negative or active/positive behaviour of the contemnor but, at best, it can be a relevant consideration for imposition of punishment, wherever the contemnor is found guilty of contempt. The Supreme Court noted that disobedience to Court orders by positive or active contribution or non-obedience by a passive and dormant conduct leads to the same result and that such disobedience of the orders of the Court strikes at the very root of the Rule of Law on which the judicial system rests.

In **E.T.SUNUP V/s. C.A.N.S.S. EMPLOYEES ASSOCIATION** (2004) 8 SCC 683), the Supreme Court observed that it has become a tendency with Government officers to somehow or the other circumvent the orders of the Court and try to take recourse to one justification or the other. It was further observed that it showed complete lack of grace in accepting the orders of the Court and this tendency of undermining the Court's order could not be countenanced.

In **R.S.SUJATHA V/s. STATE OF KARNATAKA** (2011) 5 SCC 689), the Supreme Court observed as under:

'18. Thus, from the above, it is evident that the inquiry/contempt proceedings should be initiated by the court in exceptional circumstances where the court is of the opinion that perjury has been committed by a party deliberately to have some beneficial order from the court. There must be grounds of a nature higher than mere surmise or suspicion for initiating such proceedings. There must be distinct evidence of the commission of an offence by such a person as mere suspicion cannot bring home the charge of perjury. More so, the court has also to determine as on facts, whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

……

21. The proceedings being quasi-criminal in nature, burden and standard of proof required is the same as required in criminal

cases. The charges have to be framed as per the statutory rules framed for the purpose and proved beyond reasonable doubt keeping in mind that the alleged contemnor is entitled to the benefit of doubt. Law does not permit imposing any punishment in contempt proceedings on mere probabilities. The court cannot punish the alleged contemnor without any foundation merely on conjectures and surmises….. Needless to say, the contempt proceedings being quasi-criminal in nature require strict adherence to the procedure prescribed under the rules applicable in such proceedings……'

In **SAHDEO ALIAS SAHDEO SINGH V/ s. STATE OF UTTAR PRADESH** (2010) 3 SCC 705), the Supreme Court summarised the law relating to suo motu contempt proceedings as under:

'27. In view of the above, the law can be summarised that the High Court has a power to initiate the contempt proceedings suo motu for ensuring the compliance with the orders passed by the Court. However, contempt proceedings being quasi-criminal in nature, the same standard of proof is required in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/ rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The alleged contemnor is to be informed as to what is the charge, he has to meet. Thus, specific charge has to be framed in precision. The alleged contemnor may ask the Court to permit him to cross-examine the witnesses i.e. the deponents of affidavits, who have deposed against him. In spite of the fact that contempt proceedings are quasi-criminal in nature, provisions of the Code of Criminal Procedure, 1973 (hereinafter called "CrPC") and the Evidence Act are not attracted for the reason that proceedings have to be concluded expeditiously. Thus, the trial has to be concluded as early as possible. The case should not rest only on surmises and conjectures. There must be clear and reliable evidence to substantiate the allegations against the alleged contemnor. The proceedings must be concluded giving strict adherence to the statutory rules framed for the purpose.'

Applying the above legal principles to the cases on hand, it may be noted that registration of the suo motu contempt case clearly sets out the charge to the effect that the second respondent-Tahsildar interfered with the administration of justice by placing the order, vide proceedings dated 20.11.2015, before this Court which, on the face of it, appeared to be antedated. Though Sri K.Ramakrishna Reddy, learned senior counsel, would contend that there must be a formal drawing up of a charge, this Court is of the opinion that niceties may not be reason enough to set at naught the suo motu contempt case when the second respondent-Tahsildar was made fully aware of the substance of the charge against him, even if it was not couched as a formal charge. All the more so, given the seriousness of the charge.

The plea of the second respondent-Tahsildar is that he not only passed an order, vide proceedings dated 20.11.2015, but also got the same served upon Tammisetti Venu

Gopal. The very fact that he admits to having made a mistake as to the date on which such service was allegedly effected shrouds such claim in serious doubt. That apart, it is surprising to note that the version of the second respondent-Tahsildar, supported by his misguidedly loyal staff, is that Tammisetti Venu Gopal affixed his signature on the office copy of the proceedings dated 20.11.2015 and then struck off his signature therein after speaking to someone on the mobile phone. He is alleged to have then left the office with his copy of the said proceedings. Significantly, this incident is stated to have occurred in the Tahsildar's office in the presence of several Government servants. However, no steps were taken by them to report the same to the police or to the Joint Collector, Warangal. It may be kept in mind that by that date, a communication had already been addressed by the Joint Collector, Warangal, on 25.07.2014 requiring the Tahsildar, Hanamkonda, to strictly comply with the judgment dated 25.07.2014 passed in the writ appeal. Despite knowledge of intervention in the matter by the Joint Collector, Warangal, the second respondent-Tahsildar claims that he did not find it necessary to either inform the Joint Collector, Warangal, of passing the order or what had happened at the time of the alleged service of the order or even forward a copy of the said order to the Joint Collector, Warangal. This plea lacks merit, given the fact that the Joint Collector, Warangal, again made an endorsement on 06.08.2018 upon the representation of Tammisetti Venu Gopal to the effect that the Tahsildar, Hanamkonda, should implement this Court's judgment. This endorsement was made long after filing of C.C.No.1231 of 2016. Being well aware of these contempt proceedings and the direction from his superior, it is not believable that the second respondent-Tahsildar did not think it necessary to at least inform the Joint Collector, Warangal, that he had passed an order, vide proceedings dated 20.11.2015, had he actually done so.

The plea of the second respondent-Tahsildar is that he could not get the said order served upon Tammisetti Venu Gopal by post owing to the fact that his address was not available. It may be noted that the second respondent-Tahsildar admits that summons were served upon Tammisetti Venu Gopal upto August, 2015, while he was still hearing the case. The sudden failure on his part to ascertain the whereabouts of Tammisetti Venu Gopal or his address when it came to service of the proceedings dated 20.11.2015 therefore seems rather farfetched. Even the later service of the said proceedings is not clear from suspicion. The second respondent- Tahsildar claimed that the same was affixed on the land as Tammisetti Venu Gopal was not available at his given address but his Senior Assistant and the Village Revenue Officer claimed that the same was sent only for affixation on the land. The Village Revenue Officer did not even state that the said order was sent to him for service at the address of Tammisetti Venu Gopal, but that was the version put forth by the second respondent-Tahsildar.

Another aspect which was pressed into service by the second respondent-Tahsildar was the so-called filing of a caveat by Pindi Rama Krishna Reddy after he passed the order, vide proceedings dated 20.11.2015. However, perusal of the caveat register and the caveat petition disclose that no mention

was made therein of the said proceedings and on the other hand, it was asserted therein that Pindi Rama Krishna Reddy apprehended that Tammisetti Venu Gopal would approach the civil Court in relation to the land and obtain ex parte interim orders against him. Had the caveat been filed in relation to the proceedings dated 20.11.2015, C.Vidyasagar Reddy, Advocate, Warangal, who filed the said caveat, would not have failed to mention the said proceedings in the body of the caveat. It may be noted that he claimed that he filed the said caveat after going through the said proceedings but significantly, there is no mention made by him of the said proceedings in the body of the caveat petition or the supporting affidavit. The said caveat petition therefore does not further the case of the second respondent-Tahsildar.

That apart, as rightly pointed out by Sri P.S.P.Suresh Kumar, learned counsel, the proceedings dated 20.11.2015 did not even address the aspect of the locus of Pindi Rama Krishna Reddy. When there was a specific direction by this Court in the judgment dated 25.07.2014 passed in the writ appeal that this issue should be determined by the Tahsildar, Hanamkonda, it was not open to him to baldly state that the issue stood settled by the order of the learned Judge, which was the subject matter of the said writ appeal. It was after noting the said observation of the learned Judge that this Court felt it necessary to direct the Tahsildar, Hanamkonda, to determine the issue of locus of Pindi Rama Krishna Reddy, but the second respondent-Tahsildar left this aspect completely unaddressed. This failure on his part in this regard is sufficient to make out a case of willful disobedience. Further, the second respondent-Tahsildar observed therein that he passed the order after hearing both parties but it was brought out by Tammisetti Venu Gopal that Pindi Rama Krishna Reddy did not even attend the hearing on 01.08.2015. At that point of time, the second respondent-Tahsildar conveniently changed his stand and came up with a new story to the effect that Pindi Rama Krishna Reddy was represented in the hearing by one Venu Gopal Reddy, his General Power of Attorney holder. Significantly, this was neither stated in the proceedings itself nor in the earlier counter-affidavit filed by the second respondent-Tahsildar. This clearly shows an attempt on the part of the second respondent-Tahsildar to improve his version to suit his own interest and at his own convenience.

Though the second respondent-Tahsildar also made an attempt to put the first respondent-Tahsildar in the dock so as to get himself exonerated, the fact remains that the first respondent-Tahsildar, having initiated proceedings, demitted office before he could conclude the same. He also offered justification for the delay on his part in completing the proceedings while he was in office. Having considered the reasons offered by the first respondent-Tahsildar for the delay on his part while in office, this Court is of the opinion that his disobedience in abiding by the time frame cannot be categorized as wilful disobedience. It is only symptomatic of the casual indifference that is usually shown by the authorities to the time frames stipulated by this Court. He is therefore not an exception to that rule but still, deliberate and wilful intention to disobey is absent. However,

when it comes to the second respondent-Tahsildar, not only did he fail to abide by the directions of this Court in its judgment dated 25.07.2014 in the writ appeal, as discussed hereinabove, but he compounded the same by coming up with the ante-dated proceedings dated 20.11.2015. This conclusion is not based on inferences but on hard facts which negate acceptance of the contrary claim of the second respondent-Tahsildar. The original record produced before this Court does not even contain the 'Note File', which, in itself, is a suspicious circumstance, and what is available therein does not help in clarifying the issues arising in these contempt proceedings.

On the above analysis, this Court holds that the second respondent- Tahsildar failed to abide by the directions of this Court in the judgment dated 25.07.2014 passed in W.A.No.1043 of 2014 as he did not choose to address the aspect specifically directed to be looked into by this Court, even if his proceedings dated 20.11.2015 are accepted at face value. Either way, his actions constitute wilful disobedience as per Section 2(b) of the Act of 1971. That apart, this Court finds that the said proceedings have been ante-dated only to escape the rigour of these contempt proceedings. This act on his part undoubtedly interferes with and obstructs the administration of justice, as per Sections 2(c)(iii) and 13(a) of the Act of 1971. He is therefore held guilty of committing civil and criminal contempt. It may be noted that the second respondent-Tahsildar never even attempted to tender an apology to this Court for contumacious conduct, if any, on his part. All along, he only apologised for the delay on his part in passing an order and no more. He therefore never showed any remorse or had any second thoughts, despite ample opportunity being given to him, and remained wilfully adamant.

On the above analysis, the first respondent-Tahsildar is exonerated for the delay on his part in complying with the order dated 25.07.2014 giving him the benefit of doubt, duly accepting the reasons set out by him for the said delay. The second respondent-Tahsildar is however held guilty of committing civil and criminal contempt. He is sentenced under Section 12 of the Act of 1971 to imprisonment for six months, in accordance with the due procedure as set out in Rules 31 and 32 of the A.P. High Court Rules framed under the Act of 1971, and shall also pay a fine of Rs.2,000/-. His subsistence allowance is fixed at Rs.400/- per day and shall be borne by the State as his imprisonment is attributable to the suo motu contempt proceedings also. Contempt Case No.1231 of 2016 and Suo Motu Contempt Case No.128 of 2018 are ordered accordingly. No order as to costs.

This order shall remain suspended for a period of three months to enable the second respondent-Tahsildar to avail appellate remedies, if he so chooses. Subject to just exceptions, the Registry shall take steps to give effect to this order thereafter.

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2019(1) L.S. 26 (Hyd.)

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

Present:
The Hon'ble Mr.Justice
C. Praveen Kumar

Pendru Srimathi
& Ors., ..Petitioners

Vs.

State of Telangana
& Ors., ..Respondents

PETROLEUM AND MINERALS PIPELINE ACT, 1962 - Writ Petitioners seeking issuance of a writ of mandamus declaring action of the respondents in proposing to lay the natural gas pipeline through their lands without issuing any notice, as illegal and improper and consequently direct the respondents to change the alignment of the proposed gas pipeline to other Government lands - Petitioners claim to be owners and possessors of the land, eking out their livelihood by doing cultivation.

Held – Petitioners participated at the time of preparation of panchanama - Delay of 2 months in making the second Gazette publication, which caused no prejudice - Land is being listed for public good - Entire process of acquisition is completed, pipelines are laid and award proceedings came to be passed, compensation is paid to 90% of landholders - Writ Petition is dismissed.

W.P.No.18329/2018 Date:13-10-2018

Mr.P.V. Nagamani, Advocates for the Petitioners.
G.P. for Revenue (TG), Advocate for the Respondents.

J U D G M E N T

1. The present Writ Petition came to be filed seeking issuance of a writ of mandamus declaring the action of the respondents in proposing to lay the natural gas pipeline through the lands of the petitioners in Sy.Nos.230, 244, 244/A and 246 situated at Puttapaka village, Manthani Mandal, Peddapally District without issuing any notice, as illegal and improper and consequently direct the respondents to change the alignment of the proposed gas pipeline to other Government lands.

2. The petitioners claim to be the owners and possessors of the above land, eking out their livelihood by doing cultivation in the said land. It is said that without issuing any notice and without taking consent of the writ petitioners, the respondents have commenced laying of a pipeline through the lands of the petitioners and others. The action of the respondents in laying the pipeline without following due process of law is subject matter of challenge herein.

3. The affidavit filed in support of the Writ Petition itself is silent as to the violation of the provisions of law. Taking a clue from the averments in the counter, the learned counsel for the petitioners mainly submits that the violation is in respect of the procedure contemplated under the Petroleum and Minerals Pipeline Act, 1962 (for short "the Act"). The main argument of the learned counsel for the petitioners is

that though notification under Section 3(1) of the Act was issued on 07.06.2014, the notification under Section 6(3) of the Act came to be made beyond a period of one year, whereby the entire proceedings get vitiated. It is further stated that after issuance of notice under Section 3(1) of the Act, an obligation is cast on the authority to conduct an enquiry so as to allow or disallow the objections. It is stated that, in the instant case, neither any notice was given to the petitioners nor any enquiry as contemplated under Section 5(1) of the Act was conducted nor a Gazette notification was issued within a period of one year as required under Section 6(3) of the Act. Taking the court through the proceedings issued by the officers of the competent authority dated 16.04.2018, which is said to be a notice under Section 10(4) of the Act, the learned counsel for the petitioner would submit that even this notice does not refer to holding an enquiry as contemplated under Section 5(1) and the consequential proceedings under Section 6(3) of the Act, before deciding the quantum of compensation to be paid.

4. The same is disputed by the learned counsel for the 5th respondent. A detailed counter came to be filed explaining the circumstances under which the pipeline came to be laid through the land of the petitioners. It is said that the Ministry of Petroleum and Natural Gas, Government of India, is developing the Mallavaram Bhopal-Bhilwara-Vijaipur Natural Gas Pipeline Project and for formation of pipeline, land is acquired under the provisions of the Petroleum and Minerals Pipeline Act, 1962. Twenty meters of the land (spur land) was acquired for the purpose of laying a pipeline underneath the surface of the soil, at a depth of over 2 meters. After the pipeline is laid, the land will be restored to its original position and possession will be handedover to the original owner. The only restriction on the land owners is that they cannot construct any building or permanent structure or plant trees at the place where the pipe line is passing. It is said that after issuing the statutory notice under Section 3(1) of the Act, the declaration under Section 6(1) of the Act was published vide Gazette Notification 1701 dated 12.08.2015. The same was also displayed on the notice boards of the District Collector, Superintendent of Police, Office of the MPDO, Tahsildar Manthani, Police Station Manthani, Grama Panchayat office and office of V.R.O., on 18.09.2015 and 21.09.2015. It is said that notice issued under Section 6(1) of the Act was refused by the petitioners. Hence, the same was affixed in the Notice Board of Grama Panchayath Office, Puttapaka on 06.11.2015 by the concerned V.R.O. It is said that by virtue of publication made under Section 6 of the Act, that portion of the land stand vested with the Government/GITL. It is said that 4 the petitioners were aware about the entire proceedings and by suppressing the same, the present writ petition came to be filed.

5. The averments in the counter further show that notices were served and before taking over the land, Grama Sabha was conducted at Puttapaka village on 18.11.2017 and pamphlets were also distributed by Natural Gas Pipe Line before holding another meeting on 06.01.2018, in the office of the Revenue Divisional Officer, Manthani. By an order dated 24.07.2018, this Court while issuing notice, directed the respondents not to lay the pipeline through the survey numbers referred to above, for

a period of two weeks.

6. No reply came to be filed to the counter filed by the respondents. As stated earlier, the argument is built on the averments made in the counter filed by the 5th respondent, which was not the case of the petitioners in the writ petition.

7. However, since arguments came to be advanced on these aspects during the course of hearing of the writ petition, it would be useful to refer to the provisions of law.

Section 3 of the Act deals with the publication of notifications for acquisition. Section 3(1) of the Act postulates that whenever it appears to the Central Government that it is necessary in the public interest, for transport of petroleum or any mineral from one locality to another locality, pipelines be laid by that Government or by any State Government or a corporation and for the purpose of laying such pipelines, it is necessary to acquire the right of user in any land under which such pipelines may be laid, it may, by notification in the official gazette, declare its intention to acquire the right of user therein. Sub section 2 of Section 3 states that every notification under sub-section (1) shall give a brief description of the land. Sub section 3 of Section 3 states that the competent authority shall cause the substance of the notification to be published at such places and in such manner as may be prescribed.

Section 4(1) of the Act postulates that on issuance of a notification under sub-section 1 of Section 3, it shall be lawful for any person authorized by the Central Government or by the State Government or by the Corporation which proposes to lay pipelines for transporting petroleum or any mineral, and his servants and workmen (a) to enter upon, survey and take levels of any land specified in the notification; (b) to dig or bore into the sub-soil; (c) to set out the intended line of work; (d) to mark such levels, boundaries and line by placing marks and cutting trenches; (e)where otherwise survey cannot be completed and levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle, and (f) to do all other acts necessary to ascertain whether pipelines can be laid under the land;

Provided that while exercising any power under this Section, such person or any servant or workman of such person shall cause as little damage or injury as possible to such land.

Section 5 of the Act, which deals with hearing of objections, is as under:-

> (1) Any person interested in the land may, within twenty-one days from the date of the notification under subsection(1) of section 3, object to the laying of the pipelines under the land.
>
> (2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector and opportunity of being heard either in person or by a legal practitioner and may, after hearing all such objections and after making such further inquiry, if any, as that authority thinks necessary, by border

whether allow or disallow the objections.

(3) Any order made by the competent authority under subsection (2) shall be final.

Section 6 of the Act relates to declaration of acquisition of right of user. Sub section 1 of Section 6 states that where no objections under subsection (1) of Section 5 have been made to the competent authority within the period specified therein or where the competent authority has disallowed the objections under subsection (2) of that section, that authority shall, as soon as may be, either make a report in respect of the land described in the notification under sub-section (1) of section 3, or make different reports in respect of different parcels of such land, to the Central Government containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government and upon receipt of such report the Central Government shall, if satisfied that such land is required for laying any pipeline for the transport of petroleum or any mineral, declared, by notification in the Official Gazette, that the right of user in the land for laying the pipelines should be acquired and different declarations may be made from time to time in respect of different parcels of the land described in the notification issued under sub-section (1) of section 3, irrespective of whether one report or different reports have been made by the competent authority under this Section. Sub-section 2 of Section 6 states that on publication of the declaration under sub-section (1), the right of user in the land specified therein shall vest absolutely in the Central Government free from all encumbrances. Sub-section 3 of Section 6 postulates that where in respect of any land, a notification has been issued under sub-section (1) of Section 3, no declaration in respect of any parcel of land covered by that notification has been published under this section within a period of one year from the date of notification, that notification shall case to have effect on the expiration of that period. Sub-section 3A of Section 6 states that no declaration in respect of any land covered by a notification issued under sub-section (1) of Section 3, published after the commencement of the Petroleum Pipelines (Acquisition of Right of User in Land) Amendment Act, 1977, shall be made after the expiry of three years from the date of such publication. Subsection 4 of Section 6 explains that notwithstanding anything contained in sub-section (2), the Central Government may, on such terms and conditions as it may think fit to impose, direct by order in writing, that the right of user in the land for laying pipelines shall, instead of vesting in the Central Government vest, either on the date of publication of the declaration or, on such other date as may be specified in the direction, in the State Government or the corporation proposing to lay the pipelines and thereupon the right of such user in the land shall, subject to the terms and conditions so imposed, vest in the State Government or corporation, as the case may be, free from all encumbrances.

8. In exercising the power conferred under Section 3 of the Act, the Central Government by notification published on 09.05.2014 in the Gazette of India, declared its intention to acquire the right of user in respect of certain lands. The said notification is as under:

"S.O. 1255(E) - Whereas, it appears to the Central Government, that it is necessary in the public interest that for the transportation of Natural Gas through the Spurline under Mallavarm-Bhopal-BhilwaraVijaipur Pipeline project to various customers en-route should be laid by the GSPL India Transco Limited.

. Spurline from Tap off in Gumnoor village to FCIL (Ramagundam) in Karimnagar District, Andhra Pradesh.

And whereas, it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid, in Karimnagar district of Andhra Pradesh State and which is described in the Schedule annexed to this notification.

Now, therefore, in exercise of the powers conferred by Sub section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

Any person interested in the land described in the said schedule may, within twenty one days from the date on which the copies of this notification issued under sub-section (1) of Section 3 of the said Act, as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of the right of user therein or laying of the pipeline under the land, to Sri Md. Akbar Nawaz, competent authority, GSPL India Transco Limited, Mallavaram-Bhopal-Bhilwa-Vijaipur Project, Flat No.309, 3rd Floor, Sri Kailasa Residency, Opp. Apollo Reach Hospital, Railway Station road, Village-Teegalagutapally – 505 001, Karimnagar district of Andhra Pradesh State.

9. The notification further set out details of survey numbers of land from different villages and the extent of land in respect of which right of user was sought to be acquired. The case on hand relates to land at Puttapaka village. The Gazette No.1039 dated 09.05.2014, wherein the notification under Section 3(1) of the 10 Petroleum and Minerals Pipeline (Acquisition of Right of User in land) Act, 1962 came to be issued, for laying the pipe line, came to be published on the Notice Board of the office of District Collector, Superintendent of Police, office of MPDO, office of Tahasildar, Police Station of Manthani, Gram Panchayat office and office of V.R.O. from 30.05.2014 to 19.06.2014. It is said that notices came to be issued under Section 3(1) of the Act, to those persons whose lands are getting affected. It is not in dispute that the lands which are subject matter of dispute in this Writ petition are in Sy.Nos.230, 244, 244/A and 246 situated in Puttapaka village of Manthani Mandal, Peddapally District, of which notices under Section 3(1) of the Act came to be issued to the petitioners vide C.A/Karimnagar/A/01/2012 dated 07.06.2014, which were served on the petitioners on different dates. The petitioner herein claim to have received the same on 19.06.2014. As no objections were filed, a declaration under Section 6(1) of the Act was published vide Gazette notification 1701 dated 12.08.2015. Copies of the Gazette came to be published on the Notice Boards of District Collector, Superintendent of

Police, office of MPDO, office of Tahasildar, Police Station of Manthani, Gram Panchayat office and office of V.R.O on 18.09.2015 and 21.09.2015. It is said that though notice under Section 6(1) of the Act was issued, the petitioners refused to take the same. Hence, the same were affixed in the office of Gram Panchayat, Puttapaka village by the concerned V.R.O. on 06.11.2015. By virtue of this declaration, the land in respect of ROU vest with Government of India.

10. As observed by me earlier, the question would be; Whether there was any violation of the provisions of the Act?

11. Two main grounds are urged by the learned counsel for the petitioners, though the said grounds are not pleaded in the affidavit filed in support of the writ petition. As stated earlier, the counsel for the petitioners has built up his argument basing on the counter filed by the respondents. The first ground being i) the publication under Section 6 (1) of the Act was not made within a period of one year from the date of Gazette notification issued under Section 3(1) and the second ground being that no notices were served on the petitioners before taking the said land for laying the pipeline.

12. The only document filed along with the writ petition is a notice under Section 10(4) dated 16.04.2018 issued by the Competent Authority asking the petitioners to come and collect their cheques prepared for payment of ROU land compensation.

13. Insofar as non-service of notices is concerned, the proceedings dated 16.04.2018, which are filed along with the Writ Petition were sent to the address of the petitioners referring to their name, village, Mandal and District. It appears that this notice dated 16.04.2018, which is filed along with the Writ Petition, was received by them and then Writ Petition came to be filed on the ground that without following the due procedure, the land of the petitioners was sought to be acquired. As seen from the original record, which is placed before this Court, notices under Section 3(1) of the Act were also sent to the very same address and every notice was signed by the petitioners, which was attested by the Village Revenue Officer, as proof of receipt of the notice. Therefore, the argument of the learned counsel for the petitioners that no such notice was sent or that they have not received any notice, cannot be accepted.

14. The other ground urged by the learned counsel for the petitioners is that the publication under Section 6 (1) of the Act was not made within a period of one year from the date of Gazette notification issued under Section 3(1). As seen from the record, the first Gazette notification came to be issued on 09.05.2014. Pursuant thereto, notices came to be issued to about 270 villagers, calling for their objections. Objections to the notice under Section 3(1) of the Act, were never made by any of the petitioners. Even the persons to whom it was served, did not file their objections. In fact, the petitioner No.5, who received compensation, even did not file his objections. Since no objections were received from any of the villagers, a report was submitted to the Central Government under Section 6 of the Act. After considering the said report and on being satisfied that the said land is required for laying the pipe line, the Central Government decided to acquire the right of user therein. In exercise

of its power under Section 6(1) of the Act, the Central Government declared that the right of user in the land specified in the schedule, appended to the notification, which includes the land of the petitioners, shall be acquired for laying the pipe line. In view of the power conferred under Section 6(4) of the Act, the Central Government directed that the right of user, in the said land for laying the pipeline shall vest with GSPL India Transco Limited. The notification also says that GSPL Transco Limited shall be exclusively liable for payment of compensation in terms of Section 10 of the Act.

15. From the above, it is clear that the report was sent after Gazette notification and basing on the said report, the Central Government, on being satisfied with the report for laying the pipeline, decided to acquire the right of the user therein. As held by the Apex Court in **Laljibhai Kadvabhai Savaliya and others v. State of Gujarat and others** (2016) 9 SCC 791)**,** upon the publication of declaration under Section 6, the right of user in the land so specified vests absolutely in the Central Government or in the State Government or in the Corporation free from all encumbrances. It has been also held that after such vesting, the compensation for the loss or injury suffered is to be determined under Sections 4, 7, 8 and 10 of the Act. It would be appropriate to refer to the findings of the Apex Court, which is as under:

> "18. Under the provisions of the PMP Act, what is taken over or acquired is the right of user to lay and maintain pipelines in the subsoil of the land in question. The provisions of the PMP Act get attracted upon the requisite notification having been made under Section 3. If it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum or any minerals any pipeline be made and for the purposes of laying such pipelines it is necessary to acquire the right of user in any land, it may by notification issued in exercise of power under Section 3 declare its intention to acquire such right of user. The Act then provides for making of objections by those interested in land, which objections are thereafter to be dealt with by the competent authority. The report made by the competent authority is then placed before the Central Government for appropriate decision and after considering such report land the relevant material on record, if the Central Government is satisfied that such land is required for laying any pipeline for the transport of petroleum or any other mineral, it may declare by notification in the Official Gazette that the right of user in the land for laying the pipeline be acquired. Upon the publication of such declaration under Section 6 the right of user in the land so specified vests absolutely in the Central Government or in the State Government or in the corporation free from all encumbrances. Thus what stands acquired is the right of user in the land in question for laying pipeline for the transport of petroleum or any mineral and not the land itself."

16. From a reading of the provision of the Act and judgment referred to above, it is clear that upon publication of such declaration under Section 6, the right of

user in the land, so specified, vests absolutely with the Central Government or the State Government or the Corporation, free from all encumbrances.

17. The main thrust of the argument of the learned counsel for the petitioners appears to be that in view of Section 6(3) of the Act, wherein the second Gazette notification is required to be issued within one year, which is not done, the entire proceedings are bad in law. As seen from the record, notice under Section 3(1) of the Act came to be issued in June 2014 to more than 250 villagers, and these notices came to be served on different dates.

18. The learned counsel for the respondents did not dispute the fact of notification, as required under Section 6 of the Act, being issued beyond a period of one year from the date of first notification, but submits that there being large number of persons to whom notices are to be served, there was some delay in publishing notification and as such the second notification came to be issued in the month of August, 2015, which does vitiate the proceedings, moreso when no prejudice is caused to the petitioner.

19. In some what identical situation, the Apex court in **P.Chinnanna and others v. State of A.P. and others** (1994) 5 SCC 486)**,** while dealing with the provisions of the Land Acquisition Act observed as under:

> "In relation to acquisition proceeding involving acquisition of land for public purposes, the court concerned must be averse to entertain writ petitions involving the challenge to such acquisition where there is avoidable delay or laches since such acquisition, if set aside, would not only involve enormous loss of public money but also cause undue delay in carrying out projects meant for general public good. When a fresh ground of attack to acquisition proceedings, even if it involves purely a question of law, its entertainment cannot be governed by a principle different from that which governs entertainment of writ petitions before the High Court or proceedings arising therefrom before this Court under Article 136 of the Constitution."

20. Further, a perusal of the record shows that all the petitioners, who were issued notices, participated at the time of preparation of panchanama in the month of September, 2017. A reading of the panchanama shows that the petitioners and all villagers were declared to be present on that day, to make a note of existing features in the said lands, for the purpose of determining the compensation. The record shows that all the petitioners appeared and singed on the panchanama. Later, in the month of February 2018, an order of compensation, for acquisition of right of user in the said land, came to be passed by the Competent Authority, GITL, Karimnagar, fixing the total amount of compensation to be paid to all the villagers is Rs.40,52,857/-. It is said that among the petitioners, even the 5th petitioner is said to have received the cheque for payment of compensation. Therefore, delay of 2 months in making the second Gazette publication, which caused no prejudice; and as the land is being listed for public good, does not vitiate the proceedings.

21. Since the entire process of acquisition is complete, pipelines are laid; award proceedings came to be passed; compensation is paid to 90% of the landholders, whose lands have been taken over for laying the pipeline; and in view of the observations made by the Apex Court in the judgment referred to above, the entire procedure cannot be found fault with.

22. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, pending if any in this Writ Petition shall stand closed.

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2019(1) L.S. 34 (Hyd.)

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

Present:
The Hon'ble Mr.Justice
M. Satyanaraayana Murthy

Nuthulapati Naga Basweshwer Rao ..Petitioner

Vs.

The State of Telangana & Ors., ..Respondents

PREVENTION OF CORRUPTION ACT, Secs.13(1)(e) & 13(2) – Public Servant – Whether petitioner who is working as Paid Secretary in Primary Agriculture Co-Operative Society, is a 'Public Servant' as defined under Section 2(c) of P.C. Act – If, petitioner is a 'Public Servant' as defined under Section 2(c) of P.C. Act, whether the sanction is valid - If not, whether the proceedings against this petitioner on this ground are liable to be quashed.

Held - Petitioner is public servant within meaning of Sec.2(c) of P.C. Act and also under Section 21 of IPC– When there is a question as to whether previous sanction is required to be given by Central or State Government or any other authority, such sanction shall be given by the Government or authority which would have been competent to remove public servant from his office at time when offence was alleged to have been committed – Criminal petition is dismissed, while permitting to raise the issue of validity and legality of the sanction, and also about receipt of financial aid during trial.

Mr.Nandigam Krishna Rao,Advocates ffor the Petitioner.
Spl. P.P. for ACB, Telangana State, Advocate for the Respondent R1.

J U D G M E N T

The sole accused in C.C.No.5 of 2016 on the file of Special Judge for SPE & ACB Cases, Karimnagar, filed this criminal petition to quash the proceedings against him, registered for the offences punishable under Sections 13(2) r/w Section 13(1)(e) of Prevention of Corruption Act (for short 'P.C. Act'), 1988 in Crime No.14/RCA-ACB-NZB/2010.

It is the case that, the petitioner initially worked as a clerk at Primary Agriculture Co-Operative Society, Kotagiri Village,

Nizamabad District and subsequently worked as Paid Secretary at Minarpally Village, Bodhan Mandal, Nizamabad District from 04.01.1982 to 20.12.2010. On receiving credible information that this petitioner acquired assets by corrupt practices, the Joint Director (Telangana) A.C.B., Hyderabad registered crime and search warrants were obtained from the II Additional Special Judge for SPE & ACB cases Hyderabad. Searches were conducted at various residential premises of the petitioner at H.No.1-2-760, Rakasipet, Bodhan, Nizamabad District, H.No.14-67, Kotagiri Village & Mandal, Bodhan, Nizamabad District and bank locker bearing No.102 in Nizamabad District Co-operative Central Bank Limited, Bodhan Branch on 20.12.2010. During the searches, incriminating material relating to the disproportionate assets was found to the tune of Rs.79,45,007/- in his name and in the name of his family members. Further, during the check period, the total income derived by the petitioner during check period was ascertained at Rs.37,61,389/-, whereas, the total expenditure of the petitioner during the check period as determined at Rs.37,61,389/-. Further, the petitioner possessed savings of Rs.8,40,464/- and assets worth Rs.79,45,0007, thereby, he could not satisfactorily account for Rs.87,85,471/-, which is disproportionate to his known source of income. Thus, the petitioner allegedly committed offences punishable under Sections 3(2) r/w Section 3(1)(e) of 'P.C. Act'.

The material collected by the Investigating Officer during investigation revealed the assets, income and expenditure of the petitioner which are placed at Annexures-I, II & III respectively and based on the statements recorded, the Investigating Officer came to the conclusion that the petitioner along with his family members possessed disproportionate assets to the tune of Rs.87,85,471/-.

The present petition is filed by the petitioner mainly on the ground that, the allegations made in the charge-sheet do not constitute an offence, even if the allegations made in the chargesheet are accepted on its face value and that there was no allegation that the property was acquired by corrupt practices and that the petitioner is only an employee in Primary Agriculture Co-Operative Society, Minarpally Village, Bodhan Mandal, Nizamabad. The petitioner contended that no proceedings were initiated against him, inasmuch as, neither there was any allegation with regard to corrupt practices nor making unlawful gain while working as an employee in Primary Agriculture Co-Operative Society, Minarpally Village, Bodhan Mandal, Nizamabad, no disciplinary proceedings were initiated against this petitioner or no surcharge proceedings were initiated under Section 60(1) of A.P. Cooperative Societies Act till date, therefore, he cannot be prosecuted for the above offences. Further, it is contended that, the petitioner is not an independent authority and that, question of adopting corrupt practices, and acquiring property does not arise. In addition to that, the Primary Agriculture Co-Operative Society is not a society registered under the Telangana Cooperative Societies Act, 1964, and it is a well settled law in terms of the judgment rendered by this Court in **A. Subramanyam Naidu v. Government of Andhra Pradesh (**2005 (5) ALD 682), that, the Primary Agricultural Cooperative Societies have no independent power to appoint and retrench Paid Secretaries without obtaining previous sanction of the Registrar of Cooperative Societies and

therefore, contended that, Paid Secretary is not a Public Servant within the definition of public servant under Section 2(c) of P.C. Act and he cannot be prosecuted for the offences punishable under Sections 13(2) r/w Section 13(1)(e) of P.C. Act.

Learned counsel for the petitioner also contended that, the sanction allegedly obtained by the respondent is not legal, even assuming that this petitioner is a Public Servant within the definition of Section 2(c) of P.C Act and on this ground alone, sought to quash the proceedings against this petitioner in C.C.No.5 of 2016 on the file of Special Judge for SPE & ACB Cases, Karimnagar, for the offences punishable under Sections 13(2) r/w Section 13(1)(e) of P.C. Act.

During hearing, Sri Nandigam Krishna Rao, learned counsel for the petitioner would draw attention of this Court to the judgment rendered in **Ravuri Siva Prasad v. State of Andhra Pradesh (**2013 (2) ALD (Crl.) 469), to contend that the prosecution against this petitioner is not maintainable, since the petitioner is not a public servant and in the absence of any sanction from the competent authority, the proceedings against this petitioner are liable to be quashed. In support of his contention, learned counsel for the petitioner placed reliance on the judgment rendered by this Court in **A. Subramanyam Naidu v. Government of Andhra Pradesh** (referred supra) to contend that the petitioner is not a public servant and when he is not a public servant, obtaining sanction in terms of G.O.Ms.No.5 Agriculture & Cooperative (VI) Department dated 24.01.2015, passed by APC & Principal Secretary to Government is illegal and thereby, the proceedings against this petitioner are liable to be quashed.

Per contra, learned Special Standing Counsel for A.C.B, Sri Nayan Kumar contended that though the petitioner is working as a Paid Secretary in Primary Agriculture Co-Operative Society, he falls within the definition of public servant under Section 2(c) of P.C. Act and that the validity of the sanction obtained from the competent authority cannot be looked into while deciding an application under Section 482 Cr.P.C, since such question can be decided only during trial. In support of his contentions, learned counsel placed reliance on the judgment of the Apex Court in **Central Bureau of Investigation, Bank Securities and Fraud Cell v. Ramesh Gelli and others** (2016) 2 Supreme Court Cases (Cri) 222) and on the strength of the principles laid down in the above judgment, learned counsel contended that the proceedings against this petitioner cannot be quashed at this stage by exercising power under Section 482 Cr.P.C and requested to dismiss the criminal petition.

Considering rival contentions and perusing the material available on record, the points that arise for consideration are as follows:

1) Whether the petitioner who is working as a Paid Secretary in Primary Agriculture Co-Operative Society, Minarpally Village, Bodhan Mandal, Nizamabad, is a 'Public Servant' as defined under Section 2(c) of P.C. Act?

2) If, the petitioner is a 'Public Servant' as defined under Section 2(c) of P.C. Act, whether the sanction obtained by the respondent to prosecute this petitioner vide G.O.Ms.No.5 dated 24.01.2015 is valid. If not, whether

the proceedings against this petitioner on this ground are liable to be quashed?

POINT No.1

Undisputedly, the petitioner is working as a Paid Secretary in Primary Agriculture Co-Operative Society, Minarpally Village, Bodhan Mandal, Nizamabad and he is governed by the provisions of Telangana Cooperative Societies Act (for short 'T.C.S. Act'), 1964 and the petitioner would fall within the definition of 'Officer' defined under Section 2(k) of T.C.S Act, which reads as follows:

'officer' includes a person elected or appointed by a society to any office of such society according to its bye-laws and a president, vice-president, chairman, vice-chairman, secretary, assistant secretary, treasurer, manager, member of committee, liquidator or any other person elected or appointed under this Act, rules or the bye-laws to give directions in regard to the business of the society.

When the petitioner being a Paid Secretary is termed as an 'officer' within the definition of Section 2(k) of T.C.S. Act, the Court has to examine whether the petitioner falls within the definition of 'public servant' as defined under Section 2(c) of P.C. Act, since the petitioner's main endeavour is that, he would not fall within the definition of 'public servant', as he is not discharging any public duty. At this stage, it is relevant to advert to the definitions of 'public duty' under Section 2(b) and 'public servant' under Section 2(c) of P.C. Act, and they are as follows:

> "**public duty**" means a duty in the discharge of which the State, the public or the community at large has an interest;
>
> Explanation.- In this clause "State" includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956.
>
> "**public servant**" means—
>
> (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
>
> (ii) any person in the service or pay of a local authority;
>
> (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);
> (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
>
> (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commission appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co- operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any their teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Explanation 1.—

Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2.—

Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

1[(d) “undue advantage” means any gratification whatever, other than legal remuneration.

Explanation.— For the purposes of this clause,—

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(a) the word "gratification" is not limited to pecuniary gratifications or to gratifications estimable in money;

(b) the expression "legal remuneration" is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive.]"

According to Article 12 of the Constitution of India, the society is a State and the persons discharging duties in society are discharging public duty.

In Gayatri De v. Mousumi Cooperative Housing Society Limited (2004) 5 SCC 19), the Supreme Court held in paragraph 11 as follows:

55. We have, in paragraphs supra, considered the judgments for and against on the question of maintainability of writ petition. The judgments cited by the learned Senior Counsel appearing for the respondents are distinguishable on facts and on law. Those cases are not cases covered by the appointment of a Special Officer to manage the administration of the Society and its affairs. In the instant case, the Special Officer was appointed by the High Court to discharge the functions of the Society, therefore, he should be regarded as a public authority and hence, the writ petition is maintainable."

In view of the law declared by the Apex Court, Society is State and its officers are discharging public duty.

Turning to the concept of public servant, the officers of the society defined under Section 2(k) of the Act is a public authority are deemed to be discharging public duty as defined under Section 2(b) of P.C. Act and thereby the officers are public servants as defined under Section 2(c) of P.C. Act.

In **Govt. of Andhra Pradesh v. P. Venku Reddy** (2002) 7 Supreme Court Cases 631), the Supreme Court held as follows:

8. From the above quoted Sub-clause (ix) of Clause (c) of Section 2 of the 1988 Act, it is evident that in the expansive definition of 'public servant', elected office-bearers with President and Secretary of a registered cooperative society which is engaged in trade amongst others in 'banking' and 'receiving or having received any financial aid' from the Central or State Government, are included although such elected office-bearers are not servants in employment of the co-operative societies. But employees or servants of a co-operative society which is controlled or aided by the government, are covered by Sub-clause (iii) of Clause (c) of Section 2 of the 1988 Act. Merely because such employees of co-operative societies are not covered by Sub-clause (ix) along with holders of elective offices, High Court ought not to have overlooked that the respondent, who is admittedly an employee of a co-operative bank which is controlled and aided by the government, is covered within the comprehensive definition of 'public servant' as contained in Sub-clause (iii) of Clause (c) of Section 2 of the 1988 Act. It is not disputed that the respondent/accused is in service of a co-operative Central Bank which

is an 'authority or body' controlled and aided by the government.

9. It cannot be lost sight of that the 1988 Act, as its predecessor that is the repealed Act of 1947 on the same subject, was brought into force with avowed purpose of effective prevention of bribery and corruption. The Act of 1988 which repels and replaces the Act of 1947 contains a very wide definition of 'public servant' in Clause (c) of Section 2 of the 1988 Act. The Statement of Objects and Reasons contained in the Bill by which the Act was introduced in the Legislature throws light on the intention of the legislature in providing a very comprehensive definition of word 'public servant'. Paragraph 3 of the Statement of Objects and Reasons reads:-

"3. The bill, inter-alia, envisages widening the scope of the definition of the expression 'public servant', incorporation of offences under Sections 161 to 165A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provision with regard to grant to stay and exercise of powers of revision on interlocutory orders have also been included.

10. Clause 2 of the Notes on Clause in Gazette of India Extraordinary, Part-II, Section 2, further clarifies the legislative intent thus:-

"Clause 2. The clause defines the expressions used in the Bill. Clause 2(c) defines "public servant". In the existing definitions the emphasis is on the authority employing and the authority remunerating. In the proposed definition the emphasis is on public duty. The definition of "election" is based on the definition of this expression in the Indian Penal Code".

11. Under the repealed Act of 1947 as provided in Section 2 of the 1988 Act, the definition of 'public servant' was restricted to 'public servants' as defined in Section 21 of the Indian Penal Code. In order to curb-effectively bribery and corruption not only in government establishments and departments but also in other semi-governmental authorities and bodies and their departments where the employees are entrusted with public duty, a comprehensive definition of 'public servant' has been given in Clause (c) of Section 2 of the 1988 Act.

12. In construing definition of 'public servant' Clause (c) of Section 2 of the 1988 Act, the court is required to adopt a purposive approach as would give effect to the intention of legislature. In that view Statement of Objects and Reasons contained in the Bill leading to the passing of the Act can be taken of assistance of. It gives the background in which the legislation was enacted. The present

> Act, with much wider definition of 'public servant', was brought in force to purify administration. When the legislature has used such comprehensive definition of 'public servant' to achieve the purpose of punishing and curbing growing corruption in government and semi-government departments, it would be appropriate not to limit the contents of definition clause by construction which would be against the spirit of the statute. The definition of 'public servant', therefore, deserves a wide construction. [see : State of Madhya Pradesh v. Shri Ram Singh 2000CriLJ1401.]

In view of the law declared by the Apex Court in the judgment referred supra, Cooperative Society is a State within Article 12 of Constitution of India and it is covered by explanation to Section 2(b) of P.C. Act, as the duties being discharged by the employees as defined under Section 2(k) of T.C.S Act are public duties. But, the learned counsel for the petitioner at this stage, contended that the petitioner is not discharging public duties and he is just rendering services to the society. When the cooperative society is engaged in providing credit facilities to the agriculturists with the aid of the government, it shall be treated as discharging public duties, since the society is being aided by the government or government corporations established by the centre or the state. Therefore, the duties being discharged by the employee of the society would fall within the definition of public duty.

The main grievance is that, the petitioner is not a public servant as defined under Section 2(c) of P.C Act. But, Section 9 of T.C.S Act defined society to be a body corporate and according to it, the registration of a society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal. The society is entitled to acquire, hold and dispose of property, to enter into contracts on its behalf, to institute and defend suits and other legal proceedings and to do all other things necessary for the purpose for which it was constituted.

On a bare look at Section 9 of T.C.S Act, registration of a society would be deemed to be a corporate body for the purpose of provisions of this Act, but, that would not acquire the status of a corporation under the Companies Act. In **S.S. Dhanoa v. Municipal Corporation of Delhi (**LAWS (SC) 1981 (5) 12), the Supreme Court had an occasion to advert to Section 21(c) I.P.C and Section 23 of Bombay Cooperative Societies Act, 1925, and they read as follows:

> **Clause (xii) of Section 21** of the Indian Penal Code protects two classes of public servants, viz., (a) every person in the service or pay of the Government or remunerated by fees or commission for the performance -of any public duty by the Government, and (b) every person in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956.
>
> **Section 23 of the Bombay Cooperative Societies Act, 1925:**
>
> The registration of a society shall

> render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution.

But, the Supreme Court took a different view that, cooperative society would not fall within the definition of 'corporate body' under the Companies Act, since a corporation is an artificial body being created by law having a legal entity entirely separate and distinct from the individuals who compose it with the capacity of continuous existence and succession, notwithstanding changes in its membership. In addition, it possesses the capacity as such legal entity of taking, holding and conveying property, entering into contracts, suing and being sued, and exercising such other powers and privileges as may be conferred on it by the law of its creation just as a natural person may. The following definition of corporation was given by Chief Justice Marshall in **Dartmouth College v. Woodward (**N.H. 4 Wheat. 518 : 4 L. Ed. 629), which is as follows:

> A corporation is an artificial being, invisible , intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only these properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individuals They enable a corporation to manage its own affairs, and to hold property, without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that corporations were invented, and are in use. By these means, a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being.

In paragraph 10 of the said judgment, the Apex Court observed that, there is a distinction between a corporation established by or under an Act and a body incorporated under an Act. The distinction was brought out by the Supreme Court in **Sukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi and Ors** (1975) ILLJ 399 SC), wherein, it was observed as follows:

"A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act."

Thus, there is a well-marked distinction between a body created by a statute and a body which, after coming into existence, is governed in accordance with the provisions of a statute. Mere registration under the Act would not render the society

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as body corporate, on par with company.

In **Sabhajit Tewary v. Union of India and Ors** (1975) ILLJ 374 SC) the question arose whether the Council of Scientific and Industrial Research which was a society registered under the Societies Registration Act, was a statutory body. It was urged, therein, that because the Council of Scientific and Industrial Research had government nominees as the President of the body and derived guidance and financial aid from the Government, it was a statutory body. Repelling the contention, the Court observed that, the Society does not have a statutory character like the Oil and Natural Gas Commission, or the Life Insurance Corporation or Industrial Finance Corporation. It is a society incorporated in accordance with the provisions of the Societies Registration Act. The fact that the Prime Minister is the President or that the Government appoints nominees to the Governing Body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and co-operation of scientific and industrial research, the institution and financing of specific researches, establishment or development and assistance to special institutions or departments of the existing institutions for scientific study of problems affecting ' particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a responsible manner. As such, CISR is a society, its employees are public servants.

Yet, the main grievance of this petitioner is that the petitioner is not a public servant, though discharging public duties, as defined under Section 2(b) of P.C. Act. But, to decide this contention, it is appropriate to advert to the provisions of T.C.S. Act.

Section 129-A of T.C.S. Act deals with Officers and employees to be public servant and according to it, the Registrar or any person authorised by him to recover any amount or to execute any orders issued or decisions taken under any of the provisions of this Act and every officer and employee of a society shall be deemed to be a public servant within the meaning of Section 21 of I.P.C.

The petitioner is not an officer, but an employee of the society, would fall within the definition of officer under Section 2(k) of T.C.S Act. When the petitioner is an employee of the society, and deemed to be a public servant within the meaning of Section 21 IPC, it embraces the definition of 'officer' within Section 2(k) of T.C.S. Act and 'public servant' within 2(c)(ix) of P.C. Act.

Under the repealed P.C. Act of 1947 as provided in Section 2 of the 1988 Act, the definition of 'public servant' was restricted to 'public servants' as defined in Section 21 of the Indian Penal Code. In order to curb-effectively bribery and corruption not only in government establishments and departments but also in other semi-governmental authorities and bodies and their departments where the employees are entrusted with public duty, a comprehensive definition of 'public servant' has been given in Clause (c) of Section 2 of the 1988 Act. It cannot be lost sight of that the 1988 Act, as its predecessor i.e. the repealed Act of 1947 on the same subject, was brought into force with avowed purpose of effective

prevention of bribery and corruption. The Act of 1988 which repels and replaces the Act of 1947 contains a very wide definition of 'public servant' in Clause (c) of Section 2 of the P.C Act, 1988. The Statement of Objects and Reasons contained in the Bill by which the Act was introduced in the Legislature throws light on the intention of the legislature in providing a very comprehensive definition of word 'public servant' (vide **Govt. of Andhra Pradesh v. P. Venku Reddy** (referred supra).

Thus, it is clear that, as per the repealed Act, the employee of a cooperative society is not a public servant, but, the definition of Section 2(c) of the new Act, P.C. Act, 1988, includes the employee working in the society, registered under the Cooperative Societies Act.

I`f, the principle laid down in the above judgment is applied to the present facts of the case, certainly the petitioner would fall within the definition of 'public servant' under Section 2(c) of P.C. Act. Even, ignoring the law laid down by the Apex Court in various judgments referred supra, still, in view of the definition of 'officer' under Section 2(k) and Section 129-A of T.C.S. Act, the petitioner would fall within the definition of 'public servant' under Section 21 of I.P.C and when the petitioner falls within the definition of public servant under Section 21 IPC, he would certainly fall within the definition of public servant under Section 2(c) of P.C. Act, which is wider than Section 21 of I.P.C.

Similar question came up for consideration before the Supreme Court in **State of Madhya Pradesh v. Rameshwar (**LAWS (SC) 2009 (4) 65)**,** where, the Supreme Court considered the scope of Section 87 of M.P. Cooperative Societies Act, 1960 with Section 21 of I.P.C. The issue that arose before the Apex Court was, whether the respondents therein being Directors of the Indore Premier Cooperative Bank Limited would fall within the definition of a public servant for the purpose of P.C. Act,. Reliance was also placed on Section 87 of M.P. Cooperative Societies Act, 1960, which provided that the Registrar and other officers, as well as employees of a Co-operative Bank or a Co-operative Society, would be deemed to be "public servants" within the meaning of Section 21 of I.P.C and on that basis, the Court held that, the respondent who was Chairman and the Executive Officer of the Bank would fall within the definition of a 'public servant' defined under Section 2(c)(ix) of P.C. Act. On perusal of the judgment, the Court opined that the officer of the cooperative bank as 'public servant' and the definition of public servant under P.C. Act. As far as M.P. Cooperative Societies Act, 1960 is concerned, as the M.P. Cooperative Societies Act, 1960 itself declares the authorities as public servants. When the Act itself directly conferred the status of the officers of the bank or the society, registered under the T.C.S. Act under Section 129-A, this petitioner cannot escape from his liability under the provisions of P.C.Act on the ground that he is not a public servant, as defined under Section 2(c) of P.C. Act. The principle laid down in **State of Madhya Pradesh v. Rameshwar** (referred supra) is squarely applicable to the present facts of the case, since, the Indore Premier Cooperative Bank Limited is State within Article 12 of the Constitution of India and the petitioner was an officer within the definition of Section 21 I.P.C and conferred status of public servant by Section 129-A of T.C.S. Act, which is restricted to certain categories of employees, but Section 2(C) of P.C. Act

is wider, which includes the definition of public servant under Section 21 of I.P.C. Therefore, by any stretch of imagination, the contention of the petitioner cannot be accepted to quash the proceedings againsthim.

In **C.B.I v. P.G. Jain (**LAWS (SC) 2016 (4) 70), the Supreme Court by relying on the judgment in **Govt. of Andhra Pradesh v. P. Venku Reddy** (referred supra), concluded that an employee of a cooperative society may not come within ambit of definition of public servant under Section 2(c)(ix) of P.C. Act, 1988, yet such person may be a public servant within meaning of Section 2(c)(iii) of P.C. Act, provided cooperative society is owned, controlled or aided by government. Further, the Supreme Court held in the said case that National Cooperative Consumers Federation of India Limited (NCCF) is a body aided by Central Government as required under Section 2(c)(iii) of P.C. Act and the employees working thereunder would fall under the definition of public servant. But, the facts of the above judgment need no detailed consideration.

Similarly, in **State of Maharashtra v. Prabhakara Rao (**LAWS (SC) 2002 (3) 103), the Supreme Court by adverting to principle in **State of Maharashtra v. Laljit Rajshi Shah and others (**JT 2000 (2) SC 546), held that, an employee of a cooperative society would not fall within the definition of public servant under Section 21 IPC or Section 2(c) of P.C. Act. Since, the case was under P.C. Act, 1947, the Court did not agree with the view in **State of Maharashtra v. Laljit Rajshi Shah and others** (referred supra), as P.C. Act was amended in 1988 and finally, concluded that the employee of a cooperative society would fall within the definition of public servant under Section 2(c) of P.C. Act. Similarly, in **N.K. Sharma v. Abhimanyu (**LAWS (SC) 2005 (10) 72), the question that fell for consideration in the appeal was whether a member of Indian Administrative Service, whose services are placed at the disposal of an organization which is neither a local authority, nor a corporation established by or under a Central, Provincial or State Act, nor a Government Company, by the Central Government or the Government of a State, can be treated to be a public servant within the meaning of Section 21 I.P.C for purposes of Section 197 Cr.P.C, the Supreme Court held that, when the employee is discharging his public duties, though he is an IAS officer, he would fall within the definition of public servant and such officers are declared as public servants under several special and local Acts. If the legislature had intended to include officers of an instrumentality or agency for bringing such officers under the protective umbrella of Section 197 Cr.P.C, it would be done so expressly, thereby concluded that, he is a public servant. In **N.K. Ganguly v. CBI, New Delhi (**LAWS (SC) 2015 (11), the Supreme Court dealt with identical question as to whether an officer discharging his duties in The Indian Council of Medical Research (ICMR), which is a registered society under the Societies Registration Act, 1860, is a public servant and when the petitioner was facing charges under the provisions of P.C. Act and offences under I.P.C. But, the Court concluded that he is a public servant for the purpose of Section 197(1) Cr.P.C and set-aside the orders passed by the High court, while quashing the proceedings, as no sanction was obtained under Section 197 Cr.P.C to prosecute the officer of the society registered under the Societies A

ct. Similarly, in **Manish Trivedi v. State**

of Rajasthan (2013 (3) G.L.H. 490), the councillors and members of the Board are public servants within the definition of Section 2(c)(viii) of P.C. Act, came up for consideration, the Court held that, municipal councillor would come within the definition of public servant and the basis for such conclusion is Section 87 of Rajasthan Municipalities Act and in the present case also, Section 129-A of T.C.S. Act is identical to Section 87 of Rajasthan Municipalities Act and consequently, the petitioner would fall within the definition of public servant under Section 2(c)(ix) of T.C.S. Act. In **Naresh Kumar Madan v. State of Madhya Pradesh (**LAWS (SC) 2007 (4) 46), the Apex Court again considered the scope of Section 2(c)(i) of P.C. Act and held that, electricity board established under Central Act is a corporation within the meaning of Section 2(c)(i) of P.C. Act and all its employees are public servant within the meaning of said section. The Court further held that, The Prevention of Corruption Act, 1947 was repealed and enacted in the year 1988 and the definition of 'public servant', as contained in Section 2(c) thereof, is a broad based one, though reliance was placed in the judgment of **State of Maharashtra v. Laljit Rajashi Shah and Others (**AIR 2000 SC 937), observed that the Court therein was dealing with a case of member of a cooperative society, but not dealing with the case of an employee of a statutory corporation. Moreover, the restricted definition of 'public servant' under repealed Act 1944 cannot be applied in view of definition under section 2(c) of 1988 Act.

Curiously, in **Vanam Anjaiah v. State of Andhra Pradesh (**LAWS (APH) 2005 (6) 15), this Court considered that, Secretary of A.P. Cooperative Society is a public servant, for the purpose of sanction and with reference of Section 2(k) of Cooperative Societies Act. The learned single Judge of this Court concluded that, the secretary is a "public servant".

Undoubtedly, there are several judgments of different High Courts, including the judgment Apex Court in **State of Maharashtra v. Laljit Rajshi Shah and others** (referred supra), which are in favour of this petitioner to conclude that he is not a public servant. But, the judgment in **State of Maharashtra v. Laljit Rajshi Shah and others** (referred supra) was not accepted by the Apex Court in various judgments referred supra, in view of Amended Act, 1988, since the case was under 1944 Act, including the judgment in **State of Maharashtra v. Brijlal Sadasukh Modani** (2016) 4 SCC 417**).** Therefore, the judgment in **State of Maharashtra v. Laljit Rajshi Shah and others** (referred supra) is not applicable.

In **Yash Kumar Sharma v. State of Punjab (**LAWS (P & H) 1987 (1) 2), the petitioner therein was an employee of the Punjab Cooperative Land Mortgage Bank, Muktsar, which was registered under the Punjab Cooperative Societies Act, 1961. The Punjab and Haryana Court held that the employee of a cooperative society is not a public servant within the meaning of Section 5 of P.C. Act or Section 21 IPC, because a cooperative society is not a corporation established by a statute, Punjab Cooperative Societies Act, conferred no status of a public servant unlike Section 129-A of T.C.S. Act.

Similarly, this Court in **Pinjari Pandalapuram Pedda Hussain Saheb v. Government of Andhra Pradesh (**LAWS (APH) 2009 (12) 32), held that, the

President and Secretary of a cooperative society are not public servants within the meaning of Clause 12(b) of Section 21 IPC and to them the provisions of Section 409 IPC are not attracted. But, this view is contrary to Section 129-A of T.C.S. Act and in the said case; the Court did not advert to Section 129-A and Section 2(k) of T.C.S Act. Therefore, the law declared by the learned single Judge of this Court is no more good law, in view of the long line of perspective pronouncements of the Apex Court referred supra.

In **Shanti Ranjan Bhattacharya v. The State (**AIR 1970 CALCUTTA 557), the Calcutta High Court took a contrary view, but, that is based on the State enactment of West Bengal.

The judgments of various High Courts of other states, including the judgment in **State of Maharashtra v. Laljit Rajshi Shah and others** (referred supra) have no application, in view of the law declared by the Apex Court in the judgments referred supra. Moreover, in **State of Maharashtra v. Brijlal Sadasukh Modani** (referred supra) the Apex Court dealt with an identical question with reference to provisions of Maharashtra Cooperative Society Act, 1960, and held that, employees of cooperative society falls within the definition of public servant under Section 2(c) of P.C. Act.

Thus, by applying the principles laid down in **State of Maharashtra v. Brijlal Sadasukh Modani** (referred supra) and other judgments of Apex Court referred supra, it is difficult to uphold the contention of this petitioner that he is not a public servant. Though learned counsel for the petitioner placed reliance on the judgment of this Court in **Ravuri Siva Prasad v. State of Andhra Pradesh** (referred supra), the same cannot be applied to the present facts of the case, though the learned Single Judge of this Court referred the judgments of Apex Court, but it was not properly considered. The Single Judge also did not advert to definition of officer under Section 2(k) and Section 129-A of T.C.S Act Therefore, the principle laid down by the learned single Judge of this Court cannot be applied in view of the judgments of the Supreme Court referred supra.

The principle laid down in other judgment relied on by the learned counsel for the petitioner in **A. Subramanyam Naidu v. Government of Andhra Pradesh** (referred supra), cannot be applied to the present case, since, the provisions were considered with reference to the Industrial Disputes Act to find out whether the employees of Cooperative Society would fall within the definition of workman. But, whether the society is receiving financial aid from State, Centre or Corporations established by state, or Central Government is to be decided only during trial, in view of the judgment of the Supreme Court rendered in **State of Maharashtra v. Brijlal Sadasukh Modani** (referred supra).

Whereas, learned counsel for the respondent placed reliance on the judgments in **Govt. of Andhra Pradesh v. P. Venku Reddy** (referred supra) and **Central Bureau of Investigation, Bank Securities and Fraud Cell v. Ramesh Gelli and others** (referred supra), where the Apex Court highlighted the definition of 'public servant' under Section 2(c) of P.C Act and concluded that the Chairman and the Executive Officer of the Bank would fall within the definition of a 'public servant' defined under Section 2(c)(ix) of P.C. Act and liable for prosecution.

Even in **State of Maharashtra v. Brijlal Sadasukh Modani** (referred supra), the Apex Court held that, it is left to be dealt with, the course of trial whether the society concerned has ever been granted any kind of aid or not and directed that the issue whether the respondent is a public servant or not, shall be gone into during the trial based on such aid from government or its corporation or public financial institutions. Therefore, at this stage, it is difficult to accept the contention that the sanction to prosecute this petitioner is not legal and it is left open to raise this issue during trial.

The law laid down by the Apex Court in the judgments referred supra is sufficient to conclude that this petitioner is a public servant within the meaning of Section 2(c) of P.C. Act and also under Section 21 of IPC, subject to establishing that the Agricultural Cooperative Society is receiving financial aid as State. Accordingly, I find this point in favour of the respondent and against the petitioner.

POINT NO.2

The other contention raised by the learned counsel for the petitioner is that, sanction of prosecution against this petitioner is not accorded by a competent officer, since APC & Principal Secretary to Government is incompetent to grant any such sanction as required under Section 19 of P.C. Act.
It is an undisputed fact that sanction of prosecution was granted by APC & Principal Secretary to Government. But, whether the said APC & Principal Secretary to Government is competent to grant such a sanction is to be decided at appropriate stage of the trial, as the petitioner is an employee of cooperative department and not appointed by registered cooperative societies. The appointment of petitioner as Paid Secretary by registered cooperative society will not confer power on the District Registrar of Cooperative Societies to accord sanction, since, he is an employee of cooperative department. But, this Court cannot decide the validity or legality of the sanction, at this stage.

The main contention before this Court is that, the petitioner is not an employee appointed by the Government and he was appointed by the society itself. But, as seen from the allegations made in the charge-sheet, he was appointed initially as a clerk by the Government and subsequently worked as Paid Secretary at Minarpally Village, Bodhan Mandal, Nizamabad District. If, really, the petitioner was appointed by the Executive Committee of the society, he is not liable for the offences punishable under Sections 13(2) r/w Section 13(1)(e) of P.C. Act. If, for any reason, the petitioner was appointed by the Registrar of Cooperative Societies, as contended by the learned counsel for the petitioner, certainly, the District Registrar Cooperative Societies is the competent authority. But, no material is placed before this Court to ascertain whether the petitioner is appointed by the government or by the District Registrar of Cooperative Societies. When there is a doubt as to the competent authority as to whether the previous sanction is required should be given by Central or State Government or any other authority, such sanction shall be given by the Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

Here, the APC & Principal Secretary to Government issued sanction orders under

Section 19(1) of P.C. Act and when there is any such doubt to the authority as to who has appointed the petitioner, it is left open to the petitioner to raise such contention before the Special Judge for SPE & ACB Cases, Karimnagar and on raising such objection, the Special Judge for SPE & ACB Cases, Karimnagar is bound to consider the same and decide the same in accordance with law.

In view of my foregoing discussion, I do not find any merit in the contention of the learned counsel for the petitioner and the present criminal petition is liable to be dismissed. However, the petitioner is at liberty to raise the issue of validity and legality of the sanction during trial and also about receipt of any financial aid from State or Central Government or from any corporation, established by State or Centre and any public financial institutions or Banks to decide whether the petitioner is a public servant.

One of the contentions raised by the learned counsel for the petitioner is that, when the society is not registered under A.P. Cooperative Societies Act, thereby, the provisions of A.P. Cooperative Societies Act has no application to the present facts of the case. irrespective of registration of the societies either under A.P. Cooperative Societies Act or A.P. Mutually Aided Cooperative Societies Act or any other Act, the petitioner is an employee in a cooperative department, who was initially appointed as clerk and later promoted as Paid Secretary and now working as such. Therefore, the petitioner is under the indirect control of the sanctioning authority i.e APC & Principal Secretary to Government. On this ground also, the proceedings against the petitioner in C.C.No.5 of 2016 on the file of Special Judge for SPE & ACB Cases, Karimnagar, cannot be quashed.

In the result, the criminal petition is dismissed, while permitting to raise the issue of validity and legality of the sanction, and also about receipt of financial aid during trial. On raising on such contention, the Trial Court shall decide the validity of the sanction during trial and also about receipt of any financial aid from State or Central Government or from any corporation, established by State or Centre and any public financial institutions or Banks to decide whether the petitioner is a public servant, in accordance with law. Consequently, miscellaneous petitions pending if any, shall stand closed. No costs.

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2019(1) L.S. 49 (Hyd.)

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

Present:
The Hon'ble Mr.Justice
U. Durga Prasad

M/s. Adorn Jewellers & Ors., ..Petitioners

Vs.

The State of A.P. & Anr., ..Respondents

INDIAN PENAL CODE, Sec.420 – Petition to Quash Criminal Proceedings against petitioner.

Held - In order to bring a case for the offence of cheating, it is not

merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that representation was false to knowledge of the accused and was made in order to deceive complainant - Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction - Criminal Petition stands allowed.

Mr.K. Pallavi, Advocates for the Petitioners. Addl. Public Prosecutor (TS), Advocate for the Respondents: R1.

J U D G M E N T

1. The petitioners/A1 to A3 seek to quash the proceedings against them in C.C.No.588 of 2010 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad.

2. The factual matrix of the case is thus:

a) The 2nd respondent filed a private complaint against the accused with the averments that the complainant is a registered company doing business in selling diamond and jewellery ornaments by purchasing them from different diamond and jewellery merchants as per the orders placed by the various customers. The accused are the manufacturers of diamond and jewellery ornaments and they used to make diamond and jewellery ornaments as per the orders placed by the complainant company. Therefore, the accused approached the complainant with an offer to manufacture and supply the diamond and jewellery ornaments by accepting 50% of the ordered amount and agreeing to collect the remaining balance at the time of delivery of the ornaments. The complainant and accused agreed to continue their business and accordingly developed acquaintance. They continued their business relations for some period. During the course of business on different dates between 03.04.2007 and 13.09.2008 the complainant placed orders for different types of diamond and jewellery ornaments worth Rs.50,27,032/- and paid the amount. The accused neither prepared the ornaments nor delivered them to the complainant. The accused expressed their inability to deliver the ornaments within the prescribed time and they used to postpone the matter from time to time. In the 1st week of September, 2008 the accused have requested the complainant to pay the remaining amount of Rs.2,27,032/- and the complainant paid the said amount through DD No.628385 dated 13.09.2008 drawn on ICICI Bank. Thereafter, the complainant demanded for delivery of the ornaments. On that, the accused abused the complainant in filthy and un-parliamentary language and also warned not to approach for collecting ornaments or for the amount. The accused intentionally and deliberately cheated the complainant with an intention to misappropriate the amounts given to them. Further, the accused threatened the complainant when requested for the ornaments or money.

b) The said complaint was referred to police of Bowenpally PS under Section 156(3) Cr.P.C. and the same was registered as Cr.No.375 of 2008 for the offences under Section 406, 420 and 507 IPC. The police after investigation filed a final report dated 30.07.2009 before the Court submitting that facts of the case revealed both complainant and accused were running business transactions since last some years and in the course of business transaction the

complainant issued cheques in favour of accused which were dishonoured and thereby, the accused have filed two criminal case—C.C.Nos.14969 and 14970 of 2008 for the offence under Section 138 r/w 141 and 142 of Negotiable Instruments Act (for short'NI Act)before the learned Chief Judicial Magistrate Court at Surat and the same are pending and in those circumstances, the complaint allegations only reveal a civil dispute and accordingly filed final report.

c) Aggrieved, the complainant filed a protest petition before XI Additional Chief Metropolitan Magistrate, Secunderabad. The Court, it appears, after examining LWs.1 to 3 took cognizance of the case for the offence under Sections 420, 406, 507 r/w 34 IPC and ordered summons. Hence the instant quash petition.

3. Heard arguments of Ms. K.Pallavi, learned counsel for petitioners and learned Additional Public Prosecutor for 1st respondent. Though 2nd respondent appeared through counsel, there is no representation.

4. Severely fulminating the order of the trial Court taking cognizance of the complainant, learned counsel for petitioners Ms. K.Pallavi would argue that the complaint allegations are false to the core in as much as, the petitioners/accused and complainant have been doing business in gold ornaments and jewellery quite for some time and some of the cheques issued by the complainant for the jewellery and gold ornaments supplied by the accused were dishonoured and therefore, the accused filed C.C.Nos.14969 and 14970 of 2008 against the complainant before the Chief Judicial Magistrate, Surat for the offence under Section 138 r/w 141 and 42 of NI Act and those cases are pending and the present complaint is filed by the complainant with all false allegations only to wriggle out of those criminal cases and to bring down them to his dictates. Learned counsel further argued that even assuming that complaint allegations are true and genuine, still they at best reveal breach of contract for which the remedy lies before the civil court but not criminal court. Learned counsel strenuously argued that mere non-delivery of jewellery and gold ornaments as agreed, after receiving the amount would only amount to breach of contract but by no stretch of imagination the failure on the part of accused can be dubbed as cheating or misappropriation to bring the transaction within the fold of criminal offence. The civil liability cannot be converted into a criminal liability to intimidate the opposite party. In that view, learned counsel argued, continuation of the criminal proceedings would amount to abuse of process of court. To buttress her argument, she placed reliance on the following judgments.

1) International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and Ors. vs. Nimra Cerglass Technics (P) Ltd. and others

2) Binod Kumar and others vs. State of Bihar and another

5. Per contra, learned APP would argue that on the promise of delivery of jewellery and gold ornaments the accused have received and deceived the complainant to the tune of Rs.50,27.032/- and therefore, the trial Court rightly took cognizance. He thus prayed to dismiss the petition.

6. The point for determination is: "Whether there are merits in this Criminal Petition to allow?

7. POINT: I gave my anxious consideration to the facts and material placed before the Court to know whether the transaction between the parties even if assumed to be true would amount to criminal offence. As can be seen from the complaint allegations and the statements of witnesses examined before the trial Court, the complainant and accused were known to each other and they have been in the jewellery and gold ornaments business quite for some time, as the complainant sells jewellery and gold ornaments by purchasing them from the manufacturers. The accused company is the manufacturer of such jewellery and gold ornaments. As per the complaint, in between 03.04.2007 and 13.09.2008 the complainant placed an order for diamond and jewellery ornaments worth Rs.50,27,032/- with accused company and paid total amount through cheques and DDs. In spite of receiving the total amount the accused have failed to comply with the order and did not deliver the jewellery and gold ornaments as per the agreement. As per the statement of LW3, an amount of Rs.50,27,032/- was paid to the accused through cheques and DDs. on different dates for different amounts. The petitioners/accused in para-4 of the quash petition denied the allegation that they received Rs.50 lakhs and odd between 03.04.2007 and 13.09.2008 as false and frivolous story. Their case is that during the course of business transaction, the complainant had issued cheques, out of which some cheques were bounced back and therefore the accused filed C.C.No.14969 and 14970 of 2009 in the Court of Chief Judicial Magistrate, Surat and the present complaint is only a counter blast.

8. In the light of allegations and counter allegations, it has now to be seen, if the complaint allegations are accepted to be true on their face value, whether they divulge any criminal offence or depict only breach of contract for taking civil action.

9. The offences alleged in this case are under Sections 406, 420 and 507 IPC. The Apex Court in International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI)'s case (1 supra) hasdrawn the distinction between the breach of contract and cheating. It held thus: "

> Para-15: The essential ingredients to attract Section 420Indian Penal Code are:
>
> (i) cheating;
>
> (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and
>
> (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating Under Section 420 Indian Penal Code.
>
> (Emphasis supplied)

In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant. Para-16 The distinction between mere breach of

contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court.

(Emphasis supplied)

Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction.

10. When the above principle is applied to the case on hand, admittedly the complainant and the accused are known to each other and doing the business in gold ornaments and jewellery quite for some time. Even assuming that the complainant has paid Rs.50,27,032/- to the accused, which fact is denied, for supplying jewellery and gold ornaments and accused failed to deliver the same, that by itself one cannot draw a conclusion that the accused had dishonest intention at the inception to take away the money and not to supply the ornaments. Even the complaint and statements of witnesses did not specify that the accused made a false representation at the inception to deceive or defraud the complainant. L.Ws.1 and 2 stated that the accused persons refused to supply the gold ornaments and jewellery on the plea that the gold rate increased and they cannot supply the articles as per the old rate and they were running in loss. From this alleged explanation one cannot readily infer that the accused had deceptive intention to cheat the complainant since inception. Every non-fulfilment of an obligation cannot be readily dubbed as cheating. Therefore, the act of accused, as rightly argued, may at best be treated as breach of contract. Of course, the accused denied receiving of such huge amount, which is a different fact altogether. Therefore, the material on record will not attract the ingredients of Section 420 IPC.

11a) To attract the offence of criminal breach of trust under Section 405 IPC, there must be entrustment of the property or there must be obtainment of any dominion over the property which the accused misappropriated or converted to his own use or dishonestly used or disposed of the property in violation of any direction of law which prescribes the mode in which such a trust is to be discharged or of any legal contract express or implied, which the accused made touching the discharge of such trust. So, the live nerve to attract the offence of criminal breach of trust is entrustment of property to the accused out of trust for utilising the property in a particular manner or to return the same after particular purpose is over. Though the property is entrusted to the accused, the proprietary right over the said property still vests with the person who entrusted. When these ingredients are applied, it can be emphatically said that the transaction of sale will not fulfil the ingredients of criminal breach of trust. In a sale transaction, there is no entrustment of property which the accused has to dispose of as per the terms of any statute or as per the terms of contract

when the complainant pays the money for obtaining certain goods or articles and the accused fails to fulfil his obligation by making delivery, the recourse for the complainant is a civil action.

b) My view gets fortified by the decision of Honourable Apex Court reported in State of Gujarat vs. Jaswantlal Nathalal wherein it is held thus:

Para-8:

xx xx xx

The expression 'entrustment' carries with itthe implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an entrustment. It is true that the government had sold the cement in question to BSS solely for the purpose of being used in connection with the construction work referred to earlier. But that circumstance does not make the transaction in question anything other than a sale. After delivery of the cement, the government had neither any right nor dominion over it. If the purchaser or his representative had failed to comply with the requirements of any law relating to cement control, he should have been prosecuted for the same. But we are unable to hold that there was any breach of trust."So, even if the complaint allegations are held to be true, the offence under Section 406 IPC will not attract.

12. Then, the offence of criminal intimidation under Section 507 IPC is concerned, LW1 only stated as if the accused abused the complainant in filthy language and refused to send jewellery and diamonds. The abuse without any intimidation to cause injury to the person, reputation or property will not attract the offence of criminal intimidation under Section 507 IPC.

13. So, at the outset, even if the complaint allegations are accepted to be true, they do not attract the offences under Sections 420, 406 and 507 IPC. Therefore, continuation of criminal proceedings against the accused, in my considered view, will amount to abuse of process of court.

14. In the result, this Criminal Petition is allowed and proceedings in C.C.No.588 of 2010 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad are quashed against the petitioners/A1 to A3. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

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LAW SUMMARY

2019 (1)

Supreme Court Reports

2019 (1) L.S. 1 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Uday Mehesh Lalit &
The Hon'ble Dr.Justice
Dhananjaya Y.Channdrachud

Prakash Chand Daga ..Petitioner

Vs.

Saveta Sharma & Ors., ..Respondents

MOTOR VEHICLES ACT,Sec.50 - Petitioner contended that a failure to intimate the transfer of ownership of vehicle will only result in a fine u/ Sec.50(3) but will not invalidate transfer of vehicle.

Held - Merely because vehicle was transferred does not mean that such registered owner stands absolved of his liability to a third person - So long as his name continues in RTO records, he remains liable to a third person - Appeal stands dismissed.

J U D G M E N T
(Hon'ble Mr.Justice
Uday Umesh Lalit).

This appeal challenges the judgment and order dated 05.04.2018 passed by the High Court of Punjab and Haryana at Chandigarh in FAO No.7010/2011.

2. The appellant, original owner of a Santro Car sold said vehicle to Ms. Saveta Sharma, first respondent on 11.09.2009. According to the appellant, after receiving due consideration, the possession was transferred to said first respondent. An accident occurred on 09.10.2009 in which one Rakesh Kumar, second respondent, received injuries. In a claim lodged by second respondent, the Motor Accident Claims Tribunal assessed the compensation at Rs.12.47 lakhs and directed as under:

"32. In view of my findings on the various issues above, the claim petition is allowed with costs and claimant is awarded total compensation of Rs.12,47,739/- (Rs. Twelve lacs Forty Seven Thousand Seven Hundred Thirty Nine only), Rs.11,58,489/- compensation for medical expenses etc. + Rs.60,000/- as compensation for pain and sufferings + Rs.18,000/- as compensation for loss of income + Rs. 11,250/- as compensation for temporary disability from respondent No.2 and 3 alone. Keeping in view prevalent interest rates, the claimant shall also be entitled to interest on the above awarded amount at the rate of 7.5% per annum from the date of filing of petition till final realisation. The liability of the respondent No.2 and 3 to pay the compensation shall be joint as well as

C.A.No.11369/ 2018 Date:14-12-2018

several. Memo of costs be prepared and file be consigned to records."

3. Since the liability was fastened on the driver and first respondent, the aforesaid decision was challenged by them in the High Court by filing FAO No.7010/2011. The High Court found that despite the sale of the vehicle on 11.09.2009, no transfer of ownership, in accordance with Section 50 of the Motor Vehicles Act,1988 ('the Act' for short) was effected and as such the appellant continued to be the owner in terms of definition as incorporated in Section 2(30) of the Act. Relying on the decision of this Court in Naveen Kumar v. Vijay Kumar and others, (2018) 3 SCC 1 the High Court concluded as under.

"Applying the ratio of the above said judgment to the facts of the present case, the award stands modified to the above extent that the Insurance Company is liable to make the compensation to the claimant and the Insurance Company will have the recovery rights to recover the same from the registered owner i.e. respondent No.1 of the offending vehicle. Remaining conditions of disbursal of amount shall remain unaltered."

4. Learned counsel appearing for the appellant submitted that the accident had occurred within thirty days of the transfer when the statutory period as prescribed under Section 50(1)(b) of the Act had not expired and as such the liability could not be fastened on the present appellant. Though served, the transferee, namely, first respondent has chosen not to appear in the matter. We have gone through the record and considered the submissions advanced by the learned counsel for the appellant and the Insurance Company.

5. It is true that in terms of Section 50 of the Act, the transfer of a vehicle ought to be registered within 30 days of the sale. Section 50(1) of the Act obliges the transferor to report the fact of transfer within 14 days of the transfer. In case the vehicle is sold outside State, the period within which the transfer ought to be reported gets extended. On the other hand, the transferee is also obliged to report the transfer to the registering authority within whose jurisdiction the transferee has the residence or place of business where the vehicle is normally kept. Section 50 thus prescribes timelines within which the transferor and the transferee are required to report the factum of transfer. As per Sub-Section 3 of said Section 50, if there be failure to report the fact of transfer, fine could be imposed and an action under Section 177 could thereafter be taken if there is failure to pay the amount of fine. These timelines and obligations are only to facilitate the reporting of the transfer. It is not as if that if an accident occurs within the period prescribed for reporting said transfer, the transferor is absolved of the liability.

6. Chapter XII of the Act deals with Claims Tribunals and as to how applications for compensation are to be preferred and dealt with. While considering such claims, the Claims Tribunal, in case of an accident is required to specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or whether such amount be paid by all or any of them, as the case may be. It is well settled that for the purposes of fixing such

liability the concept of ownership has to be understood in terms of specific definition of 'owner' as defined in Section 2(30) of the Act.

7. In Pushpa alias Leela and Ors. v. Shakuntala and Ors., (2011)2 SCC 240 the vehicle in question belonged to one Jitender Gupta who was its registered owner. He sold said vehicle to one Salig Ram on 02.02.1993 and gave its possession to the transferee. Despite said sale, the change of ownership was not entered in the Certificate of Registration. The earlier insurance policy having expired, the transferee took out fresh insurance policy in the name of original owner Jitender Gupta. In an accident that took place on 07.05.1994 two persons lost their lives. The heirs and legal representatives lodged separate claims and an issue arose as to who was liable as owner. The submissions that Jitender Gupta, the registered owner had no control over the vehicle and the possession and control of the vehicle was in the hands of the transferee and as such no liability could be fastened on the transferor were rejected by this Court. It was observed in para 11 as under:

"11. It is undeniable that notwithstanding the sale of the vehicle neither the transferor Jitender Gupta nor the transferee Salig Ram took any step for the change of the name of the owner in the certificate of registration of the vehicle. In view of this omission Jitender Gupta must be deemed to continue as the owner of the vehicle for the purposes of the Act, even though under the civil law he ceased to be its owner after its sale on 2.2.1993."

8. In the decision in Naveen Kumar (supra) the legal position was adverted to and this Court observed as under:

"13. The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression "owner" in Section 2(30), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the "owner". However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the Registering Authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression "owner" in Section 2(30), making a departure from the provisions of Section 2(19) in the earlier 1939 Act. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the Registering Authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. In the present case, the first respondent was the "owner" of the vehicle involved in

the accident within the meaning of Section 2(30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured. The High Court has proceeded upon a misconstruction of the judgments of this Court in Reshma (2015)3 SCC 679 and Purnya Kala Devi (2014) 14 SCC 142.

14. The submission of the petitioner is that a failure to intimate the transfer will only result in a fine under Section 50(3) but will not invalidate the transfer of the vehicle. In T.V. Jose (2001)8 SCC 748, this Court observed that there can be transfer of title by payment of consideration and delivery of the car. But for the purposes of the Act, the person whose name is reflected in the records of the Registering Authority is the owner. The owner within the meaning of Section 2(30) is liable to compensate. The mandate of the law must be fulfilled."

9. The law is thus well settled and can be summarised:-

"Even though in law there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person ... ... Merely because the vehicle was transferred does not mean that such registered owner stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person." (P.P. Mohammed v. K. Rajappan and Ors. (2008) 17 SCC 624 para 4)

The High Court was therefore absolutely right in allowing the appeal. The challenge raised by the appellant must fail.

10. This appeal is dismissed. No costs.

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2019 (1) L.S. 4 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Uday Umesh Lalit &
The Hon'ble Mr.Justice
R. Subhash Reddy

Urvashiben & Anr., ..Petitionersd

Vs.

Krishnakant Manuprasad Trivedi ..Respondeent

CIVIL PROOCEDURE CODE, O.VII, R.11 - Respondent/Plaintiff has filed Suit for Specific performance of Agreement to Sell - Appellant/ Defendants have filed an application under Order7, Rule11(d) of CPC to reject the plaint on the ground that suit is barred by limitation – Trial Court allowed the application, which was later set aside by the High Court - Appellants /Defendants preferred present appeal aggrieved by Judgment and Decree of High Court.

Held - Merits and demerits of matter cannot be gone into, while deciding an application filed under O.VII R.11 of the CPC - At this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint, it cannot be said that suit

C.A.Nos.12070-12071/2018 Date:14-12-18

is barred by limitation - Even assuming that there is inordinate delay and laches on the part of the Respondent/Plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC – Appeal stands dismissed.

J U D G M E N T

(per the Hon'ble Mr.Justice R. Subhash Reddy)

Leave granted.

2. These civil appeals are preferred by the defendants in Civil Suit No.930 of 2017, on the file of the City Civil Court, Ahmedabad, aggrieved by the judgment and decree of the High Court of Gujarat dated 10.07.2018 passed in Regular First Appeal No.160 of 2018 and Civil Application No.1 of 2018.

3. The respondent-plaintiff has filed Civil Suit No.930 of 2017 for specific performance of the Agreement to Sell dated 13.03.1992 with regard to suit schedule property, i.e. Final Plot No.147 of Town Planning Scheme No.3 of Mouje Shekhpur-Khanpur of Ahmedabad, admeasuring 2821 Sq.Mtrs. It is the case of the plaintiff that the predecessor-in-title of the appellant-defendants, one Chaitanyabhai Patel, had agreed to sell the suit schedule property to him and execute Agreement of Sale / Sale Deed for a sale consideration of Rs.32 lacs. The total consideration amount of Rs.32 lacs was paid during the period from 15.01.1990 to 05.09.1991. It is stated that such payments are acknowledged by vouchers. It was the case of the respondent-plaintiff that, time was not the essence of the contract, and citing financial problems, the Sale Deed was not executed. It is alleged that deceased Chaitanyabhai Patel has given trust and belief that he will execute the Sale Deed. However, recently when the respondent-plaintiff had visited the suit schedule property on 25.05.2017 he has come to know that the said property was sold to third party in view of increase in prices. It is alleged in the plaint that the appellant-defendants have expressed that they will not execute the Sale Deed. Hence, the suit is filed.

4. In the aforesaid suit, the appellant-defendants have filed application under Order 7, Rule 11 (d) of the Code of Civil Procedure (CPC) to reject the plaint on the ground that suit is barred by limitation. The said application was contested by the respondent herein. However, trial court, by order dated 27.12.2017, allowed the application and ordered to reject the plaint.

5. As against the same, respondent-plaintiff preferred Regular First Appeal No.160 of 2018 before the High Court of Gujarat at Ahmedabad. By the judgment and decree dated 10.07.2018, the High Court has allowed the appeal filed by the respondent by setting aside the order of the trial court dated 27.12.2017. As against the same, these civil appeals are filed.

6. We have heard Sri Anshin H. Desai, learned senior counsel for the appellants and Sh. Dushyant Dave, learned senior counsel for the respondent-plaintiff.

7. In these appeals, it is contended by Sri Desai, learned senior counsel appearing for the appellants that the alleged Agreement to Sell is dated 13.03.1992 and the suit is filed in the year 2017, i.e., after a period

of 25 years and even according to the case of the respondent-plaintiff there is no communication at all in between the period from 1992 to 2017. It is submitted that except stating that he had visited the site on 25.05.2017 on which date he has come to know the said plot is sold to third parties, there is nothing on record to show that the suit is within limitation. Referring to Article 54 of the Limitation Act, 1963 it is contended by learned counsel that even in absence of prescribing time for executing the Sale Deed, the period of three years is to be computed from the date of refusal. It is submitted that by waiting for a period of 25 years and by merely stating that he had visited the site on 25.05.2017 on which date, the appellants have refused to execute the Sale Deed, such a suit is filed. It is submitted that the suit filed is frivolous, vexatious and ex-facie barred by limitation. It is contended that even in absence of fixing any period for executing the Sale Deed, it is not open to respondent-plaintiff to file the suit after 25 years of alleged Sale Deed / Agreement to Sell. It is further stated that the so-called Agreement to Sell is unregistered one, not supported by any payments through cheque. Vaguely stating that entire amount of consideration is paid, by way of cash during the period from 15.01.1990 to 05.09.1991, the said suit is filed. It is contended by learned counsel that a well reasoned order passed by the trial court is set aside by the High Court without recording any justifiable reasons. In support of his case for rejection of plaint under O.VII R.11, learned counsel has placed reliance on judgment of this Court in the case of **Prabhakar v. Joint Director, Sericulture Department & Anr., (2015) 15 SCC 1**; **T. Arivandandam v. T.V. Satyapal & Anr., (1977) 4 SCC 467**; **Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614**; **Dilboo (Smt.) (Dead) by LRs & Ors. v. Dhanraji (Smt.) (Dead) & Ors., (2000) 7 SCC 702**; **I.T.C. Limited v. Debts Recovery Appellate Tribunal & Ors., (1998) 2 SCC 70**; **Raj Narain Sarin (Dead) through LRs. & Ors. V. Laxmi Devi & Ors., (2002) 10 SCC 501**; **N.V. Srinivasa Murthy & Ors. v. Mariyamma (Dead) by Proposed LRs. & Ors., (2005) 5 SCC 548**; **Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174** and in the case of **Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706**.

8. On the other hand Sh. Dushant Dave, learned senior counsel appearing for the respondent has submitted that the appellant-defendants sought rejection of the plaint under O.VII R.11(d) of the CPC only on the ground that suit is barred by limitation. It is the contention by the learned counsel that undisputedly time was not the essence of the contract, in which event as per Article 54 of the Limitation Act 1963, the period of limitation is three years from the date of refusal. It is submitted that the limitation being a mixed question of fact and law, whether the suit is filed within a period of three years from the date of refusal, is a triable issue, which can be adjudicated only after trial but same is no ground for rejection of the plaint at this stage. It is submitted that for the purpose of considering the application under O.VII R.11(d), plain averments in the plaint are to be seen and no other ground can be a ground for rejection of the plaint, under O.VII R.11(d). It is

submitted that whether, from the averments in the plaint in a given case, plaint is to be rejected or not under O.VII R.11, is to be considered with reference to facts of each case and from the case on hand, it cannot be said that suit is barred by limitation, only by looking at the averments in the plaint. Learned counsel has contended that all the citations by learned counsel for the appellants are not applicable to the facts of the case on hand and, in support of his arguments, reliance is placed in the case of **Gunwantbhai Mulchand Shah & Ors. v. Anton Elis Farel & Ors., (2006) 3 SCC 634**; **Rathnavathi & Anr. v. Kavita Ganashamdas, (2015) 5 SCC 223**; **Madina Begum & Anr. v. Shiv Murti Prasad Pandey & Ors., (2016) 15 SCC 322** and **Chhotanben & Anr. v. Kiritbhai Jalkrushnabhai Thakkar & Ors., (2018) 6 SCC 422**.

9. Having heard learned counsel on both sides, we have perused the order passed by the trial court as well as the High Court and other material placed on record.

10. The trial court has allowed the application filed by the appellant-defendants, by holding a finding that respondent-plaintiff, by clever drafting, has created illusion of cause of action and stated that cause of action has arisen on 25.05.2017, but he failed to give justifiable explanation for unreasonable delay in filing the suit. Trial court further held that when the plaintiff has not taken any action for 25 years, by clever drafting, the plaintiff cannot bring an action within the period of limitation. Therefore, it has held that suit being barred by limitation, attracts rejection under O.VII R.11(d) of CPC. The High Court has set aside the order of the trial court by recording a finding that going by the plain averments in the suit, it cannot be stated that the same is barred by limitation.

11. It is fairly well settled that, so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that limitation can be the ground for rejection of plaint in exercise of powers under O.VII R.11(d) of the CPC. Equally, it is well settled that for the purpose of deciding application filed under O.VII R.11 only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into. Article 54 of the Limitation Act, 1963 prescribes the limitation of three years, for suits for specific performance. The said Article reads as under :

uits for Specific Performance	3 years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused

12. From a reading of the aforesaid Article, it is clear that when the date is fixed for performance, limitation is three years from such date. If no such date is fixed, the period of three years is to be computed from the date when the plaintiff, has notice of refusal. When rejection of plaint is sought in an application filed under O.VII R.11, same is to be considered from the facts of each case, looking at the averments made in the plaint, for the purpose of

adjudicating such application. As averred in the plaint, it is the case of the plaintiff that even after payment of the entire consideration amount registration of the document was not made and prolonged on some grounds and ultimately when he had visited the site on 25.05.2017 he had come to know that the same land was sold to third parties and appellants have refused performance of contract. In such event, it is a matter for trial to record correctness or otherwise of such allegation made in the plaint. In the suits for specific performance falling in the second limb of the Article, period of three years is to be counted from the date when it had come to the notice of the plaintiff that performance is refused by the defendants. For the purpose of cause of action and limitation when it is pleaded that when he had visited the site on 25.05.2017 he had come to know that the sale was made in favour of third parties and the appellants have refused to execute the Sale Deed in which event same is a case for adjudication after trial but not a case for rejection of plaint under O.VII R.11(d) of CPC.

13. Counsel for the appellants has placed reliance on the judgment in the case of Prabhakar (supra). In the above said case, this Court has held that, even where no limitation period is prescribed by the Statute, courts apply doctrine of delay/laches/ acquiescence and non-suit litigants who approach court belatedly without justifiable explanation. Delay and laches are to be examined with reference to facts of each case and the said judgment is not helpful to support the case of the appellant inasmuch as this matter arises out of an application filed under O.VII R.11(d) of the CPC. The judgment in the case of T. Arivandandam (supra) pertains to eviction from tenanted premises which was contested by the tenant. In the said case where rejection of plaint under O.VII R.11(d) was considered on the ground that plaint does not disclose cause of action but not a case for rejection of plaint on the ground of limitation. In the case of Hardesh Ores (supra) it was the case falling in the first limb of Article 54 of the Limitation Act 1963 but not a case falling under second limb, where the time is not the essence of the contract. In the judgment in the case of Dilboo (Dead) (supra) this Court has considered relevant principles of applicability of O.VII R.11 of CPC. Equally, the case of I.T.C. Limited (supra) is a case concerning rejection of plaint under O.VII R.11(a) but not case of rejection on the ground of limitation. In the case of Raj Narain Sarin (supra) the suit was filed after 40 years after execution of the Sale Deed and as a fact it was found that Sale Deed was to the knowledge of the plaintiff and he had not taken any steps to declare the Sale Deed invalid. In that context, the order passed under O.VII R.11 was confirmed by this Court. In the case of N.V. Srinivasa (supra) the suit is for declaration but not for specific performance and in the said suit having regard to the facts of the case this Court has held that suit for declaration filed by the plaintiff is not maintainable. In the case of Madanuri Rama (supra) the suit was filed seeking cancellation of Sale Deed on the ground that property in question is a waqf property which cannot be sold to a private party. The aforesaid case is a case not concerning limitation under Article 54 of the Limitation Act 1963.

14. On the other hand, judgment in the case Gunwantbhai (supra) this Court has held as under :

"8. We may straightaway say that the manner in which the question of limitation has been dealt with by the courts below is highly unsatisfactory. It was rightly noticed that the suit was governed by Article 54 of the Limitation Act, 1963. Then, the enquiry should have been, first, whether any time was fixed for performance in the agreement for sale, and if it was so fixed, to hold that a suit filed beyond thre years of the date was barred by limitation unless any case of extension was pleaded and established. But in a case where no time for performance was fixed, the court had to find the date on which the plaintiff had notice that the performance was refused and on finding that date, to see whether the suit was filed within three years thereof. We have explained the position in the recent decision in **R.K. Parvtharaj Gupta v. K.C. Jayadeva Reddy (2006) 2 SCC 428**. In the case on hand, there is no dispute that no date for performance is fixed in the agreement and if so, the suit could be held to be barred by limitation only on a finding that the plaintiffs had notice that the defendants were refusing performance of the agreement. In a case of that nature normally, the question of limitation could be decided only after taking evidence and recording a finding as to the date on which the plaintiff had such notice. We are not unmindful of the fact that a statement appears to have been filed on behalf of the plaintiffs that they did not want to lead any evidence. The defendants, of course, took the stand that they also did not want to lead any evidence. As we see it, the trial court should have insisted on the parties leading evidence on this question or the court ought to have postponed the consideration of the issue of limitation along with the other issues arising in the suit, after a trial."

In the aforesaid case, it is clearly held that in cases falling in second limb of Article 54 finding can be recorded only after recording evidence. The said view expressed by this Court supports the case of the respondent-plaintiff. In the judgment in the case of Rathnavathi (supra) in paragraphs 42 and 43 it was clearly held that when the time is not fixed in the agreement, the limitation of three years to file a suit for specific performance would begin when the plaintiff has noticed that defendant has refused the performance of the agreement. In the judgment in the case of **Ahmadsahab Abdul Mulla(2)(Dead) by Proposed LRs. v. Bibijan & Ors., (2009) 5 SCC 462** while interpreting Article 54 of the Limitation Act, it is held that words "date fixed for the performance" is a crystallised notion. The second part "time from which period begins to run" refers to a case where no such date is fixed. In the case of **Balsaria Construction (P) Ltd. v. Hanuman Seva Trust & Ors., (2006) 5 SCC 658** and Chhotanben (supra) this Court clearly held that issue of limitation, being a mixed question of fact and law, is to be decided only after evidence is adduced.

15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while

deciding an application filed under O.VII R.11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC.

16. For the aforesaid reasons, we do not find any illegality in the judgment of the High Court, so as to interfere with the same in these appeals. Accordingly, these appeals are dismissed, being devoid of merit, with no order as to costs. We make it clear that we have not expressed any opinion on the merits of the matter, including on the issue of limitation. It is open for the trial court to frame issues, including the issue of limitation, and decide the matter on its own merits. As the alleged agreement is of the year 1992, trial court to dispose of the suit, as expeditiously, as possible.

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2019 (1) L.S. 10 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mrs.Justice
R. Bhanumathi &
The Hon'ble Ms.Justice
Indira Banerjjee

V. Ravi Kumar ..Petitioner

Vs.

State, T.N. & Others ..Respondents

CRIMINAL PROCEDURE CODE, Sec.482 – Whether High Court should have quashed the criminal proceedings on the grounds that the appellant had withdrawn an earlier complaint without assigning reasons.

Held - No provision in Criminal Procedure Code or any other statute which debars a complainant from making a second complaint on the same allegations, when the first complaint did not lead to conviction, acquittal or discharge - Clear allegations of fraud and cheating which prima facie constitute offences u/Sec.420 of the Indian Penal Code - Correctness of the allegations can be adjudged only at the trial when evidence is adduced - At this stage, it was not for High Court to enter into factual arena and decide whether allegations were correct - Appeal stands allowed.

92 Crl.Appeal No.111/2011 Date: 14-12-2018

J U D G M E N T

(per the Hon'ble Ms.Justtice Indira Banerjjee0

This appeal is against the final judgment and order dated 20-03-2006 passed by the High Court of Judicature at Madras, inter alia, allowing Criminal Original Petition No.27039 of 2005 filed under Section 482 Cr.P.C. and quashing the criminal proceedings being Crime No.54 of 2005 against the petitioners before the High Court and also against the first accused company, which was not party before the High Court.

2. The appellant, Shri Ravi Kumar carries on business of cotton ginning and conversion of cotton into yarn at Salem, Tamil Nadu as proprietor of "SARAVANA YARN TRADERS".

3. The appellant as proprietor of "SARAVANA YARN TRADERS" entered into transactions with Sri. Rajendran Mills Ltd., Salem (hereinafter referred to as "the Mill"). The respondent No.2/accused No.2 is the Managing Director of the Mill and the respondent No.3/accused No.3 Sri Sundaram is its Chairman, respondent No. 4/accused No.4 Sri Sundar is the son of the Managing Director being the respondent No.2/accused No.2 and is in charge of the affairs of the Mill. The respondents/ accused Nos.5 to 13 are also responsible for administering the Mill.

4. In December 2001, the Mill requested the appellant to supply cotton lint to the Mill for conversion of the same into yarn. The appellant and the respondents entered into transactions in 2001. Later, in January 2002, a Memorandum of Understanding in writing was executed between the appellant and the Mill.

5. The appellant has alleged that pursuant to the Memorandum of Understanding, the appellant supplied 1,03,920 Kgs of cotton lint to the Mill for conversion into yarn. The appellant has further alleged that respondent No.2/accused No.2 Shri Chokalingam had, from out of the said quantity of cotton lint, purchased lint weighing about 47,164 kgs of the value of Rs.26,93,289/- on credit basis and the balance which was worth Rs.35,26,561.69 had been entrusted to the Mill for conversion into yarn.

6. According to the appellant, the Mill did not take any step to convert the lint into yarn in spite of repeated requests. The appellant later came to know that all the accused had connived with each other and in criminal breach of trust sold the entire cotton lint weighing about 1,08,920/- kgs of the value of about Rs.62,19,850.50 and appropriated the sale proceeds thereof.

7. On 20-05-2004, the appellant lodged a complaint at the Edapadi Police Station, Salem district against respondents for offences under Sections 420 and 409 read with Section 34 of the Indian Penal Code.

8. As the Police failed to register any case, the appellant invoked Section 156(3) of the Cr.P.C. to seek orders of the learned Judicial Magistrate II, Sankagiri for registration of the complaint.

9. Even after orders under Section 156(3) of the Cr.P.C., the Police did not register any complaint. Thereafter, the appellant filed a petition being Crl. O.P. No.7715 of 2005

praying for direction on the Inspector of Police to register a case on the basis of the complaint made by the appellant.

10. It is stated that since the amount involved exceeded the limit for invocation of the pecuniary jurisdiction of the local Police Station, the Superintendent of Police transferred the investigation to the District Crime Branch and the same was registered as Crime No.54/2005 under Sections 420, 409 and 34 IPC on 22-06-2005.

11. According to the appellant, since the police did not conduct the investigation properly, the appellant was constrained to file Crl. O.P. No.23354 of 2005 in the High Court of Madras for direction on the Investigation Officer of Crime No.54 of 2005 to arrest the accused mentioned in the FIR, complete the investigation and file a final report.

12. By an order dated 29-08-2005, the High Court disposed of the criminal original petition by directing the respondent to file a final Report within three months from the date of receipt of a copy of the said order.

13. It is pleaded that as the Police could not complete the investigation within three months as directed, it filed Criminal Miscellaneous Petition being Crl.M.P. No.9149 of 2005 in Crl. O.P. No.23354 of 2005 for extension of time, by a further period of six months, for completion of investigation in Crime No.54 of 2005.

14. On 22-09-2005 respondent Nos.2 to 13 filed Crl. O.P. 27039 of 2005 under Section 482 Cr.P.C. in the High Court for quashing FIR No. 54 of 2005 alleging that the allegations in the complaint did not prima facie make out the offences for which the respondents had been charged.

15. The respondent State filed its counter affidavit to the aforesaid application under Section 482 Cr.P.C. and prayed that the said application be dismissed. In the affidavit in opposition, it was contended that investigation revealed that the accused persons had forged documents using blank letter head, papers and cheque leaves of the appellant given to him before entering into business transactions. As such ingredients of Sections 468, 471, 420, 409 and 120 (b) IPC were to be found. Furthermore, there was evidence that one of the accused mentioned in the FIR namely Prasanna Chakravarthy had deposed about the forged letter prepared by him on the instruction of Kasi Viswanathan, Meiyappan, Rajarathinam, and Jayapal.

16. On 18-10-2005, the appellant, as a de facto complainant, filed an application numbered Crl.M.P. No.8370 of 2005 for intervention in Crl. O. P. No.27039/2005.

17. By an order dated 24-11-2005, the High Court granted the police six months' time for completing the investigation in FIR No.54 of 2005 and for filing final report therein.

18. On 30-11-2005, the High Court referred the matter to the Conciliation and Mediation Centre for resolution of the dispute between the parties, in the absence of the appellant, being the complainant.

19. The appellant opposed the conciliation proceedings contending that the offences were non-compoundable whereupon the

case was again referred back to the High Court for decision on merits.

20. By the impugned order dated 20-03-2006, the High Court allowed the application under Section 482 Cr.P.C. observing that the complainant had, without assigning any reason, withdrawn the first complaint and launched prosecution by filing a fresh complaint; that the complaint arose out of a commercial transaction; and that the complainant would have to approach the Civil Court for recovering dues if at all arising out of commercial transaction.

21. The short question in this appeal is whether the High Court should have quashed the criminal proceedings being Crime No.54 of 2005 on the grounds that the appellant had withdrawn an earlier complaint without assigning reasons; the transactions being commercial in nature, the ingredients of an offence under the Sections referred to above were absent; and that the remedy of the appellant lay in filing a civil suit.

22. There is no provision in the Criminal Procedure Code or any other statute which debars a complainant from making a second complaint on the same allegations, when the first complaint did not lead to conviction, acquittal or discharge. In Shiv Shankar Singh v. State of Bihar and Anr., (2012) 1 SCC 130, this Court held:

"18. Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit."

23. As held by this Court in Jatinder Singh and Others v. Ranjit Kaur, 2001 (2) SCC 570, it is only when a complaint is dismissed on merits after an inquiry, that a second complaint cannot be made on the same facts. Maybe, as contended by the respondents, the first complaint was withdrawn without assigning any reason. However, that in itself is no ground to quash a second complaint.

24. In Pramatha Nath Talukdar and Anr. v. Saroj Ranjan Sarkar, AIR 1962 SC 876, this Court dealt with the question whether the second complaint by the respondent should have been entertained when the previous complaint had been withdrawn. The application under Section 482 Cr.P.C. was allowed and the complaint dismissed by the majority Judges observing that an order of dismissal under Section 203 Cr.P.C. was no bar to the entertainment of second complaint on the same facts, but it could be entertained only in exceptional circumstances, for example, where the previous order was passed on an incomplete record or a misunderstanding of the nature of the complaint or the order passed was manifestly absurd, unjust or foolish or where there were new facts, which could not, with reasonable diligence, have been brought on record in previous proceedings.

25. In Poonam Chand Jain and Anr. v. Fazru, (2010) 2 SCC 631, this Court relied upon its earlier decision in Pramatha Nath (supra) and held that an order of dismissal of a complaint was no bar to the entertainment of second complaint on the same facts, but it could be entertained only in exceptional circumstances, such as, where the previous order was passed on incomplete record, or on a misunderstanding of the nature of the complaint or was manifestly absurd, unjust or foolish or where there were new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings.

26. In Poonam Chand Jain (supra) this Court further held that:-

"...this question again came up for consideration before this Court in Jatinder Singh v. Ranjit Kaur. There also this Court by relying on the principle in Pramatha Nath held that there is no provisions in the Code or in any other statute which debars a complainant from filing a second complaint on the same allegation as in the first complaint. But this Court added when a Magistrate conducts an enquiry under Section 202 of the Code and dismisses a complaint on merits a second complaint on the same facts could not be made unless there are "exceptional circumstances". This Court held in para 12, if the dismissal of the first complainant then there is no bar in filing a second complaint on the same facts. However, if the dismissal of the complaint under Section 203 of the Code was on merit the position will be different."

27. In M/s Jayant Vitamins Ltd. v. Chaitanyakumar and Another, (1992) 4 SCC 15 this Court held that in the absence of compelling and justifiable reasons, it was not permissible for the Court to stop investigation by quashing an FIR.

28. In Zandu Pharmaceutical Works Limited and Ors v. Mohd. Sharaful Haque and Another, 2005 (1) SCC 122 this Court referred to State of Haryana and Ors. v. Bhajan Lal and Ors., (1992) Supp. 1 SCC 335 and summarized and illustrated the category of cases in which power under Section 482 of the Criminal Procedure Code could be exercised. This court observed and held:-

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

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

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

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

contemplated under Section 155(2) of the Code.

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

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

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

29. There can be no doubt that a mere breach of contract is not in itself a criminal offence, and gives rise to the civil liability of damages. However, as held by this Court in Mridaya Ranjan Prasad Verma and Ors. v. State of Bihar and Anr., (2000) 4 SCC 168, the distinction between mere breach of contract and cheating, which is a criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In this case, in the FIR, there were allegations of fraudulent and dishonest intention including allegations of fabrication of documents, the correctness or otherwise whereof can be determined only during trial when evidence is adduced.

30. Exercise of the inherent power of the High Court under Section 482 of the Criminal Procedure Code would depend on the facts and circumstances of each case. It is neither proper nor permissible for the Court to lay down any straitjacket formula for regulating the inherent power of the High Court under Section 482 of the Cr.P.C.

31. Power under Section 482 Cr.P.C. might be exercised to prevent abuse of the process of law, but only when, the allegations, even if true, would not constitute an offence and/ or were frivolous and vexatious on their face.

32. Where the accused seeks quashing of the FIR, invoking inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint. Reference may be made to the decision of this Court, inter alia, in State of Punjab v. Subhash Kumar and Ors., (2004) 13 SCC 437 and Janata Dal v. H.S. Chowdhary and Ors., (1992) 4 SCC 305

33. In Vesa Holdings (P) Ltd. and Anr. v. State of Kerala and Ors., (2015) 8 SCC 293, this Court observed:

"12. The settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception."

13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that

itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not."

34. In Vesa Holding (P) Ltd. (supra), this Court found that there was nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat, which was a condition precedent for an offence under Section 420 IPC. The complaint was found not to disclose any criminal offence at all.

35. It is well settled that a judgment is a precedent for the issue of law which is raised and decided. Phrases and sentences in a judgment are to be understood in the context of the facts and circumstances of the case and the same cannot be read in isolation.

36. As observed above, every breach of contract does not give rise to an offence of cheating. The language and tenor of Vesa Holdings (P) Ltd. (supra), particularly, the observation that breach of contract would give rise to an offence of cheating only in those cases where there was any deception played at the very inception, is to be understood in the context of the facts of that case and accordingly construed. The phrase "in those cases where there was any deception played at the very inception" cannot be read out of context. This is not a case of breach of contract simplicitor but there are serious allegations of forgery of documents, use of blank letterhead, papers and cheque leaves of the appellant.

37. In this case, it cannot be said that there were no allegations which prima facie constitute ingredients of offences under Sections 420, 409 and 34 of the Indian Penal Code in complaint. There were clear allegations of fraud and cheating which prima facie constitute offences under Section 420 of the Indian Penal Code. The correctness of the allegations can be adjudged only at the trial when evidence is adduced. At this stage, it was not for the High Court to enter into factual arena and decide whether the allegations were correct or whether the same were a counter-blast to any proceedings initiated by the respondents.

38. In Jatinder Singh (supra), this Court clearly held that if dismissal of the complaint was not on merit, but on default of the complainant, moving the Magistrate again with a second complaint on the same facts is maintainable. But if the dismissal of the complaint under Section 203 of the Code was on merits, the position could be different.

39. The failure to mention the first complaint in the subsequent one is also inconsequential as held, in effect, in Jatinder Singh (supra). Mentioning of reasons for withdrawal of an earlier complaint is also not a condition precedent for maintaining a second complaint. In our considered opinion, the High Court clearly erred in law in dismissing the complaint, which certainly disclosed an offence prima facie. At the cost of repetition, it is reiterated that it was not for the High Court to enter the factual arena and adjudicate the merits of the allegations.

40. The appeal is, therefore, allowed and the impugned order of the High Court quashing the complaint is set aside. The first respondent shall proceed with further investigation in accordance with law.

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2019 (1) L.S. 17 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
R.F. Nariman &
The Hon'ble Mr.Justice
Navin Sinha

Naman Singh Alias Naman
Pratap Singh &Anr., ..Pettitioner
Vs.
State of Uttar Pradesh
& Ors., ..Respondents

INDIAN PENAL CODE, Secs.34, 406, 420 467, 468, 471, 504 and 506 – Appellants aggrieved by denial to quash criminal prosecution against them preferred instant CriminalAppeal.

Held - Executive Magistrate has no role to play in directing the police to register an F.I.R. on basis of a private complaint lodged before him - If a complaint is lodged before the Executive Magistrate regarding an issue over which he has administrative jurisdiction, and Magistrate proceeds to hold an administrative inquiry, it may be possible for him to lodge an F.I.R. himself in matter – A reading of present F.I.R. reveals that police has registered F.I.R on directions of b Sub-Divisional Magistrate which was clearly impermissible in law - Sub-Divisional Magistrate does not exercise powers u/ Sec/156(3) of the Code - FIR stands quashed - Appeal stands allowed.

J U D G M E N T
(per the Hon'ble Mr.Justice
Navin Sinha)

Leave granted.

2. The appellants are aggrieved by the denial to quash the criminal prosecution against them under Sections 420, 406, 467, 468, 471, 504, 506, 34 IPC in F.I.R. No.22/2018 dated 31.01.2018.

3. Learned counsel for the appellants submits that no objection certificate has been obtained from the Chatrapati Sahuji Maharaj University, Kanpur for establishment of the three-year Law course. Affiliation has also been granted by the University. The appellants have also deposited a sum of Rs. 3,50,000/- with the Bar Council of India and await permission from it for starting the law course. The question of any fraudulent misrepresentation by the appellants, persuading students to take admission in an unauthorised institution simply does not arise. Several students have taken admission in full awareness of the existent facts with no grievances and have sworn affidavits to that effect.

4. Learned counsel for the respondents submits that the appellants by misrepresentation and cheating have persuaded respondent no.4 and others to take admission in an unrecognised institution. There are several students who are aggrieved. In any event, such enquiries cannot be held in a quashing application by examining the defence of the appellants. The impugned order merits no interference.

5. We have considered the submissions on behalf of the parties and are satisfied that the application deserves to be allowed,

though on different grounds. Respondent no.4 lodged a complaint with the Sub-Divisional Magistrate, Unnao on 31.01.2018 that she had been duped into taking admission in an unrecognised institution. The Sub-Divisional Magistrate, the very same day, without furthermore, directed the police to register a first information report. The only question for our consideration is whether the Sub-Divisional Magistrate was competent to do so, and whether such an F.I.R. can be said to have been registered in accordance with the Code of Criminal Procedure,1973 (hereinafter referred to as 'the Code').

6. Section 154 of the Code provides for registration of a first information report at the instance of an informant, reduced into writing and signed by the person giving it. Section 154(3) stipulates that in the event of a refusal on part of an officer in charge of a police station to record such information, it may be sent in writing and by post to the Superintendent of Police who will direct investigation into the same.

7. Section 190 of the Code provides for taking of cognizance by a Magistrate either on a complaint or upon a police report. Similarly, Section 156(3) provides that any Magistrate empowered under Section 190 may order such an investigation, and which also includes the power to direct the lodgement of an F.I.R. The Code in Section 200 provides for lodging of a complaint before the Magistrate, who after examination of the complainant and witnesses, if any, can take cognizance.

8. It is therefore apparent that in the scheme of the Code, an Executive Magistrate has no role to play in directing the police to register an F.I.R. on basis of a private complaint lodged before him. If a complaint is lodged before the Executive Magistrate regarding an issue over which he has administrative jurisdiction, and the Magistrate proceeds to hold an administrative inquiry, it may be possible for him to lodge an F.I.R. himself in the matter. In such a case, entirely different considerations would arise. A reading of the F.I.R. reveals that the police has registered the F.I.R on directions of the Sub-Divisional Magistrate which was clearly impermissible in the law. The Sub-Divisional Magistrate does not exercise powers under Section 156(3) of the Code. The very institution of the F.I.R. in the manner done is contrary to the law and without jurisdiction.

9. Nothing prevented respondent no.4 from lodging an F.I.R. herself before the police under Section 154 of the Code or proceeding under Section 154(3) if circumstances so warranted. Alternately the respondent could have moved the Magistrate concerned under Section 156(3) of the Code in the event of the refusal of the police to act. Remedy was also available to the respondent by filing a complaint under Section 200 of the Code before the jurisdictional Magistrate.

10. In view of the scheme of the Code as discussed, we have purposely refrained from going into the merits of the case so as not to prejudice either parties and also keeping in mind the nature of the jurisdiction under Section 482 of the Code. Any application by respondent no.4 hitherto under the Code will therefore have to be considered by the appropriate authority or forum in accordance with law. For the reasons discussed, the impugned order is held to be unsustainable and is set aside. The First Information Report therefore also stands quashed for the reasons discussed, but with liberty as aforesaid.

11. The appeal is allowed.

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2019 (1) L.S.19 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Madan B. Lokur
The Hon'ble Mr.Justice
Abdul Nazeer &
The Hon'ble Mr.Justice
Deepak Gupta

M.A. Antony @ Antappan ..Petitioner
Vs.
State of Kerala ..Respondent

CRIMINAL PROCEDURE CODE - Question of sentence -Commuting death sentence awarded to the appellant into one of life sentence - No material whatsoever to come to the conclusion that the gravity of crime caused revulsion in the society or that it had materially disturbed normal life in the society.

Held - Socio-economic factors concerning a convict must be taken into consideration while taking a decision on whether to award a sentence of death or to award a sentence of imprisonment for life - There are number of cases where convicts have been on death row for more than six years and if a standard period was to be adopted, perhaps each and every person on death row might have to be given the benefit of commutation of death sentence to one of life imprisonment - Long delays in courts must be taken into account, but what is needed is a systemic and systematic reform in criminal justice delivery rather than ad hoc or judge-centric decisions.

J U D G M E N T

(perr the Hon'ble Mr.Justice Madan B. Lokur)

1. The broad allegations against the appellant have been stated in the decision of this Court in the criminal appeal out of which the present Review Petition arises. It would be more convenient to reproduce the allegations from the decision:

"On the intervening night of 6th and 7th January, 2001, when inmates of Aluva Municipal Town of Ernakulam District in the State of Kerala were in deep sleep, Manjooran House located in the midst of the town became a scene of ghastly crime. Six members of one family in the Manjooran House lost their lives in a matter of three hours, Antony @ Antappan, the appellant herein, in search of greener pastures abroad for which purpose he needed money but was refused to be paid by the members of the Manjooran family, and therefore as per the prosecution's version used knife, axe, and electrocuted and strangulated Kochurani and Clara at about 10 in the night of 6.1.2001 and Augustine, his wife Mary, and their children – Divya and Jesmon at midnight. The Manjooran House full of life at 10 in the night by the stroke of midnight became a graveyard. The appellant after causing the death of Kochurani and Clara is said to have waited for the arrival of other four members of the family who had gone to see a film show. On their arrival he turned them into corpses. He waited for their arrival to kill them as he knew that for the two murders committed earlier by him he would be suspected by them, as he was in the house when they left the house for the film show. The prosecution alleges that all these murders were cold

blooded, planned and executed with precision and the appellant ensured that there is no trace of life left in them before he left the scene of occurrence. When put to trial for murders, appellant, however, pleaded innocence and claimed trial."

2. After trial, the Sessions Court in Ernakulam in Kerala in Sessions Case No.154 of 2004 found the appellant guilty of the offences and convicted him by judgment and order dated 31st January, 2005. It appears that submissions on the question whether the appellant should be awarded life sentence or death sentence were addressed on the same day or immediately thereafter since on 2nd February, 2005 the Trial Judge sentenced the appellant "to be hanged by the neck till he is dead".

3. The Trial Judge stated, while awarding the sentence of death, as follows:

"231. The cruel tendency of the accused was writ large even in the manner of attack. His conduct and behaviour is repulsive to the collective conscience of the society. It is clear that he does not value the lives of others in the least. The fact that the murders in this case were committed in such a deliberate and diabolic manner even beyond the slight expectation of the victims, without any provocation whatsoever from the side of the victims that too having enjoyed the hospitality and kindness of the victims, indicate the cold blooded and premeditated approach of the accused to put to death the victims which included two innocent children in their earlier teenages also, for a sordid purpose.

232. It was clearly come out that his wife and child are not residing with the accused. He does not know even the school at which his wife is working as teacher. Even according to him, she has not cared to come to reside with him after the incident in this case. In fact, all my searches for extenuating circumstances in this case are in vain. From various judicial pronouncements of the Hon'ble Supreme Court of India on the subject, it has come out that in the choice of sentence the court has to weigh the aggravating and mitigating factors available on the facts of the case to find out whether special reasons do exist to categories [categorize] the case as one among the "rarest of rare cases".

233. The accused is a hardened criminal beyond any correction and rehabilitation. In this case the culpability has assumed the preparation of extreme depravity. The accused is a preferred example of blood thirsty, irreclaimable and hardened criminal. This court is of the view that, to spare such a criminal from the gallows is to render the justicing system suspect and to have recourse to the lesser alternative in sentencing this accused will be a mockery of justice. As this incident had sent tremors in the society and the collective conscience of the community as such was shocked, it is not to be humane but to be callous to allow such a criminal to return to the society. When multiple murders are committed in the most cruel, inhuman, extreme, brutal, gruesome, diabolic, revolting and dastardly manner, this court cannot wriggle out of the infliction of the extreme penalty. Matters being so, special reasons do exist in this case under Section 354(3) Cr. P.C. and this case comes within the category of "rarest of rare case" in which the "lesser alternative is unquestionably

foreclosed."

4. The conviction and sentence came up for confirmation before the High Court of Kerala in Death Sentence Reference No.5 of 2005. The appellant was also aggrieved by his conviction and sentence and he preferred Criminal Appeal No.385 of 2005 against the judgment and sentence of the Trial Court.

5. By a judgment and order dated 18th September, 2006 the High Court confirmed the death sentence and dismissed the appeal of the appellant.

6. On the award of the death sentence, the High Court took the view that the crime committed by the appellant was most cruel and diabolical. It was observed that he had no respect, no care, no dignity, no mercy for human life and his living in this world is most dangerous to society. The High Court expressed its views on the sentence to be awarded to the appellant in paragraph 49 of the judgement. This reads as follows:

"49. On the question of sentence all that has been urged before us by Mr. Ramakumar is that the present is not a 'rarest of rare' case where the appellant should be given capital punishment. No arguments have been raised to show any mitigating circumstances. We have reconsidered and yet reconsidered every aspect of the case. On every reconsideration, our view gets more and more strengthened that in the present case, death penalty has to be imposed. It is indeed a rarest of rare case. In this country of seers and sages, even a worm unconsciously trampled under the foot is considered to be a sin. Guided and motivated by tradition of non-violence, people in this country do not even think of physically harming anyone. Mahatma Gandhi, the Father of the Nation and many other stalwarts brought freedom to this Nation from the British Empire by fighting a bloodless war of independence. The appellant has trampled these lofty ideals and traditions of this country under his foot. He extinguished all members of a family in a most cruel and gruesome manner. He became instrumental in causing black and unmitigated tragedy and caused shudders to the society. In causing death of six members of a family, he acted in a most cruel and diabolical manner. He used every possible instrument in the house to cause their death. As the confession goes if knives would not be enough to kill the inmates, he would use furniture in the house to strike them, and if that be not enough he would axe them, and even if that be not enough he would electrocute them and if still not enough he would strangulate them. In cruelty and brutality, he exceeded all limits. It is unimaginable, unthinkable and difficult to believe that after causing six murders by splashing blood all around the house, he would sit in the same house for almost five hours as if he was not siting amongst six dead people, but amongst trophies won by him in a prestigious event. He has no respect, no care, no dignity, no mercy for human life. His living in this world is most dangerous to the society. We need not refer to various judicial precedents as every case has its own facts, but would hasten to make reference to only one case which appears nearest on facts of the present case. In **Dayanidhi Bisoi v. State of Orissa,** 2003 Crl.L.J. 3697 (SC), a case which was based upon circumstantial evidence, accused was related to the deceased. He was enjoying hospitality and

kindness of deceased in the evening. He killed entire family of deceased which included a three years child in the night. Murders were committed when the victims were sleeping and there was no provocation from the victims. The motive was only to gain financial benefits. The Supreme Court found it to be case of cold blooded murder with premeditated approach of accused. It was held to be a rarest of rare case. The accused was sentenced to death."

7. Feeling aggrieved by his conviction and confirmation of the death sentence, the appellant preferred Criminal Appeal No. 811 of 2009 in this Court which was dismissed by a judgment and order dated 22nd April, 2009. This Court did not at all advert to or discuss the quantum of sentence awarded to the appellant. This was decided on its facts and dismissed.

8. Feeling aggrieved by the dismissal of his appeal, the appellant preferred Review Petition (Crl.) No.245 of 2010 but that was dismissed by an order dated 13th April, 2010.

9. In view of the decision of this Court in **Mohd. Arif alias Ashfaq v. The Registrar Supreme Court of India & others** (2014) 9 SCC 737)the said review petition was re-opened for consideration and that is how it is before us.

Submissions

10. Learned counsel for the appellant raised a variety of grounds for commuting the death sentence awarded to the appellant into one of life sentence. It was contended that the case was one of circumstantial evidence and therefore the sentence of death should not be awarded. It was also contended that this Court as well the High Court and the Trial Court failed to consider the probability of reformation of the appellant. It was also contended that the prior history and criminal antecedents of the appellant were not relevant in awarding the sentence. It was submitted that the Trial Judge had erroneously described the appellant as a hardened criminal. In fact, we find that learned counsel for the appellant is correct in this submission since there is absolutely nothing on record to show that the appellant had previously committed any crime whatsoever. Indeed, there is nothing on record to even suggest that the appellant was a hardened criminal.

11. We do not propose to deal with the submissions advanced by learned counsel since similar submissions were raised before us in **Rajendra Pralhadrao Wasnik v. State of Maharashtra** in which we have delivered judgment today. The cases cited by learned counsel for the appellant in this petition as well as in **Rajendra Pralhadrao Wasnik** were the same and we would only be duplicating our efforts and repeating what we have already said.

12. Apart from the above submissions, it was contended by learned counsel for the appellant that the socio-economic circumstances relating to the appellant are relevant for an objective consideration of the award of sentence and these have not been considered by any court including this Court.

13. It was submitted that the "collective conscience of the society" and reference to it for the purposes of imposition of a sentence is totally misplaced. It is not possible to determine public opinion through

evidence recorded in a trial for an offence of murder and it is even more difficult, if not impossible, to determine something as amorphous as the collective conscience of the society.

14. Finally, it was submitted that the appellant has been in custody for a considerable period of time and that by itself is a good ground for commutation of his sentence from death to life imprisonment. In this context, it was stated that the appellant was arrested on 18th February, 2001. He remained in custody until he was granted bail on 25th January, 2002. He was again arrested when the Trial Court convicted him on 31st January, 2005 and since then he is continuously in custody having spent about 14 years in custody and about three years on bail.

Consideration of socio-economic factors

15. There is no doubt that the socio-economic factors relating to a convict should be taken into consideration for the purposes of deciding whether to award life sentence or death sentence. One of the reasons for this is the perception (perhaps misplaced) that it is only convicts belonging to the poor and disadvantaged sections of society that are awarded capital sentence while others are not. Although **Bachan Singh v. State of Punjab** (1980) 2 SCC 684)does not allude to socio-economic factors for being taken into consideration as one of the mitigating factors in favour of a convict, the development of the law in the country, particularly through the Supreme Court, has introduced this as one of the factors to be taken into consideration. In fact, in **Bachan Singh** this Court recognised that a range of factors exist and could be taken into consideration and accepted this position. In paragraph 209 of the Report it is rather felicitously stated as follows:

"209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." **Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. (**We may add that hanging of murderers has never been too good for them either!)Facts and Figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency — a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare

cases when the alternative option is unquestionably foreclosed."

(Emphasis supplied by us).

16. Following the view laid down by the Constitution Bench of this Court, we endorse and accept that socio-economic factors must be taken into consideration while awarding a sentence particularly the ground realities relating to access to justice and remedies to justice that are not easily available to the poor and the needy.

17. The consideration of socio-economic factors is tied up with another important issue (which need not necessarily or always be taken into consideration for sentencing purposes, but could be relevant in a given case) and that is whether the convict has had adequate legal representation. Several accused persons belonging to the weaker sections of society cannot afford defence counsel and they are obliged to turn to the National Legal Services Authority, the State Legal Services Authority or the District Legal Services Committee for legal representation. While these authorities provide the best legal assistance possible at their command, it sometimes falls short of expectations resulting in the conviction of an accused and, depending upon the facts of the case and the sentencing process followed, a sentence of death follows.

18. That the poor are more often than not at the receiving end in access to justice and access to the remedies available is evident from a fairly recent report prepared by the Supreme Court Legal Services Committee (Website of the Supreme Court Legal Services Committee – www.sclsc.nic.in)which acknowledges, through Project Sahyog, enormous delays in attending to cases of the poor and the needy. Quality legal aid to the disadvantaged and weaker sections of society is an area that requires great and urgent attention and we hope that a vigorous beginning is made in this direction in the new year.

19. Reverting to the issue of socio-economic factors, we are not sure when this was introduced as a mitigating factor for consideration in deciding whether life imprisonment or death sentence should be awarded. Be that as it may, the earliest decision to which our attention was drawn is **State of U.P. v. M.K. Anthony** (1985) 1 SCC 505)in which this Court cautioned against being overwhelmed by the gravity or brutality of the offence. As held in **Bachan Singh**, it is not only the crime that is of importance in the sentencing process but it is also the criminal. With this in view, this Court considered the plight of the have-not and commuted the death sentence into one of imprisonment for life. This is what this Court said in paragraph 23 of the Report:

"23. The last question is what sentence should be imposed upon the respondent. The learned Sessions Judge has imposed maximum penalty that could be imposed under the law, namely, sentence of death. The murder of near and dear ones including two innocent kids is gruesome. **We must however be careful lest the shocking nature of crime may induce an instinctive reaction to the dispassionate analysis of the evidence both as to offence and the sentence.** One circumstance that stands out in favour of the respondent for not awarding capital punishment is that the respondent did not commit murder of his near and dear ones

actuated by any lust, sense of vengeance or for gain. **The plight of an economic have-not sometimes becomes so tragic that the only escape route is crime. The respondent committed murder because in his utter helplessness he could not find few chips to help his ailing wife and he saw the escape route by putting an end to their lives.** This one circumstance is of such an overwhelming character that even though the crime is detestable we would refrain from imposing capital punishment. The respondent should accordingly be sentenced to suffer imprisonment for life."

(Emphasis supplied by us).

20. In **Surendra Pal Shivbalakpal v. State of Gujarat** (2005) 3 SCC 127)this Court considered the socio-economic condition of the appellant therein, namely that he was a migrant labourer and was living in impecunious circumstances and therefore it could not be said that he would be a menace to society in future. The sentence of death was converted into one of imprisonment for life. This is what this Court said in paragraph 13 of the Report:

".....The appellant was aged 36 years at the time of the occurrence and there is no evidence that the appellant had been involved in any other criminal case previously and the appellant was a migrant labourer from U.P. and was living in impecunious circumstances and it cannot be said that he would be a menace to society in future and no materials are placed before us to draw such a conclusion. We do not think that the death penalty was warranted in this case....."

21. Similarly, in **Sushil Kumar v. State of Punjab** (2009) 10 SCC 434)the poverty of the convict was taken into consideration as a factor for sentencing. This Court in paragraph 46 of the Report held as follows:

"**Extreme poverty had driven the appellant to commit the gruesome murder of three of his very near and dear family members –** his wife, minor son and daughter. There is nothing on record to show that appellant is a habitual offender. He appears to be a peace-loving, law abiding citizen but as he was poverty- stricken, he thought in his wisdom to completely eliminate his family so that all problems would come to an end. Precisely, this appears to be the reason for him to consume some poisonous substances, after committing the offence of murder." (Emphasis supplied by us).

22. In **Mulla v. State of Uttar Pradesh** (2010) 3 SCC 508)this Court specifically noted in paragraph 80 of the Report that one of the factors that appears to have been left out in judicial decision-making on the issue of sentencing, is the socio-economic factor which is a mitigating factor although it may not dilute the guilt of the convict. This is what this Court held:

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"80. **Another factor which unfortunately has been left out in much judicial decision-making in sentencing is the socio-economic factors leading to crime. We at no stage suggest that economic depravity justify moral depravity, but we certainly recognise that in the real world, such factors may lead a person to crime.** The 48th Report of the Law

Commission also reflected this concern. **Therefore, we believe, socio-economic factors might not dilute guilt, but they may amount to mitigating circumstances.** Socio-economic factors lead us to another related mitigating factor i.e. the ability of the guilty to reform. It may not be misplaced to note that a criminal who commits crimes due to his economic backwardness is most likely to reform. This Court on many previous occasions has held that this ability to reform amounts to a mitigating factor in cases of death penalty." (Emphasis supplied by us).

23. In **Kamleshwar Paswan v. Union Territory of Chandigarh** (2011) 11 SCC 564)this Court noted the fact that the convict was a rickshaw puller and a migrant with psychological and economic pressures. The socio-economic condition of the convict was therefore taken into consideration for the purposes of sentencing him. It was held in paragraph 8 of the Report as follows:

"8. **We cannot also ignore the fact that the appellant was a rickshaw-puller and a migrant in Chandigarh with the attendant psychological and economic pressures that so often overtake and overwhelm such persons.** Village Kishangarh is a part of the Union Territory of Chandigarh and at a stone's throw from its elite sectors that house the Governors of Punjab and Haryana, the Golf Club, and some of the city's most important and opulent citizens. It goes without saying that most such neighbourhoods are often the most unfriendly and indifferent to each others' needs. Little wonder his frustrations apparently came to the fore leading to the horrendous incident."

(Emphasis supplied by us).

24. Finally, in **Mahesh Dhanaji Shinde v. State of Maharashtra** (2014) 4 SCC 292)it was noted that the convicts were living in acute poverty. However, their conduct in jail was heartening inasmuch as they had educated themselves and has shown that if given a second chance, they could live a meaningful and constructive life. This Court noted as follows:

"38. At the same time, all the four accused were young in age at the time of commission of the offence i.e. 23-29 years. **They belong to the economically, socially and educationally deprived section of the population. They were living in acute poverty.** It is possible that, being young, they had a yearning for quick money and it is these circumstances that had led to the commission of the crimes in question. Materials have been laid before this Court to show that **while in custody all the accused had enrolled themselves in Yashwantrao Chavan Maharashtra Open University and had either completed the BA examination or are on the verge of acquiring the degree……..** There is no material or information to show any condemnable or reprehensible conduct on the part of any of the appellants during their period of custody. All the circumstances point to the possibility of the appellant-accused being reformed and living a meaningful and constructive life if they are to be given a second chance……."

(Emphasis supplied by us).

25. There is, therefore, enough case law to suggest that socio-economic factors concerning a convict must be taken into

consideration while taking a decision on whether to award a sentence of death or to award a sentence of imprisonment for life.

26. On the facts of the present case, we find from the decision of the Trial Court that the convict was working as a driver on a casual basis. He was desirous of obtaining employment in the Gulf and was making all attempts in this direction. He managed to arrange a visa but had to pay the agent Rs.62,000/-. Due to severe financial constraints he could only arrange Rs.25,000/- for making the initial payment. He continued making attempts to raise the amount. His economic condition was so severe that for the purposes of going to Gulf he had to proceed from Ernakulam to Mumbai by train and while he could manage to purchase the ticket, he was unable to pay for reservation charges. Under these circumstances, he had gone to the house of the deceased family for getting money or by stealing it or by grabbing it by any other means. It is under this financial and economic stress that his presence in the house of the deceased family was explained. But unfortunately for him and the deceased family, he was unable to obtain any funds from them and this led to his decision to kill all of them.

Public opinion or collective conscience of the society

27. With regard to the second submission made by learned counsel for the appellant, that is, relating to the collective conscience of the society or public opinion, we draw attention to an extremely educative discussion on the topic in **Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra** (2009) 6 SCC 498)in paragraphs 80 to 89 of the Report. We do not find the necessity of repeating the enlightening discussion. We may only note that in this decision, reference was made with regard to this topic in **Bachan Singh** in paragraph 126 of the Report to the following effect:

"126. Incidentally, the rejection by the people of the approach, adopted by the two learned Judges in Furman (Furman v. Georgia, 33 L Ed 2d 346 : 408 US 238 (1972), furnishes proof of the fact that judicial opinion does not necessarily reflect the moral attitudes of the people. At the same time, it is a reminder that **Judges should not take upon themselves the responsibility of becoming oracles or spokesmen of public opinion:** Not being representatives of the people, if is often better, as a matter of judicial restraint, to **leave the function of assessing public opinion to the chosen representatives of the people** in the legislature concerned."

(Emphasis supplied by us).

In our opinion therefore, the learned Trial Judge was in error in coming to the conclusion that the collective conscience of the society was disturbed and felt repulsed by the gravity of the crime committed by the appellant. In view of the Constitution Bench decision of this Court in **Bachan Singh** and in **Bariyar** it would be wise if impressions gathered on what is perceived to be public opinion or collective conscience of the society are eschewed while sentencing a convict found guilty of a grave or brutal crime. On the facts of the present case, we find that there was no material whatsoever to come to the conclusion that the gravity of the crime

caused revulsion in the society or that it had materially disturbed normal life in the society. Consequently, the view expressed by the learned Trial Judge in this regard must be disregarded for the purposes of imposing an appropriate sentence on the appellant.

Conclusion

28. On an overall consideration of the facts of the case from the point of view of the crime and the criminal, we are of opinion that even though the case may be one of circumstantial evidence, it is now well settled that that by itself is not enough to convert a sentence of death into a sentence of imprisonment for life. We have held so in **Rajendra Pralhadrao Wasnik** and do not feel the necessity of repeating what has already been said.

29. We are also of opinion that all the courts including this Court overlooked consideration of the probability of reform or rehabilitation and social reintegration of the appellant into society. There is no meaningful discussion on why, if at all, the appellant could not be reformed or rehabilitated.

30. The Trial Court was in error proceeding on the basis, while awarding a sentence of death to the appellant by observing that he was a hardened criminal. There is no such evidence on material or on record.

31. The socio-economic condition of the appellant was a significant factor that ought to have been taken into consideration by the Trial Court as well the High Court while considering the punishment to be given to the appellant. While the socio-economic condition of a convict is not a factor for disproving his guilt, it is a factor that must be taken into consideration for the purposes of awarding an appropriate sentence to a convict.

32. We do not think it necessary to consider on the facts of this case, the period of incarceration of the appellant as a factor for deciding whether or not he should be awarded the death sentence. This is a factor that ought to have been placed before the Trial Judge and while we could certainly take this into consideration, we hesitate to do so in view of some uncertainty in this regard. In **Ramesh v. State of Rajasthan** (2011) 3 SCC 685)an opinion was expressed in paragraph 76 of the Report that since the appellant therein had been languishing on death row for more than six years that would be a mitigating circumstance in his favour. There are a number of cases where convicts have been on death row for more than six years and if a standard period was to be adopted, perhaps each and every person on death row might have to be given the benefit of commutation of death sentence to one of life imprisonment. The long delays in courts must, of course, be taken into account, but what is needed is a systemic and systematic reform in criminal justice delivery rather than ad hoc or judge-centric decisions.

33. In view of the above discussion, the death sentence awarded to the appellant is converted into a sentence of imprisonment for life.

34. The petition stands disposed of accordingly.

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