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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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PART - 12 (30TH JUNE 2019)

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Held - Public interest litigation is not maintainable in service maters, including recruitment, appointment, transfers etc - Public Interest Litigation under Article 226 of the Constitution of India in employment or service disputes, including selection process and mode of selection is not maintainable and the Memo cannot be quashed or set-aside, at this stage, more particularly, when the academic year is coming to close within short time - Writ petition is liable to be dismissed. **(Andhra)** ***81***

--X--

MODES OF RECTIFICATION AND CANCELLATION OF INSTRUMENTS, WHEN AND HOW ?

-

K.PARDHA SARADHI RAO,
Junior Civil Judge,
Sulthanabad.

Specific Relief Act 1963 was introduced as an important piece of Legislation after duly replacing the prior Act of 1877. This Act exclusively dealt with equitable reliefs/remedies, namely :-

1. Recovery of Possession.
2. Specific Performance of Contracts of Agreements of sale.
3. Rectification of Instruments.
4. Cancellation of Instruments.
5. Rescission of Contracts of Agreements of sale.
6. Declaratory reliefs.

Granting of Perpetual Injunction, Mandatory Injunction and Declaration of title over the property and also for recovery of possession over the property being main reliefs which are to be granted by way of granting decrees in the Main title suits.

In the Interlocutory Applications, declaratory reliefs are usually granting as Ad-Interim Injunction or Temporary Injunction being grant of preventive reliefs.

- Section 26 deals with the **'Rectification of Instruments'.**
- Section 27 deals with the **'Rescission of Contracts'.**
- Section 31 deals with the **'Cancellation of Instruments'.**
- Section 34 deals with the Granting of **'Declaratory reliefs'.**
- Section 37 deals with **'Injunctions'** generally.
- Section 38 deals with the Granting of **'Perpetual Injunction'**.
- Section 39 deals with the Granting with **'Mandatory Injunction'.**
- Section 40 deals with the **'Damages'** in lieu of, or in addition to 'Injunction' relief.
- Section 41 deals with the **'Refusal of Injunctions'.**

Out of the above quoted sections, Section 26 and Section 31 are covering with the present topic.

As per the language used in sub-section (1) to Section 26, it is clearly understood :
that as and when any **fraud** or occurrence of **mutual mistake** of the parties to a contract or other instrument which was reduced into writing, (barring articles of association of a company, to which Companies Act 1956 applies), which does not express their real intention, then such a contract or other written instrument is liable to be rectified :

a) either of the party to such a contract or other written instrument, or representative-in-interest, of either party is supposed to institute a suit to have

the said contract or written instrument rectified.
b) the plaintiff in his suit accrues right for rectification of instrument as an issue, can claim through his pleadings that the written instrument is liable to be rectified.
c) the defendant in any such suit as referred to (a) & (b), is entitled to raise his defence seeking rectification of written instrument, apart from any other defence left open for him.

As per the language used in sub-section (2) to Section 26, it is clearly understood :
the Court upon finds that the written instrument was obtained through **fraud** or **mutual mistake**, which does not express the real intention of the parties to the suit filed as mentioned in sub-section (1), the Court in exercise of its discretion may order direction of rectification of written instrument duly expressing its intention that such direction of rectification is expected to be done without there being causing prejudice to the rights so acquired by third parties in good faith and for value under the written instrument.

As per the language used in sub-section (3) to Section 26 clearly understood :
the written contract may initially is liable for rectification and thereafter, if the party to the suit for claiming such rectification so prayed in his suit pleadings, then the Court if thought that it is a fit case may be specifically enforced such rectification.

As per the language used in sub-section (4) to Section 26 clearly understood :
that no Court is empowered to grant relief of rectification of written instrument to any party unless and until such relief has been specifically claimed.

As per the language used in Proviso to Section 26 clearly understood :
that if any party to the suit has failed to claim any relief of rectification instrument in his respective pleadings, the Court shall allow such party at any stage of the proceedings for amendment of his pleadings on imposition of certain terms which are just for including such claim of rectification of written instrument.

From the above keen perusal of the terms of language used in Section 26 mean that :
any contract of agreement or other written instrument can be rectified by the Court in any suit as and when the Court find :
such contract or other instrument does not express the real intention of the parties ;
such contract or other instrument was obtained through **fraud** or **mutual mistake** of the parties and the said rectification can be rectified at the instance of :
either party to contract or written instrument ;
or his representative-in-interest.
A party to the suit can obtain rectification of a contract or other instrument when he is able to show that there has been commission of **fraud** and **mutual mistake.**

Thus such a party can institute that kind of suit for rectification instrument and if

the Court feels such claim is found to be true, it may rectify the instrument by expressing the parties real intention without there being causing any prejudice to the rights so acquired by third persons in good faith and for value thereunder while exercising its discretionary jurisdiction.

The provisions of Section 26 are not at all applicable to a case where there is no **valid** and **complete contract.**
The word **'instrument'** includes a decree, an award or even an acknowledgment and it also includes every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or accorded.

As per the language used in Section 26, it is very much clear and known to a prudent man that :
either parties to a contract or their legal representatives alone can maintain an action of the Court for rectification of instrument and not a third party. Any beneficiary has no right in maintain an action for rectification of an instrument in the absence of an assignment made by District Judge in favour of such beneficiary, who would have to execute a bond in favour of District Judge for his benefit.

The principles laid down in Section 26 would apply to compromise decrees also, because that sort of compromising is not the result of adjudication between parties to the suit and it is an instrument of contract made by the hand of the Court, but by the will of the parties and a decree in which a mistake has cruptine an account of mutual mistake of the parties in an earlier transaction which extends into judicial proceedings automatically as it were without mistake on the part of judge is not similar footing with a compromise decree in which there is a mistake due to mutual mistake of the parties. Whereas, a compromise decree stands on no higher footing than that of a contract between the parties and such a decree can be collected or rectified, if owing to **fraud** or **mistake** and it does not represent the real contract between the parties.
The word **'fraud'** means and includes :
any of the following acts committed by a party to a contract or with his connivance or by his agent, with an intention to deceive another party thereto, or his agent or to induce him to enter into the contract.
1. The suggestion as to a fact, of that which is not true by one who does not believe it to be true.
2. The active concealment of a fact by one having knowledge or belief of the fact.
3. A promise made without any intention of performing it.
4. Any other act fitted to deceive.
5. Any such act or omission as the law specifically declares to be fraudulent.

Mutual Mistake :-
The word **"Mutual Mistake"** means common mistake on the part of both parties to contract. A party seeking rectification has to establish that there was a prior complete agreement which was reduced into writing in accordance with the common intention of the parties and by reason of a mistake the writing did not express the **'real intention'** of the parties. There cannot be rectification where the mistake was not a '**mutual mistake'** but only a mistake committed by the Scribe. There cannot be rectification on the basis of unilateral mistake not amounting to fraud. A mutual mistake can be established by any

one of the parties to a contract. Where in a conditional sale, the price in reconveyance was omitted by mistake, such mistake can be rectified. Courts in exercise of jurisdiction under this Section do not rectify contract but they merely rectify the instrument which fails to give effect to the **'intention of the parties'** and hence it will be necessary for a plaintiff to show that there was **'concluded contract'** antecedent to the instrument which is sought to be rectified and that such a contract is inaccurately expressed in the instrument. The power which the Court possesses of reforming written agreements where there has been an omission or insertion of stipulations contrary to the **'intention of the parties'** and under a **'mutual mistake'** is one which has been frequently and most usefully exercised. But is is also one which should be used with extreme care and caution. To substitute a new agreement for one which the parties have deliberately subscribed ought only to permitted upon evidence of a different intention of the clearest and most satisfactory description.

Real Intention of parties :-

In a suit for rectification of deed, it is not necessary to have evidence of a binding contract antecedent to the instrument which is sought to be rectified and it is enough it, the plaintiff proves beyond reasonable doubt the concurrent intention of the parties at the moment of executing the instrument and the instrument fails to give effect to that concurrent intention. The rectification of instrument always involves the real prior agreement between the parties and the absence of such real agreement in fact in the document as a result of **'fraud' or 'mutual mistake'** and hence the Court has to find out as to whether there has been **'fraud' or 'mistake'** in framing the instrument and further the Court has to also ascertain the real intention of the parties.

Rectification :-

Rectification is a term which may be understood as the correction of an error in an instrument with a view to give effect to the 'real intention' of the parties. The remedy is distinguished from other equitable remedies like the relief granted to a defendant in a suit for specific performance by way of variation from the contract on the ground of **'fraud' or 'mistake'** or the **'relief of rescission of contract'** or **'refusal'** or **'remedy of specific performance of the contract'** on the ground of **'fraud'** or **'mistake'**. These remedies are applicable where the **'fraud'** or **'mistake'**. These remedies are applicable where the **'fraud'** or **'mistake'** goes to the root of the agreement and vitiates the contract itself but rectification assumes that there exists between the parties a perfectly valid contract but the writing has failed to express that intention either from **'fraud' or 'mutual mistake'**. Thus the remedy of rectification relates only to cases of **'mistake'** in expression only as distinguished from the contract itself. The Court cannot make a new agreement in the case of rectification unlike in the case of setting aside of an instrument where virtually the Court makes a new agreement.

So far as this can be done without prejudice to rights acquired by third persons in good faith and for value :-

The Courts will not be inclined to rectify instruments where such rectification may cause prejudice to the rights acquired by third persons in good faith and for value. A purchaser who does not make enquiries as to the title of the vendor and intends to take advantages of the mistake cannot be termed as a ***'bona fide'*** purchaser without notice.

Doctrine of Rectification :-

Rectification means correction of an error in an instrument in order to give effect

to the real intention of the parties. Where a contract has been reduced into writing, in pursuance of a previous engagement and the writing, owning to **'fraud' or 'mutual mistake'**, fails to express the real intention of the parties, the Court will rectify the writing instrument in accordance with their true intent." Here the fundamental assumption is that there exists in between the parties a complete and perfectly unobjectionable contract, but the writing designed to embody it, either from **'fraud' or 'mutual mistake'** is incorrect or imperfect and the relief sought is to rectify the writing so as to bring it into conformity with true intent.

In such a case to enforce the instrument as its stand must be to injure atleast one party to it; to rescind it alltogether must be to injure both, but rectify it and then enforce it is to injure neither but to carry out the intention of both.

In cases of rectification the Court does not put it to the other party to submit to the variation alleged but makes the instrument conformable to the intention of the parties without such offer or submission.

Who can apply for Rectification :-

The following persons may apply :-

a) Either party or his representative in interest.
b) The plaintiff in any suit.
c) A defendant in such suit.

Conditions necessary :-

The conditions necessary for obtaining rectification are :-

1. There must have been a complete agreement reached prior to the written instrument which is sought to be rectified. There must be two distinct stages :-

I) An agreement, verbal or written, which clearly expresses the final intention of the parties, and

II) Both the parties must have intended, and still intending, that the exact terms of the prior contract should be reduced into writing.

III) Clear evidence of Mistake common to both parties or of fraud.

The principle on which the Court acts in correcting instruments is that the parties are to be placed in the position as that in which they would have stood if no error had been committed.

Rectification and cancellation of instruments and rescission of contracts :-

By law, many transactions are required to be in writing. Because of expediency, many more transactions are put into writing. A **'written transaction'** is called an **'instrument'**. An instrument is a result of negotiations. Sometimes, an instrument may fail to express the intention of the involved parties. Rectification of such an instrument may become necessary. Help towards parties who want to have their documents (which are mistakenly executed) rectified, is provided in Chapter III of the Specific Relief Act. Closely related with documents mistakenly executed, is the category of documents which are at a later point found to be **'void'** or which become **'void'**. These documents ought to be cancelled. Chapter V provides relief from such kinds of documents. Also, there is a category of contracts which, for some reason or the other (e.g., lack of free consent) can be deemed voidable by the party which consent was not free. This party has the right to have the contract rescinded. Relief by way of rescission is provided by Chapter IV of the Specific Relief Act.

' CANCELLATION OF INSTRUMENTS '

Section 39 deals with the Cancellation of instruments which read as follows :-

Any person against whom a **'written instrument'** is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, '**may sue'** to have it adjudged void or viodable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

If the instrument has been registered under the Registration Act, 1908, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

When can Cancellation of an Instrument is to be done :-

CANCELLATION OF AN INSTRUMENT :-

An equitable remedy by which a Court relieves both parties to a legal document of their obligations under it due to **'Fraud', 'duress',** or other grounds.

'Cancellation' is a term often used interchangeably with Rescission, but whereas only a document can be cancelled, any agreement - whether oral or written - can be rescinded. **'Cancellation'** is distinguishable from **'reformation',** which is an action by a Court to enforce a document after its terms have been re-framed in accordance with the intent of the parties, in that cancellation abrogates the duties of the parties under the instrument.

Any instrument by which two or more parties agree to exchange designated performances, such as a contract, deed, lease, insurance policy, Commercial Paper, or a mortgage, may be cancelled if the circumstances of the case warrant it.

The judicial remedy of the 'cancellation' of an instrument is granted by a Court in its sound discretion exercising its Equity powers to do justice. If it is apparent that no injustice will result from restoring both parties to the positions they had prior to the execution of the instrument, an instrument may be set aside.

If the party seeking the cancellation has an adequate remedy at law. For example, one can recover damages that will give complete relief, cancellation will be denied. It is available, however, if the defendant is judgment-proof or financially unable to pay damages awarded against him or her. Statutes, too, may provide this equitable remedy as concurrent relief, in addition to damages, in particular cases. The Uniform Commercial Code permits merchants in sales transactions to seek the cancellation of a contract, in addition to an award of damages in a breach of contract suit.

A plaintiff is entitled to have an instrument cancelled only if he or she has acted equitably in dealings with the defendant. The principles of equity apply to any case in which this equitable remedy is sought.

GROUNDS :-

The cancellation of an instrument must be based upon appropriate grounds, the gist of which makes the enforcement of the instrument inequitable. Such grounds must be proven by a **PREPONDERANCE OF THE EVIDENCE** presented in the civil action. A term of a document may provide for its cancellation, and Courts will usually act accordingly when the facts warrant it. The setting aside of an instrument that appears to record the

agreement of the parties to it is considered a significant intervention by a Court, which will not be done for a trivial reason or merely because of a change of mind by one party. The primary grounds for cancellation involve the validity of the instrument itself and the agreement that it embodies.

DURESS :-

An instrument that was obtained by **'duress'**, the use of threats or physical harm to compel one party to enter into an agreement that he or she would not have made otherwise, can be cancelled at the request of the victimized party. If **'duress'** was present at the time the contract was entered, the agreement of the parties is a **'sham'**, as the victim was forced to act against his or her will. It would be inequitable for a Court to enforce such an agreement.

FRAUD :-

An instrument may be set aside if it was induced by fraud - an intentional deception of another - to gain an advantage over him or her. To justify cancellation, it must be clearly established that the representations made to the victim were untrue and of such a material nature that without them the victim would not have agreed to the transaction. In addition, it must be shown that such statements were made intentionally to defraud the victim and that the statements were relied upon by him or her in the decision to enter the agreement. Fraud vitiates an agreement, which makes it unjust to enforce a document embodying its terms.

If, however, a **'material misrepresentation'** is made innocently by one party, the victim is still entitled to have the instrument set aside, as it does not reflect the mutual assent of the parties.

MENTAL INCAPACITY :-

If an agreement has been made by one party who, at the time of its execution, was mentally incapable of understanding the nature of the transaction, it may be cancelled at the request of the victim or the victim's legal representative. This is particularly true when the other party has taken advantage of the victim's incompetence in drawing the terms of the agreement.

Courts frequently cancel an instrument entered by a person so intoxicated at the time of executing the document that he or she does not comprehend its legal ramifications. Cancellation is justified particularly when the intoxication is brought about by the other party in order to deceive the victim about the nature of their agreement.

MISTAKE :-

When the parties have both made a **'mutual Mistake of Fact'** concerning the agreement entered, an instrument may be cancelled, since there is no real agreement between them. If an unilateral mistake exists, that is, a mistake by one party, a Court may set aside the document and restore the parties to their position prior to its execution. In order to justify cancellation, a mistake must be material and involve a significant part of the agreement without which the contract would not have been entered into. If the mistake is the result of the carelessness of one or both parties, a Court may deny a request for cancellation.

UNDUE INFLUENCE :- Undue influence, which is the unfair use of pressure on the will of another to gain an advantage over him or her, is a ground for the cancellation of an instrument because one party's will is so overcome by pressure that the person is effectively deprived

of freedom of choice. **'Undue influence'** is usually established when there is a confidential relationship between the parties and one of them has a greater bargaining power or influence on the other.

FORGERY OR ALTERATION :-

'Forgery' or **'Alteration The cancellation of an instrument'** is justified when it has been forged. Moreover, if an instrument has been materially altered without the consent or knowledge of the party against whom the change is effective, the instrument may be set aside.

PRECLUSION OF RELIEF :-

A person seeking the equitable relief of the **'Cancellation of an instrument'** might be precluded from it by Waiver or Estoppel. The right to such relief may be **'waived'** or **'relinquished'** by a plaintiff's conduct, such as by failing to pursue a remedy within a reasonable time from the execution of the document, a **'form of Laches'.** The **'doctrine of equitable estoppel'** - by which a person is precluded by conduct from asserting his or her rights because another has relied on that conduct and will be injured if the relief is not precluded - may also operate in a case in which cancellation of an instrument is sought.

The **'ratification of a document'** by a party prevents its subsequent abrogation. If a party knowingly affirms or ratifies an instrument - whether by stating so, or by using the property received under it - he or she is precluded from having it set aside.

CONCLUSION :-

On fair perusal of the language used in relevant sections pertain to **'rectification'** and **'cancellation' of instruments**, one can understand that civil suits have to be filed invariably for getting the reliefs thereof by paying the requisite Court fee like regular civil suits and all the civil Courts are expected to take up these suits by assigning numbers like civil suits and proceed with them according to law by following the procedural law as enunciated through '**C.P.C'** and **relevant provisions of 'Specific Relief Act'** and to dispose of them accordingly.

I am submitting my Pranaams to our Hon'ble Administrative Judge for affording me this wonderful opportunity. I am fortunate enough to present this paper in this prestigeous workshop which is **'brain child'** of Hon'ble High Court and I am expressing my sincere gratitude to Hon'ble High Court for affording me this wonderful opportunity in preparing this article by mem, as per the norms prescribed by Hon'ble High Court for presenting me this article. I am also expressing my sincere regards to Hon'ble District Judge for naming me to present this valuable article.

--X--

2019(2) L.S. 79 (A.P.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present:
The Hon'ble Mr. Justice
Gudiseva Shyam Prasad

Valasimgam Vyshnavi ..Appellant
Vs.
Union of India & Ors., ..Respondents

CRIMINAL LAW - Petitioner involved in a criminal case - Writ Petition filed by petitioner to declare proceedings issued by respondent, as illegal and arbitrary and sought for a direction to the respondent to issue passport to the petitioner.

Held - Petitioner has to seek permission from competent Court for issuance of passport - Petitioner may approach the criminal court and the Court shall consider the application of the petitioner and pass appropriate orders within a period of one week from the date of receipt of application.

Mr.J.C. Francis, Advocates for the Appellant.
M. Indrani, Advocate for the R1 & R2.
G.P. for Home, for the R3.

J U D G M E N T

1. This is a writ of mandamus filed by the petitioner under Article 226 of the Constitution of India to declare the proceedings issued by the respondent, dated 20.12.2018 as illegal and arbitrary and sought for a direction to the respondent to issue passport to the petitioner.

2. Heard learned counsel for the petitioner and Mrs. M. Indrani, learned standing counsel for the respondents 1 and 2.

3. Learned counsel for the petitioner submits that a false complaint was lodged against the petitioner and her family members by her paternal aunt and a criminal case was registered, which was numbered as C.C.No.125 of 2018 on the file of the Judl. Magistrate of I Class. Kurnool and it is pending. The petitioner in order to prosecute her studies in Medicine, has applied for an admission in foreign Country and consequently secured an admission in Southwestern University, Cebu City, Phillippines for prosecuting her MBBS course. In anticipation of admission, the petitioner has applied for Indian Passport to the respondent on 03.07.2017. The respondents 1 and 2-passport authorities have passed impugned order expressing that NOC/Police Clearance for issuance of passport cannot be accorded and called for explanation of the petitioner. The petitioner accordingly submitted her explanation. In spite of explanation given be the petitioner, the passport authorities have issued proceedings, dated 08.11.2017.

4. The petitioner has submitted passport application form on 03.07.2017, on which, the passport authorities issued proceedings, dated 08.11.2017 calling for explanation of the petitioner. The petitioner has submitted her explanation on 07.12.2017. On submission of the application of the

petitioner, the passport authorities have not taken any action. Therefore, she filed W.P.No.40444 of 2018, wherein this Court passed an order directing the 4th respondent to pass appropriate orders by taking into account the explanation submitted by the petitioner, dated 8.11.2017 in accordance with law within a period of 2 weeks from the date of receipt of a copy of the order. Thereafter, the 2nd respondent has issued impugned proceedings, dated 20.12.2018 informing the petitioner to furnish the requisite orders from the competent court for issue of passport. Aggrieved by the impugned order, the present writ petition is filed.

5. Learned standing counsel for Central Government Submits that as per Section 6 (2) (t) of the Passports Act, 1967, when the proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal Court in India, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country. Counsel placing reliance on the above provision submits that criminal case is pending against the petitioner. Therefore, the respondents cannot issue passport to the petitioner.

6. In this connection, learned standing counsel placed reliance on the notification issued by the Ministry of External Affairs in G.S.R.570 CE). As per G.S.R.510 (E), the passport to be issued to every such citizen shall be issued;

> (i) for the period specified in order of the court referred to above, if the court specifies a period for which the passport has to be issued: or
>
> (ii) If no period- either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period of one year.

A combined reading of Section 6 (2) (f) of the Passports Act and the notification in G.S.R.570 (E) clearly reveals that when a person was involved in a criminal case, he has to obtain an order from the Court for issuance of passport for a specified period and if the period is,' not specified, passport shall be issued for a period of one year.

7. In the light of the submissions made by the-learned standing counsel, it is obvious that the petitioner involved in a criminal case. She has to seek permission from the competent Court for issuance of passport for a specified period and if no period is specified for issue of passport or for the travel abroad, the passport shall be issued for a period of one year.

8. In view of the foregoing reasons, the petitioner may approach the criminal court and the Court shall consider the application of the petitioner and pass appropriate orders within a period of one week from the date of receipt of the application.

9. With the above observation, the Writ Petition is disposed of. No order as to costs. Miscellaneous petitions, if any pending in this writ petition shall stand closed.

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2019(2) L.S. 81 (A.P.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present:
The Hon'ble Acting Chief Justice Justice
Mr.C.Praveen Kumar &
The Hon'ble Mr. Justice
M.Satyanarayana Murthy

Prasada Rao Vemireddy ..Appellant
Vs.
State of A.P. & Ors., ..Respondents

SERVICE LAWS - Writ Petition - Pro bono litigation, to declare the action of first respondent in issuing Memo entrusting to fill up the posts on outsourcing basis in Sarva Sikshya Abhiyan (SSA) to manpower supply agencies as illegal, arbitrary, unconstitutional and against the principles of natural justice and also prayed for consequential relief to set-aside the said memo.

Held - Public interest litigation is not maintainable in service maters, including recruitment, appointment, transfers etc - Public Interest Litigation under Article 226 of the Constitution of India in employment or service disputes, including selection process and mode of selection is not maintainable and the Memo cannot be quashed or set-aside, at this stage, more particularly, when the academic year is coming to close within short time - Writ petition is liable to be dismissed.

Mr.Karri Suryanarayana, Advocates for the Appellant.

Mr.G. Seena Kumar, SC for APEWIDC & RVMSSA, Advocate for the Respondents.

W.P. Nos.381/2018 Date: 13-3-2019

J U D G M E N T

(per the Hon'ble Mr.Justice
M. Satyanarayana Murthy)

1. Sri Prasada Rao Vemireddy, a practicing Advocate, claiming to be a social activist, while highlighting his social activism, filed this writ petition under Article 226 of the Constitution of India, as pro bono litigation, to declare the action of the first respondent in issuing the Memo No.ESE01-12029/96/ 2018-PROG2 SECT-SE-DEPT dated 04.09.2018 entrusting to fill up the posts on outsourcing basis in Sarva Sikshya Abhiyan (SSA) to manpower supply agencies as illegal, arbitrary, unconstitutional and against the principles of natural justice and also prayed for consequential relief to set-aside the said memo.

2. It is alleged that, the petitioner is a practicing advocate and he is also claiming himself as a social activist aged 54 years, came to know that recruitment of outsourcing staff like teachers, section officers and other subordinate staff members in Sarva Siksha Abhiyan in the State of Andhra Pradesh is being undertaken through outsourcing and entrusted to manpower supply agencies by the first respondent or its governmental agencies i.e., Project Officer. The manpower supply agencies are collecting huge amount in lakhs depending upon the posts they applied, thereby, the unemployed youth are turning in queue to purchase the posts in their respective capacities. The same was lured by the

manpower supply agencies and encash the public and unemployed youth. He also contended that the print and electronic media has exposed the same in episodes, on day-to-day basis in their respective newspapers and channels, where fraud and cheating are played by the manpower supply agencies is highlighted. The petitioner also agitated such malpractices of fraud played by the manpower supply agencies and protested before the office of the respondent Nos. 3 & 4. But, no purpose was served. He also submitted a representation before the respondent Nos. 1 & 2 to stop illegal recruitment in Sarva Siksha Abhiyan.

3. While so, the second respondent issued proceedings vide RC.No.5101/APSSA/A7/2017 dated 27.06.2018 stating that all the Project Officers in the State were informed to hold the process of selection of staff on outsourcing basis of their respective districts immediately, until further instructions in the matter, treating it as 'top priority'. Despite such direction, the first respondent has issued Memo NO.ESR01-12029/96/2018-PROG2 SECT-SE-DEPT dated 04.09.2018 directing to gear up academic progress of the institutions. It is contended that, the proceedings issued by the first and second respondents are contradicting each other.

4. The petitioner mainly alleged that, Sarva Siksha Abhiyan Scheme is an educational scheme befitting the unemployed youth, where 70% project cost is sponsored by the Central Government and the remaining 30% project cost is sponsored by the State. The State Government takes up recruitment whenever the posts fell vacant or there is need of recruitment without charging the private agencies and thereby, monitors the entire scheme. It is alleged that, if such process is undertaken, there is every possibility of avoiding fraud by the private agencies and exploitation of unemployed youth and thereby, the process of selection of itself can be set right, as it would benefit the educational institutions itself in the entire State and prayed the relief stated supra.

5. The second respondent, filed counter denying material allegations, inter alia contending that the petition of public interest litigation under Article 226 of the Constitution of India is not maintainable and it is misconceived, since the dispute is with regard to recruitment through outsourcing agency, which is purely a service dispute and public interest litigation cannot be maintained, in view of the law declared by the Apex Court in Dr. Duryodhan Sahu and others v. Jitendra Kumar Mishra and others (I) (1998) 7 SCC 273 and on this ground alone, the writ petition is liable to be dismissed. It is specifically contended that, when the petitioner is questioning Memo No.ESE01-12029/96/2018-PROG2 SECT-SE-DEPT dated 04.09.2018, he ought to have made a representation or demanded the authorities concerned Le respondents 1 & 2 and in the event of denial to discharge their legal duty, he can approach the respondents, subject to maintainability of writ petition as public interest litigation. But, the petitioner straight away approached the Court under Article 226 of the Constitution of India, therefore, on this ground alone, the petition is liable to be dismissed.

6. The memo impugned in this writ petition was issued in terms of existing governmental outsourcing policy and unless outsourcing policy is set-aside, the petitioner cannot question the procedure adopted by the respondents. The allegation that the manpower agencies are selling the posts for consideration in lakhs as per the demand is incorrect, for the reason that, no specific complaint is received from any corner of the State or from any of the aspiring candidates. The petition is filed on Imaginary grounds, playing fraud and in the absence of any material to substantiate the same, the petition cannot be maintained. The respondent admitted about issue of memos by respondents 1 & 2. However, contended that intentionally a memo was issued by the second respondent to hold the selection process. But, on verification of those news Items in the news papers, a discrete enquiry was conducted and found no truth in the allegations made in the news items. Thereupon, issued memo impugned in this writ petition directing the Project Officers to complete the process of selection through outsourcing agencies. Hence, contended that the memo impugned in this writ petition cannot be set-aside.

7. The respondent admitted about the initial funding of 85% by the Central Government and 15% funding by the State Government, depending upon the budget allocation. But, share of expenditure varies from year to year. For the academic year 2015-2016, the Central Government share was 60% of the total expenditure and the remaining 40% was borne by the State Government itself. For every financial year, the Government of India released funds to the State Implementing Society in two instalments, i.e. in the months of April and September of the year and the funds thus released will be credited to the bank account of the State Implementing Society and they will be utilized for various interventions like opening of new schools, alternate schooling facilities, construction of school buildings, additional classrooms, toilets, providing drinking water, teachers, regular teacher in service training, academic resource support, free textbooks & uniforms, support for improving learning activities.

8. It is further contended that Sarva Siksha Abhiyan is only a project having no permanent posts and all the posts in the project are temporary and thus filling can only be by way of deputation/contract/ outsourcing basis. Thus, by following the orders of the Government, steps are taken to fill the vacant posts on outsourcing basis in 13 districts and accordingly, the authorities have entrusted the recruitment of posts to manpower agencies in the State. Since the project itself is temporary, no permanent employee can be appointed in any cadre i.e. teaching or non-teaching staff and therefore, the alleged fraud in the absence of any details, cannot be a ground to quash the memo. Hence prayed for dismissal of the writ petition.

9. During hearing, Sri Karrt Suryanarayana, learned counsel for the petitioner vehemently contended that, the government alone has to take up the process of recruitment on permanent basis, so that the unemployed youth will be benefitted, as Sarva Sikshya

Abiyan is generating employment. If, the recruitment process is under taken by the State Government, the possibilities of corruption and fraud in recruitment process can be avoided to the maximum extent and sought a direction against the Government to undertake recruitment of teaching and non-teaching staff directly by the State Government, ignoring the relief actually claimed in the petition.

10. The learned Standing Counsel appearing for respondents 2 & 3 contended that, entrustment to Project Officers to complete the process of selection through outsourcing agencies is only in view of the orders passed by the State Government. The State probed into the allegations published in the news items arid when the news Item were published complaining about fraud, and found no truth in it, consequently, the memo impugned in this writ petition was issued, though the second respondent issued a memo directing to hold the recruitment process until further orders. Enquiry was conducted only for issuance of memo by the second respondent and when the nest respondent found no truth in the allegations, the impugned memo in this writ petition was issued, so as to gear up the process of selection of teaching and non-teaching staff by the outsourcing agencies, to cater the needs of the students under Sarva Siksha Abhiyan Scheme. Learned Standing Counsel specifically contended that the public interest litigation is not maintainable in service matters, since recruitment of teaching and non-teaching staff directly falls under service dispute and relied on two judgments of the Apex Court in Dr. Duryodhan Sahu and others v. Jitendra Kumar Mishra and others (referred 1 supra) and P. Seshadriv. S. Mangati Gopal Reddy and others (2) 2011 (4) SCALE 41 = 2011 (5) ALT 27.2 (DN SC). In view of the principles laid down by the Apex Court in the above two judgments, he requested to dismiss the writ petition, while supporting the memo impugned, issued by the first and second respondents.

11. It is also contended that, based on news items, the Court cannot quash the memo, since the news item published in the newspaper is only hearsay evidence, but not admissible and on the strength of such news items, this Court cannot grant relief, and requested to dismiss the petition.

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

(1) “Whether public interest litigation call be maintained in service disputes by a practicing advocate aged 54 years, claiming to be a social activist?

(2) Whether issue of Memo No.ESE01-12029/96/2018-P dated 04.09.2018 IS in violation of fundamental rights guaranteed under the Constitution of India or in violation of fundamental duties enshrined under Article 43 of the Constitution of India. if so, whether Memo No.ESE01-12029/96/2018-P dated 04.09.2018 is liable to be set-aside, declaring the action of the respondents 1 & 2 as illegal and arbitrary?”

POINT NO. I

13. The petitioner, claiming to be a practicing advocate cum social activist, filed this writ petition as public interest litigation under Article 226 of the Constitution of India, he was aged about 54 years by the date of filing the petition, he is not even qualified for appointment in any government service.

14. It is settled law that public interest litigation is not maintainable in service maters, including recruitment, appointment, transfers etc. An identical question came up before the Madhuri Bench of Madras High Court, wherein, the Division Bench of the Madras High Court in P. Mayilrajaperumal v. The Secretary to Government (3) W.P. (MD) No.9088 of 2011 dated 7.9.2016 considered the question as to the maintainability of public interest litigation.

15. In the facts of the above judgment, the service conditions of the drivers and conductors from the third respondent/Tamil Nadu State Express Transport Corporation were questioned, on the ground that when the drivers or conductors should work only for eight hours, the third respondent is illegally compelling to work beyond eight hours continuously and they are directed to work for more than 13 hour continuously in one trip. Such an action of the Corporation was questioned before the Madras High Court by a practicing advocate claiming to be a social activist. In paragraph, 10 of the said judgment, the Court observed that, in view of the law laid down by the Apex Court in various cases, no public interest litigation Writ Petition lie in respect of service matters. The petitioner being a practicing Advocate is no way connected with the service of the respondent/Corporation. There are service rules for the third respondent/ Corporation and as per the above said rules, employees, namely Driver-cum-Conductors are working in the third respondent/ Corporation and that the information furnished by the third respondent/ Corporation under Right to Information Act to the petitioner make it clear that there are 2421 drivers and 2425 conductors working in the third respondent/Corporation and totally 910 buses are running and the State Express Transport Corporation's buses are operating in 192 routes and the employees namely drivers and conductors are working 8 hours per day. The Court held that, based on such information, the petitioner being a practicing advocate who is unconcerned with the Government Department cannot question the same in the guise of public interest litigation.

16. The Madhurai Court also adverted to the judgment in Dr. Duryodhan Sahu and others v. Jitendra Kumar Mishra and others (referred I supra), wherein, the Apex Court dealt with the issue to whether a Public Interest Writ Petition, at the instance of a stranger, could be entertained, by the Administrative Tribunal. After considering the decisions in Jasbhai Motibhai Desai v. Roshan Kumar Haji basher Ahmed and others (4) (1976) 1 SCC 671, and the law declared in Chandra Kumar v. Union of India (5) (1997) 3 SCC 261, the provisions of the Administrative Tribunals Act. 1985 held as follows:

> "Section 3 (b) defines the word 'application' as an application made under Section 190 The latter Section refers to 'person aggrieved' 0 In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. 'We have already seen that the work' order' has been defined in the explanation to sub-so (1) of Section 19 so that all matters referred to in Section 3 (q) as service matters could be brought before the Tribunal. It in that context, Sections 14 and 15 are read, there is no doubt that a total stranger to the concerned service cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal the very object of speedy disposal of service matters would get defeated."

17. In Ashok Kumar Pandey v. State of West Bengal (6) (2004) 3 SCC 349 = 2004 (3) ALT 10.2 (DN SC), the Apex Court at paragraphs 5 to 16, held as follows:-

> "50 It is necessary to take note of the meaning of the expression, public interest litigation' In Stroud's Judicial Dictionary, Vol. 4, (4th Edn.), 'public interest' is defined thus:

Public interest. "(1) A matter of public or general interest" does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal right or liability are affected?"

18. In Janata Dal VO HS. Chowdary (7) 1993 SCC (Cri.) 36 the Apex Court considered the scope of public interest litigation. In para 53 of the said judgment, after considering what is 'public interest', the Supreme Court held as follows:

> 'The expression 'litigation' means a, legal action including all proceedings therein initiated in a court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some Interest by which their legal rights or liabilities are affected".

Be that as it may, it is needless to emphasise that the requirement of locus standi of a party to a litigation is mandatory: because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."

19. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be

extremely careful to see that behind the beautiful veil of public interest an ugly private malice vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of Public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above courts must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

20. The Court has to be satisfied about: (a) the credentials of the applicant: (b) the prima facie correctness or nature of information given by him: and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions.

21. In Gurpal Singh v. State of Punjab (8) (2004) 3 SCC 363 = 2005 (5) ALT 19.2 (DN SC) the Apex Court decided the case on the same lines and held that PIL is not maintainable in service matters.

22. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake- of justice and refuse to interfere where it is against the social interest and public good (vide State of Maharashtra v. Prabhu (9) (1994) 2 SCC 481 and A.P. State Financial Corporation v. Gal' Re-Rolling Mills (10) AIR 1994 SC 2151.

23. No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not. be misused as a licence to file misconceived and frivolous petitions, (Vide Buddhi Kola Subba Rao (Dr) v. K. Parasaran (11) (1996) 5 SCC 530).

24. The Apex Court also adverted to the principle laid down in Dr. Duryodhan Sahu and others v. Jitendra Kum.ar Miishra and others (referred 1 supra) and Ashok Kumar Pandey v. State of West Bengal (referred 6 supra) and held as follows:

"It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated und whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances to civil matters involving properties worth hundreds of millions or rupees and substantial rights and criminal cases in which persons sentenced to death facing the gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters, government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc. arc all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffling their faces by wearing the mask of public interest litigation and gel into the courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to lose but trying to gain for nothing and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the courts never moves, which piquant situation creates frustration in the minds of the genuine litigants."

25. In the judgment referred supra, the Madras High Court reviewed the entire law and concluded that. Public Interest Litigation is not maintainable in service matters unless the applicant had any interest in the subject matter.

26. In the present case. the petitioner claiming to be a practicing Advocate and social activist filed the present petition bringing to our notice that the paper clippings of news items and the inaction of the respondents I & 2 in taking steps to prevent such abuse by the manpower agencies, contended that the public money of unemployed youth is being looted in the name of employment through outsourcing, though, the petitioner is unconcerned with such employment issues, being a practicing Advocate.

27. It is an undisputed fact that. Prima facie paper clippings are not admissible in evidence, since they are hearsay evidence.

28. No doubt, the news paper clippings published in the newspapers state that the respondents 1 & 2 failed to take steps to prevent such abuse by the manpower

agencies, contending that the public money of unemployed youth is being looted in the name of employment through outsourcing agencies, but, that cannot be a ground to infer malafides on the part of respondents 1 & 2. The news items published in the daily is inadmissible in evidence and based on such news items, the Court cannot infer such malafides on the part of respondents 1 & 2.

29. Learned counsel for the petitioner placed reliance on the judgment of the Apex Court rendered in Borgaram Deuri v. Premodhar Bora (12) 2004 (3) ALT 42 (SC) = (2004) 2 SCC 227, wherein, the Apex Court basing on the principle laid down in Quamarul Islam v. S.K. Kanta and others (13) 1994 Supp. (3) SCC 5 and also in R.K. Anand v. Registrar, Delhi High Court (14) 2009 (3) ALT (Crl.) 206 (SC) = (2009) 8 SCC 106, concluded that, Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Therefore, based on such news items, till it is proved by satisfactory evidence, the Court cannot draw any inference from the news items.

30. In any view of the matter, based on the news items published in the newspapers annexed to the petition, cannot form the basis to conclude that respondents 1 & 2 failed to take steps against the manpower agencies who are alleged to have been looting public money of unemployed youth, in the name of employment through outsourcing agencies. Hence, on the basis of news items, it is difficult to accept the malafides attributed to the respondents 1 to 2.

31. Therefore, based on the news items in the news papers, reaction of the second respondent directing the Project Officers not to hold the selection process or teaching and non-teaching staff in Sarva Sikshya Abhyan Scheme, temporarily is a haste decision of the authorities, but, it is in the interest of public good. However, after making necessary enquiry, the first respondent noticed that there were no such corrupt practices as alleged by this petitioner. This petitioner did not produce prima facie evidence to substantiate his contention that public money is being looted, in terms of law declared by the Apex Court and for entertaining such public interest litigations, examination of credentials of the petitioner in necessary. If, they are taken into consideration, it would certainly show that the petitioner who is claiming to be a practicing Advocate approached this Court with an intention to popularise himself being an activist and publicise the same.

32. The Supreme Court in Hari Bansh Lal v. Sahodar Prasad Mahto and others (15) AIR 2010 SC 3515 had an occasion to deal with the maintainability of a Public Interest Litigation. wherein High Court allowed Public Interest Litigation filed by the petitioner and quashed appointment of the appellant as Chairman of State Electricity Board and directed the State Government to made fresh appointment to the post of Chairman of Board in place of appellant. The Court while reiterating the principles laid in Dr.

Duryodhan Sahu and others v. Jitendra Kumar Mishra and others (referred 1 supra). Ashok Kumar Pandey v. State of West Bengal (referred 6 supra) and reviewing the other judgments held that Public Interest Litigation is not maintainable in employment or service matters.

33. In Bholanath Mukherjee and others v. R.K. Mission V. Centenary College and others (16) (2011) 5 SCC 464 = 2011 (6) AL T 6.1 (DN SC), the Supreme Court while adverting to judgments in Dr. Duryodhan Sahu and others v. Jitendra Kumar Mishra and others (referred I supra). P. Seshadri v. S. Mangati Gopal Reddy and others (referred 2 supra) and other judgments, held as follows:

> 'The High Court has committed a serious error in permitting Respondent No. 1 to pursue the writ petition as a public interest litigation. The parameters within which Public Interest Litigation can be entertained by this Court and the High Court, have been laid down and reiterated by this Court in a series of cases. By now it ought to be plain and obvious that this Court does not approve of an approach that would encourage petitions filed for achieving oblique motives on the basis of wild and reckless allegations made by individuals, i.e., busybodies; having little or no interest in the proceedings. The credentials, the motive and the objective of the Petitioner have to be apparently and patently aboveboard. Otherwise the petition is liable to be dismissed at the threshold."

34. If these principles are applied to the present facts of the case, before adverting, the Court has to examine the object behind this litigation as the petitioner had no interest either direct or indirect, atleast a remote interest in the litigation.

35. In the present facts of the case, the proceedings were issued to undertake appointment of teaching and non-teaching staff under the scheme of Sarva Siksha Abhyan, which is purely temporary in nature. The Central Government contributes part of amount and the balance shall be borne by the State Government to run the schools with teachers, as per the norms referred in the earlier paragraphs. The scheme is purely temporary in nature and when the scheme is temporary, the Court need not undertake impact assessment on account of such appointments. More particularly, the financial burden is on the State if they were allowed to continue in service after expiry of scheme. When temporary governmental schemes are organized for students and selection process is taken up by the respondents through manpower agencies, selection cannot be questioned as it purely a dispute of employment, which cannot be decided in Public Interest Litigation in view of the law declared by the Apex in the judgments referred supra, more particularly, when the petitioner has no remotest interest in litigation. it is nothing but an abuse of process of the Court for personal vendetta. Therefore, the Court shall exercise its power to curb such public interest litigation against a person who is

claiming to be a social activist and practicing advocate at the threshold. If. such Public Interest Litigations are not nipped at the bud, it will multiply and devouring most of the valuable Courts time, thereby preventing the courts from a concentrating in deciding real disputes where the public valuable rights cue involved. Therefore, taking into consideration the facts and circumstances of the case and applying the law laid down by the Apex Court and other Courts referred supra, we find that the petition filed under Article 226 of the Constitution of India as a public interest litigation, which is purely a dispute regarding mode of selection of temporary teaching and non-teaching staff of the State is not maintainable. On this ground alone, the petition is liable to be dismissed. Accordingly, the point is held against the petitioner and in favour of the respondents.

POINT NO.2

36. The main relief claimed by this petitioner in this petition is to quash the Memo No.ESE01-12029/96/2018-P dated 04.09.2018. The petitioner did not challenge the process of selection of teaching and non-teaching staff through outsourcing agency i.e., manpower agency notified by the District Collector, But only questioned the Memo No.ESE01-12029/96/2018-P dated 04.09.2018, whereby the first respondent directed the Project Director to complete selection process of teaching and non-teaching staff. If the memo is quashed or set-aside, again respondents 1 & 2 may issue and pass appropriate orders directing the Project Officers to complete the selection process, in view of the urgent need of the staff members, more particularly about the teaching staff to cater to the needs of the students who are prosecuting their studies, as annual examinations are fast approaching. When the respondents issued directions to the Project Directors to undertake selection for the posts of teaching and non-teaching staff, in view of the State Government Policy, for outsourcing of temporary staff, the Memo No.ESEOI-12029/96/2018-P dated 04.09.2018 cannot be set-aside, since it is only direction issued by the respondents to the Project Directors.

37. Through serious allegations of fraud are made based on news items, as stated above, the news items are not admissible in evidence and they do not form the basis for entertaining such public interest litigations and unless those allegations are supported by any prima facie material. In the present facts of the case, in view of publication of news items in papers alleging corrupt practices by man power agencies, the second respondent issued Memo No.ESEOI-12029/96/2018-P dated 04.09.2018 directing the Project Officers to hold the selection process. But, after making necessary enquiry as to truth in the allegations covered by news items, having found no truth in those allegations, issued the present Memo No. ESE01-12029/96/2018-P dated 04.09.2018 which is impugned in this writ petition. Even now, the petitioner did not substantiate the allegation that the manpower agencies playing fraud on the unemployed youth by collecting huge amount for selecting them as teaching and non-teaching staff. Such allegations can be proved at least by filing notarized affidavits

of those who paid the amount to the manpower agencies as bribe or any tangible material to substantiate such allegation. Obviously for the reasons best known to the petitioner, made reckless allegations to sling mud on the government and its instrumentalities, as the petitioner resorted to unethical practice and appears to be a busy body.

38. During hearing, though the learned counsel for the respondents made serious allegations against this petitioner that he demanded two posts at Srikakulam District for the persons interested by him and when the Project Director refused, he resorted to this litigation. But, this allegation is not supported by any material. Consequently, based on such vague unsubstantiated allegation, the petition filed by this petitioner cannot be thrown overhead. However, it is evident from the contention of this petitioner that, this petition is filed obviously with a motive to popularise himself in the District, mostly among the persons who applied for appointment through manpower agencies in the Scheme of Sarva Siksha Abhyan and thus, the litigation can be described as Publicity Interested Litigation rather than Public Interest Litigation, as the petitioner's credentials are doubtful and has no remotest interest in the litigation, as no public interest is involved. If, for any reason, Memo No.ESEOI-12029/96/2018-P dated 04.09.2018 is quashed and recruitment process is stalled through manpower agencies, it would not only seriously affect the carrier of the candidates selected for the posts of teaching and non-teaching staff, but also adversely affects the studies of the children who are prosecuting their studies. The interests of children will outweigh the interest of public. In the absence of any public injury, it is difficult to quash Memo No.ESEOI-I-2029/96/2018-P dated 04.09.2018, which is consequential directions issued by the respondents to the Project Directors.

39. In view of our foregoing discussion, we hold that the Public Interest Litigation under Article 226 of the Constitution of India in employment or service disputes, including selection process and mode of selection is not maintainable and the Memo ESEOI-12029/96/2018-P dated 04.09.2018 cannot be quashed or set-aside, at this stage, more particularly, when the academic year is coming to close within short time. Consequently, the writ petition is liable to be dismissed.

40. In the result, the writ petition is dismissed.

41. Consequently, miscellaneous applications pending if any, shall also stand dismissed.

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LAW SUMMARY

2019 (2)

High Court of Telangana Reports

2019(2) L.S. 1 (T.S.)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr. Justice
M.S. Ramachandra Rao

Kancham Suresh ..Petitioner

Vs.

Telukunta Swaroopa ..Respondent

CONSTITUTION OF INDIA, Art.227 - Civil Revision Petition filed under challenging Order refusing to transfer suit from the file of IX Additional Chief Judge, City Civil Court, Hyderabad to any other Court of equivalent jurisdiction at the request of Petitioner/ Defendant no.1

Held - Presiding of Court of IX Additional Chief Judge, could not have proceeded to adjudicate suit after actively playing a role in the mediation between parties, which admittedly failed - She disqualified herself to be an adjudicator thereafter and should have herself recused instead of proceeding to decide the matter, particularly when the petitioner expressed reservations about her independence after the mediation failed - Chief Judge, therefore clearly erred in refusing to allow Tr.O.P. filed by the petitioner - Civil Revision Petition stands allowed.

I.A. No. 2/2019 in
CRP.No. 421/2019 Date:3-6-2019

Mr.M.V. Suresh, Advocate for the Petitioner.
Mr.T. Nataraj, Advocate for the Respondent: R1 & R2.
Mr.P. Suresh, Advocate for the Respondent R4 & R8.
Mr.G.R. Sudhakar, Advocate for the Respondent 6.
Mr.P. Suryanarayana, Advocates for the Respondent 5.

J U D G M E N T

1. This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.31-01-2019 in Tr.O.P. No.2 of 2019 of the Chief Judge, City Civil Court, Hyderabad refusing to transfer O.S.No.944 of 2017 from the file of the IX Additional Chief Judge, City Civil Court, Hyderabad to any other Court of equivalent jurisdiction at the request of the petitioner.

2. Petitioner is defendant No.1 in the said suit.

3. Respondent Nos.1 and 2/plaintiffs filed the said suit for partition of plaint “A” to “K” schedule properties into 9 equal shares and allot 1/9th share to them.

4. Admittedly, petitioner filed I.A.No.2364 of 2018 in the said suit invoking Section 89 C.P.C. and prayed the IX Additional Chief Judge, City Civil Court, Hyderabad to refer the suit for mediation for amicable settlement of the disputes.

5. Respondent Nos.1 and 2 herein and 4th respondent/3rd defendant refused notice in the said application. Respondent No.3/2nd defendant and 8th respondent/7th defendant endorsed "no counter".

6. By order dt.04-01-2019, the Court allowed the said I.A. and referred the matter to mediation directing the Secretary, Legal Services Authority to entrust the case to an experienced mediator.

7. Later on the same day, it allegedly passed another docket order directing both parties to be present for settlement talks before the Court along with their respective counsels by 1 p.m. on that day.

8. Both parties except 2nd defendant were present on 04-01-2019. On 08-01-2019, the said Court noted that respondent Nos.1 and 2/plaintiffs made specific proposals for being worked out for settlement, but defendants sought time to deliberate on the proposal forwarded from the plaintiffs' side. So it adjourned the matter to 22-01-2019 to hear the stand of the defendants regarding the settlement.

Tr.O.P..No.2 of 2019

9. In the meantime, on 21-01-2019, petitioner filed Tr.O.P..No.2 of 2019 before the Chief Judge, City Civil Court, Hyderabad seeking transfer of the suit to any other Court alleging that the Court had changed the order dt.04-01-2019 in his absence and in the absence of defendant Nos.1, 2, 4 and others; there was an oral request by the petitioner to send the matter to mediation, but the Presiding Officer of the Court of IX Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Presiding Officer') did not accept it; and so petitioner entertained a doubt and lost faith in the Court and filed on 05-01-2019 a memo stating that he intends to seek a transfer of the suit to another Court. It is alleged that on 08-01-2019, when all parties were present, the Presiding Officer of the Court, without discussing anything, made a proposal to pay Rs.1.4 crores and give one godown to the plaintiffs/respondent Nos.1 and 2; that defendants requested the Court to decide about their share in the plaint schedule property; that the Presiding Officer then informed that respondent Nos.1 and 2 had filed for partition and only their shares will be decided. It is also contended that the Presiding Officer stated that whether the parties are willing or not, that they should inform by 22-01-2019 or the suit properties will be handed over to a Receiver. It is also stated that defendant No.6, came from U.S.A. on 08-01-2019 and requested in person the Court to decide about her share, but the Presiding Officer told her that she is not the plaintiff and had not sought for partition. It is stated that for the above unilateral decisions, petitioner apprehends that the Court is not acting in a fair and judicious manner and he cannot expect fair play, and so the Chief Judge, City Civil Court, Hyderabad should transfer the suit to another Court of equivalent jurisdiction.

10. On 22-01-2019, the IX Additional Chief Judge, City Civil Court, Hyderabad noted that there was no settlement reported by one of the defendants who was present before it; that Tr.O.P.. No.2 of 2019 was filed before the Chief Judge, City Civil Court, Hyderabad for transfer of the suit to another Court which was adjourned to 23-01-2019; and so posted the suit to 31-01-2019.

The Counter of the respondents in the Tr.O.P

11. Respondent Nos.1 and 2 filed a counter opposing the Tr.O.P.. and stated that it is filed with mala fide intention and it is an abuse of process of Court and there are no grounds for transfer. It is stated that the Presiding Officer was competent to conduct mediation under Section 89 of C.P.C. and did so on 08-01-2019 and all parties and counsels participated in it. It is stated that the Presiding Officer did not impose anything on the parties. It was denied that the Court changed the order already passed. It is also stated that Presiding Officer did not make any proposal as is alleged by the petitioner and did not make any threat that she would handover the properties to a Receiver if the parties did not give decision on 22-01-2019. It is contended that the Presiding Officer only stated that if parties did not accept mutual settlement, it will have no bearing on merits and the matter will proceed as per procedure and in accordance with law.

12. Similar counter was filed by respondent Nos.4, 6 and 8. They contended that Section 89 of C.P.C. did not preclude the Court from conducting mediation.

13. By order dt.31-01-2019, the Chief Judge, City Civil Court, Hyderabad dismissed the Tr.O.P. No.2 of 2019.

14. It observed that bias cannot be attributed to the Presiding Officer merely because she conducted mediation in open Court; that all parties appeared for mediation before the Court and proposals and suggestions were made in the open Court; that the Presiding Officer had stated at the time of mediation, that the result of the mediation will not affect the matter on merits; and that the allegations leveled by the petitioner against the Presiding Officer of the Court of IX Addl. Chief Judge, City Civil Court, Hyderabad were denied by the respondents. It referred to Pasupala Fakruddin and another Vs. Jamia Mosque and another (2003 (2) APLJ 289) wherein this Court had held that unless there is specific instance of bias or Presiding Officer had personal interest in the subject matter of the suit, he cannot be branded as a biased Officer. It also stated that the Supreme Court in Rajkot Cancer Society Vs. Municipal Corporation, Rajkot (AIR 1988 Gujarat 63) had held that power to transfer a case should be exercised with due care and caution bearing in mind that there should be no unnecessary, improper and unjustifiable stigma or slur on the Court from which the case is transferred.

15. Assailing the same, this Revision is filed.

Contentions of petitioner in this CRP

16. Learned counsel for petitioner contended

that the order passed by the Chief Judge, City Civil Court, Hyderabad cannot be sustained; that there is an order, certified copy of which was supplied to the petitioner by the Court of IX Additional Chief Judge, City Civil Court, Hyderabad passed on 04-01-2019 in I.A.No.2364 of 2018 specifically referring the matter to mediation and directing the Secretary, Legal Services Authority to entrust the case to an experienced mediator; and so the Presiding Officer, cannot on the same day, start mediation herself contrary to her order, and after failure of such mediation, proceed to adjudicate the suit. He also reiterated the allegations made against the Presiding Officer in the Tr.O.P.

Contentions of respondents

17. Sri T.Nataraj, learned counsel for respondent Nos.1 and 2 supported the order passed by the Court below and contended that the Revision Petition is not maintainable. He reiterated that the Presiding Officer of the Court of the IX Additional Chief Judge, City Civil Court, Hyderabad acted in a fair and transparent manner and the allegations leveled against her by the petitioner are false. According to him, petitioner did participate in the mediation process conducted by the Court on 08-01-2019 along with his counsel and the Court was empowered under Section 89 to conduct mediation.

18. Sri P.Suresh, learned counsel for respondent Nos.4 and 8, Sri G.R.Sudhakar, learned counsel for respondent No.6, Sri P.Suryanarayana, learned counsel for respondent No.5 supported his contentions. The 3rd respondent was served but there is no representation. The notice to respondent No.7 was returned with endorsement "unclaimed" and so she is deemed to be served.

19. I have noted the contentions of the parties.

The consideration by the Court

20. Section 89 C.P.C. states:

> "89. Settlement of disputes outside the Court:-
>
> (1) Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parities for their observations and after receiving the terms of a possible settlement and refer the same for -
>
> (a) arbitration;
>
> (b) conciliation:
>
> (c) judicial settlement including settlement through Lok Adalat;
> or
>
> (2) Where a dispute has been referred-
>
> (a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were

referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of Section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of the Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed."

21. In Afcons Infrastructure Limited and another Vs. Cherian Varkey Construction Company Private Limited (2010) 8 SCC 24), the Supreme Court considered the provisions of Section 89 and Order X Rule 1-A, 1-B and 1-C C.P.C. and held that there is a mixing up of the definitions of "mediation" and "judicial settlement" under Clauses (c) and (d) of sub-Section (2) of Section 89 of the Code. It declared:

"11. ... Clause (c) says that for "judicial settlement", the court shall refer the same to a suitable institution or person who shall be deemed to be a Lok Adalat. Clause (d) provides that where the reference is to "mediation", the court shall effect a compromise between the parties by following such procedure as may be prescribed. It makes no sense to call a compromise effected by a court, as "mediation", as is done in clause (d). Nor does it make any sense to describe a reference made by a court to a suitable institution or person for arriving at a settlement as "judicial settlement", as is done in clause (c).

12. "Judicial settlement" is a term in vogue in USA referring to a settlement of a civil case with the help of a Judge who is not assigned to adjudicate upon the dispute. "Mediation" is also a well-known term and it refers to a method of non-binding dispute resolution with the assistance of a neutral third party who tries to help the disputing parties to arrive at a negotiated settlement. It is also a synonym of the term "conciliation". (See Black's Law Dictionary, 7th Edn., pp. 1377 and 996.)

13. When words are universally understood in a particular sense, and assigned a particular meaning in common parlance, the definitions of those words in Section 89 with interchanged meanings has led to confusion, complications and difficulties in implementation. The

mix-up of definitions of the terms "judicial settlement" and "mediation" in Section 89 is apparently due to a clerical or typographical error in drafting, resulting in the two words being interchanged in clauses (c) and (d) of Section 89(2). If the word "mediation" in clause (d) and the words "judicial settlement" in clause (c) are interchanged, we find that the said clauses make perfect sense."

22. It thus held that the definitions of "judicial settlement" and "mediation" in clauses (c) and (d) of Section 89(2) shall have to be interchanged to correct the draftsman's error.

23. Therefore, where a dispute has been referred to mediation, the Court should refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat. Where a dispute has been referred for "judicial settlement", the Court shall affect a compromise between the parties and shall follow the prescribed procedure.

24. In the instant case, admittedly the IX Additional Chief Judge, City Civil Court, Hyderabad referred the parties to mediation in her order dt.04-01-2019 but subsequently took an active role in the mediation as per the pleadings of both sides.

25. In Afcons Infrastructure (3 supra), the Supreme Court held in para-44(iv) at page 47 that if the Judge in charge of the case assists the parties and if settlement negotiations fails, he should not deal with the adjudication of the matter, to avoid apprehensions of bias and prejudice and it is advisable to refer cases proposed for judicial settlement to another Judge.

26. This principle is also statutorily recognized in Section 80 of the Arbitration and Conciliation Act, 1996 in the following terms:

> "80. Role of conciliator in other proceedings. - Unless otherwise agreed by the parties,-
>
> (a) the conciliator shall not act as an arbitrator or as a representative or counsel for a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings;
>
> (b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings."

27. The basis for the rule appears to be that parties make confidential disclosures to mediators that are outside the rules of evidence, and that the parties are assured these disclosures will play no role in future litigation; this ability to talk confidentially to a mediator is the fundamental basis of the mediation process; and so serving as a mediator is inherently incompatible with subsequently serving as a neutral arbitrator. This principle is recognized and accepted in other jurisdictions also.

28. In Minkowitz Vs. Israeli (Decision of Superior Court of New Jersey dt.25-09-2013), it was held that a mediator, who may becomes privy to party confidences in

guiding disputants to a mediated resolution, cannot thereafter retain the appearance of a neutral fact finder necessary to conduct a binding arbitration proceeding; and consequently, absent the parties' agreement, he cannot assume the role of a mediator. It observed that mediation encourages confidential disclosures to the mediator, whose training is designed to utilize these confidential positions to aid the parties to evaluate their positions, promote understanding of the other side's position and reach a consensus; on the other hand, arbitrations require an arbitrator to weigh evidence, assess credibility, and apply the law when determining whether a party has proven his or request for relief. It also relied on Canon IV.H of the Code of Ethics for Arbitrators in commercial disputes approved by the American Bar Association and the American Arbitration Association that an arbitrator should not be present or otherwise participate in the settlement discussions unless requested to do so by all parties and that this guideline is directed to the evaluator-facilitator dichotomy. It observed that the positions of arbitrator and mediator are in conflict and if the same person acts as a mediator, obtains party confidences or offers opinions on the issues in dispute, a conflict arises were he or she to then switch roles to act as an arbitrator making the final call.

29. Thus a Judge who acts as a mediator becomes disqualified to be an adjudicator.

30. Therefore the Presiding of the Court of IX Additional Chief Judge, City Civil Court, Hyderabad could not have proceeded to adjudicate the suit O.S.No.944 of 2017 after actively playing a role in the mediation between the parties, which admittedly failed. She disqualified herself to be an adjudicator thereafter and should have herself recused instead of proceeding to decide the matter, particularly when the petitioner expressed reservations about her independence after the mediation failed.

31. The Chief Judge, City Civil Court, Hyderabad therefore clearly erred in refusing to allow Tr.O.P.No.2 of 2019 filed by the petitioner.

32. Accordingly, the Civil Revision Petition is allowed; Tr.O.P.No.2 of 2019 is also allowed; and O.S.No.944 of 2017 pending on the file of the IX Additional Chief Judge, City Civil Court, Hyderabad is transferred to the Court of the III Additional Chief Judge, City Civil Court, Hyderabad. I.A.Nos.336 of 2018, 752 of 2018 and 843 of 2018 pending in the suit be disposed of by the transferee Court within three (03) months.

33. Consequently, I.A.No.2 of 2019 is dismissed. No costs.

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

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2019(2) L.S. 8 (T.S.)

IN THE HIGH COURT OF TELANGANA

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

Pasula Ravinder ..Appellant

Vs.

Union Of India & Ors., ..Respondents

NATIONAL HIGHWAYS ACT, Sec.3(A)(1) - Writ Petition - Union of India issued notification u/Sec.3(A)(1) of the National Highways Act, declaring its intention to acquire lands in specified survey numbers for public purpose of four laning of National Highway No.202. - Petitioner / Claimant, challenges the award passed by the Land Acquisition Officer and Revenue Divisional Officer.

Held - Land Acquisition Officer, in conformity with the provisions of Act and following the procedure prescribed u/Sec.26 of Act, relating to determination of compensation, awarded compensation - Considering fact that petitioner's writ petition was pending all along, subject to the condition of the petitioner making an application before the competent authority i.e., the District Collector within two weeks from the date of receipt of a copy of this order, the case of the petitioner shall be referred to the Arbitrator - On such reference, the Arbitrator shall decide the same in accordance with law – Writ Petition stands dismissed.

W.P. No. 21082/2016 Date:01-5-2019

Mr.V.S.R. Anjaneyulu, Advocates for the Appellant.

Standing Counsel for Central Government,Advocate for the R1.

Mr.A. Laxminarayana, Standing Counsel for National Highways Authority of India, Advocate for the R2 to R4.

Government Pleader for Land Acquisition, Advocate for the R5.

J U D G M E N T

1. In this writ petition, petitioner / claimant, challenges the award bearing Rc.No.F/4438/ 2012, dated 15.10.2015 passed by the respondent No.5 – Competent Authority, Land Acquisition Officer and Revenue Divisional Officer, Warangal.

2. The Union of India issued notification vide Gazette No. S.O.810(E) dated 22-03-2013, under Section 3(A)(1) of the National Highways Act, 1956 (Act 48 of 1956), declaring its intention to acquire lands in the specified survey numbers at Vangapahad village of Hasanparthy mandal of Warangal District, for the public purpose of four laning of National Highway No.202 (New NH No.163) from K.M. 76/800 to 150/000 KM (Yadagiri – Warangal Section) in Warangal District, and calling for objections from the persons interested. In terms of Section 3(a) of Act 48 of 1956, the Revenue Divisional Officer, Warangal was appointed to perform the functions of the competent authority – Land Acquisition Officer. Subsequently, the Government of India, approving the proposals, issued notification under Section 3(D)(1) of the Act, vide Gazettee of India through S.O.332 dated 05.01.2014. Eventually, the competent authority passed

award in Rc.No.F/4438/2012 dated 15.10.2015. Assailing the said award, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner, based on the averments made in the affidavit filed in support of the writ petition, submits that the petitioner is the owner and possessor of the land in an extent of Ac.0.02 ½ gts in Sy.No.501, Ac.0.38 gts in Sy.No.502 and Ac.0.01 ½ gunts in Sy.No.506 and, thus in all he owns Ac.1.02 ½ gts. situate in Vangapahad village, Hasanparthy mandal, Warangal District, and the said land was acquired for the above said purpose and the competent authority passed the award fixing the compensation.

4. Learned counsel for the petitioner submits that by virtue of the power conferred under Section 113(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013), the Ministry of Rural Development, Government of India vide notification SO. 2368(E) dated 28.08.2015, extended the provisions of Act 30 of 2013 to the acquisitions under Act 48 of 1956. Under Section 25 of Act 30 of 2013, the award shall be made within a period of twelve months from the date of publication under Section 19 of the said Act, and if no award is made within that period, the entire proceedings for the acquisition of the land, shall lapse. Since, the provisions of Act 30 of 2013 are made applicable to the acquisitions under Act 48 of 56, the time limit prescribed under Section 25 of Act 30 of 2013, also applies and in terms of the said provision, the competent authority has to pass award within twelve months i.e., one year from the date of publication. In the present case, the notification for intention under Section 3(A)(1) of Act 48 of 56, was given on 22.03.2013 and after approval of proposals, the Government of India, issued notification under Section 3(D)(1) of said Act and published in the Gazettee of India through S.O.332(E) dated 05.01.2014. In view of limitation prescribed under Section 25 of Act 30 of 2013, the competent authority has to pass award within one year from the date of publication i.e., 5.1.2014, but the competent authority passed award beyond the period of one year i.e., on 15.10.2015. Therefore, in view of Section 25 of Act 30 of 2013, the entire acquisition proceedings shall be declared as lapsed.

5. Learned counsel for the petitioner further submits that the subject land of the petitioner is agriculture land situated in Vangapahad village, Hasanparthy mandal, Warangal District, and comes under rural area, but the Land Acquisition Officer, relying on G.O.Ms.No.1177 MA (HMA & UD) Department dated 6.11.1981, has treated the Vangapahad as an urban area, and arrived the market value at Rs.7,00,000/- per acre. He contends that the subject property of the petitioner is agricultural land situated in rural area, and would fetch more amount, but the Land Acquisition Officer, treating the same as urban area, awarded less compensation. He submits that the Joint Sub Registrar – 12 Warangal has furnished certificate dated 07.04.2016, showing the market value in respect of Sy.No.501, where the subject land of the petitioner is situate, as Rs.38,72,000/- per

acre, and the Joint Sub Registrar – 12 Warangal has issued Market Value Assistance Certificate dated 13.05.2015, which establish that the market value of the subject land as Rs.38,72,000/- per acre from 1.4.2013 onwards. But, without considering the said market value, the competent authority has taken the market value of the land at Rs.7,00,000/-, per acre, which is very meagre. Learned counsel contends that as the competent authority, fixed the market value, without following the parameters prescribed under Section 26 of the Act 30 of 2013, the award is liable to be set aside.

6. Learned counsel for the petitioner further contends that as per the material evidence produced by the petitioner before the competent authority, he owns in all Ac.1.02 ½ gts, but the Land Acquisition Officer, though arrived at Rs.7,00,000/- per acre, awarded only an amount of Rs.79,524/-, which is incorrect.

7. He submits that if the amount granted under the award is not acceptable to the party, he has to seek for arbitration under Section 3 (G)(5) of Act 48 of 1956, but in the present case, as the award is passed in utter disregard to the statutory provisions, the petitioner is entitled to invoke the jurisdiction of this court under Article 226 of the Constitution of India, and he cannot be relegated to avail the alternative remedy. In support of this contention, learned counsel for the petitioner placed reliance on the judgment of a Division Bench of the erstwhile High Court of Andhra Pradesh at Hyderabad in K.PEDA VENKATAIAH v. GOVT. OF ANDHRA PRADESH (2004(3) ALT 78(DB).

8. With the above contentions, learned counsel for the petitioner sought praying to set aside the impugned award.

9. The Project Director, National Highways Authority of India – 4th respondent filed counter affidavit on behalf of respondents 1 to 4, and while not disputing the factual aspects with regard to issuance of notification under Section 3(A) of the Act with regard to intention for acquisition of the lands, including that of the petitioner, for the purpose of four laning of the National Highway 163 of Yadagiri – Warangal Section; calling for objections under Section 3(C) of the Act 48 of 1956; issuance of publication under Section 3(D) and eventual passing of the award by the competent authority; denied the above contentions of the petitioner and sought for dismissal of writ petition.

10. Sri A.Laxminarayana, learned Standing Counsel for National Highways Authority of India, referring the averments made in the counter affidavit, submits that the Ministry of India, Government of India, vide order dated 28.08.2015 made the provisions of Act 30 of 2013 applicable for the purpose of determination of compensation with regard to the first schedule, rehabilitation and resettlement in accordance with the second schedule, infrastructure amenities in accordance with the third schedule and to all case of land acquisition under the enactments specified in the fourth schedule. The land acquisition under Act 48 of 56 is covered under the enactments specified in the fourth schedule of Act 30 of 2013. Therefore, he submits that only for the limited purpose of determination of compensation, the provisions of Act 30 of 2013 i.e., Section

26 of the said Act, are applicable to Act 48 of 1956 and the period of one year prescribed under Section 25 of Act for the purpose of passing award from the date of publication of declaration under Section 19 of Act 30 of 2013, is not applicable to the proceedings under Act 48 of 1956. He submits that Act 48 of 56 prescribes time limit of one year from the date of publication of intention under Section 3(A), and the date of publication of declaration under Section 3(D) of the Act. He submits that in the present case, the notification under Section 3(A) of the Act was issued on 22.03.2013 and the declaration for acquisition under Section 3(D) was published on 5.1.2014 and hence there is compliance of time schedule prescribed under Section 3 of the Act.

11. Learned Standing Counsel further submits the market value as per Sub Registrar records as on the date of the publication of Section 3-A notification for the dry lands of Vangapahad village vide letter dated 22.08.2015, is Rs.7,00,000/- per acre and accordingly the 5th respondent, awarded compensation by duly following the procedure prescribed under Section 26 of Act 30 of 2013. He further submitted that as per G.O.Ms.No.1177 dated 06.11.1981, Vangapahad village was declared by the State Government as urban area and accordingly the compensation was awarded.

12. Learned Standing Counsel submits that the petitioner has submitted proof of ownership only to the extent of Ac.0.02 ¼ gts. in the acquired land in Sy.No.502, and accordingly, the compensation was award at Rs.79,524/- and in respect of payment for the lands acquired in Sy.Nos.501 and 506, the compensation could not be made, as the petitioner has not furnished the proof of ownership in the award enquiry conducted on 19.05.2015 and 28.11.2015 and therefore, the 5th respondents recorded owners for the said survey numbers as 'unknown'.

13. Learned Standing Counsel submits that the competent authority, in strict compliance of the procedure prescribed under Section 3 of Act 48 of 1956, and further following the procedure prescribed under Section 26 of Act 30 of 2013 for determination of compensation, awarded just compensation and if the petitioner is aggrieved with regard to quantum, they are at liberty to invoke arbitration clause under Section 3(G)(5) of Act 48 of 1956, and they cannot seek to stall the entire proceedings. He submits that the land of the petitioner, which is being acquired, is a small extent and because of the interim order obtained by the petitioner, the project got stalled and there is escalation of project costs and the public interest is at stake. Therefore, he sought to vacate the interim stay granted by this court and to dismiss the writ petition.

14. Heard the learned Standing Counsel for the Central Government appearing for 1st respondent and the learned Government Pleader for Land Acquisition appearing for 5th respondent.

15. In order to met the principal contention raised by the learned counsel for the petitioner with regard to limitation for passing of award from the date of publication of declaration, certain provisions of Act 25 of 2013 and the notification issued by the

Central Government making provisions of Act 30 of 2013 applicable to Act 48 of 1956, have to be considered.

16. The present Act 30 of 2013, received the assent of the President of India on 26.09.2013 and it came into force with effect from 01.01.2014, and under Section 114 of Act 30 of 2013, the earlier Land Acquisition Act, 1894 (1 of 1894), stood repealed. Under Section 105 of Act 30 of 2013, certain provisions of this Act are made applicable to the enactments relating to land acquisition specified in the fourth schedule, and Act 48 of 1956, is one such enactment. Section 113 of the Act, empowers the Central Government to make order for removal of any difficulty that arises in giving effect to the provisions of this enactment. The said provisions, to the extent relevant, are extracted as under for ready reference:

105. Provisions of this Act not to apply in certain cases or to apply with certain modifications:

(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) . . . . .

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) . . .

THE FOURTH SCHEDULE
(See Section 105)

List of Enactments Regulating Land Acquisition and Rehabilitation and Resettlement)

1. . .

. . .

7. The National Highways Act, 1956 (48 of 1956)

. . . .”

113. Power to remove difficulties:

(1) If any difficulty arises in giving effect to the provisions of this Part, the Central Government may, by order, make such provisions or give such directions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such power shall be exercised after the expiry of a period of two

years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as maybe after it is made, before each House of Parliament."

17. From a combined reading of the above provisions it is clear that subject to sub section (3) of Section 105, the provisions of Act 30 of 2013, are not applicable to the enactments relating to land acquisition specified in the fourth schedule. However, sub-section 3 of Section 105, empowers the Central Government to issue notification directing that any of the provisions of the Act 30 of 2013 relating to the determination of compensation in accordance with First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule. Act 48 of 1956 is one such enactment under the Fourth Schedule to Section 105. Therefore, the provisions relating to determination of compensation, under Act 30 of 2013, shall be made applicable by the Central Government by virtue of a notification, to the land acquisitions under Act 48 of 1956. The provision to issue such notification, as required under sub-section 3 of Section 105, is provided under Section 113 of the Act 30 of 2013.

18. In terms of Section 113 of Act 30 of 23013, the Ministry of Rural Development issued order on 28.01.2015 in S.O.2368(E). The same is extracted as under for ready reference:

"MINISTRY OF RURAL DEVELOPMENT

ORDER

New Delhi, the 28th August, 2015

S.O.2368(E):— Whereas, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (hereinafter referred to as the RFCTLARR Act) came info effect from 1st January, 2014;

And whereas, sub-section (3) of Section 105 of RFCTLARR Act provided for issuing of notification to make the provisions of the Act relating to the determination of the compensation, rehabilitation and resettlement applicable to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act.

And whereas, the notification envisaged under sub-section (3) of Section 105 of the RFCTLARR Act was not issued, and the RFCTLARR (Amendment) Ordinance, 2014 (9 of 2014) was promulgated on 31st December, 2014, thereby inter-alia amending Section 105 of the RFCTLARR Act to extend the provisions of the Act relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act.

And whereas, the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was promulgated on 3rd April,2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2014;

And whereas, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) was promulgated on 30th May, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015).

And whereas, the replacement Bill relating to the RFCTLARR (Amendment) Ordinance 2015 (4 of 2015) was referred to the Joint Committee of the House for examination and report and the same is pending with the Joint Commissioner;

As whereas, as per the provisions of Article 123 of the Constitution, the RFCTLARR (Amendment) Second ordinance, 2015 (5 of 2015) shall lapse on the 31st day of August, 2015 and thereby placing the land owners at the disadvantageous position, resulting in denial of benefit of enhanced compensation and rehabilitation and resettlement to the cases of land acquisition under the 13 Act specified in the Fourth Schedule to the RFCTLARR Act as extended to the land owners under the said Ordinance;

And whereas, the Central Government considers it necessary to extend the benefits available to the land owners under the RFCTLARR Act to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule; and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the land owners and uniformly apply the beneficial provisions of the RFCTLARR Act, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the land owners;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government make the following order to remove the aforesaid difficulties, namely:—

1.(1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.

(2) It shall come into force with effect from the 1st day of September, 2015.

2. The provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructures amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act."

19. Thus, by virtue of the above order, it is clear that the Central Government has specifically made the provisions of Act 30 of 2013, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to

cases of land acquisition under the said enactments in the interest of the land owners, applicable to Act 48 of 1956. The provision prescribing the period of limitation under Section 25 of Act 30 of 2013, with regard to passing of award within one year from the date of publication of the declaration, has not been made applicable to the acquisitions under the Act 48 of 1956. In the absence of any such provision, the period prescribed under the Act 30 of 2013, with regard to passing of the award from the date of publication of declaration under Section 25 of Act 30 of 2013, cannot be imported to Act 48 of 1956.

20. A learned single Judge of this court in NEERAJALA NAGESWARA RAO AND ANOTHER v. UNION OF INDIA (2017(5) ALD 575)considering the Sections 3-D, 3-E, 3-G and 3-J, held that provisions of Act 2013 shall apply for determination of compensation as per its first schedule and where required to be provided for rehabilitation and resettlement and / or infrastructure amenities with reference to Schedules I to IV.

21. In view of the above position, the contention of the learned counsel on the aspect of limitation for passing of the award, merits for rejection and accordingly rejected.

22. The other contentions of the learned counsel for the petitioner relates to factual aspects of the matter. The contention of the learned counsel for the petitioner is that as per market value certificate issued by the Sub Registrar – 12 Warangal rural dated 07.04.2016, the market value of the agricultural land in the area is question is Rs.38,72,000/-, whereas only an amount of Rs.7,00,000/- was awarded by the Land Acquisition Officer, therefore, this amounts to improper determination of market value, and the impugned award is liable to be set aside.

23. Here it is to be seen that the impugned award was passed on 15-10-2015 and the market value certificate stated to be issued by the Sub Registrar – 12 Warangal Rural, is dated 07.04.2016. Therefore, as on the date of passing of the award, the market value certificate dated 07.04.2016, was not available for consideration of Land Acquisition Officer. Moreover, the Land Acquisition Officer, while determining the market value of the lands acquired, has taken the market value as per the records of the Sub Registrar as on the date of publication of notification under Section 3-A in respect of dry lands of Vangapahad village vide letter dated 22.08.2015 and arrived at compensation of Rs.7,00,000/- per acre and hence no exception can be taken.

24. Similarly the other contention of the learned counsel for the petitioner that compensation was awarded treating the land of the petitioner as urban land, also pales into insignificance, since the Land Acquisition Officer, as noted above, relied on the market value as per the records of the Sub Registrar and awarded compensation, which is in accordance with the procedure prescribed under Section 26 of Act 30 of 2013.

25. The next contention of the learned counsel for the petitioner is that though an

extent of 1.02 ½ gts. was acquired, and the Land Acquisition officer, valued the land at Rs.7,00,000/- per acquired, only an amount of Rs.79,524/- was awarded. This aspect of the matter is factual in nature. As per the material on record, it could be seen that the petitioner could prove ownership only to an extent of Acs.0.02 ¼ gts in Sy.No.502, and in so far as land claimed by the petitioner in Sy.Nos.501 and 506, he could not prove ownership in the enquiry conducted on 19.05.2015 and 28.11.2015, therefore, the 5th respondents recorded owners for the said survey numbers as 'unknown'. Hence, the contention of the learned counsel for the petitioner in this regard, cannot be countenanced.

26. Coming to the judgment of the Division Bench in K.PEDA VENKATAIAH v. GOVERNMENT OF ANDHRA PRADESH (1 supra), relied on by the learned counsel for the petitioner, the facts of the said case disclose that while determining the market value of the land acquired, the Land Acquisition Officer, has taken the date of taking of possession of the land, whereas under Sections 11 and 23 of the Land Acquisition Act, 1894, the market value of the acquired land shall be determined as on the date of publication of notification under Section 4(1) of the said Act. As the award was passed in utter disregard to the mandatory provisions of the said Act, the Division Bench held that existence of an alternative remedy is not a bar to entertain a writ petition, where the impugned order is void. But in the present case, the facts are different. The Land Acquisition Officer, in conformity with the provisions of the Act 48 of 1956 and following the procedure prescribed under Section 26 of Act 30 of 2013, relating to determination of compensation, awarded compensation. Hence, the judgment of the Division Bench, cannot be made applicable to the facts of the present case.

27. For the foregoing reasons, I do not find any merit in the writ petition and the same is accordingly dismissed.

28. Before parting with the case it is made clear that the observations made in this order with respect to the market value and compensation, are only for the limited purpose, and the same shall not be construed as disentitling the petitioner for seeking higher compensation before the competent authority as provided under Act 48 of 1956. Considering the fact that the petitioner's writ petition was pending all along, subject to the condition of the petitioner making an application before the competent authority i.e., the District Collector within two weeks from the date of receipt of a copy of this order, the case of the petitioner shall be referred to the Arbitrator. On such reference, the Arbitrator shall decide the same in accordance with law.

29. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs

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2019(2) L.S. 17 (T.S.)

IN THE HIGH COURT OF TELANGANA

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

Vittala Gopala Krishna ..Petitioner
Vs.
The State of Telangana ..Respondent

PREVENTION OF CORRUPTION ACT, Secs.7, 12, 13(1)(d) r/w Sec.13(2) – Petitioner is A.1 out of two accused – Contentions in present quash petition, are that chargesheet is not maintainable either in law or on facts as same is devoid of merits.

Held - Even if evidence of accused as accepted tainted currency, on the face value it falls short of quality and decisiveness of proof of demand of illegal gratification - Thereby the accused cannot be found guilty for prosecution failed to prove both the demand and acceptance - when there is no proof of demand for illegal gratification even mere recovery of tainted currency notes from accused did not establish commission of offence and as demand of illegal gratification when not proved beyond reasonable doubt, the accused cannot be convicted and it must be proved pursuant to the demand there was acceptance by voluntarily accepting money knowing it to be a bribe - Criminal proceeding pending against the petitioner are liable to be quashed.

Crl.P. No.253/2019 Date: 8-4-2019

Mr.V.R. Machavaram, Advocates for the Petitioner.
Public Prosecutor, Advocate for the Respondent.

J U D G M E N T

The petitioner-Vittala Gopalakrishna, is A.1 out of two accused in C.C.No.178 of 2015 on the file of the Learned Special Judge for SPE & ACB Cases at Karimnagar, outcome of Cr.No.04/ACB-KNR/2013 of Anti Corruption Bureau(for short, 'ACB'), Karimnagar Range, Karimnagar, registered for the offences punishable Under Sections 7,12 and 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988 (for short, 'the D.P.Act') on the report, dt.23.01.2013 of one Thorrikonda Srinivas S/o. Mallaiah, a Student, resident of Sulthanabad village and Mandal, Karimnagar District. The averments in the report speak that his father is in possession of agricultural land admeasuring Ac 0-30 Guntas and Ac 1-10 in Sy.Nos.531/A and 535/A situated outskirts of Gattepalli Village, Sulthanabad Mandal. Due to nuisance causing by the neighbouring agriculturists on boundaries, his father paid an amount of Rs.350/- on 20.06.2012 through challan and submitted a representation on 28-06-2012 to V. Gopala Krishna, Deputy Inspector of Survey, Peddapalli- the petitioner enclosing original challan, Photostat copies of pahani and pattadar pass book requesting to cause survey of their land and to fix boundaries. Though the petitioner assured to do so, despite their requests for 3 to 4 times, there was no response from him. Again on 07.01.2013 when the complainant requested the petitioner to survey and fix boundaries,

he demanded an amount of Rs.10000/- as bribe to measure and demarcate the boundaries of the land. The report further reads that the defacto-complainant informed the accused for such demand of he suffered loss in cultivation and already indebted to many and not in a position to pay the bribe amount and requested to survey. However the accused bluntly stated that without payment, the work will not be done. The further averment is later he met thrice and reiterated the same. It is further averred that on 07.01.2013 he met the accused and pleaded for survey, he reduced his bribe demand to Rs.8,000/- else not to meet him. With no other go, he agreed to give Rs.8,000/- and cause fix date to measure and notices to give to boundary owners and asked to pay on 09.01.2013 evening at his office. He met him on 09.01.2013 accordingly and informed that he could not secure. The accused for that stated he was not coming on 10.01.2013 to cause survey. So again on 23.01.2013 he went to the accused and requested to fix date to pay on that day however the accused stated unless paid on 28.01.2013 not coming to cause survey. Hence to take action.

2. The report received as per endorsement of DSP, ACB, at Karimnagar on 23.01.2013 at 17.00 hours. However the FIR dispatched to the Court only on 28.01.2013 at 13.00hours as per the column No.15 of the FIR which is after 5 days. Leave about when the Special Judge received the FIR is not before the Court. The ACB Inspector, Karimnagar after investigation filed chargesheet dt.01.05.2015 against the petitioner as A.1 and another person as A.2 by name Kannam Rakesh.

3. The sum and substance of the chargesheet speaks that on 28.01.2013 at about 17.00hours a trap was laid against the petitioner at the RDO office, Peddpalli of Karimnagar District, and in the office, the L.W.1-the complainant made to enter into the office of the petitioner and in the meantime the trap party took vantage positions near the office and later at about 17.45 hours, the complainant came outside of the office and gave the pre-arranged signal to the trap party by wiping his face with handkerchief. The trap party along with the mediators rushed into the office and the L.W.1-complainant informed that the petitioner accepted bribe amount and handed over the same to the A.2 and accordingly the trap party entered into the office and apprehended the petitioner including the A.2 near the seat of the petitioner and restricted the movements and when subjected for sodium carbonate solution test, the fingers of both the hands of the petitioner and A.2 yielded positive result. Then the L.W.14-Investigating Officer recovered the tainted bribe amount of Rs.8,000/- from A.2 kept in right side front pocket of his wearing pant and then got tested the left side pocket of A.2's wearing pant which contained tainted bribe amount, which turned into pink colour. The L.W.14 got transferred all the five resultant solutions into separate glass bottles and the sample of sodium carbonate powder in a separate cover, sealed them, labelled and seized the same along with the pant of A.2 by getting attestation of the mediators (L.W.10 and L.W.11) on it. When the L.W.14 asked the L.W.2, the immediate officer to the petitioner/ A.1, to produce the connected documents, the L.W.2-G.Shankaraiah-Tahasildar produced the processing file of the L.W.1-complainant which contains 24 pages and

the same were seized by the Investigating Officer, and took signatures of L.Ws.10 and 11 mediators on each and every page. The Investigating Officer also perused the Attendance Register of the office and found that signature was put by the petitioner/ A.1. On enquiry it was disclosed that the A.1 is Executive Officer and was working on deputation and not putting his signatures in the Attendance Register and the LW-14 seized the copy of the Attendance Register, for the month of January, 2013 and took the signatures of LWs.10 and 11 on each and every page. Later when the LW-14 enquired L.W.1 what was happened after leaving the trap party, he stated that he entered into office of RDO Peddapalli and found both the petitioner and A.2 were present in the office and when entire Staff went out from the office, on the demand of A.1 he handed over the tainted amount to the A.1 who accepted the same and handed over the same to the A-2 to count and keep with him and A.2 did so and kept in the right side front pocket of his wearing pant. Later the A.1 prepared notices in the names of L.W.4-Bogiri Bheemaiah, L.W.5-Nallavelli Mallaiah, L.W.6 Thorrikonda Rayamallu and L.W.7-Rate Sadaiah by fixing date on 31-01-2013 to survey and gave them to the complainant to hand over to L.W.9-Sampath Kumar, VRO, Gattepally to serve them to concerned and also assured to survey and fix boundaries. Thereafter, the LW-I came out of the office and gave pre-arranged signal to the trap party. Then the L.W.14 seized the notices prepared by the A.1 supra and handed over to L.W.1 to hand over to L.W.11-Ellandula Yellaiah for serving to concerned. The L.W.14 also seized the tour diary of the A.1 for the month of January, 2013 containing one sheet and list of particulars of applications received from the seat of A.1 with the attestation of mediators. Then the L.W.14 examined the scene of offence and prepared rough sketch attested by mediators and arrested the A.1 and A-2 on 28-01-2013 and produced before the Court and later released on bail. Later, he examined and recorded under Section 161 CrPC statements of LWs.1 to 9 supra and also the Judicial Magistrate of First Class, Special Mobile Court, Karimnagar (LW-12) recorded the statement of L.W.1 U/s 164 CrPC on 08.02.2013 and forwarded the same to the Special Judge, supra. The Principal Secretary to Government, Revenue (Vigilance-I) Department, Telangana State, Hyderabad (LW-13), who is the competent authority to remove the A.1 from service, accorded sanction for prosecution of A.1 and for taking cognizance of the offence vide G.O.Ms.No.160, 09.09.2015. The trap amount was reimbursed to LW-I. It is clearly established that the A-1 with the assistance of A.2 demanded and accepted an illegal gratification of Rs.8,000/- other than legal remuneration from the LW-I on 28.01.2013 at the office of the RDO for doing an official favour to cause survey. Thereby, the A.1 committed the offences punishable u/s 7 and 13 (1) (d) r/w 13 (2) of PC Act and the A-2 committed an offence punishable u/s 12 of P.C.Act.

4. The chargesheet speaks the above facts with reference to the so called investigation and citing 16 witnesses. L.W.14 is the DSP who registered the FIR and examined and recorded the statement of L.W.1 and arrested the A.1 and A.2. L.W.15 is Inspector who assisted the DSP in laying the trap and examined and recorded the statements

of L.Ws.2 to 9 and L.W.16 is successor to L.W.15 who filed chargesheet. Among the other L.W.8 is father of defacto-complainant, L.Ws.4 to 7 are so called nearby adjacent land owners of L.W.8, L.W.3 is Asst. Director of Survey & Land Records, immediate superior to A.1 and L.W.2 is the Tahasildar-Administrative Officer(for short, 'the AO') in the office of RDO, Peddapalli and handed over the processing file to the defacto-complaint pertaining to survey of his land at Gattepalli.

5. The contentions in the quash petition, impugning the proceedings in Calendar Case supra are that the chargesheet is not maintainable either in law or on facts as the same is devoid of merits, weight of evidence and probabilities of the case. The alleged bribe money was not seized from the petitioner and the Investigating agency failed to produce any material to show as to how the A.2 is connected with the case and the presence of A.2 at the alleged place of trap shows he was set up with no nexus between the petitioner-A.1 and the A.2. There is no material to establish that the petitioner received the application for survey of land from L.W.1-defacto-complainant on 28.06.2012. The statement of L.W.2-G.Shankaraiah-the AO, shows the application was handed over in the inward section and the documentary evidence covered by tour diary of A.1 establishes that he was on official tour to Bommareddypalli and the very demand of bribe is not established prima facie. The statement of LW-1 that the petitioner issued notices to the neighbouring land owners on 7.01.2013 for survey of land on 10.01.2013 but the prosecution failed to produce said notices in the chargesheet along with other documents which gave suspicion to the genesis of the prosecution. The claim of the Investigating Officer-L.W.14 and LW-1 that due to non-payment of bribe amount by LW-1, the petitioner did not cause survey is false for the reason that the documentary evidence establishes that the petitioner was on tour and following the L.W.3-Assistant Director. The failure on the part of the L.W.1 to give dates and times of alleged demand except stating he approached the petitioner three times and all the time reiterated the demand of bribe, is false and the proceedings are nothing but abuse of process since there was no any demand much less acceptance. However, the unexplained delay of 7 months in approaching the ACB police from the date of alleged first demand of 28.06.2012 to the date of lodging report on 23.01.2013 is fatal so also the unexplained delay of 5 days in registering the case from the date of 23.01.2013 to the date of FIR i.e. 28.01.2013. Further there is no prosecution witnesses that spoke to the allegation of demand of bribe by the petitioner in their presence at any point of time to give credence to the L.W.1's version and the so called report of L.W.1 itself apparently manipulated one with false story by interpolation of date 23.01.2013 and amount of Rs.8,000/- to lay false trap to implicate the petitioner. The fact of absence of the petitioner in the office when the L.W.1 entered the office at 15.40 hours and again going into the office at 17:00 hrs and drafting of any proceedings by the DSP, ACB during the interregnum period gives raise to suspicion to the trap. The non-conducting of phenolphthalein test on the notices allegedly handed over by the petitioner to the L.W.1 immediately after receiving the bribe amount gives raise to suspicion. The

documentary evidence that covered by tour diary dt.28.06.2012 establishes that the petitioner was on official duty to Bommireddypalli whereas L.W.1 claims that he met the petitioner on the above date at his office which is false so also the demand of the bribe. There is no mention of time, place of meeting of the petitioner by L.W.1 on 28.6.2012 and demand of A.1 for bribe amount of Rs.10,000/- stated in the 164 CrPC statement of L.W.1 shows that the L.W.1 did not meet the petitioner on the above date. As per the prosecution case, the bribe money was received by the petitioner-A.1 from the L.W.1 and counted and handed over to A.2 who kept the same in his pant pocket but in the 164 CrPC statement, it is clearly mentioned that the bribe money was received by A.2 on the instructions of A.1 and counted it and kept in his pant pocket which is contradictory to the so called acceptance and it is suffice to quash the proceedings. The fact of non-mentioning of presence of kerchief with L.W.1 before proceeding for trap in the MRI clearly goes to show no signal was given with kerchief and the proceedings are false. The L.W.1 falsely stated that he met the petitioner on 09.01.2013 on which day the A.1 reiterated the demand of bribe, but on that day the petitioner was on tour to Garripalli on office work that is borne out by tour dairy and thus the alleged demand is false. There is no mention in MRI that sodium carbonate powder was taken to the scene of offence and without which, no chemical test can be conducted and what is mentioned in MR-II that the D.S.P. got prepared Sodium Carbonate Solution in four glass tumblers separately with the help his staff and asked the petitioner and A.2 to rinse their hand fingers separately in the said four glass tumblers and upon which the colourless solution in the four glass tumblers turned into pink colour and the very procedure adopted testing the hand fingers of both the accused simultaneously is wrong and the said test is not accurate and liable to be rejected. The file relating to the survey of lands of L.W.1 stated as seized by DSP after trap from the possession of the Administrative Officer-L.W.2, clearly establishing that had the petitioner got any interest and demanded money from L.W.1, he would have kept the file with him. There is no intentional delay caused by the petitioner in causing Survey, since they are about 200 surveys relating to 8 Mandals of Peddapalli Revenue Division under the control of the petitioner and those pending files were long prior to the application of the L.W.1 which is borne out by the made up file No.5 produced along with charge sheet and hence continuation of proceedings is abuse of process of law. The ACB officials chose to falsely trap the petitioner by using the L.W.1 who is a rank criminal involved in number of criminal cases including a case in S.C.No.112/2013 on the file of Addl.Sessions Judge, Godavarikani in which he was convicted for life imprisonment and undergoing the sentence in central prison, Warangal. The ACB officials did not verify the antecedents of L.W.1 so also of the petitioner-A.1. The complainant is a criminal involved in a murder case covered by Cr.No.306/2010 of Godavarikani Police Station that was not even find place in the so called investigation and final report. Though verification of antecedents is mandatory, there is no record showing mediators to the panchanamas 1 and 2 obtaining necessary permissions from the superiors in attending pre-trap and post-

trap proceedings. Further as per the Section 164CrPC statement of L.W.1 no written complaint was given to the ACB officials, Karimnagar against the A.1 and thus the very crime proceedings and pre-trap and post-trap proceedings are unsustainable including cognizance order of the learned Special Judge, from the police final report with no basis and there is no necessity to the petitioner to be put to ordeal of trial and to subserve the ends of justice, the case proceedings are liable to be quashed.

6. The counter filed by the respondent/ (ACB Inspector) in saying from the investigation there is a sustainability of accusation from which the sanction order obtained and chargesheet filed and taken cognizance by the learned Special Judge in allotting Calander Case number supra. The Investigating Officer conducted proper investigation and prepared chargesheet that is forwarded to DG, ACB, who after examination forwarded the same to Government for sanction and sanction orders were issued from which the chargesheet filed in Court. As per mediators report, the A.1 asked the defacto-complainant whether he brought the demanded bribe amount and the complainant took the wad of currency notes from his left front pant pocket with his left hand and handed over to the A.1 who accepted the same with left hand and handed over to A.2 with his right hand with instructions to count and kept with him and the A.2 counted with his both hands and kept in his right front pant pocket. The mediators report to contain the proceedings with independent witnesses who are Government officials but there was no necessity to incorporate which is not happened. The ACB officials rushed to the office of the A.1, after receiving signal from the complainant, A.2 was present in the office of A.1 along with A.1, but if the A.2 was unknown to A-1 how and why the A.2 was present in the office of the A.1 along with A.1 after office hours and in the post trap proceedings, the A.1 did not take a plea of he did not know the A.2 and if the A.2 was unknown to him, he would have told and there is no need for ACB officials to set up the A.2 and there is no enmity or previous acquaintance between the A.1 and the ACB Officials, to accept such a false contention in the quash petition grounds. The L.W.2 nowhere stated in his 161 Cr.P.C. statement that the application was handed over in the inward section, just he disclosed the procedure of processing file for survey of the land and fixing the boundaries. The A.1 was trapped on 28-01-2013 and requested him about his work, but the A.1 officially received the file on 02-07-2013 and kept pending the file with him for 06 months in order to obtain illegal gratification. As per the 161CrPC statement of witnesses with reference to the documentary evidence on record, the A.1 issued notice dt.10.01.2013 for survey and demarcation of boundaries but did not visit the field as the complainant did not arrange the bribe amount prior to that and if he did not demand the bribe amount, he would have visited the field to conduct survey on 10.01.2013. The office of A.1 was at Peddapally. The distance between Peddapally to Bommareddypalli is about 32 Kms and as per the tour diary on 01.01.2013 to 31.01.2013(File No.4) the A.1 wrote on 10-01-2013 to survey the land at Gattepally in Sy,Nos.531 and 535 and strike off. It seems that the A.1 fixed the date for survey and issued notices Dt.10-01-2013

and when L.W.1 failed to provide the demanded bribe amount on prior date, he did not visit the land for survey. As per documentary evidence on record, the A.1 fixed date for survey on 10-01-2013 but as per complaint version, when he failed to provide bribe amount on 09.01-2013, he did not conduct survey on 10-01-2013. If the A.1 was on tour and followed the Assistant Director, he would have informed the same on previous date, but he did not do so. When the L.W.1 did not provide the demanded bribe amount, the A.1 strike out the entire row of Dt.10-01-2013. If the L.W.1 had an intention to trap the A.1, he would have remembered exact date and time but he was willing to get his work done by the petitioner, as such he met the petitioner about 2 to 3 times, when he made rounds, he vexed with the attitude of A.1 as he was reiterating his earlier demand for which he approached the ACB officials. If the complainant wants to get to trap the A.1, he would have approached the ACB officials on the very next day itself when the A.1 demanded the bribe amount to do official favour. The L.W.1 was roaming around the A.1 from 28-06-2012 till the date of trap and A.1 was avoiding to survey after fixing the date for survey in order to obtain illegal gratification. After 28-06.2012 the L.W.1 met the A.1, two or three times but the A.1 reiterated his earlier demand. Again the L.W.1 met the A.1 on 07-01-2013 about his work and after persistent request, the A.1 reduced the bribe amount from Rs. 10,000/- to Rs. 8,000/- in fixing date to survey on 10.01.2013 for non-payment by 09.01.2013 by the L.W.1. On 23.01.2013, the L.W.1 requested the A.1 to fix date so that he can arrange the amount on that day and the A.1 stated unless pays the bribe amount, he will not fix date and on 28.01.2013 when the L.W.1 paid the amount, the accused fixed date and issued notices and the L.W.1 in his examination before the Investigating Officer before the Magistrate stated in support of his report. Thus There is no any non-explanation of delay of 05 days. If the A.1 did not receive bribe amount, why both hand finger wash of A.1 who was subjected to chemical test yielded positive result. The tour diary of A.1 clearly proves the payment was accepted on 10.01.2013 for survey as per the complaint for non-payment of bribe amount by 09.01.2013 and if really the A.1 went along with the Assistant Director for survey, he would have informed to the neighbouring land owners by issuing notices to whom the A.1 issued notices that he would not be coming for survey, but he did not do so which shows he demanded and it was not meted out and the statement of neighbouring land owners established the same. There is no previous enmity or acquaintance between the ACB officials and the A.1 and no necessity for ACB officials to file false trap against the A.1 and no need to interpolate the date and bribe amount. During the post trap proceedings, when both the hand fingers of A.1 were subjected to chemical test and it yielded positive result, the recovery was made from the pant pocket of Personal Assistant of A.1. When gone through the connected file which was seized during the post trap proceedings, the A.1 kept the file pending with him at about 6 months. All the material collected during the investigation proved the allegation against A.1. Therefore the ACB Officials laid trap against the A.1I by manipulating the report is false and baseless. The absence of A.1 at 15.40 hrs and was seen entering into the office at

17.00 hrs, was disclosed by both mediators in the MR-II proceedings. During the interregnum period no need to draft proceedings, when there were no specific events and happenings and the contention in this regard is false and baseless. After giving signal by L.W.1, the trap party rushed into the office of the A.1 and while entering so, the DSP, ACB instructed L.W.1 to wait outside in a little distance for some time. The DSP, ACB did not know about the handing over notice by the A.1 to the complainant after accepting of bribe amount. The DSP ACB came to know about the above fact while recording the version of L.W.1 who went into the office of A.1 with tainted amount only which was kept by Police Constable, except that nothing carried by him which seems that after accepting bribe amount, the A.1 handed over notices to him. The phenolphthalein test conducted on the hand fingers of A.1 and pant pocket of A.2 is sufficient and the contention of the A.1 thereby in the quash petition is untrue. The L.W.1 never stated either in the trap proceedings or in his statement before the Investigating officer or Magistrate of he handed over the bribe amount to the A.1, in turn A.1 counted and gave it to the A.2 and on the instruction of A.1 for A.2 counted it and kept in his pant pocket, what L.W.1 stated is the A.1 took with his left hand and handed over to A.2 with his right hand to count and keep with him. The mediators report with one of pre-trap proceedings speaks about instructions of DSP where in case the DSP demands and accepted tainted amount asked L.W.1 to give signal by wiping his face with kerchief, it shows that he got handkerchief and non-mentioning of kerchief with the L.W.1 in the trap proceedings is not fatal. The distance between Garrepally to office at Peddapalli is at about 21 kms. The A.1 might have gone there and returned to office within one or two hours and tour diary did not contain time of visit to Garrepalli. The post-trap proceedings contains what was happened after the trap laid and tainted currency seized and the contra-contention of the A.1 in the quash petition is untrue. If the petitioner got 200 survey files pending, why he fixed date on 10.01.2013 but for L.W.1 could not provide bribe amount as demanded in not conducting. The L.W.1 merely because involved in SC No.112 of 2013 and convicted when he was on bail by the time report given to the ACB officials and at the time of trap the L.W.1 was studying LLB, at KMR Law College at Hyderabad and prior to one year back he was convicted in S.C.No.112 of 2013 that is after four to five years of trap. The Kerala High Court in K.Balaji Agarwal Vs. State of Kerala dt.26.10.2010-held that the complainant involved in other cases and not a person of good character not by itself a ground to reject the complaint. The ACB officials conducted discreet enquiry with regard to the genuineness of the report, reputation of A.1 and antecedents of L.W.1 and found the contents of the report, genuineness and antecedents of L.W.1 are good and reputation of A.1 is suspectable, leave about the criminal conduct of L.W.1 will not have any impact on the trap proceedings, the L.W.1 in his statement before the Magistrate stated that during pre-trap proceedings, DSP introduced the Government employees as mediators and gave copy of complaint to the mediators who confronted the contents to L.W.1 which shows without lodging a report by the L.W.1 what is need to ACB officials to lay trap

and the contentions are therefore false and there are no grounds to quash the proceedings that too after commencement of the evidence of L.W.1 as P.W.1 in chief in part by posted for further chief-examination.

7. Heard both sides at length with reference to the above and perused the entire material on record.

8. So far as the first contention of maintainability of the quash petition from the version of L.W.1 was examined in chief in part as P.W.1 and taken time for further chief examination that is not a bar as quash petition can be filed at any time after registration of the FIR and before end of trial and the same truth was reiterated by the Apex Court in Umesh Kumar Vs. State of AP (2013 (10) SCC 591.).

9. Undisputedly, as per the constitution Bench expression of the Apex Court in Lalita Kumari Vs. State (2014) 2 SCC 1) it is the duty of the ACB officials in the cases under the PC Act, to verify the antecedents of the accused officially. In fact once the report was received on 23.01.2013 as per the very version of the prosecution from the endorsement on the report page No.2, the endorsement on 23.01.2013 at 17hours speaks informed the above facts and contents to Joint Director, ACB, Hyderabad over phone and as per his instructions further action will be taken after due verification of the reputation of the officer. The very endorsement itself is sufficient to say antecedents of the complainant not at all verified. What is mentioned in the counter to the quash petition saying as if antecedents of the complainant which verified and good and nothing but false per se that too when admitting the L.W.1 is involved in a murder case covered by Cr.No.306 of 2010 in S.C.No.112 of 2013 on the file of the Addl. Sessions Judge, Godavarikhani, thus by the time of the report dated 23.01.2013 referred supra by L.W.1 received by the DSP-L.W.14. there is a charge sheet filed and committal proceedings pending if not Sessions Case number outcome of Cr.No.306 of 2010 of Godavarikhani and it could have been revealed at the antecedents of the informant which is supposed to be verified as per the expression of the Lalita kumari supra even otherwise allegedly verified, baseless to say as if good antecedents despite the crime admittedly pending from 2010 from very counter version. There is nothing to show either from the pre-trap proceedings or in endorsement by the DSP or the Inspector, after 23.01.2013 before registration of crime on 28.01.2013 if at all the antecedents of A.1 verified as to what was his previous history. The mere mention in the counter as antecedents are suspectable is nothing but false and baseless in the absence of any whisper by any record including in the police final report. The ACB officials abdicated their mandatory responsibility on verification of the truth of report before laying trap so also antecedents of the complainant first than that of the alleged accused which are liable to be verified as per Lalita Kumari supra. As per the expressions of the Apex Court in P.Sirajuddin Vs. State of Madras (AIR 1971 SC 520)whatever be the status of a public servant, is publicly charged with acts of dishonesty etc., which amount to serious misdemeanour or misconduct under the PC Act of any type of allegation in the case and the first information is lodged

against him, there must be some suitable preliminary enquiry into the allegations of a responsible officer. The lodging of such a report against a person, specially one who like the official occupied top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to in general. If the Government had set up a vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner. It is observed further that the officer who is conducting discreet enquiry on the allegations in the report against the public officer, must not act under any pre-conceived idea of guilt of the person whose conduct was being enquired into or pursue the enquire in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction. It is categorically observed that the means adopted no less than the ends to be achieved must be impeccable. In Lalita Kumari supra, further held that neither the chargesheet nor the FIR, referred any role much less advertent antecedents of the A.1-petitioner. From the above, it is clear that there is nothing to show any bad antecedents of the petitioner/ A.1 and there is criminal record of the informant-L.W.1 who was accused of a grave crime of murder which occurred nearly three years prior to the said report which gives impact on the credibility of the version of L.W.1.

10. In fact, the very report of L.W.1 received by the L.W.14 on 23.01.2013 speaks the L.W.1 is a student aged 25years and not even mentioned as cultivator. His father Mallaiah is alive and examined as per the prosecution as L.W.8. The counter filed by the ACB Officials shows the L.W.1 is a law student. Even the L.W.8-Mallaiah, father of L.W.1 shown aged 60 years, a retired employee in Singareni calories. Thus the L.W.1 and 8 are not laymen but educated and know men and matters. In this background, the Court has to consider the material to see any justification or not to lay trap proceedings.

11. From the above, the very report of L.W.1, dt.23.01.2013 speaks he applied and obtained challan for Rs.350/-dt.20.06.2012 for the purpose to cause fixating of boundaries of the land of his father and therefrom he says that he approached the petitioner/A.1-Deputy Inspector of Survey. In fact, the proceedings of the RDO, Peddapalli dt.30.06.2012 speaks G.Mallaiah(L.W.8 not L.W.1 his son) filed a petition before the RDO for demarcation of his land by paying Rs.350/- towards challan No.5106, dt.20.06.2012. Therefore, the A.1 has to conduct survey to demarcate within seven days. The proceedings of the RDO were issued on 30.06.2012 for the first time bearing No.C/3313/2012 addressed to the A.1 and copy marked to Mallaiah-L.W.8. This clearly shows the very version of the complainant-L.W.1 of he addressed application to the A.1 on 28.06.2012 is false. In fact, his father Mallaiah that applied to RDO. Further it is the proceedings of RDO, dt.30.06.2012 to complete the survey and demarcation within one week. Once a copy of it marked to L.W.8 and if at all

prior or after 30.06.2012 L.W.8 would have approached the A.1 if not on his behalf by the L.W.1 within one week therefrom, to say in the first week of July, 2012 itself. If at all the survey was not conducted from the time fixed by the RDO, L.W.8, father of L.W.1 being a retired employee in Singareni Calories and the L.W.1 leave about his antecedents are accused in murder case of 2010 a student of law, should have approached the RDO, with a complaint for non-completion of work. What the FIR says is for the first time the L.W.1 met A.1 on 07.01.013 which is nearly six months after RDO Proceedings and there is no meaning to believe said version of him in the report of meeting after such a long time that too in saying allegedly met on 28.06.2012 itself having given the application for survey and the A.1 allegedly demanded bribe and reiterated when six months later as referred supra. The very giving of application by the L.W.1 to the A.1 on 28.06.2012 to cause survey of his land is false as application given by the L.W.8 to the RDO and the RDO directed on 30.06.2012 the A.1 to conduct survey and demarcate within one week and marked copy to the L.W.8. Had the veracity of the complainant verified by the ACB officials, the very report shows something is behind and untrue for very giving of report on 28.06.2012 approaching the A.1 by L.W.1 to survey is false so also on that day the demand by the A.1 to L.W.1. In this context it is also to mention that it is not the prudence of a common man to infer u/sec.3 of the Indian Evidence Act, of keeping quiet even demanded on 28.06.2012 when approached by L.W.1 to A.1 with application for survey, Rs.10,000/- as bribe, keeping quiet if at all not willing and if at all to pursue in his case as to when subsequently he met was in between 7.01.2013 in 6 months gap allegedly thrice he did not mention where, when, how and what is the version of accused for nothing to say in between also any such demand and for nothing to say despite repeated demands more than thrice why he again approached on 07.01.2013 and why he did not give any report, leave about no application for survey allegedly given by the L.W.1 to A.1 on 28.06.2012 filed. Neither L.W.8 nor L.W.1's complaint to RDO for survey is not filed if at all pursuant to the proceedings of RDO, dt.30.06.2012. Even coming to the FIR version in its background in addition to the above showing hard to believe said version of complainant for no ordinary prudent man will act in such a way and even taken for arguments sake, he went again on 07.01.2013 despite several repeated demands by the A.1 of Rs.10,000/- bribe and persuaded to pay Rs.8,000/- and agreed for it to fix date as 10.01.2013 to pay amount by 09.01.2013. Admittedly he did not pay by 09.01.2013. What could be his conduct if not paid on 09.01.2013 pursuant to the demand on 07.01.2013 fixing the date of survey on 10.01.2013 to payment on 09.01.2013, he should have at least approached the ACB officials or RDO for not conducting survey despite proceedings, dt.30.06.2012 to conduct within one week. It is hardly believable of even no survey conducted pursuant to the notice dt.10.01.2013 for the alleged non-payment of the bribe amount on 09.01.2013 as agreed by the L.W.1. There is no meaning in his waiting till 23.01.2013 in giving report to the ACB officials after 10.01.2013 for about 13 days. Not only that, the so called notice fixing date for survey 10.01.2013 issued and even mentioned in the tour diary of A.1

of time fixed to conduct survey on 10.01.2013 it was stated struck off the date accepted to conduct survey on 10.01.2013. It is not even the case of the ACB officials despite quash petition averments of therefrom about 100 applications for survey and demarcation pending entrusted to him by the RDO and he has to proceed in priority and application of the complainant is far below in priority. Once such is the case even any date tentatively fixed to the complainant, how the ACB officials can say in the chargesheet without basis as if the version of the criminal antecedents of L.W.1 good who did not show about applying in writing to A.1 much less on 28.06.2012 but for his father L.W.8 that too to the RDO in fixing the date for not even conducted, instead of approaching the RDO approaching to A.1, can give to the alleged inference of giving amount of bribe of Rs.8,000/- agreed by L.W.1 to A.1. It is baseless inference that no prudent man would give but for otherwise and it if at all aggrieved by the L.W.1, what could be his conduct of a prudent persons immediately after 10.01.2013 having bribe amount to approach the ACB officials instead of waiting for 13.06.2013, that itself shows something behind to implicate the petitioner by the L.W.1 with criminal antecedents taking advantage of his father applied to survey to the RDO in 2012 with challan dated 20.06.2012 for which the RDO fixed by proceedings dated 30.06.2012 to conduct survey within one week therefrom for A.1 busy with other applications and tours could not conduct survey for such animosity and also behind, the investigation is totally tainted and influential and prejudicial mind including with no preliminary enquiry which is prior to what is laid down by the expressions of the Apex court in Sirajuddin and Lalita Kumari supra. Not only that before coming to the allegations of trap, a perusal of the FIR no way mentions that any GD entry made even information received on 23.01.2013 at 17.00 hours by the L.W.14 despite the expressions of the Apex Court Constitution Bench Lalita Kumari supra making of GD entry and conducting of trial and enquiry, it clearly shows some report with ante-date with some extraneous reasons apparently outcome as if received on 23.01.2013 in laying trap and registration of crime on 28.01.2013 and subsequent dispatch of FIR.

12. Not only that if at all on 23.01.2013 report received, leave about the alleged statement if not from alleged enquiry of the antecedents of the L.W.1 good and the accused are suspectable, why the FIR not registered and submitted to Court when shows a prima facie accusation if not chosen to make GD entry and straightaway issued the FIR. There is nothing even as to what is the enquiry conducted and who conducted with regard to the antecedents of the complainant after 23.01.2013 which must find place in the chargesheet with some basis leave about at least in FIR with a note which is lacking to say the ACB officials proceeded with pre-judicial mind from beginning either for statistical purpose or otherwise, rather than conducting preliminary enquiry supposed to conduct on receiving report if at all received on 23.01.2013 leave about no meaning waiting to lay the trap after 5 days till 28.01.2013. In fact, the statement of L.W.3-Assistant Director who is immediate superior to A.1 as if stated of A.1 failed to visit the land and conduct survey as fixed on some pretext and demanded Rs.8,000/- as bribe from the

complainant, a law student, for demarcation of their land and was trapped for not even witness to any of it, not even a case that the antecedents of A.1 are bad and earlier there are no such complaints or he was earlier even indulged in such extraneous demands or avoiding work. It is nothing but introduced as if their statement by mentioning name of the witnesses to suit the prosecution purpose as a basic preparation on its face from its reading. The duties of the Deputy Inspector of Survey-the petitioner mentioned are that Inspection of the work of Mandal Surveyor, Town Surveyors, Special Surveyors, Technical Scrutiny of Sub-Division records and supervision of incorporation of changes in both village and Mandal level records, overcheck of plotting sub-divisions in Villages/Mandal records, Detailed and general check of village accounts, scrutiny of survey errors, detection of missing Theoldolite section, Enquire into complicated boundary disputes, Inspection of village stone depots, appeal cases on 'F' line/ demarcation, court commissions, monthly review of progress of work of Mandal Surveyors and passing of diaries of Mandal Surveyors/Special Surveyors through centre check and Attending inspection of Revenue and Survey Officials. Had it been taken true, there is no necessity of any duty to the A.1 to conduct field survey and demarcate the boundaries but for to depute the subordinates viz; Mandal Surveyors, Town Surveyors and Special Surveyors etc., in his Range or Division and is it believable that the A.1 has to conduct survey?. Coming to L.W.2, the Administrative Officer stated that he is working only from 27.06.2012 in that capacity usually any pattadar to get boundaries of his land fixed has to pay challan of Rs.350/- and give along with representation in the inward section of the RDO office and from those the papers will be sent for signature of RDO and after RDO signature, that will be sent to C-wing to Junior Assistant who puts up file and sent to the Deputy Inspector of Survey with memo to fix boundaries and report. Then the Deputy Inspector prepares notices to be issued to the adjacent pattadars and hands over them to the concerned surveyor and the Deputy Inspector visits to the land and cause survey on the scheduled date and time in the notice. This statement itself is crystal clear that the role of the Deputy Inspector is only after receiving proceedings from the RDO office, fix date and send notices to adjacent land owners and depute a surveyor to conduct survey. Thus what the complainant averred of the so called investigation of the ACB officials disclose that the A.1 has to conduct survey and wanted to conduct survey and failed to come on the scheduled time and date in the notices fixed for the survey on 10.01.2013 and it might be for the reasons of alleged non-payment of alleged bribe amount is baseless and the mechanical investigation by the ACB officials is without even little application of mind to the material.

13. Not only that coming to the report of the defacto-complainant, the statement recorded by the L.W.14 and by the Magistrate L.W.12 under 164CrPC respectively concerned, his report referred supra further speaks the most unbelievable part of allegedly he went on 28.06.2012 and the petitioner demanded the amount of Rs.10,000/- and later thrice went and reiterated the demand allegedly on 07.03.2012 again went after six months gap to the original date of 28.06.2012 and

from his plea and bargain, reduced the demand to Rs.8,000/- allegedly fixed to pay by 09.01.2013 and as failed to pay and allegedly he could understand for survey not conducted on 10.03.2013 without payment he will not conduct survey. Even then that too being a law student not a layman why he did not approach in writing either RDO or ACB officials immediately what made him to wait. Even coming to his version, it is 13 days later again went and asked to fix date for survey is meaningless for not even his case that on that he paid amount and therefrom any notice issued to conduct survey. It is his version that it is only then he went to the ACB officials. It is hardly believable from what is discussed supra. Further when the tour diary itself shows the A.1 was on tour on 23.01.2013, it is difficult to say without ascertaining from the L.W.1 what is the time, when and where he met A.1 on that day. In fact, notice for conducting survey and boundary demarcation issued on 24.01.2013 fixing the date 31.01.2013 and copy marked to L.W.8, Tahasildar, RDO and the boundary proceedings by referring earlier RDO officers in letter and directing demarcate. Once notices issued on 24.01.2013 itself with the signature of A.1 fixing the date of survey on 31.01.2013, is it believable of date fixed for payment of the bribe on 28.01.2013. Is it believable of earlier even date fixed for 10.01.2013 subject to payment by 09.01.2013 and for not paid, having cancelled the so called survey as per the alleged versions, issued notice fixing a date without payment of bribe. Despite the above version thereafter even when went and asked, A.1 stated without payment survey not be conducted when survey not chosen to be conducted, is it believable of notices issued.

14. The very giving of notices of 24.01.2013 fixing date on 28.01.2013 itself shows the alleged demand in between to fix on payment 28.01.2013 is nothing but false so also need to give report on 23.01.2013 and even the antecedents of the complainant, truth of the complaint, whether notices sent or not, what is the date fixed for survey were verified, it could be known of the notices dated 24.01.2013 which is immediately on the next date of the report dated 23.01.2013 and four days prior to the so called trap on 28.01.2013. Thus the very version of payment of amount fixed on 28.01.2013 is baseless to believe. When that is the version highly unbelievable from the very report, coming to the statement of L.W.1-complainant before Investigating Officer, he did not even whisper that notices dated 24.01.2013 issued by the A.1 and also none of the witnesses up to L.Ws.4 to 8-the father of the complainant and the boundary owners, fixing the date of survey on 31.01.2013. The Investigating Officer not properly investigated much less collected either from L.W.1 or 3 the so called written report of L.W.1 to A.1 on 28.06.2013 or written requisition of L.W.8 to the RDO from which the RDO fixed by proceedings dated 30.06.2012 directing the A.1 to cause survey within one week and as per the statements of L.Ws.2 and 3, the A.1 is the supervisory authority among the surveyors to depute the surveyors to the field to cause survey and not the person so to conduct survey and no direct application to A.1 that could be made but for to the RDO and from which after they process, they direct the Deputy Inspector to cause survey is the A.1 to depute any of the surveyors. Thus entire version in very report and the statement of

L.W.1 and L.Ws.4 to 8 in this regard besides no consistency is quite unbelievable. Coming to his 164 CrPC Statement before the Magistrate, it is also not consistent to the report supra for the reasons supra and also from what is contended in the quash petition grounds for the respondent officials to dispute with no basis, of so called meeting of the L.W.1 to A.1 not correlating with as pointed out in ground Nos. 11 to 17 in the quash petition.

15. From the above, even coming to pre and post trap proceedings importantly the tainted currency according to the prosecution version given to the L.W.1 to pay to the A.1. According to the post-trap proceedings, the LW.1 allegedly given to the A.1 with his hands. If true, the Phynapthaline test to be conducted to rinse his hands also to get positive result, that was not shown conducted and not only that if at all the tainted currency held by him with his hands and handed over to the A.1 and with them wiped out his face with kerchief, the kerchief must have remnants of the material which is on the tainted currency through hands to the kerchief to pass, the kerchief also was subjected to Phynapthaline test that was not done. Not only that there is a delay of 10 days to the examination of the L.W.1 u/sec.164 CrPC with version therein different to the FIR and 161 CrPC statement before the L.W.14. The two versions one showing as if L..W.1 directly paid to A.1 and who held with one hand and pass to A.2 or directly asked to pay to A.2 or A.2 received and counted that also belies the very versions on the credibility and genesis of the prosecution. Once such is the case, any version of so called Phynapthaline test as if conducted and yielded positive result is unbelievable. Can it infer any demand which is pre-requisite without which even any person accused to so called cause and wanted to pay and even held for the time being and not chosen to receive would not be inferred the demand and acceptance from the so called test results. A test result to the hands of A.2 or tainted currency in his pant pocket will no way suffice to fix the A.1 as a person demanded and accepted any bribe which is a pre-requisite. The L.W.8 statement is only hearsay. It is not even his case that he went along with L.W.1 as no independent means. It is not even the case of L.W.8 that he has given the amount to L.W.1 to pay the bribe which are also contextually relevant. Not only that, the version of the Investigating Officer of immediately after the so called payment of bribe amount either to A.1 or at his instructions to A.2 by L.W.1, the A.1 allegedly prepared notices and handed over to L.W.1 fixing date for survey in a future date. Had it been true, immediately after payment by the L.W.1 holding that the tainted currency if held, the paper prepared immediately by the A.1 and given to L.W.1 that also would contain the substance of the material which was also supposed to be subjected to the test. Not only that the post-trap proceedings no way contain that which is crucial that it is a version created otherwise. The contention in the counter as if L.W.14 asked the L.W.1 for time being to wait outside and conducted post-trap proceedings and does not know to mention about the tour as notices handed over by the A.1 to L.W.1 to cause survey fixing a future date concerned, even it relates to notices dated 24.01.2013 fixing date on 31.01.2013. At least if it is true, the L.W.14 could know by ascertaining from the L.,W.1

what happened, the so called examination of the L.W.1 by the L.W.14 u/sec.161 CrPC is even alleged on 28.01.2013 what is mentioned is the A.1 told that he will issue notices to neighbouring agriculturists on 31.01.2013 at 10.00A.M. for fixation of boundaries to be completed on that date and he took photostat copies of the same and stated to handed over to the VRO and inform to serve to boundary owners, then came outside and wiped off his face with kerchief as a signal for the trap party. Had it been true, the notices on his hand besides kerchief which is apparent, could it be possible to L.W.14 at least to ask if before trap or immediately after trap and caught hold of A.1 or A.2 from L.W.1 to know what are the papers, could it be believed that the L.W.1 was kept out of the area even after completion of the post-trap proceedings. All these infirmities goes to the root of the matter. In fact the Apex Court Constitution Bench in P.Sathyanarayana Murthy Vs. District Inspector of Police State of Andhra Pradesh (2015) 10 SCC 152) to Sections 7 (1) (d) of the PC Act, referring to Section 13 of the PC Act, acquitted the accused on the ground of quality and decisiveness of the proof of demand of illegal gratification and acceptance of bribe in a trap cases where even tainted currency allegedly recovered and Phynapthaline test yielded positive result by saying proof of demand of illegal gratification. Even if evidence of accused as accepted tainted currency, on the face value it falls short of the quality and decisiveness of proof of demand of illegal gratification. Thereby the accused cannot be found guilty for prosecution failed to prove both the demand and acceptance.

16. In B.Jayaraju Vs. State of AP (**2014 (13) SCC 55)** for the offences u/sec.7,13 (1)(d) read with 20 of the P.C.Act, where the accused was prosecuted based on a report and when there is no proof of demand for illegal gratification even mere recovery of tainted currency notes from accused did not establish commission of offence and as demand of illegal gratification when not proved beyond reasonable doubt, the accused cannot be convicted and it must be proved pursuant to the demand there was acceptance by voluntarily accepting money knowing it to be a bribe to constitute the ingredients of Section as held by the earlier expression of the Apex Court in C.M.Sharma Vs. State of A.P. (2010 15 SCC 1), C.M.Girish Babu Vs. CBI (2009) 3 SCC 779), that was placed reliance to quash the proceedings and the same is also the position of law reiterated in Mukhtiar Singh Vs. State of Punjab (2016 11 SCC 357) and State through CBI Vs. Dr.Anoop Kumar Srivastava (2017 15 SCC 560).

17. Having regard to the above, as the ends of justice are more than sacrosanct, to subserve the ends of justice and to prevent abuse of process, the criminal proceeding pending against the petitioner are liable to be quashed.

18. Accordingly the Criminal Petition is allowed by quashing the proceedings in C.C.No.178 of 2015 on the file of the Learned Special Judge for SPE & ACB Cases at Karimnagar, outcome of Cr.No.04/ACB-KNR/2013 of Anti Corruption Bureau (for short, 'ACB'), Karimnagar Range, Karimnagar. The accused is acquitted and his bail bonds shall stand cancelled. Consequently, pending miscellaneous petitions, if any, shall stand closed.

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completing the chain of evidence, unless the witness(es) is obliterating the role of persons already facing trial. More so, Section 299 CrPC enables the court to record evidence in absence of the accused in the circumstances mentioned therein.
92. Thus, in view of the above, we hold that power under Section 319 CrPC can be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence."

7.6 While answering question No. (iv), namely what is the degree of satisfaction required for invoking the power under Section 319 of the CrPC, this Court after considering various earlier decisions on the point, has observed and held as under:

105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."

7.7 While answering question No. (v), namely in what situations can the power under Section 319 of the CrPC be exercised: named in the FIR, but not charge-sheeted or has been discharged, this Court has observed and held as under:

"112. However, there is a great difference with regard to a person who has been

discharged. A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation, the court had come to the conclusion that there is not even a prima facie case to proceed against such person. Generally, the stage of evidence in trial is merely proving the material collected during investigation and therefore, there is not much change as regards the material existing against the person so discharged. Therefore, there must exist compelling circumstances to exercise such power. The court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 CrPC without resorting to the provision of Section 319 CrPC directly.

116. Thus, it is evident that power under Section 319 CrPC can be exercised against a person not subjected to investigation, or a person placed in Column 2 of the charge-sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 CrPC without taking recourse to provisions of Section 300(5) read with Section 398 CrPC."

7.8 Considering the law laid down by this Court in the case of Hardeep Singh (supra) and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under Section 319 of the CrPC even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 of the CrPC, provided from the evidence (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial.

7.9 In the case of S. Mohammed Ispahani v. Yogendra Chandak (2017) 16 SCC 226 in para 35, this Court has observed and

held as under:

"35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge-sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet. Once that stage has gone, the Court is still not powerless by virtue of Section 319 CrPC. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused."

7.10 Thus, even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial Court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of Section 319 of the CrPC and even those persons named in the FIR but not implicated in the charge-sheet can be summoned to face the trial provided during the trial some evidence surfaces against the proposed accused.

8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that, in the facts and circumstances of the case, neither the learned Trial Court nor the High Court have committed any error in summoning the appellants herein to face the trial along with other co-accused. As observed hereinabove, the appellants herein were also named in the FIR. However, they were not shown as accused in the challan/ charge-sheet. As observed hereinabove, nothing is on record whether at any point of time the complainant was given an opportunity to submit the protest application against nonfiling of the charge-sheet against the appellants. In the deposition before the Court, P.W.1 and P.W.2 have specifically stated against the appellants herein and the specific role is attributed to the accused-appellants herein. Thus, the statement of P.W.1 and P.W.2 before the Court can be said to be "evidence" during the trial and, therefore, on the basis of the same and as held by this Court in the case of Hardeep Singh (supra), the persons against whom no charge-sheet is filed can be summoned to face the trial. Therefore, we are of the opinion that no error has been committed by the Courts below to summon the appellants herein to face the trial in exercise of power under Section 319 of the CrPC.

9. Now, so far as the submissions made on behalf of the appellants herein relying upon the orders passed by the learned Magistrate dated 01.09.2016 and 28.10.2016 that once the appellants herein were discharged by the learned Magistrate on an application submitted by the Investigating Officer/SHO and, therefore, thereafter it was not open to the learned Magistrate to summon the accused to face the trial in exercise of power under Section 319 of the CrPC is concerned, it appears that there is some misconception on the

part of the appellants. At the outset, it is required to be noted that the orders dated 01.09.2016 and 28.10.2016 cannot be said to be the orders discharging the accused. If the applications submitted by the Investigating Officer/SHO and the orders passed thereon are considered, those were the applications to discharge/release the appellants herein from custody as at that stage the appellants were in judicial custody. Therefore, as such, those orders cannot be said to be the orders of discharge in stricto sensu. Those are the orders discharging the appellants from custody. Under the circumstances, the submission on behalf of the accused that as they were discharged by the learned Magistrate and therefore it was not open to the learned Magistrate to exercise the power under Section 319 of the CrPC and to summon the appellants to face the trial, cannot be accepted. 10. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned judgment and order passed by the High Court confirming the order passed by the learned Magistrate summoning the accused-appellants herein to face the trial in exercise of the power under Section 319 of the CrPC. We are in complete agreement with the view taken by the High Court. No interference is called for by this Court. In the facts and circumstance of the case and for the reasons stated hereinabove, the present appeal fails and deserves to be dismissed and is according dismissed.

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2019 (2) L.S. 74 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
N.V. Ramana &
The Hon'ble Mr.Justice
Mohan M. Shantanagoudar

M/s. Gati Limited ..Appellant

Vs.

T. Nagarajan Piramiajee
& Anr., ..Respondents

INDIAN PENAL CODE, Secs.420, 465, 467, 468 and 472 - Appeal filed questioning Order passed by Madurai Bench of Madras High Court in granting anticipatory bail in favour of R1.

Held - Lenient view cannot be taken in favour of the accused - This Court vide its Order observed that the accused is at liberty to surrender before the concerned Trial Court and obtain regular bail, but he did not choose to surrender - In any event, since there has been no change of circumstance for grant of anticipatory bail in the second application since the disposal of the first, in our considered view, the High Court was not justified in granting anticipatory bail to the accused -Order of the High Court granting anticipatory bail to the accused is liable to be set aside, and appeal stands allowed.

64 Crl.A.No.870/2019 Date:6-5-2019

J U D G M E N T

(per the Hon''ble Mr.Justice N.V. Ramana)

Leave granted.

2. This appeal is filed questioning the order dated 25.07.2018 passed by the Madurai Bench of the Madras High Court in Crl. O.P. (MD) No. 9348 of 2018 granting anticipatory bail in favour of Respondent No.1.

3. Respondent No.1 is the accused (hereinafter "the accused") in Crime No. 364 of 2017 registered at SIPCOT Police Station, District Thoothukudi, Tamil Nadu for the offences punishable under Sections 420, 465, 467, 468 and 472 of the Indian Penal Code (for short "the IPC"). The allegations against the accused as found in the First Information Report (FIR) are that he had furnished two forged Bank Guarantees each amounting toL 5,00,00,000/- (Rupees Five Crores) to the Appellant in lieu of the services of the Appellant. Initially, the FIR was registered for milder offences. However, the High Court passed an order directing the police to alter the offences suitably, and accordingly, the FIR was altered by adding Sections 467, 468 and 472 of the IPC. The accused was absconding during that time. The High Court directed the police to arrest him and report to the Court by 22.12.2017. Despite the same, the accused was not arrested. Ultimately, on 02.01.2018, he filed an application for anticipatory bail before the High Court as Crl. O.P. (MD) No. 288 of 2017 in the first instance. The application came to be dismissed by the High Court on 09.04.2018. Prior to the disposal of the said application by the High Court, the accused had approached this Court in SLP (Crl.) Diary No. 7830 of 2018 questioning the order of the High Court directing alteration of sections in the FIR, and the same had been dismissed by this Court with the specific direction that the accused was at liberty to surrender before the Trial Court and to obtain regular bail. Despite the said order of this Court, the accused subsequently pressed his anticipatory bail application before the High Court filed as Crl. O.P. (MD) No. 288 of 2017 which, as mentioned supra, came to be dismissed by the High Court. The said order of the rejection of the application for anticipatory bail by the High Court was confirmed by this Court in SLP (Crl.) Diary No. 15986 of 2018 on 17.05.2018. Thereafter, after a lapse of merely 13 days, i.e. on 31.05.2018, the accused filed a second application for anticipatory bail bearing Crl. O.P. (MD) No. 9348 of 2018 before the High Court, that too without any change in circumstance. The High Court by the impugned order granted anticipatory bail to the accused.

4. On a perusal of the impugned order, it is clear that the High Court has not applied its mind to the merits of the matter. The High Court has not assigned any valid reason or shown any change of circumstance since the rejection of the first application for anticipatory bail, for granting anticipatory bail to the accused.

5. Another aspect of the matter deserves to be noted. The first application for anticipatory bail was rejected by a certain learned Judge, but the second application for anticipatory bail was heard by another learned Judge, though the Judge who had

heard the first application was available. This Court in the case of Shahzad Hasan Khan v. Ishtiaq Hasan Khan, (1987) 2 SCC 684, in a similar matter concerning filing of successive applications for anticipatory bail, made the following observations:

"5. ...The convention that subsequent bail application should be placed before the same Judge who may have passed earlier orders has its roots in principle. It prevents abuse of process of court inasmuch as an impression is not created that a litigant is shunning or selecting a court depending on whether the court is to his liking or not, and is encouraged to file successive applications without any new factor having cropped up. If successive bail applications on the same subject are permitted to be disposed of by different Judges there would be conflicting orders and a litigant would be pestering every Judge till he gets an order to his liking resulting in the creditability of the court and the confidence of the other side being put in issue and there would be wastage of courts' time. Judicial discipline requires that such matters must be placed before the same Judge, if he is available for orders..."

In State of Maharashtra v. Captain Buddhikota Subha Rao, 1989 Supp (2) SCC 605, this Court placing reliance upon Shahzad Hasan Khan (supra) observed:

"7. ...In such a situation the proper course, we think, is to direct that the matter be placed before the same learned Judge who disposed of the earlier applications. Such a practice or convention would prevent abuse of the process of court inasmuch as it will prevent an impression being created that a litigant is avoiding or selecting a court to secure an order to his liking. Such a practice would also discourage the filing of successive bail applications without change of circumstances. Such a practice if adopted would be conducive to judicial discipline and would also save the Court's time as a Judge familiar with the facts would be able to dispose of the subsequent application with despatch. It will also result in consistency..."

At the risk of repetition, we would like to quote similar observations made by this Court on subsequent occasions. In the case of Vikramjit Singh v. State of Madhya Pradesh, 1992 Supp (3) SCC 62, this Court observed:

"3. ...Otherwise a party aggrieved by an order passed by one bench of the High Court would be tempted to attempt to get the matter reopened before another bench, and there would not be any end to such attempts. Besides, it was not consistent with the judicial discipline which must be maintained by courts both in the interest of administration of justice by assuring the binding nature of an order which becomes final, and the faith of the people in the judiciary..."

To the same effect, this Court observed in M. Jagan Mohan Rao v. P.V. Mohan Rao, (2010) 15 SCC 491:

"3. In view of the principle laid down by this Court, since the learned Judge who had refused bail in the first instance was available, the matter should have been placed

before him. This Court has indicated that such cases of successive bail applications should be placed before the same Judge who had refused bail in the first instance, unless that Judge is not available..."

In Jagmohan Bahl and Another v. State (NCT of Delhi) and Another, (2014) 16 SCC 501 too, this Court has observed along the same lines:

"15. ...when the Sixth Additional Sessions Judge had declined to grant the bail application, the next Fourth Additional Sessions Judge should have been well advised to place the matter before the same Judge. However, it is the duty of the prosecution to bring it to the notice of the Judge concerned that such an application was rejected earlier by a different Judge and he was available. In the entire adjudicatory process, the whole system has to be involved. The matter would be different if a Judge has demitted the office or has been transferred. Similarly, in the trial court, the matter would stand on a different footing, if the Presiding Officer has been superannuated or transferred. The fundamental concept is, if the Judge is available, the matter should be heard by him. That will sustain the faith of the people in the system and nobody would pave the path of forum-shopping, which is decryable in law."

6. In the matter on hand, it is clear that the well settled principle of law enunciated in the decisions cited supra has not been followed, inasmuch as the second application for anticipatory bail was heard by a different Judge in spite of the availability of the Judge who had disposed of the first application.

7. Be that as it may, even on merits we do not find any reason to take a lenient view in favour of the accused. This Court vide its order dated 19.03.2018 observed that the accused is at liberty to surrender before the concerned Trial Court and obtain regular bail, but he did not choose to surrender. In any event, since there has been no change of circumstance for grant of anticipatory bail in the second application since the disposal of the first, in our considered view, the High Court was not justified in granting anticipatory bail to the accused.

8. It may be noted that the only reason assigned by the High Court for granting anticipatory bail is that the accused has shown his bona fides towards liquidating his liability by offering an encumbered property in Survey No. 121 belonging to his father, which might fetch a sum of Rs. 45 lakhs, and also by handing over demand drafts for a sum of Rs. 40 lakhs in favour of the complainant. Except for this, no other reason has been assigned. Since the allegation against the accused is that he has furnished two forged Bank Guarantees worth Rs. 10 Crores in lieu of the appellant's services, and having regard to other facts and circumstances on record, we do not find this to be a change in circumstance that justifies the order of anticipatory bail based on the second application of the accused.

9. In this view of the matter, we find that the order of the High Court granting

anticipatory bail to the accused is liable to be set aside, and the same stands set aside accordingly.

10. The accused is directed to surrender before the concerned Trial Court and it is open for him to seek regular bail. The appeal is allowed accordingly.

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2019 (2) L.S. 78 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
N.V. Ramana
The Hon'ble Mr.Justice
Mohan M. Shantanagoudar &
The Hon'ble Mr.Justice
S. Abdul Nazeer

Union of India & Ors., ..Appellants
Vs.
Dharam Pal ..Respondent

INDIAN PENAL CODE, Secs.302 & 34 – Death Sentence – Appeal against Judgment of High Court whereby High Court allowed Petition filed by Respondent and commuted death sentence awarded to him to life imprisonment – Respondent was tried and convicted under Section 302, 34 IPC for commission of murder of five persons belonging to same family.

Held – High Court examined the inordinate delay in disposing the mercy petition in the right perspective to hold it illegal, and thereafter commuted the sentence to life imprisonment - Authorities did not place the records regarding the acquittal of the Respondent in the rape case before the President for consideration of the mercy petition has caused grave injustice and prejudice against the Respondent - No reason to interfere with the decision of the High Court.

J U D G M E N T

(per the Hon'ble Mr.Justice N.V. Ramana)

Leave granted.

2. The instant criminal appeal is directed by the State against the decision of the High Court of Judicature of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 7436 of 2013 (O&M) whereby the High Court allowed the Writ Petition filed by the Respondent Dharam Pal, and commuted the death sentence awarded to him to life imprisonment. The Respondent was tried and convicted under Section 302/34 of the Indian Penal Code (hereinafter, "IPC") for the commission of murder of five persons belonging to the same family.

3. The brief facts leading to the impugned Writ Petition are that, the Respondent Dharam Pal, in an earlier incident, was convicted under Section 376/452 of the IPC vide judgment dated 04.07.1992 passed by the Additional Sessions Judge, Sonepat, in Sessions Case 11 of 1991 and sentenced to undergo rigorous imprisonment for ten years. The Respondent was released on

Crl.A.No.804/2019 Date: 24-4-2019

bail by the High Court while admitting his appeal, however on the intervening night of 09.06.1993 and 10.06.1993 at around 03:30 a.m., the Respondent accompanied by his brother Nirmal Singh committed the murder of five persons who were the family members of the prosecutrix for whose rape the Respondent was convicted.

4. The Respondent and his brother were tried and convicted under Section 302/34 of the IPC by the Sessions Court, Sonepat in Sessions Case No. 65 of 1993. Vide its judgment dated 05.05.1997, the said Court sentenced both the accused to be hanged until death. Death Reference was heard and the conviction and sentence was affirmed by the High Court by its judgment dated 29.09.1998. The Respondent and his brother, further filed an appeal before this Court, which came to be partly allowed, commuting the death sentence of the Respondent's brother Nirmal Singh into life imprisonment, but upheld the death sentence of the Respondent taking into account his conviction in the rape case, and commission of murder of five family members of the prosecutrix of that case while on bail. Thus, this Court vide judgment and order dated 18.03.1999 confirmed his death sentence and directed that he be hanged until death.

5. The Respondent filed a mercy petition before the Governor of the State of Haryana under Article 161 of the Constitution of India, which came to be rejected after which, on 02.11.1999, the Respondent sought pardon from the President of India in exercise of powers under Article 72 of the Constitution. However, on 25.03.2013, the President rejected his application, after an inordinate and unexplained delay of 13 years and 5 months, and a date was fixed for his execution. It is pertinent to mention that in the meantime, the Respondent had filed an appeal against his conviction in Sessions Case No. 11 of 1991 under Section 376/ 452 of the IPC before the High Court, which came to be allowed acquitting him for the said offence vide order dated 19.11.2003.

6. It is under these circumstances that the Respondent filed the impugned Writ Petition before the High Court praying for his death sentence to be commuted to life imprisonment in light of the change in circumstances viz. his acquittal in the rape case, which was an important deciding factor by this Court in negating his appeal. He also challenged it on grounds of delay in deciding his mercy petition by the President, among other grounds.

7. The High Court while allowing his Writ Petition held that it is a case of violation of the fundamental rights of the Respondent, which makes him eligible for getting his death sentence commuted to life imprisonment, and orders were passed accordingly. The State has filed this appeal against the decision of the High Court.

8. In the Statement of Objections filed by the State of Haryana before the High Court, it is admitted that the Respondent has remained in solitary confinement for a period of 18 years, and has undergone imprisonment for a total period of more than 25 years till date. It is also an admitted position that the order of acquittal of the Respondent in the Sessions Case No. 11

of 1991 was not put to the notice of the President while deciding the mercy petition, the failure of which is argued to be pivotal in deciding the mercy petition causing prejudice against the Respondent.

9. The learned counsel for the appellant argued that the impugned judgment is erroneous as the delay in disposing the mercy petition pending before the President was justified. He tried to explain the various stages and reasons for the delay in deciding the petition. He further brought to our attention the nature of the offence committed by the Respondent, i.e. the gruesome coldblooded murder of five persons. He finally prayed the impugned judgment be set aside and orders for executing the Respondent be passed. Per contra, the counsel for the Respondent supported the judgment of the High Court inasmuch as there is a real and apparent violation of the Respondent's fundamental rights due to the inordinate delay in deciding the mercy petition, 18 years of solitary confinement before the rejection of the mercy petition and that the acquittal in the rape case was not put on record before the President at the time of deciding the mercy petition causing grave prejudice and injustice against the Respondent. He prayed that the appeal may be dismissed, and the Respondent be released from prison upon remission of sentence as he has already spent over 25 years in prison.

10. We have heard the parties at length and have perused the case records. It is our considered opinion that the High Court is entirely justified in allowing the Writ Petition filed by the Respondents. We find no error or illegalities with the order passed, and concur with its findings.

11. As mentioned supra, it is admitted that the Respondent has undergone incarceration for a total period of over 25 years, out of which 18 years were in solitary confinement. Throughout the period of deciding his mercy petition by the President, he was kept in solitary confinement in various jails. Solitary confinement prior to the disposal of the mercy petition is per se illegal and amounts to separate and additional punishment not authorized by law. It is pertinent to quote section 30 of the Prisoners Act, 1894 at this juncture.

"30. Prisoners under sentence of death-

(1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the Jailer and all articles shall be taken from him which the Jailer deems it dangerous or inexpedient to leave in his possession.

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard."

In the case of **Sunil Batra v. Delhi Admn. [(1978) 4 SCC 494, (Constitution Bench)]**, the interpretation of the words "prisoners under sentence of death" fell for consideration before this Court. Krishna Iyer, J. concurring with the majority, in paragraphs 89 to 91 and 110 to113 of the said judgment held thus:

"89. xxx... This [Section 30, Prisoners Act]

falls in Chapter V relating to discipline of prisoners and has to be read in that context. Any separate confinement contemplated in Section 30 (2) has this disciplinary limitation as we will presently see. If we pull to pieces the whole provision it becomes clear that Section 30 can be applied only to a prisoner "under sentence of death". Section 30(2) which speaks of "such" prisoners necessarily relates to prisoners under sentence of death. We have to discover when we can designate a prisoner as one under sentence of death.

90. The next attempt is to discern the meaning of confinement "in a cell apart from all other prisoners". The purpose is to maintain discipline and discipline is to avoid disorder, fight and other untoward incidents, if apprehended.

91. Confinement inside a prison does not necessarily import cellular isolation. Segregation of one person all alone in a single cell is solitary confinement. That is a separate punishment which the Court alone can impose. It would be a subversion of this statutory provision (Sections 73 and 74 IPC) to impart a meaning to section 30(2) of the Prisons Act whereby a disciplinary variant of solitary confinement can be clamped down on a prisoner, although no court has awarded such a punishment, by a mere construction, which clothes an executive officer, who happens to be the governor of the jail, with harsh judicial powers to be exercised by punitive restrictions and unaccountable to anyone, the power being discretionary and disciplinary.

x x x x x x

110. The ingenious arguments to keep Batra in solitudinous cell must fail and he shall be given facilities and amenities of common prisoners even before he is 'under sentence of death'.

111. Is he under sentence of death? Not yet.

112. Clearly, there is a sentence of death passed against Batra by the Sessions Court but it is provisional and the question is whether under Section 30(2) the petitioner can be confined in a cell all by himself under a 24hour guard. The key words which call for humanistic interpretation are "under sentence of death" and "confined in a cell apart from all other prisoners."

113. A convict is 'under sentence of death' when, and only when, the capital penalty inexorably operates by the automatic process of the law without any slip between the cup and the lip. Rulings of this Court in **Abdul Azeez v. Karnataka [(1977) 2 SCC 485 : 1977 SCC (Cri) 378 : (1977) 3 SCR 393]** and **D.K. Sharma v. M.P. State [(1976) 1 SCC 560 : 1976 SCC (Cri) 85 : (1976) 2 SCR 289]** , though not directly on this point strongly suggest this reasoning to be sound."

It is worthwhile to cite the relevant portion of the majority opinion through the words of Desai, J. in paragraphs 220 and 223 of the same judgment.

"220. xxx... Subsection (2) of Section 30 merely provides for confinement of a prisoner under sentence of death in a cell apart from

other prisoners and he is to be placed by day and night under the charge of a guard. Such confinement can neither be cellular confinement nor separate confinement and in any event it cannot be solitary confinement. In our opinion, subsection (2) of Section 30 does not empower the jail authorities in the garb of confining a prisoner under sentence of death, in a cell apart from all other prisoners, to impose solitary confinement on him. Even jail discipline inhibits solitary confinement as a measure of jail punishment. It completely negatives any suggestion that because a prisoner is under sentence of death therefore, and by reason of that consideration alone, the jail authorities can impose upon him additional and separate punishment of solitary confinement. They have no power to add to the punishment imposed by the Court which additional punishment could have been imposed by the Court itself but has in fact been not so imposed. Upon a true construction, subsection (2) of Section 30 does not empower a prison authority to impose solitary confinement upon a prisoner under sentence of death.

x x x x x

223. The expression "prisoner under sentence of death" in the context of subsection (2) of Section 30 can only mean the prisoner whose sentence of death has become final, conclusive and indefeasible which cannot be annulled or voided by any judicial or constitutional procedure. In other words, it must be a sentence which the authority charged with the duty to execute and carry out must proceed to carry out without intervention from any outside authority. ...xxx... Therefore, the prisoner can be said to be under the sentence of death only when the death sentence is beyond judicial scrutiny and would be operative without any intervention from any other authority. Till then the person who is awarded capital punishment cannot be said to be a prisoner under sentence of death in the context of Section 30, subsection (2). This interpretative process would, we hope, to a great extent relieve the torment and torture implicit in subsection (2) of Section 30, reducing the period of such confinement to a short duration."

The sum and substance of the judgment in Sunil Batra (supra), is that even if the Sessions Court has sentenced the convict to death, subject to the confirmation of the High Court, or even if the appeal is filed before the High Court and the Supreme Court against the imposition of death punishment and the same is pending, the convict cannot be said to be "under sentence of death" till the mercy petition filed before the Governor or the President is rejected. This Court in **Shatrughan Chauhan v. Union of India [(2014) 3 SCC 1**, (3 Judge Bench)] with approval of Sunil Batra (supra) has observed thus:

"90. It was, therefore, held in Sunil Batra case **[Sunil Batra v. Delhi Admn., (1978) 4 SCC 494 : 1979 SCC (Cri) 155]** that the solitary confinement, even if mollified and modified marginally, is not sanctioned by section 30 of the Prisons Act for prisoners "under sentence of death". The crucial holding under Section 30(2) is that a person is not "under sentence of death", even if the Sessions Court has sentenced him to

death subject to confirmation by the High Court. He is not "under sentence of death" even if the High Court imposes, by confirmation or fresh appellate infliction, death penalty, so long as an appeal to the Supreme Court is likely to be or has been moved or is pending. Even if this Court has awarded capital sentence, it was held that Section 30 does not cover him so long as his petition for mercy to the Governor and/ or to the President permitted by the Constitution, has not been disposed of. Of course, once rejected by the Governor and the President, and on further application, there is no stay of execution by the authorities, the person is under sentence of death. During that interregnum, he attracts the custodial segregation specified in Section 30(2), subject to the ameliorative meaning assigned to the provision. To be "under sentence of death" means "to be under a finally executable death sentence".

91. Even in Triveniben **[Triveniben v. State of Gujarat, (1989) 1 SCC 678 : 1989 SCC (Cri) 248]** , this Court observed that keeping a prisoner in solitary confinement is contrary to the ruling in Sunil Batra **[Sunil Batra v. Delhi Admn., (1978) 4 SCC 494 : 1979 SCC (Cri) 155]** and would amount to inflicting "additional and separate" punishment not authorised by law. It is completely unfortunate that despite enduring pronouncement on judicial side, the actual implementation of the provisions is far from reality. We take this occasion to urge to the Jail Authorities to comprehend and implement the actual intent of the verdict in Sunil Batra **[Sunil Batra v. Delhi Admn., (1978) 4 SCC 494 : 1979 SCC (Cri) 155]**."

12. Thus, solitary confinement prior to the rejection of mercy petition, which has taken place in spite of various decisions of this Court to the contrary, is unfortunate and palpably illegal. In the present case, the Respondent underwent such a long period of solitary confinement that too, prior to his mercy petition being rejected, thereby making it a formidable case for commuting his death sentence into life imprisonment, as rightly held by the High Court.

13. The next main ground of challenge is the unexplained and inordinate delay in disposing the Respondent's mercy petition by the President. Although the appellants tried to justify the delay citing various bona fide reasons, the same cannot be accepted as the prolonged delay in execution of a sentence of death has a dehumanizing effect and this has the constitutional implication of depriving a person of his life in an unjust, unfair and unreasonable way so as to offend the fundamental right under Article 21 of the Constitution. The High Court placed apt reliance on the judgment of this Court in Shatrughan Chauhan (supra) for condemning the inordinate delay and thereby commuting the sentence of the Respondent. Some important observations of Shatrughan Chauhan (supra) are reiterated herewith:

"19. In concise, the power vested in the President under Article 72 and the Governor under Article 161 of the Constitution is a constitutional duty. As a result, it is neither a matter of grace nor a matter of privilege but is an important constitutional responsibility reposed by the People in the highest authority. The power of pardon is essentially an executive action, which needs

to be exercised in the aid of justice and not in defiance of it...xxx.

x x x x x

45. Keeping a convict in suspense while consideration of his mercy petition by the President for many years is certainly an agony for him/her. It creates adverse physical conditions and psychological stresses on the convict under sentence of death...xxx.

x x x x x

47. It is clear that after the completion of the judicial process, if the convict files a mercy petition to the Governor/President, it is incumbent on the authorities to dispose of the same expeditiously. Though no timelimit can be fixed for the Governor and the President, it is the duty of the executive to expedite the matter at every stage viz. calling for the records, orders and documents filed in the court, preparation of the note for approval of the Minister concerned, and the ultimate decision of the constitutional authorities. This Court, in Triveniben **[Triveniben v. State of Gujarat, (1989) 1 SCC 678]**, further held that in doing so, if it is established that there was prolonged delay in the execution of death sentence, it is an important and relevant consideration for determining whether the sentence should be allowed to be executed or not.

48. Accordingly, if there is undue, unexplained and inordinate delay in execution due to pendency of mercy petitions or the executive as well as the constitutional authorities have failed to take note of/consider the relevant aspects, this Court is well within its powers under Article 32 to hear the grievance of the convict and commute the death sentence into life imprisonment on this ground alone however, only after satisfying that the delay was not caused at the instance of the accused himself. To this extent, the jurisprudence has developed in the light of the mandate given in our Constitution as well as various Universal Declarations and directions issued by the United Nations.

49. The procedure prescribed by law, which deprives a person of his life and liberty must be just, fair and reasonable and such procedure mandates humane conditions of detention preventive or punitive. In this line, although the petitioners were sentenced to death based on the procedure established by law, the inexplicable delay on account of executive is inexcusable. Since it is well established that Article 21 of the Constitution does not end with the pronouncement of sentence but extends to the stage of execution of that sentence, as already asserted, prolonged delay in execution of sentence of death has a dehumanising effect on the accused. Delay caused by circumstances beyond the prisoners' control mandates commutation of death sentence...xxx.

x x x x x

244. It is well established that exercising of power under Articles 72/161 by the President or the Governor is a constitutional obligation and not a mere prerogative. Considering the high status of office, the Constitution Framers did not stipulate any

outer timelimit for disposing of the mercy petitions under the said Articles, which means it should be decided within reasonable time. However, when the delay caused in disposing of the mercy petitions is seen to be unreasonable, unexplained and exorbitant, it is the duty of this Court to step in and consider this aspect. Right to seek for mercy under Articles 72/161 of the Constitution is a constitutional right and not at the discretion or whims of the executive. Every constitutional duty must be fulfilled with due care and diligence, otherwise judicial interference is the command of the Constitution for upholding its values.

245. Remember, retribution has no constitutional value in our largest democratic country. In India, even an accused has a de facto protection under the Constitution and it is the Court's duty to shield and protect the same. Therefore, we make it clear that when the judiciary interferes in such matters, it does not really interfere with the power exercised under Articles 72/ 161 but only to uphold the de facto protection provided by the Constitution to every convict including death convicts."

14. In our considered opinion, the High Court examined the inordinate delay in disposing the mercy petition in the right perspective to hold it illegal, and thereafter commuted the sentence to life imprisonment in light of the aforementioned principles of law laid down in Shatrughan Chauhan (supra). These aspects, coupled with the fact that the authorities did not place the records regarding the acquittal of the Respondent in the rape case before the President for consideration of the mercy petition has caused grave injustice and prejudice against the Respondent. On receipt of a mercy petition, the Department concerned has to call for all the records and materials connected with the conviction. When the matter is placed before the President, it is incumbent on the part of the concerned authority to place all the materials such as judgments of the courts, as well as any other relevant material connected with the conviction. In the present case, this Court while upholding the death sentence of the Respondent and commuting the sentence of his brother to life imprisonment had placed reliance on the fact that the Respondent was convicted in the rape case, and the persons who he had killed were the family members of the prosecutrix of the rape case. The fact that he was subsequently acquitted for that case has great bearing on the quantum on sentence that ought to be awarded to the Respondent and the same should have been brought to the notice of the President while deciding his mercy petition. Failure to do so has caused irreparable prejudice against the Respondent.

15. Therefore, considering the facts and circumstances of this case, it is our considered opinion that the High Court has not erred in setting aside the sentence of death of the Respondent and commuting the same into life imprisonment. Considering the aforementioned reasons discussed by us such as the unconscionable delay of more than 13 years in deciding the mercy petition, the failure to produce the relevant documents regarding the Respondent before the President for deciding the mercy petition, and that the Respondent has undergone

18 years of illegal solitary confinement, we find no reason to interfere with the decision of the High Court. However, considering the fact that the Respondent had violated the conditions of bail imposed on him by the High Court in criminal appeal, inasmuch as he had committed the murder of five persons while on bail, cannot be overlooked while quantifying the actual sentence. In our considered opinion, having regard to the totality of facts and circumstances, and for the reasons mentioned supra, it would be appropriate to direct the release of the Respondent after the completion of 35 years of actual imprisonment including the period already undergone by him.

16. Ordered accordingly. The appeal is disposed of in the aforementioned terms.

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2019 (2) L.S. 86 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
M.R.Shah &
The Hon'ble Mr.Justice
A.S. Bopanna

State of Madhya Pradesh ..Appellant
Vs.
Kalicharan & Ors., ..Respondents

INDIAN PENAL CODE, Secs.148, 149, 302, 323, and 325 – High Court partly allowed appeal preferred by accused and set aside judgment and order of conviction and sentence passed by Trial Court, whereby Trial Court had convicted Respondent-original accused for commission of offence under Sections 148, 302/149, 325/149, 323/149 of IPC and altered conviction of accused from Section 302/149 to Section 304 Part II of IPC.

Held – Accused caused fatal blow on deceased – Deceased sustained injury on his head which was caused by accused – Merely because accused caused injury on head by blunt side of weapon, High Court is not justified in altering conviction to Section 304 Part II of IPC accused should be held guilty for offence under Section 304 Part I of IPC – Judgment passed by High Court is quashed and set aside – Conviction of accused is to be altered from Section 304 Part II to Section 304 Part I of IPC – Appeal partly allowed.

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

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 18.11.2008 passed by the High Court of Madhya Pradesh, Judicature at Jabalpur, Bench at Gwalior in Criminal Appeal No. 43 of 1997 whereby the High Court has partly allowed the said appeal preferred by the original accused and set aside the judgment and order of conviction and sentence dated 16.01.1997 passed by the learned Trial Court, whereby the learned

Crl.A.No. 1411/2013 Date: 31-5-2019

Trial Court convicted the respondent-original accused for commission of the offence under Sections 148, 302/149, 325/149, 323/149 of the IPC and altered the conviction of the accused-Ramavtar from Section 302/149 of the IPC to Section 304 Part II of the IPC and sentenced him to five years R.I. with fine of Rs. 5000/- and set aside his conviction for the offence under Sections 148 and 302/149 of the IPC; altered the conviction of the accused-Kalicharan to offences under Sections 323 and 325 of the IPC and reduced the sentence to the period already undergone; set aside the conviction of the accused-Amar Singh, Kedar, Abhilakh and Ramgopal under Sections 148, 302/149, 325/149 and 323/149 of the IPC and acquitted them from the charges levelled against them; set aside the conviction of the accused-Tejsingh, Gangaram and Vedari under Sections 148, 302/149 and 325/149 of the IPC and convicted them for commission of the offence under Section 323 of the IPC and reduced the sentence to the period already undergone by them, the State has preferred the present appeal.

2. We have heard the learned advocates appearing on behalf of the respective parties at length. Having heard the learned counsel appearing on behalf of the respective parties, the findings recorded by the High Court and considering the evidence on record, we are of the opinion that the impugned judgment and order passed by the High Court, insofar as accused Kalicharan, Amar Singh, Kedar, Abhilakh, Ramgopal, Tejsingh, Gangaram and Vedari are concerned, is not required to be interfered with. In the facts and circumstances of the case and considering the fact that there was a free fight and the role attributed to the aforesaid accused, the High Court has rightly acquitted the aforesaid accused for the offences under Sections 148, 302/149 and 325/149 of the IPC. The same is absolutely in consonance with the decision of this Court in the case of Kanwarlal v. State of M.P. (2002) 7 SCC 152. Therefore, the present appeal qua the aforesaid accused (except the accused-Ramavtar) deserves to be dismissed.

3. Now, so far as the impugned judgment and order passed by the High Court altering the conviction of the accused-Ramavtar from Sections 302/149 to Section 304 Part II of the IPC is concerned, it is required to be noted that the fatal blow was caused by the said accused-Ramavtar. The deceased Kalyan sustained the injury on his head which was caused by the accused Ramavtar. The said injury caused by the accused Ramavtar was on the vital part of the body i.e. head and proved to be fatal. Merely because the accused Ramavtar caused the injury on the head by the blunt side of Farsa, the High Court is not justified in altering the conviction to Section 304 Part II of the IPC. As held by this Court in catena of decisions, even in a case of a single blow, but on the vital part of the body, the case may fall under Section 302 of the IPC and the accused can be held guilty for the offence under Section 302 of the IPC. However, in the facts and circumstances of the case, more particularly that it was a case of free fight, considering the fact that the weapon used by the accused Ramavtar was Farsa and he caused the injury on the vital part of the body i.e. head which proved to be fatal, in the facts and

circumstances of the case, we are of the opinion that the High Court has committed a grave error in altering the conviction of the accused Ramavtar from Sections 302/ 149 of the IPC to Section 304 Part II of the IPC. In the facts and circumstances of the case and considering the evidence on record, more particularly, the medical evidence and the manner in which the incident took place, we are of the opinion that the accused Ramavtar should have been held guilty for the offence under Section 304 Part I of the IPC. To that extent, the impugned judgment and order passed by the High Court deserves to be quashed and set aside. The conviction of the accused Ramavtar is to be altered from Section 304 Part II to Section 304 Part I of the IPC. 3.1 In view of the above and for the reasons stated above, the present appeal succeeds in part. The impugned judgment and order passed by the High Court insofar as altering the conviction of the accused Ramavtar from Sections 302/149 of the IPC to Section 304 Part II of the IPC and sentencing him to undergo five years R.I. with fine of Rs. 5,000/- for the offence under Section 304 Part II of the IPC is hereby quashed and set aside. The conviction of the accused Ramavtar (respondent No. 2 herein) is altered from Section 302 of the IPC to Section 304 Part I of the IPC and is sentenced to undergo eight years R.I. with a fine of Rs.5000/- and in default to further undergo R.I. for six months. Four weeks' time is granted to the accused Ramavtar (respondent No. 2 herein) to surrender to serve out the remaining portion of his sentence. Rest of the judgment and order of the High Court is hereby confirmed.

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2019 (2) L.S. 88 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
M.R.Shah &
The Hon'ble Mr.Justice
A.S. Bopanna

Surinder Singh Deswal @
Col. S.S. Deswal& Others ..Appellants
Vs.
Virender Gandhi ..Respondents

NEGOTIABLE INSTRUMENTS ACT (Amended Act No.20 of 2018) Secs.148 & 138 - Sec.389 of Criminal Procedure Code - Appeal against the Judgment of High Court, whereby, Appellants/Accused were directed to pay compensation of 25% according to the amended provisions of Section 148 of Negotiable Instruments Act, (amended Act No. 20 of 2018) - whether the first appellate court is justified in directing the appellants / accused who have been convicted for the offence under Section 138 of the N.I. Act to deposit 25% of the amount of fine imposed by the trial Court, pending appeals challenging the Order of conviction and sentence and while suspending the sentence under Section 389 of the Cr.P.C., considering Section 148 of the N.I. Act as amended?

Held - At the time when the appeals against the conviction of the

Crl.A.Nos.917-944/2019 Date:29-5-2019

appellants for the offence under Section 138 of the N.I. Act were preferred, Amendment Act No. 20/2018 amending Section 148 of the N.I. Act came into force - Even, at the time when the appellants submitted application under Section 389 of the Cr.P.C. to suspend the sentence pending appeals challenging the conviction and sentence, amended Section 148 of the N.I. Act came into force – Judgment of First Appellate Court can be said to be absolutely in consonance with the Statement of Objects and Reasons of amendment in Section 148 of the N.I. - No reason to interfere with the impugned common Judgment and Order passed by the High Court – Appeals dismissed.

J U D G M E N T

(per the Hon'ble Mr.Justice Mr.Shah)

Leave granted.

2. As common question of law and facts arise in this group of appeals and, as such, all these appeals, arise out of the impugned common judgment and order passed by the High Court, are being decided and disposed of together by this common judgment and order.

3. Feeling aggrieved and dissatisfied with the impugned common order passed by the High Court of Punjab and Haryana at Chandigarh, by which the High Court has dismissed the respective revision applications and has confirmed the order passed by the first appellate court - learned Additional Sessions Judge, Panchkula, directing the appellants herein - original appellants - original accused to deposit 25% of the amount of compensation, in view of the provisions of amended Act No. 20 of 2018 in Section 148 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act'), the original appellants -original accused have preferred the present appeals.

4. The facts leading to the present appeals in nutshell are as under:

That criminal complaints were filed against the appellants herein - original accused for the offence under Section 138 of the N.I. Act. That the said criminal complaints were filed prior to 2.8.2018. That the learned trial Court vide judgment and order dated 30.10.2018 convicted the appellants for the offence under Section 138 of the N.I. Act and sentenced them to undergo imprisonment of two years and to pay cheque amount + 1% as interest and litigation expenses as fine.

4.1 Feeling aggrieved and dissatisfied with the order of conviction passed by the learned trial Court, convicting the appellants - original accused for the offence under Section 138 of the N.I. Act and the sentence imposed by the learned trial Court, the appellants - original accused have preferred criminal appeals before the first appellate Court - learned Additional Sessions Judge, Panchkula. In the said appeals, the appellants - original accused submitted application/s under Section 389 of the Cr. P.C. for suspension of sentence and releasing them on bail, pending appeal/s.

4.2 That considering the provisions of amended Section 148 of the N.I. Act, which has been amended by Amendment Act No. 20/2018, which came into force w.e.f. 1.9.2018, the first appellate Court, while suspending the sentence and allowing the application/s under Section 389 of the Cr.P.C, directed the appellants to deposit 25% of the amount of compensation/fine awarded by the learned trial Court.

4.3 Feeling aggrieved by the order passed by the learned first appellate Court - learned Additional Sessions Judge, Panchkula directing the appellants - original accused - original appellants to deposit 25% of the amount of compensation/fine awarded by the learned trial Court, pending appeal challenging the order of conviction and sentence imposed by the learned trial Court, the appellants approached the High Court of Punjab and Haryana at Chandigarh by way of revision application/s.

4.4 It was the case on behalf of the appellants that Section 148 of the N.I. Act, as amended by Act No. 20/2018, shall not be applicable with respect to criminal proceedings already initiated prior to the amendment in Section 148 of the N.I. Act.

4.5 The High Court by a detailed judgment and order has not accepted the aforesaid contention and has dismissed the revision application/s and has confirmed the order passed by the learned first appellate Court - learned Additional Sessions Judge, Panchkula directing the appellants - original appellants-original accused to deposit 25% of the amount of compensation awarded by the learned trial Court considering Section 148 of the N.I. Act, as amended.

4.6 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court in dismissing the revision application/s and confirming the order/s passed by the learned first appellate Court directing the appellants - original appellants - original accused to deposit 25% of the amount of compensation awarded by the learned trial Court under Section 148 of the N.I. Act, as amended, the original appellants - original accused have preferred the present appeals.

5. Shri Vijay Hansaria, learned Senior Advocate has appeared on behalf of the appellants - original appellants - original accused and Shri Alok Sangwan, learned Advocate has appeared on behalf of the original complainant.

5.1 Shri Vijay Hansaria, learned Senior Advocate appearing on behalf of the appellants has vehemently submitted that in the present case, both, the High Court as well as the learned first appellate Court have materially erred in directing the appellants to deposit 25% of the amount of compensation as per Section 148 of the N.I. Act, as amended.

5.2 It is vehemently submitted by the learned Senior Advocate appearing on behalf of the appellants that in the present case as the criminal proceedings were initiated and the complaints were filed against the accused for the offence under Section 138 of the N.I. Act, prior to the amendment Act came into force, Section 148 of the N.I. Act, as

amended shall not be applicable.

5.3 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants that the legal proceedings, whether civil or criminal, are to be decided on the basis of the law applicable on the date of the filing of the suit or alleged commission of offence by the trial Court or the appellate Court, unless the law is amended expressly with retrospective effect, subject to the provisions of Article 20(1) of the Constitution of India. In support of his above submission, learned Senior Counsel appearing on behalf of the appellants has heavily relied upon the decisions of this Court in the case of Garikapatti Veeraya v. N. Subbiah Choudhury, reported in AIR 1957 SC 540; and Videocon International Limited v. Securities and Exchange Board of India, reported in (2015) 4 SCC 33.

5.4 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants that even otherwise in the present case, the first appellate Court has interpreted the word "may" as "shall" in Section 148 of the N.I. Act and proceeded on the basis that it is mandatory for the appellate Court to direct deposit of minimum of 25% of the fine or compensation awarded by the trial Court for suspension of sentence.

5.5 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants that the first appellate Court heavily relied upon the decision of the Punjab and Haryana High Court in the case of M/s Ginni Garments and another v. M/s Sethi Garments (CRR No. 9872 of 2018, decided on 04.04.2019) : Docid # IndLawLib/1401956, in which it was held that the appellate Court continues to have discretion as to the condition to be imposed or not to be imposed for suspension of sentence and it was further held that however in case discretion is exercised to suspend the sentence subject to payment of compensation/fine, such order must commensurate with Section 148 of the N.I. Act. It is submitted, however, in the present case, the appellate Court did not exercise discretion and proceeded on the assumption that it is mandatory to deposit 25% of the fine or compensation as a condition for suspension of sentence. It is submitted that therefore the High Court ought to have remanded the matter back to the appellate Court to decide on the question of suspension of sentence as per the decision in the case of M/s Ginni Garments (supra).

5.6 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants that a similar view is taken by the Bombay High Court in the case of Ajay Vinod chandra Shah v. The State of Maharashtra (Criminal Writ Petition No. 258 of 2019). It is submitted that in the said decision, the Bombay High Court has also observed and held that as per Section 148 of the N.I. Act as amended, the appellate Court has the discretion to direct deposit the sum pending appeal, but if at all such direction is given, that sum shall not be less than 20% of the amount of fine or compensation awarded by the trial Court. It is submitted that in the present case, the appellate Court wrongly presumed that the requirement under Section 148 of the N.I. Act is the deposit of 25% of the fine

or compensation.

5.7 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants that in the present case the learned trial Court imposed the fine under Section 138 of the N.I. Act, equal to the amount of cheque plus 1%. It is submitted that as per Section 357(2) of the Cr.P.C., no such fine is payable till the decision of the appeal. It is submitted that therefore also the first appellate Court ought not to have passed any order directing the appellants to deposit 25% of the amount of fine/compensation, pending appeal/s. In support of his above submission, learned Senior Counsel has heavily relied upon the decision of this Court in the case of Dilip S. Dhanukar vs. Kotak Mahindra Bank, reported in (2007) 6 SCC 528.

5.8 Making the above submissions and relying upon the aforesaid decisions, it is prayed to allow the present appeals and quash and set aside the impugned order passed by the first appellate court, confirmed by the High Court, by which the appellants are directed to deposit 25% of the amount of compensation considering Section 148 of the N.I. Act as amended.

6. While opposing the present appeals, Shri Alok Sangwan, learned Advocate appearing on behalf of the original complainant has vehemently submitted that the order passed by the first appellate Court directing the appellants to deposit 25% of the amount of compensation/fine pending appeal and while suspending the sentence imposed by the learned trial Court is absolutely in consonance with the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act. It is submitted that having found that because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of N.I. Act was being frustrated and having found that due to such delay tactics, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realize the value of the cheque, the Parliament thought it fit to amend Section 148 of the N.I. Act, which confers powers on the first appellate court to direct the appellant (the convict for the offence under Section 138 of the N.I. Act) to deposit such sum which shall be minimum of 20% of the fine or compensation awarded by the trial court. It is submitted that therefore the High Court has rightly refused to interfere with the order passed by the first appellate court, which was just in consonance with the provisions of Section 148 of the N.I. Act as amended.

6.1 It is further submitted by the learned Advocate appearing on behalf of the original complainant that the submission on behalf of the appellants - original accused that Section 148 of the N.I. Act would not be made applicable retrospectively and shall not be applicable to the appeals arising out of the criminal proceedings which were initiated much prior to the amendment in Section 148 of the N.I. Act is concerned, it is vehemently submitted that the aforesaid submission has no substance. It is submitted that first of all amendment in Section 148 of the N.I. Act is procedural in nature and therefore there is no question

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