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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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(Founder : Late Sri G.S. GUPTA)

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PART-16 & Index 2019(2) (31ST AUGST 2019)

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SUBJECT - INDEX

CIVIL PROCEDURE CODE – Interim stay granted to the petitioner, stood vacated in view of Judgment of Hon'ble Supreme Court that stay shall not extend more than six months – Aggrieved by the docket Order, Petitioner preferred revision against the validity of the docket Order passed by the lower Court.

Held – Contingency of expiry of stay after six months would arise only in cases where there is stay of Trial – In present case, such contingency does not exist - Docket Order passed by the lower Court, which is impugned in present revision cannot be sustained in the eye of law – Civil Revision Petition stands allowed. **(A.P.)** ***108***

CRIMINAL PROCEDURE CODE, Secs.197 & 239 - Revision preferred questioning the Order of lower Court, whereby, petition filed by petitioners, seeking to dismiss the complaint for want of prior sanction was dismissed.

Held – Whether sanction under Section 197 of Cr.P.C. is required or not, depends on the facts of a particular case and can be raised at any stage of proceedings – It is not that every offence committed by a public servant that requires sanction for prosecution nor every act done by him while he is actually engaged in the performance of his official duties – Sanctioning of amounts under the contract, which is not at all fulfilled, cannot be said to have been done in discharge of official duty – Impugned Order needs no interference – Criminal Revision stands dismissed. **(A.P.)*113***

CIVIL PROCEDURE CODE, Order XXI Rule 37 & Sec.51 - Present Civil Revision challenges the Order passed by lower Court, dismissing petition filed by the decree holder, seeking the Court to issue arrest warrant against Judgment debtors and commit them to civil prison for realization of the amount.

Held – Decree holder who seeks execution by way of arrest and detention of Judgment debtor in civil prison shall file an affidavit in terms of Order XXI Rule 11-

A CPC stating the grounds on which arrest is applied for – Court in an arrest E.P. shall afford a notice to Judgment debtors to give an opportunity to show cause as to why he should be not be committed to prison – Mere non-payment of a decretal amount by Judgment debtor will not land him in civil prison unless there is a proof of his willful failure to pay in spite of his sufficient means – Court below instead of issuing warrant held decree holder failed to establish the means of the Judgment debtors and ultimately dismissed the E.P. – Civil Revision stands allowed – Impugned Order in E.P. is set aside and consequently E.P is restored to file with a direction to the execution Court to issue warrant of arrest against judgment debtors in terms of Order XXI Rule 37(2) CPC and after securing their presence, conduct enquiry in terms of Order XXI Rule 40 CPC and pass Orders expeditiously. ***(A.P.) 95***

CRIMINAL PROCEUDURE CODE, Sec.482 – Drugs and Cosmetics Act – Complainant, drug inspector inspected A1 company and picked up several types of drugs for testing by complying with prescribed procedure – According to the analysts, the drugs picked up are not of standard quality, stating that sample does not meet I.P. requirements - Petitioner contended that failure of complainant to send the sample for analysis within prescribed period before expiry period of the drug and the right given to the petitioners under Section 25(3) of Act stands defeated - Petitioners/A1 to A5 filed instant petition seeking to quash proceedings against them.

Held – Petitioners did not take steps to adduce evidence in contravention of the report - On the ground that second sampling was not done, proceedings against petitioners cannot be quashed – Criminal petition stands dismissed - Interim stay shall stand vacated. **(A.P.)** ***104***

MOTOR VEHICLES ACT – While petitioner was going to his house, a tractor driven at high speed and in a rash manner dashed on to the petitioner causing severe injuries – Petitioner claimed a total of Rs.2,00,000/- as compensation, however the M.V. Accident Claims Tribunal awarded compensation of Rs.43,000/- to petitioner – Hence petitioner preferred instant appeal for the enhancement of compensation awarded.

Held – Compensation shall be evaluated in such a manner that it should be neither a pittance or windfall – Compensation awarded should financially place the victim of the accident in such a position where he would have been had there been no accident – Considering the disability and mental depression entailed by petitioner, compensation is enhanced by Rs.1,56,000/- at an interest rate of 7.5% - Appeal stands allowed.

(A.P.) ***125***

REGISTRATION ACT, Sec.49 – **CIVIL PROCEDURE CODE,** Sec.151 - Instant Revision preferred against the Order, passed in I.A., whereby the petition filed by the

petitioner seeking to admit the draft sale deed and agreement of sale, in evidence as per proviso to Section 49 of Registration Act was dismissed.

Held – Permission to get the document marked cannot be refused – Impugned Order is set aside – Agreement of sale would be marked subject to proof and draft sale deed being an inadmissible document, cannot be marked – Civil Revision stands partly allowed. **(A.P.)** ***117***

(INDIAN) STAMP ACT, Sec.38(2) - **CIVIL PROCEDURE CODE,** Sec.151 – Civil revision by the defendants/petitioners assailing the Order passed in I.A., whereby, application filed requesting to send acceptance deed filed along with affidavit, to the District Registrar for deciding the stamp duty collectable and for collecting the deficit stamp duty and penalty was dismissed.

Held – Court cannot compel a party to pay the stamp duty and penalty and have it admitted in evidence – It is for the party to have the document admitted in evidence by paying stamp duty and penalty or leave the Court to take action as provided under Section 38(2) – Trial Court ought to have considered the request of defendants and allowed the I.A. and ought to have sent the instrument in question to Stamp Duty Collector – Civil revision stands allowed. **(A.P.)** ***118***

--X--

2019(2) L.S. 95 (A.P.)

IN THE HIGH COURT OF
ANDHRA PRADESH

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

Rajeti Prabhakara Rao ..Petitioner
Vs.
Mosa Satyavathi
& Ors., ..Respondents

CIVIL PROCEDURE CODE, Order XXI Rule 37 & Sec.51 - Present Civil Revision challenges the Order passed by lower Court, dismissing petition filed by the decree holder, seeking the Court to issue arrest warrant against Judgment debtors and commit them to civil prison for realization of the amount.

Held – Decree holder who seeks execution by way of arrest and detention of Judgment debtor in civil prison shall file an affidavit in terms of Order XXI Rule 11-A CPC stating the grounds on which arrest is applied for – Court in an arrest E.P. shall afford a notice to Judgment debtors to give an opportunity to show cause as to why he should be not be committed to prison – Mere non-payment of a decretal amount by Judgment debtor will not land him in civil prison unless there is a proof of his willful failure to pay in spite of his sufficient means – Court below instead of issuing warrant held decree holder failed to establish the means of the Judgment debtors and ultimately dismissed the E.P. – Civil Revision stands allowed – Impugned Order in E.P. is set aside and consequently E.P is restored to file with a direction to the execution Court to issue warrant of arrest against judgment debtors in terms of Order XXI Rule 37(2) CPC and after securing their presence, conduct enquiry in terms of Order XXI Rule 40 CPC and pass Orders expeditiously.

Mr.A.Ravindra Babu, Advocate for the Petitioner.

O R D E R

The challenge in the C.R.P. at the instance of the decree holder is to the order dated 22.10.2018 in E.P.No.54 of 2017 in O.S.No.274 of 2016 passed by the learned Principal Junior Civil Judge, Rajamahendravaram dismissing the petition filed by him under Order XXI Rule 37 CPC seeking the Court to issue arrest warrant against the judgment debtors 3 & 4 and commit them to civil prison for realization of the amount.

2. The factual matrix of the case is thus:

The decree holder filed O.S.No.274 of 2016 against the judgment debtors/ defendants 1 to 4 for recovery of Rs.55,520/- on the strength of a promissory note and the defendants remained *ex parte* and said suit was ultimately decreed in favour of the plaintiff on 20.07.2016. Thereupon the D.Hr filed E.P.No.54 of 2017 with prayer to issue notice under Order XXI Rule 37 CPC to the judgment debtors 3 & 4 to comply the decree directions and on their failure to

commit them to civil prison. In the affidavit filed in support of E.P., he stated that the judgment debtors 2 to 4 are eking livelihood by doing works and getting salary of Rs.25,000/- per month each and in spite of having sufficient means and capacity to discharge the decretal debt in one lumpsum, they intentionally avoided to do so. The docket order in aforesaid E.P., a certified copy of which is filed herewith, shows that upon receiving notice JDrs 3 & 4 appeared in person and also through their counsel. The matter underwent several adjournments for filing their counter and ultimately on 22.06.2018 counsel for J.Drs. reported no counter. Hence, the execution Court posted the matter to 17.07.2018 for appearance of J.Drs 3 & 4, but they remained absent and hence, the Court set them *ex parte* and posted the matter for evidence of D.Hr to prove the means of J.Drs to 10.08.2018. It appears the D.Hr requested the Court to issue arrest warrant against the J.Drs 3 & 4 in terms of Rule 37(2) CPC for they failed to appear in obedience to the order of the Court. However, the Court refused to issue arrest warrant on the ground that no material was produced by the D.Hr to show that the J.Drs were working and getting any income and except mere pleading of the D.Hr there was no other material on record showing that the J.Drs were having income and thus, the D.Hr failed to establish the means of the J.Drs to pay the decree debt. On those observations, the E.P. was dismissed on 22.10.2018.

Hence, the Civil Revision Petition.

3. Notice in C.R.P. was directed against the judgment debtors 3 & 4, but there was no representation. Hence, heard the learned counsel for revision petitioner/ D.Hr.

4. Severely fulminating the order under revision learned counsel for the petitioner would submit that when the J.Drs 3 & 4 failed to appear before the Court on 17.07.2018, the Court, instead of setting them ex parte ought to have issued arrest warrant in terms of Order XXI Rule 37(2) CPC pursuant to the request made by the D.Hr to secure their presence before the Court for conducting means enquiry under Order XXI Rule 40 CPC. Learned Counsel would vehemently argue that such enquiry under Rule 40 has to be conducted in the presence of the judgment debtors and an opportunity also should be accorded to them and the said object can be achieved only by securing the presence of judgment debtors by way of arrest. Instead, the Court dismissed the E.P. itself on erroneous observation that the D.Hr failed to prove the means of judgment debtors. Since the enquiry was not conducted and D.Hr has not adduced evidence, the question of D.Hr failing to prove the means of judgment debtors does not arise. He thus prayed to allow the C.R.P.

5. The arguments advanced by the learned counsel for petitioner raise an important question of law as to the procedure to be followed by the execution Court in conducting the means enquiry to resolve whether or not the judgment debtor should be committed to civil prison for committing breach of the decree passed against him. Needless to emphasise, the methodology adopted to conduct enquiry in an arrest EP should be flaw less because the enquiry

ultimately culminate in committing the J.Dr. to the portals of civil prison by extirpating his personal liberty which is one of the previous endowments after life as recognized and enshrined in Article 21 of the constitution.

6. **Commission to civil prison for breach of contractual obligation: whether amounts to infringing upon fundamental right of liberty safeguarded under Article 21 of the Consitution and violation of Article 11 of the Insternational Covenant on Civil and Political Rights**.

(a) Several modes of execution are provided for different types of decrees under Section 51 C.P.C. of which, execution of money decree is one. For convenience Section 51 is extracted as under:

51. Powers of Court to enforce execution – Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree-

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by the sale without attachment of any property;

(c) by arrest and detention in prison [for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section]

(d) by appointing a receiver, or

(e) in such other manner as the nature of the relief granted may require:

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the court, for reasons recorded in writing, is satisfied-

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree-

(i)Is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) Has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation – In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which,

by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

b) An insight into Section 51(c) makes it clear that one of the modes of execution of money decree is by arrest and detention in prison of the judgment debtor. Having regard to the lethality of the relief, it had been impassionately argued on behalf of the judgment debtors that committing the judgment debtors to civil prison for mere infringement of a contractual obligation would amount to flagrant violation of Article 11 of the **International Covenant on Civil and Political Rights** (for short, 'the ICCP Rights') on one hand and Article 21 of the Constitution on the other, which argument was eruditely dealt with and decided by the renowned jurist V.R. Krishna Iyer in few judgments with reference to Section 51 CPC. In **Xavier v. Canara Bank Limited – MANU/KE/0255/1969** one of the arguments advanced against the commission of J.Dr. to civil prison in execution of a money decree was that ICCP Rights are part of the law of land and have to be respected by the municipal Courts and in that view, Article 11 of the aforesaid covenant militates and provides immunity from imprisonment of indigent and honest judgment debtors. Article 11 of ICCP Rights reads as under:

> "No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation".

c) An attempt was made in the said judgment to find out whether Section 51 CPC militates against the spirit of Article 11 of the international covenant. We will find in the proviso to Section 51 CPC that where the decree is for payment of money, execution by detention in prison shall not be ordered without following the conditions laid down in said proviso. Those conditions which are already extracted supra are meant to safeguard the interest of J.Drs. Therefore, the Court in an arrest E.P. shall afford a notice to the J.Dr to give an opportunity to show cause as to why he should not be committed to prison. Thereupon, recording its satisfaction that the judgment debtor with the object or effect of obstructing or delaying the execution of decree, committed certain acts, commit him to civil prison. In **Xavier's** case (supra 1), the learned judge taking these procedural safeguards into consideration observed that Section 51 has provided certain procedural safeguards that if the debtor has no means to pay he cannot be arrested and detained; if he has and still refuses or neglects to honour his obligation or if he commits acts of bad faith, he would incur the liability to imprisonment under Section 51 CPC. Learned Judge held this does not violate the mandate of Article 11. It is further observed that if the judgment debtor once had the means, but now has not or if he has money now on which there are other pressing claims, it is violative of the spirit of Article 11 to arrest and confine him in jail so as to coerce him into payment. While observing, learned judge however refused to accept the ambitious argument of counsel for J.Dr that in view of Article 11 of ICCP Rights, J.Dr shall be given total immunity from arrest. It was held that the basic human rights enshrined in the international covenants may at best

inform judicial institutions and inspire legislative action within member States; but apart from such deep reverence, remedical action at the instance of an aggrieved individual is beyond the area of judicial authority. The essence of the above observation is that Section 51 CPC imbibes in it the spirit of Article 11 by providing certain procedural safeguards to the judgment debtor before he is committed to civil prison for violation of a civil decree.

7. Again in **Jolly George Varghese v. The Bank of Cochin – AIR 1980 SC 470,** The Apex Court (Hon'ble Judges Sri R.S. Pathak and Sri V.R. Krishna Iyer) in the backdrop of executing Court not conducting any investigation regarding the current ability of the J.Drs to clear off the debts or their malafide refusal if any to discharge the debts, posed a question as to whether under such circumstances the personal freedom of the judgment debtors can be held in ransom until repayment of the debt, and if Section 51 r/w Order XXI Rule 37 CPC is constitutional when tested on the touchstone of fair procedure under Article 21 and in conformity with the inherent dignity of the human person in the light of Article 11 of the ICCP Rights. In this context, referring to the Xavier's case (supra 1) the Apex Court observed as under:

> *"15. We concur with the Law Commission in its construction of Section 51 CPC. It follows that quondam affluence and current indigence without intervening dishonesty or bad faith in liquidating his liability can be consistent with Article 11 of the Covenant, because then no detention is permissible under Section 51 CPC.*
>
> *16. Equally meaningful is the import of Article 21 of the Constitution in the context of imprisonment for non-payment of debts. The high value of human dignity and the worth of the human person enshrined in Article 21, read with Arts.14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence. Menaka Gandhi's case [1978] 1 SCR 248 as developed further in Sunil Batra v Delhi Administration MANU/SC/0184/ 1978: 1978 Cril.J 1741, Sita Ram and Ors. V State of U.P. MANU/ SC/0244/1979: 1979 Cril.J 659 and Sunil Batra V. Delhi Administration MANU/SC/0184/1978: 1978 Cril. J 1741 lays down the proposition. It is too obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling. To be poor, in this land of daridra Narayana, is no crime and to 'recover' debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his willful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave*

illness. Unreasonableness and unfairness in such a procedure is inferable from Article 11 of the Covenant. But this is precisely the interpretation we have put on the Proviso to Section 51 CPC and the lethal blow of Article 21 cannot strike down the provision as now interpreted."

Regarding the question whether Section 51 r/w Order XXI Rule 37 CPC is violative of Article 21, it was observed as under:

"18. The question may squarely arise some day as to whether the Proviso to Section 51 read with Order 21, Rule 37 is in excess of the Constitutional mandate in Article 21 and bad in part. In the present case since we are remitting the matter for reconsideration, the stage has not yet arisen for us to go into the views, that is why we are desisting from that essay."

8. Thus, the sum and substance of above quoted judgments is that Section 51 (c) CPC though provides for committing the judgment debtor to civil prison, still such a mode of execution is not violative of Article 11 of the ICCP Rights for it provides procedural safeguards in the proviso of very same section. Thus, a mere non-payment of decretal amount by J.Dr will not land him in civil prison without conducting enquiry and Court satisfying that one of the conditions mentioned in the proviso is satisfied to transmit him to the civil prison. In the context of Section 51 proviso (b), it was observed in those judgments that quondam affluence and current indigence or having sufficient means at present by the J.Dr. alone is not sufficient unless there is a proof of his willful failure to pay inspite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Therefore, there can be no scintilla of doubt that when an execution petition on the basis of money decree is filed for arrest of judgment debtor, the Court shall afford an opportunity to judgment debtor and conduct enquiry as to whether since the decree, the judgment debtor has, or has had the means to pay the amount of the decree or some substantial part thereof and still refuses or neglects or has refused or neglected to pay the same and then pass the reasoned order.

9. The next question is whether such an enquiry has to be conducted in the presence of the judgment debtor or in absentia?

10. The procedure as governed by Order XXI Rule 37 CPC and Rule 40 CPC which are as under:

*37. **Discretionary power to permit judgment-debtor to show cause against detention in prison** – (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the court [shall], instead of issuing a warrant for his arrest, issue a notice calling upon*

him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

[Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.]

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest".

(1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then given the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgement-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule(3), it shall disallow the application and if the judgment-

debtor is under arrest, direct his release.

11. The scheme of the code postulating the enquiry regarding means of the judgment debtor is thus explained in Order XXI Rule 37 and 40 CPC sufficiently. A decree holder who seeks execution by way of arrest and detention of the judgment debtor in civil prison shall file an affidavit in terms of Order XXI Rule 11-A CPC stating the grounds on which the arrest is applied for. Thereupon, the Court will have two options under Rule 37. If the Court is satisfied by the aforesaid affidavit and came to conclusion that with the object or effect of delaying the execution of the decree the judgment debtor is likely to abscond or leave the local jurisdiction of the Court, it can issue warrant of his arrest straight away for securing his presence or otherwise the Court, instead of issuing warrant of arrest, issue a notice calling upon judgment debtor to appear before it and show cause why he should not be committed to civil prison. These are the options available to the Court. Then Rule 37(2) CPC envisages that pursuant to the notice, if the judgment debtor has not appeared, the Court shall, if the decree holder so requires, issue a warrant for the arrest of the judgment debtor. So, the Court can secure the presence of the judgment debtor either by way of summoning him or by issuing warrant. It should be noted that issuing warrant of arrest under Rule 37(1) or (2) is only for securing the presence of the judgment debtor so as to proceed with an enquiry under Rule 40, but not to detain him in civil prison in terms of Sections 51 and 55 CPC. Therefore, at the stage of Order XXI Rule 37 CPC the Court need not look into the merits of the case as envisaged under proviso to Section 51. The distinction between arrest under Rule 37 and detention under Section 51(c) was well explained in (i) **Suravarapu Putrayya v. Maddukuri Veerraju – 1964(2) Andhra Weekly Reporter 38 (DB) and (ii) P.G. Ranganatha Padayachi v. The Mayavaram Financial Corporation Ltd. – AIR 1974 Madras 1 = MANU/TN/0107/1974.**

12. Then Rule 40 speaks that when the judgment debtor either appears before the Court in obedience to the notice issued under Rule 37 or is brought before the Court after being arrested, the Court shall proceed of the execution petition and shall then give the judgment debtor an opportunity of showing cause why he should not be committed to civil prison. Further, pending aforesaid enquiry the Court in its discretion order the judgment debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required. On conclusion of enquiry, the Court may, subject to the provisions of Section 51, make an order for the detention of the judgment debtor in civil prison and shall, in that event, cause him to be arrested if he is not already under arrest. When the Court does not make an order of detention, it shall disallow the execution petition and if the judgment debtor is under arrest, direct his release.

13. So, a careful analysis of the above two Rules, more particularly Rule 40, would give a clear connotation that the enquiry contemplated under Rule 40 shall be

conducted in the presence of the judgment debtor. Such a mandate is understandable in the light of the fact that the enquiry sometimes may culminate in the arrest and detention of the judgment debtor in civil prison affecting his personal liberty. It gives a further understanding that *ex parte* enquiry in the absence of judgment debtor is uncalled for. It was so held by a learned single Judge in **Kasi Subbaiah Mudali v. Kasi Veeraswamy Mudali - 2002(3) ALT 240 = MANU/AP/1397/2001.** In that case, the decree holder filed E.P. under Order XXI Rule 37 CPC for arrest and detention of the judgment debtor. The execution Court issued notice under Rule 37(1) CPC to judgment debtor, but due to his non-appearance set him *ex parte* and posted the matter for the evidence of decree holder. He was subsequently examined and the Court basing on the record gave a finding that the judgment debtor having sufficient means to pay the decree amount still avoided to pay the same and accordingly, issued warrant of arrest for production of the judgment debtor before the Court, which order was challenged in revision. In that context, it was held as under:

> *"16. Admittedly, in the present case, the court has undertaken an ex parte enquiry and recorded an ex parte finding about the possession of means by the petitioner herein. The said exercise by the executing court was contrary to the express or unambiguous provisions of Order 21, particularly Rule 40. The docket orders passed by the executing court from time to time would indicate that it has not at all taken into account the requirement under Rule 40 of Order 21 or Section 55 of the C.P.C. The executing court has not followed the express provisions of CPC, in passing the order under revision. The order cannot be sustained either in facts or in law. Accordingly, the same is set aside and the C.R.P. is allowed. However, there shall be no order as to costs."*

16. In the light of the above findings and presidential jurimetrics when the facts of the case on hand are perused, in the instant case also after attending Court for some time, J.Drs 3 & 4 remained absent and the execution Court set them *ex parte* and posted matter for evidence of decree holder to prove the means of judgment debtors. It must be said that the execution Court was totally oblivious of the procedure contemplated under Order XXI Rule 40 CPC which ordains that the means enquiry must be held in the presence of the judgment debtor. It appears in spite of the decree holder requesting the Court to issue arrest warrant in terms of Rule 37(2) CPC the Court below instead of issuing warrant held decree holder failed to establish the means of the judgment debtors and ultimately dismissed the E.P. which is totally an erroneous order bereft of legal mandate.

17. In the result, this Civil Revision Petition is allowed and the impugned order in E.P.No.54 of 2017 is set aside and consequently E.P. is restored to file with a direction to the execution Court to issue warrant of arrest against judgment debtors 3 & 4 in terms of Order XXI Rule 37 (2) CPC and after securing their presence, conduct enquiry in their presence in terms of Order

XXI Rule 40 CPC and pass an appropriate order on merits expeditiously. No order as to costs.

Miscellaneous Petitions, if any pending in this Civil Revision Petition shall stand closed.

--X--

2019(2) L.S. 104 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present:
The Hon'ble Smt.Justice
T. Rajani

Parenteral Surgicals Ltd. ..Petitioner
Vs.
State of A.P., ..Respondent

CRIMINAL PROCEUDURE CODE, Sec.482 – Drugs and Cosmetics Act – Complainant, drug inspector inspected A1 company and picked up several types of drugs for testing by complying with prescribed procedure – According to the analysts, the drugs picked up are not of standard quality, stating that sample does not meet I.P. requirements - Petitioner contended that failure of complainant to send the sample for analysis within prescribed period before expiry period of the drug and the right given to the petitioners under Section 25(3) of Act stands defeated - Petitioners/ A1 to A5 filed instant petition seeking to quash proceedings against them.

Held – Petitioners did not take steps to adduce evidence in contravention of the report - On the ground that second sampling was not done, proceedings against petitioners cannot be quashed – Criminal petition stands dismissed - Interim stay shall stand vacated.

Mr.R.Raghunandan, Sr. Counsel for Mr.S.Ganesh, Advocates for the Petitioner. Public Prosecutor for Respondent.

J U D G M E N T

This petition is filed seeking for quash of the proceedings against the petitioner, who are A1 to A5, in SC SPL No.32 of 2018 on the file of the court of III Additional District & Sessions Judge, Vijayawada, Krishna District.

2. Heard Sri R. Raghunandan, learned senior counsel appearing for the petitioners and the Public Prosecutor appearing for the respondent.

3. The complaint filed against the petitioners under section 32 of the Drugs and Cosmetics Act, 1940 and the Rules, 1945 (for short, “the Act” and “the Rules” respectively), is with the following facts, in brief:

The complainant, who was appointed as Drugs Inspector, inspected A1 Company – M/s .Parenteral Surgicals Limited, which had loan licence in Form 20A, valid upto 13.05.2014. A2 to A5 are the Board of Directors for manufacture of subjected drug along with other drugs manufactures by A1 Company. All of them

are responsible for the day to day activities of A1 Company. During inspection, the complainant picked up seven types of drugs for testing/analysis by complying with the prescribed procedure. He sent the seized samples to the Government Analyst Drugs Control Laboratory, Hyderabad and the report of the analysts, declaring the said drug as not of standard quality, stating that the sample does not meet I.P. requirements in respect of description of the sample under parental preparation, was received on 31.05.2011. On 01.06.2011, the complainant addressed a letter to LW3, enclosing a copy of the analytical report. LW3 gave a reply on 04.06.2011 to LW1 submitting two stock transfer notes of the subject drug. The complainant addressed a letter dated 06.06.2011 under Sections 18A and 18B, along with a copy of analytical report in Form-13 dated 26.05.2011, enclosing one of the sealed sample portion of the subject drug and sent the same by registered post to A1 company. On 12.07.2011, investigation was taken up by LW2. On 25.07.2011, LW2 addressed aletter to the superintendent of head post office, Vijayawada, for non-receipt of acknowledgment card. The receipt of the said notice copy, Form 13 and sample portion by A1 Company was confirmed by the reply of the superintendent of postal department. On 14.09.2011, LW2 inspected A1 Company and collected the required self attested documents and relevant information for the subject drug. On, 18.06.2012, the complainant addressed a letter to A1 Company requesting about any change in the constitution of Directors asking them to inform the same changes within seven days of the date of receipt of the letter, but no reply was received from A1 Company. Considering that A1 to A5 violated Section 18(a)(i) of the Act, the complaint was laid seeking for punishment under Section 27(d) of the said Act.

4. The grounds on which the petitioners now come before this court seeking for quash are that, the company is manufacturing drugs strictly as per WHO-GMP & revised schedule 'M' requirements and is one of the established manufactures of the Pharma products in the country. The manufacturing process is strictly in accordance with the provisions of the revised schedule M requirements and with in-process control and checks at all the stages of manufacturing. After completion of production, each batch is tested. The petitioner company reviewed the batch manufacturing record of above referred batch and found the same to be of standard quality as per the Quality Control Analytical report dated 26.05.2011 of above referred batch and found that it complies with all parameters as per the specifications. The report shows that one four bottles of the subject drug were taken for testing which were found to be having particles and not of standard quality due to failure in description. The batch is of standard quality and only four bottles developed particles due to mishandling or improper storage conditions and the contention of the petitioner's counsel is substantiated from the said fact that the sample portion supplied to the applicant company was also in leakage condition. The said fact was brought to the notice and accepted by the complainant Drug Inspector and the same was acknowledged. The failure of the sample portion was mainly due to improper storage or mishandling

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during the transportation, leading to cracks and it cannot be said to be a ground for failure of the whole batch.

The petitioners also relied on clauses 3 and 4 of guidelines, which specifies that in case particular drugs manufactured by licenced manufacturer under a valid licence is found to be grossly sub-standard, only administrative measures are to be taken and the weapon of prosecution is to be used only when administrative measures fail to meet the ends of justice. The report of the Government analyst does not specify as to what foreign matter was detected. The mere presence of particles does not imply that the particles in the medicines were of extraneous substance and not of the requisite contents thereof. The subject drug was manufactured in the month of January, 2011 with expiry in the month of December, 2013. A copy of the subject analytical report was received by the complainant on 31.05.2011. the complainant vide letter, dated 06.06.2011 informed A1 company that the subject drug has been declared to be not of standard quality and called for certain documents and information. In response, A1 company vide letter, dated 04.07.2011, challenged the test report and once again carried out the necessary tests on the sample portion available with it, as the sample portion supplied by the complainant was damaged and was in leaking condition. By sending the reply, dated 04.07.2011, A1 company had appropriately challenged the subject rest reported dated 26.05.2011. However, the complainant, for the reasons best known to him did not send the subject drug for retesting to the Central Drugs Laboratory as mandatorily required unde5r Section 25(3) of the Act.

5. Though all the above grounds were mentioned in the grounds of the petition, at the time of arguments, the counsel for the petitioners stressed only on the aspect of the failure of the complainant to send the second sample for analysis within the prescribed period, before the expiry date of the drug and hence, the valuable right given to the petitioners under Section 25(3) of the Act stands defeated. In order to appreciate the said argument, we need to have a glance at Section 25(3) of the Act, which is extracted hereunder for ready reference:

> "(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken or the person whose name, address and other particulars have been disclosed under Section 18A has, within twenty eight days of the receipt of a copy of the report, notified in writing the inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report."

6. It is clear from the above provision that within 28 days of the receipt of the copy of the report, the person receiving the copy should intimate that he intends to adduce evidence in contraversion of the report. It would be beneficial to read through clause (4) also which runs as under:

> "(4) Unless the sample has already been tested or analysed in the Central

Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused; cause the sample of the drug or cosmetic produced before the Magistrate under sub-section (4) of Section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein."

7 By reading clause (4) of Section 25, what this court can understand is that the pre-condition for sending the sample for second analysis is what is said under clause (3) of Section 25, which is that the person receiving the copy of the report has to notify in writing to the Inspector or the court, that he intends to adduce evidence in contraversion of the report. In this case, after receiving the report copy, the petitioners have sent an intimation to the complainant, which is dated 09.07.2011, reading of the copy of the said letter filed before this court shows that the petitioners have only explained the reason for the contamination, which resulted in the report coming out with the finding that the sample is contaminated, stating that it might be only due to invisible damage to bottles in transit or storage. It does not anywhere question the analyst report, either with regard to the genuineness or with regard to the correctness. When there is no attack made on the report on the said aspects, the report stands to be conclusive. As specified in Section25(3) of the Act, no intention to adduce evidence in contraversion of the report can be gathered from a letter, which explains only the reason for the report coming out in the negative. The letter, unless it specifies, either impliedly or expressly, that the petitioners intend to adduce evidence in contraversion of the report, cannot be construed as a notification made in compliance of the report. When no such intention can be gathered by the court, the obligation laid on the court to send the sample on its own or at the request of the complainant or the accused, for second sampling, does not come into operation.

8. The ruling relied upon by the petitioners' counsel reported in **NORTHERN MINERAL LIMITED VS UNION OF INIDA AND ANOTHER – (2010) 7 SCC 736** at paragraph 20 held as under:

"20. In the face of the language employed in section 24(4) of the Act, the act of the accused notifying in writing its intention to adduce evidence in controversion of the report in our opinion shall give right to the accused and would be sufficient to clothe the Magistrate with the jurisdiction to send the sample to the Central Insecticides Laboratory for analysis and it is not required to state that it intends to get the sample analysed from the Central Insecticides Laboratory. True it is that report of the Insecticide Analyst can be challenged on various grounds

but the accused cannot be compelled to disclose those grounds and expose his defence and he is required only to notify in writing his intention to adduce evidence in contoversion. The moment it is done, the conclusive evidentiary value of the report gets denuded and the statutory right to get the sample tested and analysed by the Central Insecticides Laboratory gets fructified."

9. There is no quarrel with the said finding. The petitioners cannot be compelled to disclose the grounds on which they seek to contravert the report, but in the considered opinion of this court the letter should be as explicit as to give an understanding to the court that he intends to adduce evidence in contraversion of the said report. In this case no such intention can be gathered from the letter addressed by the petitioners to the Director General, Drugs Control Administration, Hyderabad, for the reasons already mentioned in the afore-discussed paragraphs.

10. Hence, in view of the above, this court is of the considered opinion that on the ground that the second sampling was not done, the proceedings against the petitioners cannot be quashed.

11. With the above observations, the Criminal Petition is dismissed. Interim stay granted by this court, dated 08.03.2019, shall stand vacated.

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

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2019(2) L.S. 108 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
A.V. Sesha Sai

K.Ranga Prasad Varma ..Petitioner

Vs.

K.Sitarama Murthy & Anr., ..Respondents

CIVIL PROCEDURE CODE – Interim stay granted to the petitioner, stood vacated in view of Judgment of Hon'ble Supreme Court that stay shall not extend more than six months – Aggrieved by the docket Order, Petitioner preferred revision against the validity of the docket Order passed by the lower Court.

Held – Contingency of expiry of stay after six months would arise only in cases where there is stay of Trial – In present case, such contingency does not exist - Docket Order passed by the lower Court, which is impugned in present revision cannot be sustained in the eye of law – Civil Revision Petition stands allowed.

M/s.Indus Law Firm, Advocate for the Petitioner.

O R D E R

This revision is directed against the docket order dated 01.02.2019 passed by the Court of the Metropolitan Sessions

Judge-cum-I Additional District Judge, Visakhapatnam, in E.P.No.3 of 2005 in O.S.No.27 of 1998.

2.Briefly stated, the facts leading to filing of the present revision are as follows.

2 (i). Petitioner herein instituted the above mentioned suit against respondents, praying for the relief of specific performance of contract of sale and permanent injunction. The trial Court dismissed the said original Suit on merits and awarded costs to the respondents/ defendants. For realization of the said costs awarded by the trial Court,1st respondent/ 1st defendant filed E.P. No.3 of 2005. As against dismissal of the suit by the trial Court, to the extent of awarding costs, the petitioner preferred Appeal Suit vide ASSR No.6444 of 2005, before this Court, and along with the said Appeal Suit, he also filed an application, seeking condonation of delay in filing the said appeal. This court, vide order dated 16.06.2005 in A.S.M.P.No.1097 of 2005, granted interim stay of all further proceedings in E.P.No.3 of 2005 in O.S.No.27 of 1998 on the file of the I Additional District Judge, Visakhapatnam. The said appeal, according to the learned counsel for the petitioner, is pending consideration before this Court, and the stay granted, as mentioned supra, is still subsisting.

2 (ii).While the things being so, a Memo came to be filed before the Executing Court on behalf of 1st respondent, and the learned Judge passed the following order.

> "This memo is closed in view of the judgment of the Supreme Court and the learned counsel for the respondent/JDR and the JDR is not present, by accepting the memo. The JDR is not present, by accepting the memo. The JDR is called absent, counter is not filed. The stay stood vacated by the judgment of the Supreme Court in Asian Resurfacing of road agency Law vs CBI in Crl.Appeal No.1375, 1376/13, dt.23.03.18, since the stay in this case was passed on 16.06.2005 in A.S.M.P.No.1097/05 by the High Court. Hence right to file counter is for fated. To secure the presence of JDR to proceed with means enquiry the learned counsel for DHR seeks time to take steps. Call on 1-2-19."

Subsequently, the learned Judge passed the following docket order on 01.02.2019.

> "Learned counsel for petitioner/DHR filed petition to issue arrest warrant U/Sec.21 R-37 (2) CPC for condone mean enquiry. Hence issue Arrest Warrant to conduct mean enquiry against the JDR who is not regarding to the notice on payment of process by DHR is 3 days returnable by 8-3-2019."

In the above back ground, challenging the validity and legal sustainability of the said docket order. The present Civil Revision Petition came to be filed before this Court.

n the present revision, this Court, in I.A.No.2 of 2019, passed the following order.

"This petition is filed to suspend the order dated 01.02.2019 passed in E.P.No.3 of 2005 in O.S.No.27 of 1998 on the file of Metropolitan Sessions Judge-cum-I Additional District Judge, Visakhapatnam.

Heard the learned counsel for the petitioner.

Learned counsel points that initially an order was passed in A.S.M.P.No.1097 of 2005 granting an interim stay pending further orders. On 23.01.2019 metropolitan Sessions Judge-cum-I Additional District Judge, Visakhapatnam held that the stay granted is automatically vacated in view of the Judgment of the Hon'ble Supreme Court of India in **Asian Resurfacing of Road Agency Private Limited vs. Central Bureau of Investigation (2018 SCC online SC 310)**. It is the contention of the learned counsel that **Asian Resurfacing's case** applies only to the cases pending trial and that the six months dead line fixed by the Hon'ble Supreme Court clearly talks of trial being stayed in the trial Court. It is his contention that the order that is passed by this Courtin A.S.M.P.No.1097 of 2005 exercising its statutory power as an appellate court and that the provisions of order 41 etc., would not apply and are not relevant in this situation. It is his further contention that only if the trial is stayed, the Judgment of the Hon'ble Supreme Court of India or the subsequent memo issued by the High court would apply.

This Court is of the opinion that the learned counsel has made out a prima-facie case for interference at this stage.

In this view of the matter, there shall be suspension of the order dated 01.02.2019 passed in E.P.No.3 of 2005 in O.S.No.27 of 1998 on the file of Metropolitan Sessions Judge-cum-I Additional District Judge, Visakhapatnam for a period of eight weeks from today.

In this period of eight weeks, learned counsel for the petitioner is permitted to take out personal notice to the respondents by RPAD and file proof of service in the Registry, positively by 15.04.2019. List on 15.04.2019."

4. On the directions of this Court, the learned counsel for the petitioner caused notice to 1st respondent by registered post with acknowledgement due. Track record of Department of Posts, which shows that 1st respondent did not claim it on 25.02.2019, is filed before this Court by the learned counsel by way of a Memo dated 27.02.2019. there is no representation on behalf of 1st respondent.

5. Heard Sri V.R.N. Prashanth, learned counsel for petitioner and perused the material available before the Court.

6. the principal contention advanced by the learned counsel for the petitioner in this revision is that the judgment of the Hon'ble Apex Court in *Asian Resurfacing of road Agency private Limited v. Central Bureau of Investigation – 2018 SCC Online SC 310* is not applicable to the case on hand and the learned Judge erred in applying the principle laid down in the said judgment. It is the further contention of the learned counsel, in elaboration, that

the question of expiry of stay after six months would arise, as per the above said judgment of the Hon'ble Apex Court, in the cases where there is stay of trial, but not otherwise. The learned counsel has also placed on record 2 judgments of the Karnataka High Court i.e., in R.F.A. No.1344 of 2012, dated 15.03.2019 and W.P.Nos.100648-100649 of 2019, dated 10.01.2019, in support of his contention.

7. In the above background, now the issues that emerge for consideration of this Court in the present Civil Revision Petition are-

1) Whether the learned I Additional District Judge, Visakhapatnam is justified in applying the judgment of the Hon'ble Apex Court in *Asian Resurfacing of Road Agency Private Limited's case (1 supra),* to the case on hand ? and

2) Whether the court below is correct in issuing arrest warrant under Order XXI Rule 37 of the Code of Civil Procedure, 1908 ?

8. In order to appreciate the contentions of the learned counsel for the petitioner, it would be appropriate to refer to the judgments cited by the learned counsel for the petitioner. In *Asian Resurfacing of Road Agency Private Limited's case (1 supra),* the Hon'ble Apex Court, while dealing with the issue under the Prevention of Corruption Act, 1988, at paragraph Nos.37 and 38, ruled as under:

"in view of above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this, situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.

Thus, we declare the law to be that order framing charge is not purely an interlocutory

order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 Cr.P.C. or Article 227 of the constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to re-appreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e., the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on above parameters. Same course may also be adopted by civil and criminal appellate/revisional courts under the jurisdiction of the High Courts. The trial courts may, on expiry of above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced."

9. A reading of the above mentioned paragraphs of the judgment of the Hon'ble Apex Court demonstrates, in vivid and clear terms, that contingency of expiry of stay after six months would arise only in cases where there is stay of trial. In the instant case, such contingency does not exist. Admittedly, when the petitioner herein approached this court, by way of filing appeal in ASSR No.6444 of 2005, this Court, vide order dated 16.06.2005 in A.S.M.P. No.1097 of 2005, granted interim stay of all further proceedings in E.P. No.3 of 2005 in O.S.No.27 of 1998 on the file of the I Additional District Judge, Visakhapatnam. According to the learned counsel, the said stay is still operating and subsisting. When a similar issue cropped up before the Karnataka High Court in execution, the Karnataka High Court, after elaborately considering the issue, held in its order dated 10.01.2019 in W.P.Nos.100648-100649/2019, that the executing court cannot proceed to execute

judgment and decree which is stayed and categorically held that if any appellate court in any regular appeal or second appeal grants an interim stay of impugned judgment and decree, either of the trial court or of the first appellate court, as the case may be, then, so long as the stay of the execution of the decree remains in force, there can be no execution of the judgment and decree. In the said judgment, the Karnataka High Court also observed that the trial court or any other court subordinate to the High Court, cannot insist that there has to be further order made by the High /court continuing the stay of such orders on the expiry of six months from the date on which stay order was passed. The said principle was reiterated by a Division Bench of the Karnataka High Court in its order dated 15.03.2019 in R.F.A.No.1344 of 2012.

10. Having regard to the above reasons, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the docket order passed by the learned I Additional District Judge, Visakhapatnam, which is impugned in the present revision cannot be sustained in the eye of law.

11. Accordingly, the Civil Revision Petition is allowed, setting aside the docket order dated 01.02.2019 passed by the court of the metropolitan Sessions Judge-cum-I Additional District Judge, Visakhapatnam, in E.P.No.3 of 2005 in O.S.No.27 of 1998. It is made clear that till the order dated 16.06.2005 in A.S.M.P.No.1097 of 2005 in ASSR No.6444 of 2005 remains in force, the executing court cannot proceed further with the Execution Petition.

Miscellaneous petitions, if any, pending in the Civil Revision Petition shall stand closed in consequence.

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2019(2) L.S. 113 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present:
The Hon'ble Smt.Justice T.Rajani

Sayyed Ahammed & Ors., ..Petitioners

Vs.

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

CRIMINAL PROCEDURE CODE, Secs.197 & 239 - Revision preferred questioning the Order of lower Court, whereby, petition filed by petitioners, seeking to dismiss the complaint for want of prior sanction was dismissed.

Held – Whether sanction under Section 197 of Cr.P.C. is required or not, depends on the facts of a particular case and can be raised at any stage of proceedings – It is not that every offence committed by a public servant that requires sanction for prosecution nor every act done by him while he is actually engaged in the performance of his official duties – Sanctioning of amounts under the contract, which is not at all fulfilled, cannot be said to have been done in discharge of official

duty – Impugned Order needs no interference – Criminal Revision stands dismissed.

Mr.V.Subramanyam, Advocate for the Petitioner.
Public Prosecutor for Respondent No.1.

J U D G M E N T

This revision is preferred questioning the order, dated 06.12.2017, in Crl.M.P.No.3720 of 2017 in C.C.No242 of 2013 passed by the court of I Additional Judicial Magistrate of First Class, Adoni, by virtue of which the said court dismissed the petition, which was filed by the petitioners under section 239 Cr.PC, seeking to dismiss the complaint for want of prior section from the District Collector, Kurnool as required under Section 197 Cr.PC.

2. The facts need to be stated briefly in order to understand whether the petitioners are alleged to have committed the offences in discharge of their official duty.

As per the complaint, the complainant is the Assistant Executive Engineer, R & B, since March, 2007. He has been working in Adoni Division as on that date and was holding additional charge of Mantralayam R & B Section from 27.02.2011. On 28.10.2011, the R & B Department gave a contract to A4 to lay metal and blacktop road of Rampuram-Kosigi-Halvi of 4.60 KMs. But A4 Company only laid metal road up to 4.14 Km and on black top road was laid. A4 company, in collusion with A1 to A3, who are the Assistant Engineer/work incharge officer, Deputy Executive Engineer R & B, Check Measuring & payment officer respectively, has received payment of Rs.68,82,000/- vide cheques, but the road corresponding to the value of the said amount is not laid. There was a news item in the Eenadu newspaper with regard to the said deficit. An enquiry was caused by the departmental officers and A1 to A3 were suspended. Then the Contractor, A4 laid the black top road.

3. Heard Sri Mohan Reddy, learned senior counsel appearing for the petitioners and the Public Prosecutor appearing for the 1st respondent. None appears for the 2nd respondent in spite of notice.

4. The counsel for the petitioners makes a subtle argument, in support of the contention that the alleged offences occurred during discharge of the official duty of the petitioners and hence, sanction as requires under Section 197 Cr.PC is a precondition for prosecuting them.

5. The order of the court below reflects valid reasoning and has rightly made a distinction between the acts amounting to discharge of official duty and acts not amounting to. The counsel argues that as per the charge sheet, the road was nevertheless laid, but the allegation is that it was not properly laid. His argument is that if there is deficit, it has to be construed as improper discharge of official duty and hence prosecution based on such an allegation needs sanction. The contents of the charge sheet, unless they receive support from the material on record, cannot be relied upon. The charge sheet on doubt records that black top road up to 4.14 KMs was laid . But it only seems to be an erroneous observation made in the charge

sheet. The statements, which form the basis for the charge sheet, are otherwise. LW1, who is the complainant, in clear terms, stated that only metal road was laid upto 4.14 KMs and it is only after the deficit came to the notice of the public, by way of news in the newspaper, A4 hurriedly laid black top Road, which was not up to the mark. LWs.4 and 5 are the Sarpanch and VRO of Agasnur respectively. Both of them stated that after the news item appeared in the newspaper, there was an enquiry by the R&B authorities and both of them accompanied them during inspection by the R&B Authorities. They found that only metal road laid by the date of said inspection and black top road was not laid. Their statements also show that they stated that A1 to A3 helped A4 in drawing the amount, by suppressing the fact that black top road was not laid.

6. Hence, the above material would clinchingly show that A1 to A3 are alleged to have colluded with A4 in permitting him to draw the amount knowing the fact that he did not comply with the terms of contract and violated the same, by not laying the black top road.

7. The contention of the counsel that there is no element of cheating and that the ingredients of Section 409 IPC are not attracted, in the light of the above findings, has to be held as merciless. The ruling of the Apex Court in **URMILA DEVI VS. YUDHVIR SINGH** in Criminal Appeal No.1822 of 2013 which was made on 23.10.2013 does not help the petitioners. At paragraph 15, the apex court relied on three judge Bench decision of the apex court in **B.SAHA AND ORS. V. M.S.KOCHAR - 1979(4)SCC177**), which held as under:

> "Where this court held that while section 197 CrPC was capable of both liberal and narrow interpretations, a moderate and balanced approach was the correct way to interpret that provision to avoid an unfair advantage or disadvantage to the accused. This court, therefore, evolved the testy of a direct and reasonable connection between the official duty of the accused and the acts constituting the commission of offence. The court observed: The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between to extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of section 197(1), an Act constituting an offence, directly and

> reasonably connected with his official duty will require sanction for prosecution and the said provision."

8. Hence, it goes to support the opinion of this court that whether sanction under section 197 of the Code is required or not depends on the facts of the particular case, which comes before the court. The ruling of the apex court in **PROF.N.K.GANGULY VS.CBI, NEW DELHI** in Ciminal Appeal No.789 of 2015 also supports the said view, as the court, while dealing with the issues that came up before the apex court, held as under:

> "It is not that every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable. (Emphasis laid by the Court). In the case of B. Saha v. M. Skochar, the constitution Bench of this Court observed that the question of sanction under Section 197 CrPC could be raised and considered at any stage of proceedings…"

9. Hence, sanctioning of amount under the contract, which is not at all fulfilled, cannot be said to have been done in discharge of official duty. *Prima facie*, the allegation of collusion between A1 to A3 and A4 is evident from the statements of the witnesses which disclose that no black top road was laid at all. As held by the Constitutional bench of the Supreme Court, the question of requirement of sanction can be raised and decided any time during the pendency of the proceedings.

10. In view of the above, this court opines that the impugned order needs on interference.

11. With the above observations, the Criminal Revision Case is dismissed and the order, dated 06.12.2017, passed in Crl.M.P.No.3720 of 2017 in C.C.No.242 of 2013 passed by the court of I Additional Judicial Magistrate of First Class, Adoni, is hereby confirmed.

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

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2019(2) L.S. 117 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present:
The Hon'ble Smt.Justice T. Rajani

G.Leela Krishna Murthy ..Petitioner
Vs.
K.Koteswara Rao & Anr., ..Respondents

REGISTRATION ACT, Sec.49 – CIVIL PROCEDURE CODE, Sec.151 - Instant Revision preferred against the Order, passed in I.A., whereby the petition filed by the petitioner seeking to admit the draft sale deed and agreement of sale, in evidence as per proviso to Section 49 of Registration Act was dismissed.

Held – Permission to get the document marked cannot be refused – Impugned Order is set aside – Agreement of sale would be marked subject to proof and draft sale deed being an inadmissible document, cannot be marked – Civil Revision stands partly allowed.

Mr.Ghanta Sridhar, Advocate for the Petitioner.
Ms.T.V.Sridevi, Advocate for the Responents.

O R D E R

This revision is preferred against the order, dated 04.01.2018, passed in IA No.758 of 2017 in O.S.No.34 of 2011, by virtue of which the court dismissed the petition, which was filed under Section 49 of the Registration Act r/w 151 CPC seeking to admit the draft sale deed, dated 09.09.2009, and the agreement of sale, dated 20.08.2009, in evidence as per the proviso to Section 49 of the Registration Act.

2. Heard the counsel for the petitioner as well as the counsel for the respondents.

3. A perusal of the impugned order would show that the court considered that earlier there was a docket order passed by the court in O.S.No.8 of 2010, which was clubbed with O.S.No.34 of 2011 refusing to mark the same document. Against the said docket order, the petitioner therein preferred revision and the High Court Confirmed the order. A perusal of the docket order shows that no reasons were absolutely mentioned.

4. Be that as it may, the counsel now submits that the document at present is sought to be marked in O.S.No.34 of 2011 and not in O.S.No.8 of 2011 in which refusal to admit the document was recorded. He also draws the attention of this court to proviso to Section 49 of the Registration Act, wherein an unregistered document effecting immovable property and required by this Act or the Transfer of Property Act, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act or as evidence of any collateral transaction not required to be effected by registered instrument.

5. The earlier petition was filed in O.S.No.8 of 2010, while this petition is filed in O.S.No.34 of 2011, which is a suit for specific performance. As already observed, the docket order in O.S.No.8 of 2010 is not

a reasoned order, which does not even reflect the objections raised by other side. However, O.S.No.8 of 2010 is filed for recovery of possession and O.S.No.34 of 2011 is filed for specific performance, in which the unregistered agreement of sale becomes relevant and admissible. Though the suits are clubbed, the aspect of relevancy cannot be overlooked. In fact, the lower court ought to have marked the document in O.S.No.8 of 2010 itself as the document is admissible in O.S.No.34 of 2011, which is clubbed with O.S.No.8 of 2010. The docket order in O.S.No.8 of 2010 shall not, in the above circumstances, operate as a bar to allow marking of the document in O.S.No.34 of 2011.

6. Hence, in view of the above discussion and going by the purport of the above provision, the permission to get the document marked cannot be refused. The impugned order is set aside and the agreement of sale, dated 20.08.2009, would be marked subject to proof and relevancy by considering the objections, if any, that may be taken by the counsel for the respondents. However, the draft sale deed, dated 09.09.2009, being an inadmissible document, cannot be marked.

7. With the above observations, the Civil Revision Petition is partly allowed.

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

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2019(2) L.S. 118 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
M. Seetharama Murti

M. Venkateswarlu & Ors., ..Petitioners
Vs.
M. Nageswara Rao (Died) & Ors., ..Respondents

INDIAN STAMP ACT, Sec.38(2) - CIVIL PROCEDURE CODE, Sec.151 – Civil revision by the defendants/ petitioners assailing the Order passed in I.A., whereby, application filed requesting to send acceptance deed filed along with affidavit, to the District Registrar for deciding the stamp duty collectable and for collecting the deficit stamp duty and penalty was dismissed.

Held – Court cannot compel a party to pay the stamp duty and penalty and have it admitted in evidence – It is for the party to have the document admitted in evidence by paying stamp duty and penalty or leave the Court to take action as provided under Section 38(2) – Trial Court ought to have considered the request of defendants and allowed the I.A. and ought to have sent the instrument in question to Stamp Duty Collector – Civil revision stands allowed.

Mr.Doddala Yathindra Dev, Advocate for Petitioners.

CRP.No.1395/19 Date:19-6-2019

Mr.Srinivasa Rao Velivela, Advocate for Respondent No.2.

O R D E R

This Civil Revision petition, under Article 227 of the Constitution of India, is filed assailing the order, dated 07.02.2019, of the learned Principal Junior Civil Judge, Mangalagiri, passed in IA No.1575 of 2018 in OS No.157 of 2014.

2. I have heard the submissions of Sri D. Yathindra Dev, learned counsel appearing for the revision petitioners – defendants 1, 10 to 16 and of Sri Sreenivasa Rao Velivela, learned counsel appearing for the respondents 1 to 3 –plaintiffs. I have perused the material record.

3. The introductory facts, in brief, are as follows:-

In a suit for partition, the defendants 1, 9 to 16 ['the contesting defendants', for short] who are resisting the suit, filed an application under Section 38(2) of the Indian Stamp Act, 1899 read with Section 151 of the code of Civil procedure, 1908, ['Code', for short] requesting to send the original document, dated 05.04.2002, styled as 'Oppudala Patram' [acceptance deed], filed along with the affidavit filed in lieu of examination in chief of DW2, to the District Registrar, Guntur, for deciding the stamp duty collectable on the said document and for collecting the deficit stamp duty and penalty. The said application was resisted by the plaintiffs. On merits and by the orders impugned in this revision, the trial Court dismissed the said petition. Hence, the defendants 1, 10 to 16 filed this revision.

4. The case of the contesting defendants in support of the afore-stated request, as stated in the affidavit of the 13th defendant, in brief, is this:

The suit is filed for partition and other reliefs. The contesting defendants are resisting the suit. The suit is posted for hearing arguments. The 13th defendant got filed written arguments through his counsel. Thereafter, on the application of the plaintiffs, the evidence was reopened. Further evidence was adduced on behalf of the plaintiffs by examining PW2. Thereafter, the suit is again posted for hearing arguments. While discussing the case facts with the counsel, it is noticed that though the 13th defendant filed, along with the affidavit in lieu of examination in chief of the said defendant, a gift agreement letter, dated 05.04.2002, executed by the 1st plaintiff, 12th defendant & others, the said document was not exhibited as it is not duly stamped. The 13th defendant made a representation to the Court that he is prepared to pay the deficit stamp duty and penalty on the said document. Further, a request was made on behalf of the present defendants to collect the stamp duty and penalty and receive the document in evidence and permit them to exhibit the same through the 13th defendant. Hence, the present petition is filed.

5. Per contra, the case of the plaintiffs as stated in the counter of the 2nd plaintiff, in brief, is this:

The material allegations in the affidavit of the 13th defendant, which is filed in support of the petition, are false. Under the gift deed, there is no consideration.

There is no prior agreement. It is an out and out gift deed, as it created right, title and interest over immovable property; and, possession was also delivered under the very said document. The said document is a compulsorily registerable document. It is inadmissible in evidence for want of registration. Therefore, no useful purpose would be served if the document is impounded and the stamp duty & penalty collectable on the instrument are collected. The instrument was executed by six persons, as per the recitals in the first paragraph of the instrument. Thumb impressions of executants 7 & 8 were inserted at a later point of time at the bottom of pages 1 & 2 of the instrument. Since the document in question is not a registered document, though required under law to be registered, it cannot be received in evidence. It is a false document created for the purpose of this case. DW2 1 & 2 stated in their evidence that DW1 purchased item No.2 of the plaint schedule property from the shareholders by paying Rs.10,000/- each. DW1 did not state that item No.2 of the plaint schedule property is gifted to him without consideration. The provision of law relied upon by the contesting defendants is inapplicable. Since the evidence is already closed and the petition is filed at a bleated stage, the petition is liable for dismissal.

6. Learned counsel for the contesting defendants submitted as follows:

The document is styled as 'Oppudala Patram' [acceptance deed]. In view of the contents/recitals in the instrument and the transaction embodied in the document, it is necessary to examine the real nature of the transaction contained in the document by considering the entire content of the document. Since the District Registrar, who is the stamp duty collector, is the competent officer to ascertain the nature of transaction embodied in the document and determine the stamp duty payable on the instrument, the subject petition is filed before the trial Court for sending it to the said officer for ascertaining the deficit stamp duty and penalty payable on the instrument and collecting the same. Unless the deficit stamp duty and penalty as determined by the competent officer are paid and collected, the document cannot be permitted to be exhibited and cannot even be looked into for collateral purpose. The trial Court, while dealing with the request in the interlocutory application, unnecessarily went into aspects that are not relevant for consideration and had erroneously dismissed the petition by incorrectly observing that even if stamp duty & penalty are paid & collected, the document cannot be received in evidence even for collateral purpose, in view of the meaning that can be given for the words 'collateral transaction'. The primary consideration required is only with regard to the requirement of collection of deficit stamp duty & penalty on the instrument. The further aspect as to for what collateral purpose the instrument would be admissible, on collection of defict stamp duty and penalty, is secondary and does not fall for consideration at the primary consideration stage, as the Court, which is required to protect the revenue of the State, is bound to impound (seize) any document not stamped or sufficiently stamped and take steps as per law for collection of the duty/deficit duty and penalty. As per settled legal position when a party makes a request

to send a document/an instrument to a stamp duty collector for collection of stamp duty or deficit stamp duty & penalty, the Court has no discretion but to send the said document to the stamp duty collector for the said purpose for the reason that the Indian Stamp Act is a fiscal enactment and the Court is required to protect revenue of the Government. Hence, the trial Court was in error in dismissing the application filed by the defendants.

6.1. In support of the said contentions, he placed reliance on the order, dated 26.07.2017, in CRP No.4898 of 2016.

7. Learned counsel for the plaintiffs while supporting the impugned order and while reiterating the above extracted contentions of the plaintiffs further submitted as follows: - 'The 1st plaintiff died. The 2nd and 3rd plaintiffs are continuing the suit filed for partition. The contesting defendants are resisting the suit by raising frivolous grounds. The meaning of the words 'collateral transaction' is explained in a number of decisions of the supreme Court. Collateral transaction is not the main transaction itself, which is required to be effected by a registered document, that is, a transaction creating any right, title or interest in movable property of the value of one hundred rupees and upwards. A collateral transaction must be independent of or divisible from the transaction, which itself is required to be effected by a registered document. In the case on hand, the suit is one for partition. The recitals in the document clearly show that it is an out and out git deed. Therefore, it is a compulsorily
Registerable document. Therefore, as rightly held by the trial Court even if the deficit stamp duty & penalty are paid by the contesting defendants and are collected by the stamp duty collector, yet no useful purpose would be served and the exercise that may be undertaken in that regard, therefore, would be a futile exercise.'

8. I have given earnest consideration to the facts and submissions. I have perused the written submissions filed on behalf of the contesting defendants.

9. In view of the prayer in the interlocutory application filed before the trial Court by the contesting defendants, the only aspect which needed consideration by the trial Court is – whether their request for sending the document/instrument in question to the stamp duty collector for collection of deficit stamp duty and penalty can be granted ?

10. In the decision in **B.V.R. Reddy vs. The Adoni Co-operative Central Stores Ltd. And Ors – AIR 1975 AP 96** the then High Court of AP had an occasion to deal with the same question. The facts of the case disclose that the plaintiff in a suit on the file of the Court of the Subordinate Judge, Adoni, filed a document, which was found to be a lease deed requiring payment of stamp duty and registration; therefore, the Court below directed the petitioner to pay the required stamp duty and penalty; instead of complying with that order, the petitioner filed an application under Section 38(2) of the Indian Stamp Act to send the same to the Collector so that he may determine and collect the proper duty and penalty payable on the document; but the lower Court refused to grant the said request by holding that the document cannot now be sent to

the Collector under Section 38(2) of the Stamp Act as the Civil Court is the competent authority to decide as to the amount of stamp duty and penalty to be collected.

In this back drop it was held as follows:

> "....Section 33 provides for impounding of instruments required to be stamped and not duly stamped. It is provided under Section 38(1) that when a person impounding an instrument has authority to receive evidence and admits such instrument in evidence upon payment of penalty as provided by Section 35, then he shall send to the collector an authenticated copy of such instrument together with a certificate in writing stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector. It is further provided in Section 38(2) that in every other case the person impounding the instrument shall send it in original to the Collector who shall deal with it as provided under Section 40. A reading of Section 38 shows that if the party who filed the document wants it to be Admitted in evidence, then only the Court shall collect the stamp duty and penalty and the admit the instrument in evidence. But if the party instead of requiring the document to be admitted in evidence merely wants the Court to send it to the Collector to be dealt with under Section 40, I do not think the Court can have any option but to send it to the Collector as provided under Section 38(2). The Court cannot compel a party to pay the stamp duty and penalty and have it admitted in evidence. It is for the party to have the document admitted in evidence by paying stamp duty and penalty or leave the Court to take action as provided under Section 38(2). It is clear that the intention of the petitioner is not to have the document admitted in evidence by paying stamp duty and penalty and therefore he requested the court either to send the document to the Collector as provided under Section 38(2) or deliver it to him so that he himself can place it before the Collector for taking action under section 40. The latter course cannot certainly be adopted because the party may fail to put up the document before the Collector for collecting the proper stamp duty and penalty. Under these circumstances the Civil Revision Petition is allowed and the lower court is directed to send the instrument which is impounded to the collector for taking the necessary action as provided under section 40."

10.1. It is also profitable to refer to the decision of the Supreme Court in **Chilakuri Gangulappa vs Evenue Divisional Officer, Madanpalle and ors. – (2001) 4 SCC 19** wherein the Supreme Court while dealing with the same aspect, referred to Section 38 of the Indian Stamp Act, which reads as under:-

> "Instruments impounded how dealt with (1) when the person impounding an instrument under section 33 has,

by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by Section 35 or of duty as provided by Section 37, he shall send to the Collector, an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf. (2) In every other case, the person so impounding an instrument shall send it in original to the Collector."

And held as follow:

"It is clear from the first sub-section extracted above that the court has a power to admit the document in evidence if the party producing the same would pay the stamp duty together with a penalty amounting to ten times the deficiency of the stamp duty. When the court chooses to admit the document on compliance of such condition the court need to forward only a copy of the document to the Collector, together with the amount collected from the party for taking adjudicatory steps. But if the party refuses to pay the amount aforesaid the Court ? has no other option except to impound the document and forward the same to the Collector. On receipt of the document through either of the said avenues the Collector has to adjudicate on the question of the deficiency of the stamp duty. If the Collector is of the opinion that such instrument is chargeable with duty and is not duly stamped "he shall require the payment of the proper duty or the amount required to make up the same together with a penalty of an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof."

Therefore, the trial Court, which is bound by the legal position obtaining, ought to have considered the request of the contesting defendants and allowed the interlocutory application instead of dismissing it and ought to have sent the instrument in question to the Stamp Duty Collector concerned for the desired purpose.

11. The other aspects, which need to be considered by the trial Court, though at an appropriate later stage, are – 'What is a collateral purpose? Whether the document/ instrument in question could be permitted to be used for any collateral purpose and be permitted to be exhibited for the said purpose?'

11.1. In the first place, it is to be noted that a document, which is required to be stamped and which is not stamped or insufficiently stamped, is not admissible in evidence even for collateral purpose unless the stamp duty/deficit stamp duty & penalty payable thereon are paid and collected by a competent authority. The said proposition of law is laid down in Yellapu Uma Maheswari v. Buddha Jagadheeswara Rao [{2015} 16 SCC 787]. The word collateral purpose is explained in the decision of the Supreme Court in **K.B. Saha and sons pvt. Ltd., v Development Consultant limited**

– (2008) 8 SCC 56 wherein the Supreme Court held as follows:

> "A document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immovable property, but it may be admitted as evidence of collateral facts, or for any collateral purpose that is for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property.

11.2. In the present case, since the matter is at the first stage of sending the document to the stamp duty Collector for ascertaining the nature of the transaction embodied in the instrument and collection of deficit stamp duty, if any, and penalty thereon, there is no need to go into the other aspect as to what could be the collateral purpose for which the contesting defendants would be permitted to rely upon the document in question, after paying the deficit stamp duty and penalty on the instrument, as may be determined by the stamp duty collector. Suffice if it is observed that it is for the trial Court to consider the said aspect at an appropriate later stage when the contesting defendants make a request in that regard, after they pay the deficit stamp duty and penalty as determined by the collector concerned.

12. For the afore-stated reasons and in view of my finding that when a request of the present nature is made by a party, the Court has no option but to send the document to the Stamp Duty Collector, it follows that the impugned order brooks interference.

13. In the result, the Civil Revision Petition is allowed and the impugned order is set aside and IA.No.1575 of 2018 in OS No.157 of 2014 is allowed directing the trial Court to send the document/instrument in question to the Stamp Duty Collector concerned for ascertaining the nature of the transaction embodied in the document/ instrument and collecting deficit stamp duty, if any & penalty payable on the said instrument. It is made clear that in the event the deficit stamp duty and penalty are paid by the defendants as determined by the stamp duty collector, the trial court shall then consider the admissibility of the said instrument for any collateral purpose, however, following the precedential guidance of the Supreme Court wherein the word 'collateral purpose' is explained, nonetheless, uninfluenced by the observations on the said aspect, which are already recorded in the order, which is now set aside.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

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2019(2) L.S. 125 (A.P.)

IN THE HIGH COURT OF
ANDHRA PRADESH

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

K. Venkata Rama Mohana Rao ..Appellant

Vs.

M.Venkateswara Rao & Anr., ..Respondents

MOTOR VEHICLES ACT – While petitioner was going to his house, a tractor driven at high speed and in a rash manner dashed on to the petitioner causing severe injuries – Petitioner claimed a total of Rs.2,00,000/- as compensation, however the M.V. Accident Claims Tribunal awarded compensation of Rs.43,000/- to petitioner – Hence petitioner preferred instant appeal for the enhancement of compensation awarded.

Held – Compensation shall be evaluated in such a manner that it should be neither a pittance or windfall – Compensation awarded should financially place the victim of the accident in such a position where he would have been had there been no accident – Considering the disability and mental depression entailed by petitioner, compensation is enhanced by Rs.1,56,000/- at an interest rate of 7.5% - Appeal stands allowed.

MACMA.No.614/08 Dt:22-3-2019

Mr.Challa Ajay Kumar, Advocate for the Appellant.

Mr.B.Devanand, Advocate for Respondent No.2.

J U D G M E N T

1. It is a sad case vividly demonstrating how the learned Chairman, Motor Vehicle Accidents Claims Tribunal-cum-IX Additional District Judge (FTC), Guntur (for short, 'the Tribunal'), exhibited utter disdain in understanding the nature and gravity of injuries suffered by the petitioner and in evaluating consequent disability and transforming them into just and reasonable compensation.

2. Coming to factual side, on 26.04.2005 at about 07.30 p.m. while the petitioner was going towards his house near Budampadu centre on GBC Road, a tractor bearing No.AP 7Q 4350 came from Guntur side, driven by its driver at high speed and in a rash and negligent manner, dashed the petitioner and thereby the front tyre hit the petitioner and he fell down and back tyre ran over his stomach causing severe injuries. Thereby, the petitioner suffered fracture of pelvis, rupture of urinary bladder, injuries to his testicles and other parts of the body. We have the evidence of PWs. 2 and 3 – doctors with regard to the nature of treatment underwent and the disability suffered by petitioner and its impact on his life, which we will discuss a little while later. The petitioner, who is an auto driver, filed M.V.O.P. No.652 of 2005 against the respondent Nos. 1 and 2, who are the owner and insurer of the tractor, and claimed a total compensation of Rs.2,00,000/- under

different heads on the plea that the accident occurred due to the fault of the tractor driver and it resulted in severe disability and impotency and also affected his earning capacity.

3. Respondent No.1 remained ex parte.

4. Respondent No.2 the insurance company filed counter and opposed the claim urging to put the petitioner to the strict proof of his case.

5. During trial, PWs.1 to 3 were examined and Exs.A-1 to A-6 and Ex.X-1 and X-2 were marked on behalf of petitioner. On behalf of respondent No.2, RW.1 was examined and Exs.B-1 and B-2 were marked.

6. The Tribunal awarded compensation of Rs.43,000/- with interest at the rate of 8% p.a. under the following heads:

Compensation for injuries		Rs.21,000-00
Pain and suffering		Rs. 5,000-00
Medical and incidental expenses		Rs. 7,000-00
(Extra nourishment and attendant charges)		
Loss of earnings and disability		Rs.10,000-00
TOTAL	:	Rs.43,000-00

Hence the MACMA at the instance of petitioner.

7. While the learned counsel for insurance company advocated the sufficiency of compensation, appellant/ petitioner severely fulminated the same. In expatiation, he would argue that having regard to the fact that the petitioner suffered fracture to his pelvis, besides rupture of urinary bladder and other injuries, the Tribunal ought to have awarded Rs.25,000/ - towards pain and suffering. He further argued that the Tribunal granted a woefully low amount for loss of earnings and disability. He submitted that the accident was occurred on 26.04.2005 and he was discharged from hospital on 08.06.2005 and thereafter for a considerable period he could not attend his Auto driver job and thereby lost his earnings. In that view, the Tribunal ought to have awarded a reasonable amount towards loss of past earnings. Further, he suffered 10% disability due to terminal painful restriction of both hip joint movements, which would have adverse impact on his auto driving profession. Hence, the Tribunal ought to have granted compensation for future loss of earnings also.

Then, disability is concerned, he argued the abdominal injury and rupture of urinary bladder resulted in impotency to him and deprived him of the opportunity to have

children. The Tribunal has not at all considered this aspect and granted compensation. He thus prayed to enhance the compensation suitably.

8. It is a trite law that Motor Vehicles Act, 1988 being a beneficial legislation which is intended to provide just compensation to the victims of the motor vehicles accidents, needless to emphasize that it is the avowed duty of Tribunals to award just and reasonable compensation by taking into consideration all relevant factors i.e., in a death case, the age, earnings, future prospects of the deceased, the dependency, loss of consortium due to death of spouse, loss of love and affection to the nearest kith and kin etc., and similarly in an injury case, the factors like the nature of injuries suffered by the victim, their gravity, pain and suffering, the resultant disability, loss of past and future earnings due to his disability, medical and other incidental expenditure etc., The compensation shall be evaluated in such a manner that it should be neither a pittance nor a windfall. On the other hand, the compensation awarded should financially place the victim of the accident in such a position where he would have been had there been no accident. This is the objective of the scheme of compensation under the Act. The Apex court **in Yadava Kumar v. The Divisional Manager, National Insurance company Limited and another- AIR (2010) SC 3741,** while dealing with the aspect of just compensation, held thus:

> "20. The High Court and the Tribunal must realize that there is a distinction between compensation and damage. The expression compensation may include a claim for damage but compensation is more comprehensive. Normally damages are given for an injury which is suffered, whereas compensation stands on a slightly higher footing. It is given for the atonement of injury caused and the intention behind grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of grant of pecuniary relief. Thus, in the matter of computation of compensation, the approach will be slightly broader based than what is done in the matter of assessment of damages. At the same time it is true that there cannot be any rigid or mathematical precision in the matter of determination of compensation."

9. Coming to the case on hand, the evidence of PWs.2 and 3 depicts the nature of injuries, treatment underwent by the petitioner and the resultant disability occasioned to him. In fact, the Tribunal has elaborately discussed the evidence of these witnesses. PW.2 Dr.U.Surya Kumari is the head of the Department and Professor of Urology in Government General Hospital (GGH), Guntur. She deposed that the petitioner was admitted in GGH, Guntur, on 27.04.2005 with the following injuries:

> "(1) Abrasion of 6 inches x 5 inches on right side of the abdomen with Ecchymosis.

(2) Abrasion of 4 inches x 3 inches on left side of the umbilical i.e., on anterior abdominal with Ecchymosis.

(3) Bleeding present from urethra with complainant severe pain from abdomen with shock."

She further deposed after giving IV fluids and blood transfusion, he was advised for surgery. Scanning done before surgery showed fluid accumulation in the abdomen and haematoma present near kidney and liver. On opening abdomen, rupture of the urinary bladder was found with accumulation of one litre of blood in the abdomen. There was retro peritoneal haematoma on both sides of kidneys. The blood was drained and bladder was repaired and a catheter was arranged for passing urine. After surgery, the petitioner was shifted to ICU and treated with IV fluids and higher antibiotics. The aforesaid injuries were also associated with bony pelvis fracture. The petitioner was treated in the ward for 16 days and then shifted to ortho ward for further management of fractures and he was discharged from GGH, Guntur, on 08.06.2005 with catheter tube inside the bladder to enable him to pass urine with an advice to change the tube for every month at O.P. The witness further stated that the petitioner was re-operated and urethroplasty was done. Most importantly, PW.2 stated that there is a possibility that the petitioner is affected with impotency due to the injuries sustained to his urinary bladder and fracture pelvis. She also stated that the petitioner required dilation for every two months and till the date of her evidence, the petitioner has been attending for follow-up treatment.

Then, PW.3, who is the Assistant Professor in GGH, Guntur, deposed that on 27.04.2005 the petitioner was admitted in GGH, Guntur, with the injures – rupture of bladder, urethra, fracture of both pubic ramie bilaterally. He was treated in the Urology department for rupture of the bladder and urethra till 13.05.2005; later, he was transferred to ortho department and given conservative treatment till 08.06.2005 and discharged. He further stated that there is a terminal painful restriction of both hip joint movements due to which he suffered disability at 10%.

From the ocular evidence of PW.2 and PW.3 coupled with Ext.A.3 wound certificate, Ex.A-6 – x-ray film, Ex.X-1 – case sheet of GGH, Guntur, and Ex.X-2 – x-ray film, it is evident that the petitioner suffered rupture of urinary bladder and fracture pelvis which resulted in disability and impotency. Petitioner's grievance is that he married about 7 years prior to the accident and begot two daughters of which the younger

daughter died and therefore the couple wanted to have another child but due to accident, he became impotent and hence he has no chance to get another child, which causes him distress. When different medical causes for impotency are perused, the injury to pelvis, urethra, and resultant surgeries are noted as one of the causes. Therefore, the petitioner's claim that he suffered impotency due to injuries caused in the accident can be believed. In fact, the nature of injuries, the treatment underwent by the petitioner, and resultant disability etc., could not be disproved by the respondents. Be that it may, the Tribunal, it must be said, committed a grave error in understanding the nature of injuries and the resultant disability and awarded a pittance to the petitioner. Hence, the intervention is essential.

10. For instance, the Tribunal awarded only Rs.5,000/- towards pain and suffering. It should be noted that due to rupture of urinary bladder and fracture of pelvis, the petitioner must have experienced excruciating pain. Therefore, he is awarded Rs.10,000/- for pain and suffering.

11. The Tribunal awarded only Rs.10,000/- towards los of earnings and disability. This calibration is totally wrong and without any reasoning. It should be noted that as per the evidence of PW.3, due to terminal painful restriction of both hip joint movements, the petitioner suffered 10% disability. Unfortunately, both the doctors have not expressed the percentage of disability on account of erectile dysfunction (impotence). The Tribunal probably taking the 10% disability into account and on observing that the petitioner has not produced any reliable evidence regarding his auto driving profession, such as driving license etc., to prove his earnings, granted a notional amount of Rs.10,000/- for loss of earnings and disability. Needless to emphasize this assessment is without reference to the stark facts. The petitioner was a young man of 27 years by the time of accident and his case was that he was eking out his livelihood as an auto driver. Of course he has not produced his driving license. Even otherwise, having regard to his young age and potentiality to earn, his monthly income can be fixed at Rs.3,000/- . Thus the annual income comes to Rs.36,000/-. As per the decision of the Apex Court in **Sarla Verma and others v. Delhi Transport Corporation and others – 2009(6) SCC 121**, 17 can be accepted as multiplier for the persons in the age group of 26 to 30 years. So, the total earnings of the petitioner comes to Rs.6,12,000/- (36,000/- x 17). The petitioner suffered 10% disability due to painful restriction of him joint movements, which will have adverse impact on his earning capacity. Therefore, he is awarded compensation to that extent, which comes to Rs.61,000/-.

12. It should be further noted that the Tribunal failed to award any compensation for impotency suffered by the petitioner, which is also a sort of disability caused by the accident. His tragedy is that he got two daughters of which younger

daughter died and though he wanted to have another child but he could not due to impotency. Considering the disability and the mental depression that entailed, he is awarded Rs.1,00,000/-. Thus, the total compensation the petitioner deserves is as follows:

Compensation for injuries		Rs.21,000-00
Pain and suffering		Rs.10,000-00
Medical and incidental expenses (Extra nourishment and attendant charges)		Rs. 7,000-00
Loss of earnings and disability		Rs.61,000-00
Compensation for impotency		Rs.1,00,000-00
TOTAL	**:**	**Rs.1,99,000-00**

Thus, the compensation is enhanced by Rs.1,56,000/- (Rs.1,99,000-Rs.43,000).

13. In the result, the MACMA is allowed and ordered as follows:

1) Compensation is enhanced by Rs.1,56,000/- with proportionate costs.

2) The enhanced compensation shall carry interest @7.5% p.a. whereas original compensation shall carry interest @8%p.a. from the date of filing O.P. till realization.

3) The respondents are directed to deposit the compensation amount within two (2) months from the date of this order failing which execution can be taken out against them.

14. Miscellaneous petitions, if any pending, shall stand closed in consequence. No order as to costs.

-- THE END --

There is no independent consideration. Only the decision of the same High Court in Bhim Singh & Ors. v. Zila Singh & Ors. AIR 2006 P&H 195 has been relied upon to hold that no declaration can be sought by the plaintiff based on adverse possession.

44. In Bhim Singh & Ors. (supra) the plaintiffs had filed a suit for declaration and injunction claiming ownership based on adverse possession. Defendants contended that plaintiffs were not in possession. The Punjab & Haryana High Court in Bhim Singh & Ors. v. Zila Singh & Ors. (supra) has assigned the reasons and observed thus:

"11. Under Article 64 of the Limitation Act, as suit for possession of immovable property by a plaintiff, who while in possession of the property had been dispossessed from such possession, when such suit is based on previous possession and not based on title, can be filed within 12 years from the date of dispossession. Under Article 65 of the Limitation Act, a suit for possession of immovable property or any interest therein, based on title, can be filed by a person claiming title within 12 years. The limitation under this Article commences from the date when the possession of the defendant becomes adverse to the plaintiff. In these circumstances, it is apparent that to contest a suit for possession, filed by a person on the basis of his title, a plea of adverse possession can be taken by a defendant who is in hostile, continuous and open possession, to the knowledge of the true owner, if such a person has remained in possession for a period of 12 years. It, thus, naturally has to be inferred that plea of adverse possession is a defence available only to a defendant. This conclusion of mine is further strengthened from the language used in Article 65, wherein, in column 3 it has been specifically mentioned: "when the possession of the defendant becomes adverse to the plaintiff." Thus, a perusal of the aforesaid Article 65 shows that the plea is available only to a defendant against a plaintiff. In these circumstances, natural inference must follow that when such a plea of adverse possession is only available to a defendant, then no declaration can be sought by a plaintiff with regard to his ownership on the basis of an adverse possession.

12. I am supported by a judgment of Delhi High Court in 1993 3 105 PLR (Delhi Section) 70, Prem Nath Wadhawan v. Inder Rai Wadhawan.

13. The following observations made in the Prem Nath Wadhawan's case (supra) may be noticed:

"I have given my thoughtful consideration to the submissions made by the learned Counsel for the parties and have also perused the record. I do not find any merit in the contention of the learned Counsel for the plaintiff that the plaintiff has become absolute owner of the suit property by virtue of adverse possession as the plea of adverse possession can be raised in defence in a suit for recovery of possession but the relief for declaration that the plaintiff has become absolute owner, cannot be granted on the basis of adverse possession."

(emphasis supplied)

The Punjab & Haryana High Court has proceeded on the basis that as per Article 65, the plea of adverse possession is available as a defence to a defendant.

45. Article 65 of the Act is extracted hereunder:

Description of suit	Period of limitation	Time from which period begins to run
65. For possession of immovable property or any interest therein based on title.Explanation.— For the purposes of this article— (a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession; (b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies; (c) where the suit is by a purchaser at a sale in execution of a decree when the judgmentdebtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.	Twelve years.	When the possession of the defendant becomes adverse to the plaintiff.

46. The conclusion reached by the High Court is based on an inferential process because of the language used in the IIIrd Column of Article 65. The expression is used, the limitation of 12 years runs from the date when the possession of the defendant becomes adverse to the plaintiff. Column No.3 of Schedule of the Act nowhere suggests that suit cannot be filed by the plaintiff for possession of immovable property or any interest therein based on title acquired by way of adverse possession. There is

absolutely no bar for the perfection of title by way of adverse possession whether a person is suing as the plaintiff or being sued as a defendant. The inferential process of interpretation employed by the High Court is not at all permissible. It does not follow from the language used in the statute. The large number of decisions of this Court and various other decisions of Privy Council, High Courts and of English courts which have been discussed by us and observations made in Halsbury Laws based on various decisions indicate that suit can be filed by plaintiff on the basis of title acquired by way of adverse possession or on the basis of possession under Articles 64 and 65. There is no bar under Article 65 or any of the provisions of Limitation Act, 1963 as against a plaintiff who has perfected his title by virtue of adverse possession to sue to evict a person or to protect his possession and plethora of decisions are to the effect that by virtue of extinguishment of title of the owner, the person in possession acquires absolute title and if actual owner dispossesses another person after extinguishment of his title, he can be evicted by such a person by filing of suit under Article 65 of the Act. Thus, the decision of Gurudwara Sahib v. Gram Panchayat, Sirthala (supra) and of the Punjab & Haryana High Court cannot be said to be laying down the correct law. More so because of various decisions of this Court to the contrary.

47. In Gurudwara Sahib v. Gram Panchayat, Sirthala (supra) proposition was not disputed. A decision based upon concession cannot be treated as precedent as has been held by this Court in State of Rajasthan v. Mahaveer Oil Industries, (1999) 4 SCC 357, Director of Settlements, A.P. v. M.R. Apparao, (2002) 4 SCC 638, Uptron India Limited v. Shammi Bhan (1998) 6 SCC 538. Though, it appears that there was some expression of opinion since the Court observed there cannot be any quarrel that plea of adverse possession cannot be taken by a plaintiff. The fact remains that the proposition was not disputed and no argument to the contrary had been raised, as such there was no decision on the aforesaid aspect only an observation was made as to proposition of law, which is palpably incorrect.

48. The statute does not define adverse possession, it is a common law concept, the period of which has been prescribed statutorily under the law of limitation Article 65 as 12 years. Law of limitation does not define the concept of adverse possession nor anywhere contains a provision that the plaintiff cannot sue based on adverse possession. It only deals with limitation to sue and extinguishment of rights. There may be a case where a person who has perfected his title by virtue of adverse possession is sought to be ousted or has been dispossessed by a forceful entry by the owner or by some other person, his right to obtain possession can be resisted only when the person who is seeking to protect his possession, is able to show that he has also perfected his title by adverse possession for requisite period against such a plaintiff.

49. Under Article 64 also suit can be filed based on the possessory title. Law never intends a person who has perfected title to be deprived of filing suit under Article

65 to recover possession and to render him remediless. In case of infringement of any other right attracting any other Article such as in case the land is sold away by the owner after the extinguishment of his title, the suit can be filed by a person who has perfected his title by adverse possession to question alienation and attempt of dispossession.

50. Law of adverse possession does not qualify only a defendant for the acquisition of title by way of adverse possession, it may be perfected by a person who is filing a suit. It only restricts a right of the owner to recover possession before the period of limitation fixed for the extinction of his rights expires. Once right is extinguished another person acquires prescriptive right which cannot be defeated by re-entry by the owner or subsequent acknowledgment of his rights. In such a case suit can be filed by a person whose right is sought to be defeated.

51. In India, the law respect possession, persons are not permitted to take law in their hands and dispossess a person in possession by force as observed in Late Yashwant Singh (supra) by this Court. The suit can be filed only based on the possessory title for appropriate relief under the Specific Relief Act by a person in possession. Articles 64 and 65 both are attracted in such cases as held by this Court in Desh Raj v. Bhagat Ram (supra). In Nair Service Society (supra) held that if rightful owner does not commence an action to take possession within the period of limitation, his rights are lost and person in possession acquires an absolute title.

52. In Sarangadeva Periya Matam v. Ramaswami Gounder, (supra), the plaintiff's suit for recovery of possession was decreed against Math based on the perfection of the title by way of adverse possession, he could not have been dispossessed by Math. The Court held that under Article 144 read with Section 28 of the Limitation Act, 1908, the title of Math extinguished in 1927 and the plaintiff acquired title in 1927. In 1950, he delivered possession, but such delivery of possession did not transfer any title to Math. The suit filed in 1954 was held to be within time and decreed.

53. There is the acquisition of title in favour of plaintiff though it is negative conferral of right on extinguishment of the right of an owner of the property. The right ripened by prescription by his adverse possession is absolute and on dispossession, he can sue based on 'title' as envisaged in the opening part under Article 65 of Act. Under Article 65, the suit can be filed based on the title for recovery of possession within 12 years of the start of adverse possession, if any, set up by the defendant. Otherwise right to recover possession based on the title is absolute irrespective of limitation in the absence of adverse possession by the defendant for 12 years. The possession as trespasser is not adverse nor long possession is synonym with adverse possession.

54. In Article 65 in the opening part a suit "for possession of immovable property or any interest therein based on title" has been used. Expression "title" would include the title acquired by the plaintiff by way of adverse possession. The title is perfected by adverse possession has been held in a catena of decisions.

55. We are not inclined to accept the submission that there is no conferral of right by adverse possession. Section 27 of Limitation Act, 1963 provides for extinguishment of right on the lapse of limitation fixed to institute a suit for possession of any property, the right to such property shall stand extinguished. The concept of adverse possession as evolved goes beyond it on completion of period and extinguishment of right confers the same right on the possessor, which has been extinguished and not more than that. For a person to sue for possession would indicate that right has accrued to him in presenti to obtain it, not in futuro. Any property in Section 27 would include corporeal or incorporeal property. Article 65 deals with immovable property.

56. Possession is the root of title and is right like the property. As ownership is also of different kinds of viz. sole ownership, contingent ownership, corporeal ownership, and legal equitable ownership. Limited ownership or limited right to property may be enjoyed by a holder. What can be prescribable against is limited to the rights of the holder. Possession confers enforceable right under Section 6 of the Specific Relief Act. It has to be looked into what kind of possession is enjoyed viz. de facto i.e., actual, 'de jure possession', constructive possession, concurrent possession over a small portion of the property. In case the owner is in symbolic possession, there is no dispossession, there can be formal, exclusive or joint possession. The joint possessor/co-owner possession is not presumed to be adverse. Personal law also plays a role to construe nature of possession.

57. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec-vi i.e. adequate in continuity, nec-clam i.e., adequate in publicity and nec-precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonym with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and the large concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession.

58. Adverse possession is heritable and there can be tacking of adverse possession by two or more persons as the right is transmissible one. In our opinion, it confers a perfected right which cannot be defeated on reentry except as provided in Article 65 itself. Tacking is based on the fulfillment of certain conditions, tacking maybe by possession by the purchaser, legatee or assignee, etc. so as to constitute continuity of possession, that person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two

distinct trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period.

59. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/ owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

60. When we consider the law of adverse possession as has developed vis-à-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In Such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.

61. Resultantly, we hold that decisions of Gurudwara Sahab v. Gram Panchayat Village Sirthala (supra) and decision relying on it in State of Uttarakhand v. Mandir Shri Lakshmi Siddh Maharaj (supra) and Dharampal (dead) through LRs v. Punjab Wakf Board (supra) cannot be said to be laying down the law correctly, thus they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff.

62. Let the matters be placed for consideration on merits before the appropriate Bench.

--- THE END ---

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(Founder: Late Sri.G.S.GUPTA)

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ANDHRA PRADESH HIGH COURT

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SUBJECT - INDEX

ANDHRA PRADESH PREVENTION OF DANGEROUS ACTIVITIES OF BOOT LEGGERS, DACOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986:

----Sec.3(2) r/w 3(1) – Writ petition seeking issuance of a writ of habeas corpus directing respondents to release detenu by declaring the detention order as illegal.

Held: In absence of a positive conclusion that activities of detenu are prejudicial to "public order"preventive detention laws cannot be made applicable – Grounds of detention and orders of detention reveal confused state of mind of detaining authority - Order of detention under challenge cannot be sustained and is liable to be set aside – Writ petition stands allowed by setting aside the order of detention passed by the Collector & District Magistrate. ***27***

CIVIL PROCEDURE CODE:

---Interim stay granted to the petitioner, stood vacated in view of Judgment of Hon'ble Supreme Court that stay shall not extend more than six months – Aggrieved by the docket Order, Petitioner preferred revision against the validity of the docket Order passed by the lower Court.

Held – Contingency of expiry of stay after six months would arise only in cases where there is stay of Trial – In present case, such contingency does not exist - Docket Order passed by the lower Court, which is impugned in present revision cannot be sustained in the eye of law – Civil Revision Petition stands allowed. ***108***

---Sec.150 – Civil revision questioning the orders of lower Court whereby an application in IA to mark the deposition of a witness, which was recorded in another suit in year 1993 was allowed.

Held: Well settled Law that certain conditions are necessary to be satisfied before the evidence recorded in a previous judicial proceedings can be received in another judicial proceedings – Lower Court did not have any material to conclude that the issues involved in both the proceedings are same or all parties in the earlier suit had an opportunity of full and complete cross-examination of the witnesses whose deposition is sought to be marked – Or to show that witness was incapable of giving evidence because of any sickness or some other reason – Civil revision petition is allowed setting aside the order passed in IA by the lower Court. ***72***

---Or.XIII, Rule 3 – Civil Revision by petitioners that her objection for marking the documents was not considered by lower Court – Petition filed under order XII, Rule 3, CPC to reject documents as they were irrelevant and inadmissible in evidence was rejected by trial Court.

Held: Suit is of year 2013 and stage of the case is for arguments and documents were already marked in evidence – Since evidence has already been let in by parties,

rejection of documents at this stage may lead to multiplicity of proceedings - Civil revision petition is disposed of directing trial Court to dispose of the matter expeditiously. ***32***

---Or.13, Rule 3 & 6 – REGISTRATION ACT, Sec.17(1)(g) – STAMP ACT – Trial Court dismissed Application to demark document (Ex.A5) admitted in suit – Hence present revision.

Once a document is admitted in evidence rightly or wrongly with or without objection it is not permissible for Court including appellate or revisional Court to reject the same on the ground that it has not been duly stamped – Trial Court rightly dismissed Application for demarking the document – CRP, dismissed. **69**

---Or.18, Rule 17, Sec.151 and Or.47 – One IA is filed to reopen matter and another IA filed to reopen the evidence for cross examination of Pw.1 – Both IAs are dismissed - Questioning the same present CRP filed.

Petitioner contend that Court below committed an error in coming to conclusion that there are no grounds to reopen and recall witness PW.1 and further contended that Or.18, Rule 17 and CPC 151 are applicable to facts and circumstances of case and therefore the Court should have allowed application.

Respondent contends that affidavit filed is absolutely silent about need to examine witness and reasons furnished in application are not genuine or correct.

Hon'ble Supreme Court in series of judgment as held that though Or.18, Rule 17-A of CPC has been deleted power to recall a witness is available u/Sec.151 CPC – Since power is being exercised u/Sec.151 CPC Hon'ble Supreme Court in K.K. Veluswamy Vs. N.Palani swamy 2011 (SC) Cases 275 has sounded a note of caution in manner of exercise of said power – Descrition to be exercised by Court u/ Sec.151 CPC does not extend to grant any and every relief – Inherent power can only be exercised for rendering Justice and to do all things necessary to secure ends of justice – Hon'ble Supreme Court also stated that principles analogous to Or.47 CPC should be pleaded and set out with some certinity and not practice to fillup gaps in evidence by recalling evidence should be severely curtailed.

Failure to cross examine witness on certain aspects by itself is not a ground enough to recall witness for purpose of further cross examination - If this is allowed gap will be filledup – Entire branch of developed case law of highest Courts in country including Hon'ble Supreme Court of India, on failure to cross examine a witness etc., he will be set at naught, if every witness is recalled on such tenuous grounds – Grounds to reopen matter are also similar in this case – They are not enough to reopen case – For all these reasons High Court holds that both civil revision petitions do not have any merits what so ever – Therefore both civil revision petitions are dismissed. **63**

---Or.21 & Sec.151 – Suit is filed by decree holders as plaintiffs for an injunction

restraining defendants for constructing a wall in area shown as "I J" in plaint plan and not to construct any gate – In interim period after suit was dismissed and before appeals were filed defendants constructed a wall and put up gate – It is also admitted fact that plaintiff did not seek amendment.

Admittedly in this cases, construction was made after suit was dismissed and before appeal was allowed – Therefore there is power to compel defendants to act under Or.21 Rule 32(5) CPC which is in addition to other powers which are prescribed under Or.21, Rule 32(1)(2)(3)&(4) – In addition to all above, inherent powers of Court is also there to render justice between parties – While it is true that inherent power can be used to grant any and every order, still fact remains that inherent powers can be used for rendering justice in accordance with law.

In view of cases referred this Court is of opinion that this is a fit case where inherent power of Court must be used and should be used to undo wrong that was committed namely, construction of wall in plot "I J" and removal of gate – In this view of matter this Court of opinion that lower Court took a hyper technical view and disallowed application in peculiar facts and circumstances of case as construction was made after suit was dismissed and as decree holder have succeeded in appeal, inherent power of Court is being used to undo wrong – Impugned order, set aside – Judgment debtors are directed to remove wall in portion of "I J" in plaint schedule property and also gate constructed within 45 days from date of receipt of this order.

---Or.21, Rules 5, 85 & 86 & Secs.148 & 151 – Auction purchaser in EP paid 25% of sale consideration amount and also deposited remaining 75% of sale consideration and he has not deposited requisite amount for obtaining stamp paper for drafting sale certificate within period prescribed under Or.21 rule 85 but auction purchaser realized his mistake and later filed EA u/Secs.148 & 151 CPC requesting to permit him to deposit value of stamp paper for obtaining sale certificate and said petition was allowed by execution court - Considering procedural mistake as bona fide one execution court rightly allowed petition and permitted to deposit money for stamp duty and there is nothing wrong in said order - JDr assailed said order and filed present CRP.

Question "whether execution Court has power to extend time prescribed and Rule 84 and 85 CPC to deposit purchase money - Tone and terrorem of Or.21 Rules 84 & 85 and particularly Rule 86 CPC is such that they are mandatory in nature and therefore default committed by auction purchaser cannot be excused and set at right by Court by exercising its power u/Sec.148 or Sec.151 CPC.

Failure to deposit amount under Rule 85 of Or.21 CPC, automatically entails in cancellation of sale and Rule 86 mandates that the sale of property shall be conducted – There would not be any necessity to pass separate order setting aside sale on account of failure of bidder to deposit amount.

Execution Court not legally right in allowing petition filed by auction purchaser

to permit him to deposit value of sale paper beyond period prescribed under Or.21, Rule 85 CPC and impugned order in EA is set aside. ***21***

---Order XXI Rule 37 & Sec.51 - Present Civil Revision challenges the Order passed by lower Court, dismissing petition filed by the decree holder, seeking the Court to issue arrest warrant against Judgment debtors and commit them to civil prison for realization of the amount.

Held – Decree holder who seeks execution by way of arrest and detention of Judgment debtor in civil prison shall file an affidavit in terms of Order XXI Rule 11-A CPC stating the grounds on which arrest is applied for – Court in an arrest E.P. shall afford a notice to Judgment debtors to give an opportunity to show cause as to why he should be not be committed to prison – Mere non-payment of a decretal amount by Judgment debtor will not land him in civil prison unless there is a proof of his willful failure to pay in spite of his sufficient means – Court below instead of issuing warrant held decree holder failed to establish the means of the Judgment debtors and ultimately dismissed the E.P. – Civil Revision stands allowed – Impugned Order in E.P. is set aside and consequently E.P is restored to file with a direction to the execution Court to issue warrant of arrest against judgment debtors in terms of Order XXI Rule 37(2) CPC and after securing their presence, conduct enquiry in terms of Order XXI Rule 40 CPC and pass Orders expeditiously. ***95***

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. ***79***

CRIMINALPROCEDURE CODE:

---Secs.197 & 239 - Revision preferred questioning the Order of lower Court, whereby, petition filed by petitioners, seeking to dismiss the complaint for want of prior sanction was dismissed.

Held – Whether sanction under Section 197 of Cr.P.C. is required or not, depends on the facts of a particular case and can be raised at any stage of proceedings – It is not that every offence committed by a public servant that requires sanction for prosecution nor every act done by him while he is actually engaged in the performance of his official duties – Sanctioning of amounts under the contract, which is not at all fulfilled, cannot be said to have been done in discharge of official duty – Impugned Order needs no interference – Criminal Revision stands dismissed. ***)113***

---Sec.407 - NEGOTIABLE INSTRUMENTS **ACT,** Sec.142 - Instant petition filed seeking transfer of CC from Court of JMFC, at Salur, Vizianagaram District, to Court of JMFC, at Anakapalle, Visakhapatnam District, on the ground that the petitioner is not well.

Held - If provisions pertaining to jurisdiction of Courts are intended to be construed rigidly, there would have been no necessity for providing for power of transfer under Section 407 Cr.PC - It is with an intention of giving power to the High Court, to transfer the cases, if circumstances enumerated therein exist, that Sec.407 is enacted - There cannot be any distinction made between cases falling under the N.I. Act and other cases, so far as those circumstances are concerned - There can be no argument that cases under N.I. Act do not need fair and impartial inquiry or trial, or that no question of law of unusual difficulty would arise, or that the parties to the cases under the N.I. Act do not deserve to have the general convenience, as do parties in other cases, or that ends of justice need not be of concern, in N.I. Act cases - There can be no demur in holding that Section 142 of N.I. Act is subject to Section 407 Cr.P.C - Criminal petition stands allowed. ***17***

---Sec.482 – Drugs and Cosmetics Act – Complainant, drug inspector inspected A1 company and picked up several types of drugs for testing by complying with prescribed procedure – According to the analysts, the drugs picked up are not of standard quality, stating that sample does not meet I.P. requirements - Petitioner contended that failure of complainant to send the sample for analysis within prescribed period before expiry period of the drug and the right given to the petitioners under Section 25(3) of Act stands defeated - Petitioners/A1 to A5 filed instant petition seeking to quash proceedings against them.

Held – Petitioners did not take steps to adduce evidence in contravention of the report - On the ground that second sampling was not done, proceedings against petitioners cannot be quashed – Criminal petition stands dismissed - Interim stay shall stand vacated. ***104***

EVIDENCE ACT:

--- Sec.45 - Civil Revision Petition - Petitioner challenged the Order in I.A., wherein, petition filed by Petitioner/Defendant u/ S.45 of Indian Evidence Act 1872 sought to send Ex.A-1 promissory note to F.S.L. to ascertain age of signature and contents was dismissed.

Held – Though ink or a pen was manufactured in yester years, there is a possibility that a person may either deliberately or un-knowingly use such ink/ pen to make a writing of signature several years after its manufacture - Mere determination of age of ink/writing by an expert will not clinch the issue as to when exactly the maker has written/signed document -Trial court is not right in rejecting the petitioner's request to refer the document to the expert, since the required expertise

is available - Civil Revision Petition is allowed by setting aside the impugned order, and consequently, I.A. is allowed and the trial court is directed to refer Ex.A-1 promissory note for determining age of signature of the defendant at his own expenses. **8**

LIMITATION ACT,:

----Sec.5 - Whether Court below exercised its discretion correctly or not - Revision petition is filed questioning Order passed in EA – Application filed to condone the delay of 920 days in filing application to set aside ex parte order - Application is contested and the impugned order came to be passed by which lower Court dismissed the application.

Held - There is no satisfactory explanation for delay caused - Delay of 920 days can by no means be a small delay - Reasons given are also not clear - Length of delay is not important but sufficiency of reasons are important - Even though words "sufficient cause" has been liberally interpreted, they cannot be so liberally interpreted as to defeat provisions of law - Revision petition stands dismissed. ***13***

MOTOR VEHICLES ACT:

---While petitioner was going to his house, a tractor driven at high speed and in a rash manner dashed on to the petitioner causing severe injuries – Petitioner claimed a total of Rs.2,00,000/- as compensation, however the M.V. Accident Claims Tribunal awarded compensation of Rs.43,000/- to petitioner – Hence petitioner preferred instant appeal for the enhancement of compensation awarded.

Held – Compensation shall be evaluated in such a manner that it should be neither a pittance or windfall – Compensation awarded should financially place the victim of the accident in such a position where he would have been had there been no accident – Considering the disability and mental depression entailed by petitioner, compensation is enhanced by Rs.1,56,000/- at an interest rate of 7.5% - Appeal stands allowed. ***125***

NDPS ACT:

---Sec.8(c) r/w Sec.20(b) (ii)(c) - CRIMINAL PROCEDURE CODE, Secs.437 & 439 - Case of prosecution that petitioner acted as a mediator for purchase of 135kgs of Ganja.

Held - it cannot be said that petitioner would be entitled for acquittal and hence, Sec.37 of NDPS Act does not come in way of granting bail to the petitioner - Moreover, what this Court can understand from the language used in Sec.37(i)(b)(ii) is that the reasonable grounds should be in respect of believing that the accused is not guilty but not that he would be acquitted - However, Counsel for petitioner makes an alternative prayer for granting interim bail to petitioner on ground that his wife is suffering from spine problem and that his presence for fixing up surgery to his wife is very much necessary - Fit case for

granting interim bail to the petitioner - Criminal petition is disposed of and petitioner is enlarged on interim bail for a period of 30 days. **11**

NEGOTIABLE INSTRUMENTS ACT:

---Secs.138 and 142 - Petitioners sought quash of criminal proceedings against them on ground that cheques issued by petitioners are towards a time barred debt and hence, no prosecution can lie against them - Petitioners borrowed amounts from the 2nd respondent and failed to discharge the amounts taken - Petitioners executed a demand promissory note, agreeing to pay the amount with interest at 24% per annum - Petitioners did not pay the said amounts and later issued cheque towards discharge of said amounts - Promissory note is also filed along with complaint - Promissory notes are of the year 2012, while cheques are issued in the year 2017 - Date of issuance of cheques is beyond three years from the date of issuance of the promissory note.

Held - Debt or other liability means a legally enforceable debt or other liability and enforcement of legal liability has to be in nature of civil suit because the debt or other liability cannot be recovered by filing a criminal case and when there is a bar of filing a suit by unregistered firm, the bar equally applies to criminal case as laid down in Explanation (2) of Section 138 of Negotiable Instruments Act - Limitation for enforcing the promissory notes expired much prior to the issuance of the cheques in question - Impugned complaints against the petitioners cannot be sustained - Criminal petitions are allowed. ***1***

PENAL CODE:

---Secs.109 & 302 – Appeal against conviction – Accused No.1/appellant was at instigation of accused nos.2 to 4 is said to have caused death of his wife/deceased by setting her on fire – Accused nos.2 to 4 were acquitted by Sessions Court.

Held: If dying declaration is excluded from consideration, there is no material to connect appellant with the crime – Contents of dying declaration show that deceased parents died but prosecution examined the mother of deceased as Pw.9 – Manner in which certificate of doctor was obtained, and not explaining as to how print out was taken in hospital and inconsistent answers given by the deceased, Court is of opinion that it is not safe to convict accused No.1 – Criminal appeal is allowed and conviction and sentence imposed against appellant/accused no.1. by sessions court is set aside. ***39***

---Secs- 190, 420, 467, 468, 471, 474 read with 120-B - REGISTRATION ACT, Sec.82 - Petition filed for quash of proceedings against petitioner, who is A10 before Court below - Petitioner contends that sanction is required to prosecute as petitioner is a public servant, and as per Section 83 of the Registration

Act mandates permission of Inspector General, Registrar or Sub-Registrar.

Held - Unless prosecuting authority is Registering Officer, no permission is needed to be taken from Inspector-General, Registrar or Sub-Registrar - Quashing the proceedings against the petitioner, at this stage, would not be safe - Criminal petition is dismissed, however, petitioner is given liberty to file a discharge petition before the Court below and raise all the contentions raised in this petition. 5

---Sec.201 & 302 – CRIMINAL PROCEDURE CODE, Sec.374(2) – Assailing the conviction and sentence imposed by Sessions Court, appellant preferred instant criminal appeal.

Held: Motive is not established – Not proper to hold that accused No.1/ appellant guilty – Not probable to believe that accused No.1 who is a stranger and who has no prior acquaintance with Pw.15 would have gone to him and made extra judicial confession – Extra judicial confession statement cannot be made basis to confirm the conviction, when it is doubtful – Prosecution failed to establish the guilt of appellant / accused no.1 – Criminal appeal stands allowed and conviction and sentence imposed against appellant are set aside. **49**

---Secs.375, 417 & 420 – Revision against order of lower Court, where by, discharge petition preferred by petitioner was dismissed – Petitioner and complainant fell in love – Petitioner promised to marry complainant and had sexual relations with her – When petitioner was requested by complainant to marry her, petitioner necked her out by expressing that any one would give Rs.50 lakhs as dowry to him.

Held: Petitioner did not have an intention to marry any girl unless she is ready to give Rs.50 lakhs to him – Section 155(4) Cr.P.C. permits the police to investigate into non-cognizable offences also, if it is coupled with a cognizable offence – Criminal revision is partly allowed in so far as offence u/Sec.420 IPC - Criminal revision case in so far as offence u/Sec.417 IPC stands dismissed. ***35***

REGISTRATION ACT:

---Sec.49 – CIVIL PROCEDURE CODE, Sec.151 - Instant Revision preferred against the Order, passed in I.A., whereby the petition filed by the petitioner seeking to admit the draft sale deed and agreement of sale, in evidence as per proviso to Section 49 of Registration Act was dismissed.

Held – Permission to get the document marked cannot be refused – Impugned Order is set aside – Agreement of sale would be marked subject to proof and draft sale deed being an inadmissible document, cannot be marked – Civil Revision stands partly allowed. ***117***

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. ***81***

(INDIAN) STAMP ACT:

---Sec.38(2) - **CIVIL PROCEDURE CODE,** Sec.151 – Civil revision by the defendants/ petitioners assailing the Order passed in I.A., whereby, application filed requesting to send acceptance deed filed along with affidavit, to the District Registrar for deciding the stamp duty collectable and for collecting the deficit stamp duty and penalty was dismissed.

Held – Court cannot compel a party to pay the stamp duty and penalty and have it admitted in evidence – It is for the party to have the document admitted in evidence by paying stamp duty and penalty or leave the Court to take action as provided under Section 38(2) – Trial Court ought to have considered the request of defendants and allowed the I.A. and ought to have sent the instrument in question to Stamp Duty Collector – Civil revision stands allowed. ***118***

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Law Summary

(Founder: Late Sri.G.S.GUPTA)

2019 (2)
(Vol.97)

TELANGANA HIGH COURT

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SUBJECT - INDEX

A.P. RIGHTS IN LAND & PATTADAR PASS BOOKS ACT:

---Sec.5 - Suit was filed by the Appellant/ Plaintiff for declaration of his title to the plaint schedule property and for a perpetual injunction restraining the Respondents/ Defendants from interfering with his alleged peaceful possession and enjoyment of the plaint schedule property - Pending suit, the plaintiff filed I.A. under Order XXXIX Rule 1 and 2 CPC for a temporary injunction restraining the defendants from interfering with his alleged peaceful possession and enjoyment of the plaint schedule property and he also filed I.A. under Order XXXIX Rule 1 and 2 CPC for grant of temporary injunction restraining the defendants from alienating or creating any third party interest over this plaint schedule property - By separate orders dt.26.03.2019, the court below dismissed both applications.

Held - Court below did not commit any error of law or fact in refusing to grant relief to the plaintiff in both I.A. and its finding that the plaintiff was prima facie not in possession of the plaint schedule property on the date of filing of the suit does not warrant any interference by this Court – Appeals stand dismissed. ***85***

ANDHRA PRADESH LAND REFORMS (CEILING ON AGRI-CULTURAL HOLDINGS) ACT, 1973,

---Sec.8 - Petitioner challenged the proceedings of Collector, and sought a consequential direction to revenue authorities to implement earlier proceedings and the decree passed in O.S. by the Subordinate Judge.

Held - Collector adjudicated upon the status and validity of decree and came to the conclusion that as decree was an ex parte one and as original document relied upon by petitioner was more than 31 years old, it could not be looked into as a decree would be valid only for 12 years - Collector went to the extent of sitting in appeal over a Court decree and drew conclusions which are wholly opposed to settled legal principles - Apart from being bereft of jurisdiction, the said proceedings

violate settled legal principles and cannot be sustained even on merits - Writ petitions are accordingly allowed setting aside the impugned proceedings of the Collector. ***33***

CIVIL PROCEDURE CODE:

---Sec. 151 – Suit was filed by the 1st Petitioner/Plaintiff against the Respondent/ Defendant for specific performance of contract basing on an agreement of sale and for delivery of possession of the plaint schedule property – In the written statement of the Respondent there was an admission purported to have been made by the respondent admitting the execution of the said agreement of sale but claiming that she did not receive full consideration as agreed – Suit was decreed and the 1st petitioner was directed to deposit remaining sale consideration - Respondent filed an I.A. to set aside the decree and contended that she did not personally receive any notice or summons from the Court and the signatures on vakalathnama, written statement were forged – I.A. filed by the respondent was allowed and decree was set aside.

Held - To attract Section 47 of CPC, two conditions must be fulfilled i.e. (1) the question must be one arising between the parties to the suit in which the decree was passed or their representatives; and (2) the said question must relate to the execution, discharge or satisfaction of the decree - In the instant case, both these conditions are fulfilled and so even E.A. filed by the respondent to cancel the registered sale deed executed in favour of the 1st petitioner and for restoration of possession is maintainable - It was made to make the the lower Court believe that it was the respondent who signed the Vakalathnama, the written statement, the suit agreement of sale, receipts, counters in the I.As., etc., and the Court below found as a fact that respondent's signature was forged on the said documents - So it is a case of fraud on the Court as well as on the respondent, and so the respondent was justified in invoking Section 151 CPC to set aside the decree – Appeal stands dismissed. **45**

---Order XXXIX Rules 1 & 2 - Appeal filed challenging the Order in I.A in O.S of Additional Senior Civil Judge – Appellant, father-in-law of the respondent filed the said suit against the respondent for eviction of the respondent alleging that the respondent is staying in the suit schedule property which is the ground floor portion of the building owned by the appellant and that the son of the appellant had moved out of the appellant's house, but the respondent had refused to move from the suit schedule property and continued to occupy the ground floor portion - Pending the suit, appellant filed I.A. under Order XXXIX Rules 1 & 2 CPC to direct the respondent to stop all commercial activities in the ground floor portion of the suit schedule property - Court below dismissed the said I.A.

Held - When the respondent herself admitted that she is running a boutique in the suit schedule property, the Court below ought not to have said that it is a matter for evidence as to whether the respondent is using the premises for commercial business purpose - Court below could not have stated that it would compensate the appellant if any additional tax for use of the premises for commercial purpose is imposed or award mesne profits if the suit is to be ultimately decreed evicting the petitioner, because there is no prayer in the suit either for mesne profits - Finding of the Court below that when the respondent is in possession of the suit schedule property she cannot be restrained by imposing any condition to enjoy the possession is clearly perverse and cannot

be sustained – Appeal allowed - Order in I.A of the Court below is set aside. ***55***

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. ***1***

HINDU MINORITY AND GUARDIANSHIP ACT, 1956:

---Secs.8 & 17 - GUARDIANS AND WARDS ACT, 1890 --- HINDU MARRIAGE ACT - "CUSTODY OF MINOR CHILD" - Wife filed OP for dissolution of marriage in Family court and IA filed to restrain husband from coming any where near her or their minor son - Husband filed IA seeking grant of interim custody of minor child - Family Court passed common order dismissing IA filed by wife and allowing IA filed by husband partly allowed granting interim custody of minor son to father 4 pm Saturday to 6 pm Sunday every week.

High Court modifying the orders of lower Court and passed orders pending final orders in both IAs father shall handover child to mother certain dates to certain dates and father is also entitled to speak to child at least once in a day and other conditions.

It is settled legal position that in deciding the issue of temporary custody or visitation paramount consideration is welfare and interest of child.

The arrangement made by Court below had continued during pendency of revision and for summer vacation - Court has passed orders which both parties had stated that the arrangements went on peacefully. ***59***

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 compen-sation - 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. ***8***

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. ***17***

RECORDING OF EVIDENCE:

---Through video conference - Permissible if both parties wish the same. ***74***

SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002: ---Secs.13(2),14,17 & 13(4) – SECURITY INTEREST (ENFORCEMENT) RULES, 2002, Rules 8(6) & 9(1) – CIVIL PROCEDURE CODE, Or.2, Rule 2(3) – LIMITATION ACT, Sec.5 – Secured creditor can take physical possession even after sale of property under Securitisation Act. **67**

STAMP ACT :

, Sec.42 -Revision is filed challenging the Order in O.S - Suit was filed by 1st respondent herein against petitioners and other respondents for declaration that 1st respondent is the owner and possessor of the suit schedule property and to direct petitioners and other respondents to deliver peaceful possession of the schedule property to him - Petitioners wanted to mark three unregistered sale deeds for collateral purpose during the further chief-examination of D.W.1. - 1st respondent contended that these three documents being unregistered sale deeds, they cannot be marked by petitioners and other respondents, and the Court should hold that they are inadmissible in evidence - Court below held that, proof of title cannot be treated as collateral purpose, and these documents cannot be marked as Exs. in the further chief-examination of D.W.1 even if they had been revalidated subsequently by paying deficit stamp duty and penalty - Petitioners have challenged this in present Revision.

Held - A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration - A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in Immovable property of the value of one hundred rupees and upwards - In a document of sale, possession is treated as collateral purpose affecting the immovable property and unregistered sale deed is inadmissible in evidence for the collateral purpose - Civil Revision Petition is allowed - Order in O.S. is set asideand petitioners are permitted to mark Exs. in evidence not for the purpose of proving their acquisition of title of the suit schedule property under the said sale deeds, but only to the limited extent of showing their possession/nature of possession/character of possession, which are collateral to the sale transaction. ***79***

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SUPREME COURT

(Vol.96)

SUPREME COURT

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ARBITRATION AND CONCILIATION ACT:

---Secs..11(5), 11(9) and 11(12)(a) - Whether respondent company established under the laws of Belgium, having its principal place of business at belgium, could be impleaded in the proposed arbitration proceedings despite the fact that it is a non-signatory party to the agreement , executed between the applicant and respondent company established under the Companies Act, merely because it is one of the group companies of which respondent.

Held - No relief can be granted to the applicant who has invoked the jurisdiction of this Court on the assumption that it is a case of international commercial arbitration - Arbitration application stands dismissed as against respondent No.2. ***117***

CONSUMER PROTECTION ACT:

---Sec.12(1)(c) - **CIVIL PROCEDURE CODE,** Or.1, Rule 8 - "Classs action" - Present appeal is filed against orders passed by National Consumer Dispitus Redressal Commission - Builder-Buyer agreement executed between appellant no.1 and respondent whereunder respondent was to deliver possession of offfice within 4 years - Similar such agreements entered into between appellant nos.2 to 44 - Respondent failed to honour its commitments of delivering possession in 4 years - Hence appellants 1 to 4 it seeking refund of amounts paid by them to respondent - An application u/Sec.12(1)(c) of Act was also filed seeking permission to institute complaint on behalf of all buyers of commercial units - It is alleged that complaints are consumers as they are booked shops for purpose of earning their lively hood by means of self employment - Even ootherwise complaints cannot know purpose for which allottees other than complainants had booked shops, commercial units in above said projeect - Therefore this "class action"u/Sec.12 (1)(c) of Act not only complainants but all allottees in the project is not maintainable.

National Commission concluded that case could not be accepted as "class action" and dismissed same - In this appeal dismissal of case as "class action" is questioned.

Interest of persons on whose behalf claim is brought must be common or they must have common grievance which they seek to get addressed - Oneness of interest is akin to common grievance against same person.

Such a complaint u/Sec.12(1)(c) of Act being to facilitate decision of consumer disputes in which a large number of consuumers are interested without recourse to each of them filing a individual complaint.

Term "person so interested" and "persons having same interest" used in Sec.12(1)(c) mean, persons having common grievance against same service providor - Use of words "all consumers so interested" and on behalf of or for benefit of "all consumers so interested" in Sec.12(1)(c) lives no doubt that such a complaint must necessarily be filed on behalf of or for benefit of all persons having common grievance,

seeking common relief and consequently having community of interest against same service provider.

Since by virtue of Sec.13(6) of Consumer Protection Act provisions of Or.1, Rule 8 CPC apply to consumer complaints filed by one or more consumers where there are numerous consumers having same interest.

However National Commission in instant case completely lost sight of principles so clearly laid down in decisions referred above - Approach in instant case, was totally erroneous - Therefore appeal allowed and set aside order of National Commission. ***41***

CIVI PROCEDURE CODE:

---Instant appeal against Judgment of the high court, whereby High Court upheld the findings of the Trial Court, that the suit properties in the plaint were not self-acquired by the appellant (defendant No. 1) but, instead, belonged to the Joint Hindu Family of which he was a member and, therefore plaintiff and defendant Nos.1 and 2 were equally entitled to 5/12th share in all the suit properties and defendant No.3 (a) (b) and (c) each were entitled to 1/24th share in all the suit properties and thus the same could be partitioned and distributed amongst the members of the said joint family - High Court, however, granted liberty to the appellant to approach the Trial Court for an enquiry into the question whether the sale of agricultural lands belonging to joint family would bind the appellant and to pass another preliminary decree, if necessary.

Appellant has raised formidable issues on facts as well as on law which ought to receive proper attention of the High Court, in the first instance in exercise of powers under Section 96 of CPC - Additionally, the High Court will have to address the grievance of the appellant that some of the documents, which in the opinion of the appellant are crucial have not been even exhibited although the same were submitted during the trial, as noted in the written submissions filed by the appellant - Therefore, we do not wish to deviate from the consistent approach of this Court in the reported cases that the first appellate court must analyse the entire evidence produced by the concerned parties and express its opinion in the proper sense of the jurisdiction vested in it and by elucidating, analysing and arriving at the conclusion -We refrain from analysing the pleadings and the evidence in the form of exhibited documents and including the non-exhibited documents and expect the High Court to do the same and arrive at conclusions as may be permissible in law - Appeals are accordingly allowed. ***100***

---OR. 7 Rule 11 (d) - . Appeals against Judgment passed by High Court, whereby the notice of motion filed by respondent No. 1 (one of the defendant in the suits filed by the appellant) came to be allowed and as a result of which, the suit filed by the appellant had been dismissed as against respondent No. 1 - Plaintiffs/Appellants contended that the plaint cannot be rejected only against one of the defendant(s) but it could be rejected as a whole.

Relief of rejection of plaint in exercise of powers under Order 7 Rule 11 (d) of CPC cannot be pursued only in respect of one of the defendant(s) - Plaint has to

be rejected as a whole or not at all, in exercise of power Order 7 Rule 11 (d) of CPC - Appeals stand allowed. ***109***

---Or.20 Rule 6A(2), Order 21 Rule 2 and Rule 11(3) and Secs.151 & 152 - Executing Court issued warrant of possession against Respondent/Judgment debtor in respect of suit house in eviction suit against Respondent - Executing Court dismissed applications filed by Respondent challenging executability of consent order itself as being null and void - Whether the High Court was justified in allowing the respondent's (Judgment Debtor's) appeal and thereby was justified in holding that the Execution Petition filed by the appellant was not maintainable for want of formal decree not being drawn up by the Court after passing of the order.

Held – High Court was not right in holding that in the absence of a formal decree not being drawn or/and filed, the appellant (decree holder) had no right to file the Execution petition on the strength of the consent order - Though Rule 6A (2) of Order 20 of the Code deals with the filing of the appeal without enclosing the copy of the decree along with the judgment and further provides the consequence of not drawing up the decree yet, the principle underlined in Rule 6A(2) can be made applicable also to filing of the execution application under Order 21 Rule 2 of the Code.

Order 21 Rule 11(3) of the Code makes it clear that the Court "may" require the decree holder to produce a certified copy of the decree - This clearly indicates that it is not necessary to file a copy of the decree along with execution application unless the Court directs the decree holder to file a certified copy of the decree – Even though the appellant did not file the certified copy of the decree along with the execution application for the reason that the same was not passed by the Court, yet the execution application filed by the appellant, in our view, was maintainable.

High Court was right in directing the appellant to apply to the Court for drawing a decree, but was not right in directing to apply under Section 152 of the Code - Appellant is hereby granted two weeks' time to apply under Section 151 read with Order 20 Rule 6(A) of the Code to the concerned Court with a prayer for passing a decree in accordance with the order passed under Order 23 Rule 3 of the Code – Appeal stands allowed. ***130***

---Or. XXXVII – Appellant was aggrieved by grant of conditional leave to defend in Summary Suit filed against him, by Respondent for recovery of amount.

Held - Respondent had option to institute summary suit at very inception of dispute - But consciously opted for prosecution under the Act which undoubtedly was more efficacious remedy for recovery of any specified amount of dishonoured instrument raising presumption against drawer – Defence raised by Appellant was certainly not sham or moonshine much less frivolous or vexatious and neither could it be called improbable - Appellant had raised substantial defence and genuine triable issues – Fact that there may have been commercial relations between parties was ground for institution of summary suit but could not per se be justification for grant of conditional leave sans proper consideration of defence from

materials on record - Thus, there was no justification to grant conditional leave to defend - Impugned orders granting conditional leave to defend were set aside and Appellant was granted unconditional leave to defend – Appeal stands allowed. ***140***

CONSTITUTION OF INDIA:

---Arts.32 &142 - Writ Petition - Petitioner has challenged the arrest and incarceration of her husband, against whom proceedings have been initiated u/Secs.500 and 505 of the Indian Penal Code read with Section 67 of the Information Techonlogy Act - Whether the petitioner's husband ought to have been deprived of his liberty for the offence alleged.

Held - Article 32 of Constitution of India, which is itself a fundamental right cannot be rendered nugatory in a glaring case of deprivation of liberty as in the instant case - In exercise of power under Article 142 of the Constitution of India this Court can mould the reliefs to do complete justice - We direct that the petitioner's husband be immediately released on bail on conditions to the satisfaction of the jurisdictional Chief Judicial Magistrate – Instant Order is passed in view of the excessiveness of the action taken - Proceedings will take their own course in accordance with law. **98**

CONTEMPT OF COURTS ACT:

---Sec.2(c) - Appellant, advocate convicted for his undesirable conduct by High Court and has been sentenced to simple imprisonment of six months and a fine - Contemnor alleged that before pronouncement of the Order he saw one of the accused, sitting in the chamber of the CJM, who apprehended that his client will not get justice - Contemnor during lunch hour without taking permission from C.J.M. entered into his chamber along with 2-3 colleagues and started hurling filthy abuses to the CJM and raised his hand to beat the CJM.

Held - Advocate has acted contrary to the obligations - He has set a bad example before others while destroying the dignity of the court and the Judge - The action has the effect of weakening of confidence of the people in courts - High Court has noted that the concerned advocate did not apologise and has maligned and scandalised the subordinate court - He has made bare denial and has not shown any remorse for his misconduct - Considering the nature of misconduct, while upholding the conviction for criminal contempt, sentence of imprisonment of 6 months, shall remain suspended for further period of 3 years subject to contemnor, maintaining good and proper conduct with a condition that he shall not enter the premises of the District Judgeship, for a further period of three years in addition to what he has undergone already - In case of non violation of aforesaid condition the sentence after three years shall be remitted - However, sentence of imprisonment may be activated by this Court in case it is found that there is breach of any condition made by the concerned advocate during the period of three years. ***32***

CRIMINAL PROCEDURE CODE:

--- **&** INDIAN PENAL CODE, Secs.22, 29, 120-B, 379, 403 & 411 – Whether High

Court was right in quashing criminal proceedings qua documents No. 1 to 28 on ground that mere information contained in documents cannot be considered as "moveable property" and cannot be subject of offence of theft or receipt of stolen property.

Held – Use of documents No.1 to 28 and documents No.29 to 54 by Respondents in judicial proceedings is to substantiate their case namely, "oppression and mismanagement" of administration of Appellant-Company and their plea in other pending proceedings and such use of documents in litigations pending between parties would not amount to theft – No "dishonest intention" or "wrongful gain" could be attributed to Respondents and there is no "wrongful loss" to Appellant so as to attract ingredients of Sections 378 and 380 IPC – Continuation of criminal proceedings would be abuse of process of Court – Impugned judgment of the High Court qua documents No. 29 to 54 is set aside – Supreme Court has the power to quash any judicial proceedings in exercise of its power under Article 136 of the Constitution of India – Appeal stands allowed. ***1***

---Sec.340 - INDIAN PENAL CODE, Secs.193, 294(b), 323, 344, 354(A), 466, 468, 471, and 506(i) - High Court dismissed anticipatory bail application filed by Appellants - Single Judge of High Court also directed Registrar (Judicial) to lodge complaint against Appellants - Pursuant to direction of High Court, Registrar (Judicial) lodged complaint against Appellants, with respect to alleged forgery committed by them in signing vakalatnama, on basis of which, FIR for offences punishable under Sections 193, 466, 468 and 471 IPC was registered against Appellants.

Held - Mere incorrect statement in vakalatnama would not amount to a forged document – There was no prima facie evidence to show that Appellants intended to cause damage or injury or any other acts - Since disputed version in vakalatnama appeared to be inadvertent mistake with no intention to make misrepresentation, direction of High Court to lodge criminal complaint against Appellants could not be sustained and was liable to be set aside - No useful purpose would be served by proceeding with criminal prosecution against Appellants - FIR and charge sheet are quashed to meet ends of justice – Appeals allowed. ***49***

---Secs.- 148, 149, 323, 324, 325, 302, 307 & 506 - Criminal Appeal - High Court dismissed the revision petition and has confirmed the order of Trial Court - Appellants herein to face the trial along with other co-accused - Accused were not shown as accused in the challan/charge-sheet.

Held - Persons against whom no charge-sheet is filed can be summoned to face the trial – 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 – No reason to interfere with the impugned order passed by the High Court – Appeal stands dismissed. ***59***

---Sec.482 - Assuming that there is no violation of Article 20(3) of the Constitution of India, whether in the absence of any provision in the Code, can a Magistrate authorize the investigating agency to record the voice sample of the person accused of an offence?

Held - Fundamental right to privacy

cannot be construed as absolute and but must bow down to compelling public interest - Until explicit provisions are engrafted in the Code of Criminal Procedure by Parliament, a Judicial Magistrate must be conceded the power to order a person to give a sample of his voice for the purpose of investigation of a crime - Such power has to be conferred on a Magistrate by a process of judicial interpretation and in exercise of jurisdiction vested in this Court under Article 142 of the Constitution of India.

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---Sec.482 – INDIAN PENAL CODE, Secs.302, 325, 326, 331 and 352 - In impugned Order, High Court (Single Judge) dismissed petition filed by appellant u/ S.482 of Cr.P.C and, in consequence, affirmed Order passed by the Chief Judicial Magistrate, whereby appellant was summoned to face Session Trial - Whether High Court was right in dismissing the appellant's petition.

Held – In impugned order, High Court did not assign any reason as to why the petition is liable to be dismissed - Neither there is any discussion nor reasoning on submissions urged by the counsels for the parties - Approach of the High Court while disposing of the petition cannot be countenanced - Time and again, this Court has emphasized the necessity of giving reasons in support of conclusion because it is the reason, which indicates the application of mind - It is, therefore, obligatory for the Court to assign the reasons as to why the petition is allowed or rejected - Appeal succeeds and is accordingly allowed - Impugned order is set aside. ***39***

LIMITATION ACT:

---Art.65 - Adverse plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff.

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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 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. ***88***

PENAL CODE:

---Secs. 147, 148, 302/149 and 323/149 – Appellant/Accused no. 1) along with three others tried for an offence under Sections 147, 148, 302/149 and 323/149 of the IPC - Appellant and one VikasKirola were convicted under Section 304 Part II/34 IPC and sentenced to undergo rigorous imprisonment for 10 years while other two accused were acquitted.

Held - A court, while imposing sentence, has to keep in view the various complex matters in mind - To structure a methodology relating to sentencing is difficult to conceive of - Considering the tender age of Appellant at the time of offence, subsequent conduct and other ancillary circumstances, including that no untoward incident has been reported against him and the mitigating circumstances, it is appropriate that in the obtaining factual score, the sentence of rigorous imprisonment be altered to the period already undergone for offence under Section 304 Part II/34 IPC, to meet the ends of justice - Appealstands partly allowed. ***150***

---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. ***86***

----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. ***78***

---Secs.302, 201 r/w Sec.34 - Appeal by the prosecution assailing the judgment of the High Court acquitting the respondents charged for the offences under Sections

302, 201 read with Section 34 IPC - High Court in its impugned judgment recorded a finding that the chain of circumstantial evidence produced by the prosecution is very doubtful and not reliable at all.

Held - Prosecution has failed to complete the chain of events leaving any reasonable ground for the conclusion consistent with all human probability that the act must have been done only by the respondents - We find that the High Court in its impugned judgment has elaborately considered the circumstantial evidence which has been adduced by the prosecution and arrived to the conclusion that many important and relevant witnesses have not been produced by the prosecution - Judgment of the High Court requires no interference – Appeal stands dismissed. ***145***

---Secs.302, 149 and 148 – Conviction - Solitary witness - Appellants convicted under sections of IPC - Can evidence of a solitary doubtful eye witness be sufficient for conviction.

Held - Conviction on basis of a solitary eye witness is undoubtedly sustainable if there is reliable evidence cogent and convincing in nature along with surrounding circumstances - But in nature of materials available against Appellants on sole testimony of PW-1 which is common to all accused in so far as assault is concerned, court do not consider it safe to accept her statement as a gospel truth in facts of case – If PW-1 could have gone to police station alone with her sister-in-law at an unearthly hour, there had to be an explanation why it was delayed by six hours – It is virtually impossible that two women folk went to a police station at that hour of night unaccompanied by any male - These become crucial in background of pre-existing enmity between parties leading to earlier police cases between them also - Possibility of false implication therefore cannot be ruled out completely in facts of case - Order of High Court is unsustainable and set aside - Appellants are acquitted – Appeal stands allowed. ***165***

---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. ***74***

---Sec.498A, 304B – Case of harassment – Wife/Deceased committed suicide - Trial Court convicted the appellant U/S 498A and 306 of IPC - Appeal filed by the Appellant before High Court was partly allowed and appellant was acquitted for the offence under Section 306 IPC but the conviction and sentence under Section 498A IPC was upheld by the High Court – High Court affirmed the conviction of the Appellant under Section498A IPC by holding that there was

sufficient evidence on record regarding the demand of dowry – Hence instant appeal.

Held - High Court ought not to have convicted the Appellant under Section 498A for demand of dowry without a detailed discussion of the evidence on record, especially when the Trial Court found that there is no material on record to show that there was any demand of dowry - Judgment of the High Court is set aside and appeal stands allowed. **160**

---Secs.498-A & 406 - An Order passed by the Magistrate, declining permission to respondent No. 2 to prosecute the Appellants/Accused for the offences punishable u/Secs. 498A, 406 read with Sec.34 of Indian Penal Code, was set aside and allowed by the High Court only for the reason that the application has been made by an aggrieved party – Order of High Court is challenged by the Appellants/Accused in the present appeal.

Held - Though the Magistrate is not bound to grant permission at the mere asking but the victim has a right to assist the Court in a trial before the Magistrate and magistrate may consider as to whether the victim is in a position to assist the Court and as to whether the trial does not involve such complexities which cannot be handled by the victim - On satisfaction of such facts, the Magistrate would be within its jurisdiction to grant of permission to the victim to take over the inquiry of the pendency before the Magistrate - High Court has granted permission to the complainant to prosecute the trial without examining the parameters - Therefore, we set aside the Order passed by the High Court and that of the Magistrate. - Matter is remitted to the Magistrate to consider as to whether the complainant should be granted permission to prosecute the offences u/ Sec.498-A, 406 read with Sec.34 IPC. ***178***

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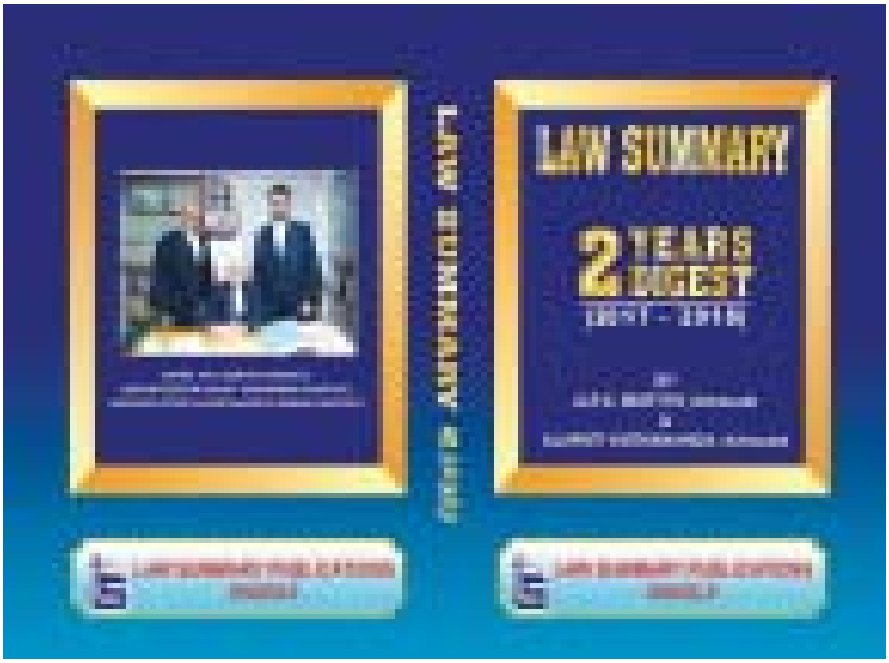

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