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(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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DEFAMATION UNDER THE LAW OF TORTS.

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

‘’ Only a trial court lawyer is a complete lawyer. A trial court lawyer is an artist, while an appeal court lawyer is an art critic.’’ *– Hon’ble Sri Justice S.J.Vazifdar, The Acting Chief Justice, P&H High Court Chandigarh.*

Introduction:- In India, ‘’defamation’’ is both a civil and a criminal offence. The fundamental right to free speech under Article 19 of the Indian Constitution is subject to reasonable restrictions. The reasonable restrictions are succinctly explained in section 499 of IPC. Under this section, defamtion takes places “by words either spoken or intended to be read, or by signs or by visible representations, to make or publish any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation, of such person” Spoken defamation is known as ‘’slander’’. Defamation in other media such as printed words or images, is called ‘’libel’’. The word “Libel” is derived from Latin word “libellus” which means literally, “small book’ or “booklet”. A person who defames another may be called as a “defamer”, “libeler”, “slanderer”. Word ‘’defamation’’, general term for words spoken (slander) or written (libel) to the prejudice of a persons character, in such case as to support an action by such person against the speaker or writer. Defamation is injury to the reputation of a person. If a person injures the reputation of another, he does so at his own risk, as in the case of an interference with the property. A man‘s reputation is his property, and possible, more valuable than other property.

Essential requirements for Defamation under the Law of Torts:-

(a) Injury to the reputation (because of statement);
(b) Such statement must refer to the plaintiff;
(c) Publication of statement

In S.T.S. Raghavendra Chary Vs. Cheguri Venkat Laxma Reddy – 2018 (4) ALT 719, it was held that issue of notice by the counsel on behalf of his client to another counsel or a party would not constitute defamation, since there is no publication of such defamatory material. In this ruling , it was further observed that cause of action in a suit for damages for defamation would arise only when the defamatory statement was published. In the absence of publication of defamatory statement in the entire plaint, the plaint shall be rejected at the threshold, by exercising power under Order 7 Rule 11(a) C.P.C. As was held in M/s. Bennett Coleman and Co.Ltd., Mumbai and others

Vs. Dr. K. Sarat Chandra, Hyderabad and another rep. P.P. - 2016 (2) ALT (CRI.) (AP) 106, in criminal side, to escape the charge of defamation, one must show that there was no malice on his part. Malice is essential for criminal defamation. Law punishes those who are reckless in their act and by their recklessness cause harm or injury to another. Malice is presumed to exist, in law, when there is intending to bring disrepute or knowledge that the matter in question could bring disrepute to a person. To constitute defamation under Section 499 IPC, there must be an imputation and such imputation must have been made with intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. As to proof of Defamation is concerned, victim must prove to establish defamation as per some generally accepted rules is, if you believe you are or have been defamed, to prove it you usually have to show there is a statement that is all of the following : Published, false, injurious and unprivileged.

The Defamation Bill, 1988 was withdrawn:-

In 1988, Defamation Bill of 1988 which was introduced by Rajiv Gandhi, passed by the Lok Sabha, but was later withdrawn. The reason for bringing the bill during the monsoon of 1988, was the discomfort caused to the government by repeated mention of the *Bofors Case* in the press. The government sought, through this bill, to control the press by making criminal, writing that was 'scurrilous' or had 'criminal imputation'. *"Without A Free Press, There Can Be No Democracy... We Uphold This Legacy...We Have Therefore Decided Not To Make The Defamation Bill, 1988 Into Law." – Rajiv Gandhi - On September 22, 1988, New Delhi.*

In 2018, Fake news circular issued by the Goverment of India recalled the Defamation Bill of 1988. Soon after the senior members of press and opposition party leaders criticized the government severely over fake news order, Prime Minister ordered the withdrawal of the circular mandating the amendment. It appears that the main aim of the bill was to categorize journalists who according to the Government wrote defamatory articles. This bill was criticized on the grounds that The bill placed the entire burden of proof on the accused in defamation suits. If a politician or bureaucrat disliked what was written in a newspaper, he could use poorly defined terms (which were included in the bill) like "grossly indecent," "scurrilous," or "intended for blackmail" to cook up charges against the journalist.

(1) **Injury to the reputation** (because of statement)**:-**

Defamatory statement is one which inclines to injure the reputation of the plaintiff. Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of society generally, or which tends to make them shun or avoid that person. An imputation which exposes one to disgrace and humiliation, ridicule or contempt, is defamatory. The defamatory statement could be made in different ways.

(2) Who to prove?

To make liable for defamation, it is the burden of the plaintiff to prove that the statement of which he complains referred to him. It is immaterial that the defendant did not intend to defame the plaintiff. If the person to whom the statement was published could reasonably infer that the statement referred to the plaintiff, the defendant is nevertheless liable.

(3) Publication of statement

Here, ''Publication'' means making the defamatory substance known to some person other than the person defamed, and unless that is done, no civil action for defamation lies. Communication to the plaintiff himself is not enough because defamation is injury to the reputation and reputation consists in the estimation in which others hold him and not a man's own opinion of himself.

Defenses for defamation under the law of Torts:-

The defenses to an action for defamation are: (1) Justification or Truth. (2) Fair comment, (3) Privilege, which may be either absolute or qualified.

(1) **Truth of the defamatory substance:-**

In a civil action for defamation truth of the defamatory matter is complete defense. Under Criminal Law, merely proving that the statement was true is no defense. First exception to Sec.499 I.P.C. requires that besides being true the imputation must be shown to have been made for public good. Under the Civil Law, merely proving that the statement was true is a good defense. The reason for the defense is that ¯the law will not permit a man to recover damages in respect of an injury to a character which he either does not or ought not to possess.

(2) **Bonafide comment on matters of public interest:-**

Making fair comment on matters of public interest is a defense to an action for defamation. For this defense to be available, the following essentials are required.

(i) It must be a Comment, i.e., an expression of opinion rather than assertion of fact; (ii) The comment must be fair, and (iii) The matter commented upon must be of public interest. (3) Privilege

Certain occasions when a defamatory statement made on such occasions is not actionable:-

There are definite occasions when the law accepts that the right of free speech outweighs the plaintiff's right to reputation : the law recognizes such occasions to be ¯privileged and a defamatory statement made on such occasions is not actionable. There are two kinds of privileges : - Those are 1. 'Absolute' privilege and 2. Qualified' privilege.

1) Absolute Privilege :-

Despite the statement is false or has been made maliciously, no action lies for the defamatory statement in case of the matters of absolute privilege. In such cases, the public interest that an individual‘s right to reputation should give way to the freedom of speech. In the following circumstances, absolute privilege is recognised by the law.

(i) Article 105(2) of the Constitution:-

Article 105(2) of our constitution provides that: (a) statement made by a member of either House of Parliament in Parliament, and (b) the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings, cannot be questioned in a court of law. a similar privilege exists in respect of State legislature, according to Article 194(2).

(ii) Judicial Proceedings :-

No action for libel or slander lie, whether against judges, counsels, witnesses, or parties for words written or spoken in the course of any proceedings before any court recognized by law, even though the words written or spoken were written or spoken maliciously without any justification and from personal ill-will and anger against the person defamed. Such a privilege also extends to proceedings of the tribunal possessing similar attributes.

Protection to the Judicial officers in India has been granted by the Judicial Officers Protection Act, 1850. The counsel has also been granted absolute privilege in respect of any word, spoken by him in the course of pleading the case of his client. If however, the words spoken by the counsel are irrelevant, not having any relevance to the matter before the court, such a defence cannot be pleaded1. The privilege claimed by a witness is also subject to a similar limit. A remark by a witness which is wholly irrelevant to the matter of enquiry is not privilege. In Jiwan Mal v. Lachman Das2, on the suggestion of a compromise in a petty suit by trial Court, Lachman Dass, a witness in the case, remarked ¯A compromise cannot be effected as Jiwan Mal stands in the way. He had looted the whole of Dinnagar and gets false cases set up . Jiwan Mal about whom the said remark was made, was a Municipal Commissioner of Dinanagar but he had nothing to do with the suit under question. In an action against Lachman das for slander, the defence pleaded was that there was absolute privilege as the statement was made before a court of law. The High Court considered the remark of the defendant to be wholly irrelevant to the matter under enquiry and uncalled for, it rejected the defence of privilege and held the defendant liable.

(iii) State Communications :-

A statement made by one officer of the State to another in the course of official duty is absolutely privileged for reasons of public policy. Such privilege also extends

to reports made in the course of military and naval duties. Communications relating to State matters made by one Minister to another or by a Minister to the Crown is also absolutely privileged1.

2. Qualified Privilege :-

In certain cases, the defence of qualified privilege is also available. Unlike the defence of absolute privilege, in this case it is necessary that the statement must have been made without malice. It is thus clear that to avail this defence, the defendant has to establish the following two essential factors:

(1) The statement was made on a privileged occasion, i.e., it was in discharge of duty or protection of an interest; or it is a fair report of parliamentary, judicial or other public proceedings.

(2) The statement was made without any malice.

CONCLUSION:-

In view of Sections 499 and 500 of IPC, mere publication of an imputation by itself may not constitute offence of defamation, unless such imputation was made with intention, knowledge or belief that such imputation will harm reputation of the person concerned. (See. Mammen Mathew Vs. M.N. Radhakrishnan and another – 2008 (2) ALT (CRL) (KER) 138. Spoken defamation is known as ‘’slander’’. Defamation in other media such as printed words or images, called libel. In IPC, section 499 defines defamation and provides valid exceptions when a statement is not considered to be defamation. In our country, a defamation case can be filed under either criminal law or civil law or in sequence. In Japan, defamation can be prosecuted either criminally or civilly, according to what is followed under Article 230-1 of the Criminal Code of Japan. The commonlaw origins of defamation lie in the torts of “slander” (especially speech (harmful statement)) and “libel”, each of which gives a common law right of action. In fact, The law of libel originated in the 17th century in England. With the growth of publication came the growth of libel and development of the tort of libel. As a measure of defence, even if a statement is defamatory, there are circumstances in which such statements are permissible in law. There are two types of privilege (Absolute and Qualified) in the common law tradition. Common law, also known as judge-made law and case law. The common law—so named because it was “common” to all the king’s courts across England. Today, one-third of the world’s population lives in common law jurisdictions or in system mixed with civil law including[16]Antigua and Barbuda, Australia etc. In some civil law jurisdictions, defamation is treated as a crime rather than a tort. In Indian Civil Law jurisdiction , defamation falls under the Law of Torts, which imposes punishment in the form of damages awarded to the claimant (person filing the claim). Under Criminal Law, Defamationis bailable, non-congnizable and compoundable offence.

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JUVENILE JUSTICE SYSTEM AND ITS PROGRESSION IN THE WORLD

THAJASWINI.C.B. AND
PASAPALA SYED MUSTAQ
III YEAR B.A., LL.B.(HONS)
SCHOOL OF LAW, SASTRA DEEMED UNIVERSITY, TAMIL NADU.

INTRODUCTION:

Youth crime is a growing concern. Many young offenders are also victims with complex needs, leading to a public health approach that requires a balance of welfare and justice models. However, around the world, there are variable and inadequate legal frameworks and a lack of a specialist workforce. The UK and other high-income countries worldwide have established forensic child and adolescent psychiatry, a multifaceted discipline incorporating legal, psychiatric and developmental fields. Its adoption of an evidence-based therapeutic intervention philosophy has been associated with greater reductions in recidivism compared with punitive approaches prevalent in some countries worldwide, and it is, therefore, a superior approach to dealing with the problem of juvenile delinquency.

Juvenile justice is a fundamental – but often overlooked – component of criminal justice systems. It is also a critical element of successful international legal development models, but in a similar way is not a major focus of many international foreign assistance donors. To be sure, a comprehensive international framework for juvenile justice is in place.

EVOLUTION OF JUVENILE JUSTICE SYSTEM:

During the British period, PopeClement XI in the year 1704 introduced the idea called “The correction and instruction of profligate youth’’. LaterQueen Elizabeth who was inspiredby the idea of the Pope established institutions for Juvenile Offenders.
The first Juvenile courts wereestablished in Chicago in the year 1847 under the Juvenile Offenders act and England in 1905.

The legislature state in the USA by the Illonis named Juvenile Justice, for the first time,passed Juvenile Courts act. This act was enacted to segregate juvenileoffenders fromadults. The main aim of the act was to give the protection Juvenile.
In the Pre-independent era,King Hammurabi (1792-1750), who was the sixth king of the Babylonian Dynastyestablished separate treatment for Juvenile Offenders. In India, an act named as the Apprentices act, 1850, has stated that the juveniles who are at the age of 10-18, convicted by the court and in the rehabilitation, a process should be given

vocational training.The Indian Penal code exempts children who are under the age of 7 years in section 82 and subsequently under section 83 who are in age between 7 to 14 because of the reason that they will not have to attend maturity. The legislature's intention here is that children don't know what is right and what is wrong. For instance, if the child below the age of the 7 years commits theft, the child cannot be arrested because it is clearly stated in section 82 thatthey are exempted from criminal liability.

The Reformatory schools act 1876 and 1897 was enacted for the treatment of offenders. This act states that courts can detain the offenders up to two to seven years, but then if they attain the age of majority, which is at the age of 18 years, they should not be detained and shall be released. The Old act of the Criminal Procedure Code which was enforced thenhas given special treatment for Juvenile Offenders where it probates the Good Juvenile offenders up to the age of 21 years. The Government of India enacted - Children's act with the primary aim to providecare, protection, maintenance, welfare, training, education etc. This act is applicable to the states as well as Union territories. Under this act, a boy is considered as a child who under the age of 16 years and a girl is considered a child under the age of 18 years.

"CHILD" TURNED TO "JUVENILE":

The authors would like to brief about their understanding of the word "Child turned to Juvenile." The word child meanshe/she may be a boy or a girl, who has no knowledge of what he/she is doing and whether it is legal or illegal. The word Juvenile is named after the child who commits the act which is illegal according to law. The child has no knowledge of what he/she was doing but the authors are concerned about the responsibility of the parents as well as educational institutions. Parents have the responsibility to monitor the behaviour of the child. The child might turnits mindset into criminal activities if the child sees violent behaviour in its surroundings (violent act against animals, left alone and has no empathy etc.,).

There are two types of family as per general categorization -Rich and Poor. In the richer family, there will be a lack of manner and empathy amongst them inspite of being well-placed and educated. And on the point of the second category who are poor people, involve in crime because there is lack of support, due to uneducated state, there will be lack of understanding amongst themselves and the society. Children involve in crimes though they have no knowledge of what they are actually doing because of lacking awareness among them. They involve rape because of lack of mannerand lack of fear to the society. The government should take the initiative to spread awareness among children in their school about the consequences of committing a crime.

JUVENILE JUSTICE SYSTEM IN COMMON LAW:

Common law system has developed during the British monarchy where the courts of equity used to deal with cases by applying the equitable principles based on the source of authority in Roman and Natural Law. Thus, the decision made by them are published and collected, by taking the precedents of those published judicial decision the courts are giving remedies or resolving the disputes in the present cases.

In common law, lawyers will make the representation before the judge and also examine the witness.

JUVENILEDELINQUENCIES:

In every country, the juvenile justice system exists at a point of collision between competing principles. Everywhere, mature adults are treated as moral beings that make choices. These choices may often be ill-informed and may emerge from an impoverished social context, yet western legal traditions insist on treating most individuals in most circumstances as free moral agents and pin responsibility for their actions onto them. To do otherwise would be patronizing and authoritarian: it would be a denial of the individual's essential humanity[1]. Children, on the other hand, are regarded as a force of nature, and not as independent moral agents. They are restrained, supervised, trained and prepared to assume that status when they reach maturity. Even after the flattening of hierarchies that has continued since the 1960s, few parents or teachers have qualms about making choices for young children, especially if they can explain and justify their choices as being in the best interests of the child. Juvenile justice is the site of conflict between these two principles.

FEMALES IN THE JUVENILE JUSTICE SYSTEM:

Although arrests have decreased in recent years for both male and female youth, the rates of decrease are lower for females than for males (Federal Bureau of Investigation, n.d.). This has resulted in an increase in the proportion of juvenile court-involved youth who are female (Snyder & Sickmund, 2006). Concomitant with this heightened prevalence is a scholarship about the strengths and needs of young court-involved females[2]. This study uses a person-centred analytic approach to explore profiles of risk and service use among adolescent females involved in the juvenile justice system and examines associations between latent classes and later outcomes.

Gender-specific services have been recommended to meet the specific needs of females in the juvenile justice system[3]. This approach is responsive to the common risk factors female youth experience and to the environment in which they live. Studies evaluating gender-specific programming are few in number and methodologically limited, but it appears that they may be effective on some outcomes (Zahn, Day, Mihalic, & Tichavsky, 2009).

The findings from this study suggest that such strategies, however, must take care to maintain sufficient flexibility to accommodate the multiple profiles likely populating the juvenile justice system.

Much work remains to be done to more completely understand the experiences, presentations, and outcomes of female juvenile court populations. LCA is one method to investigate profiles, and future research can extend these findings through prospective, longitudinal designs. The impact of policies and services designed to improve the lives of girls and young women is largely undetermined; additional work can address these gaps in knowledge.

EFFECTIVENESS OF THE NORMAL JUVENILE JUSTICE SYSTEM:

There is evidence that training and treatment programmes delivered within the framework of juvenile justice, where these have been singled out as worthy of an elaborate scientific evaluation, have a modest effect, on average, in changing the future behaviour of young offenders. Just a few programmes have much larger effects, but these are a small selection from an already select bunch. Comparing behaviour change programmes aimed at juvenile delinquency with programmes in another field such as psychotherapy for adults, it is clear that the effects of the juvenile delinquency Smith—The effectiveness of the juvenile justice system 191 programmes are much smaller. Probably there are fundamental reasons why these effects will always be relatively modest. Young offenders are often unwilling captives. They may not want to change, or may not recognize that a different pathway in life is a realistic possibility for them. Also, the setting of the training or treatment programme may have negative or stigmatizing elements even if the programme itself is entirely constructive. By contrast, most people with mental health problems consciously want to get better, even if there is unconscious resistance to the treatment; also, the stigma associated with medical treatment is less severe than that associated with criminal justice.

When youth are prostituted, the juvenile justice system typically approaches them in one of three ways, depending on state law:

(1) Prostitution of a juvenile is recognized as harm against children, so youth should never enter the juvenile justice system on a prostitution charge;

(2) Juvenile prostitution is deemed a status offence, so the juvenile justice system will work to obtain services and avoid detention for a youth; or

(3) Juvenile prostitution is a crime, so youth will enter the juvenile delinquency system.

As of this writing, one state, Illinois, had adopted the first approach. Other states, with “safe harbour” laws (see Section 1), had adopted the second approach; in these states, if a youth does not cooperate with services, a juvenile delinquency case can be reopened. Most other states had adopted the third approach, treating commercially sexually exploited and trafficked youth as delinquents so they enter the traditional juvenile justice system. Some of these states and localities within them have diversion programs so that, as in states adopting the second approach, youth identified as victims of trafficking can receive treatment as part of their rehabilitation or in lieu of punishment, but must cooperate with these services or the juvenile delinquency case will proceed or be reopened.

Finally, the juvenile justice system has opportunities to identify victims of trafficking who are in the system on charges unrelated to prostitution through intake screenings, runaway and homeless programs, and programming in juvenile detention centres.[4]

JUVENILE JUSTICE SYSTEM IN INDIA:

JUVENILE JUSTICE ACT, 2015:

Justice act 2015 has come into force on January 15,2016. This act was enacted by the repealingearlier act Juvenile Justice Act 2000. The Legislature took the challenges to resolve the delay in the adoption process, a bunch of pending cases and accountability of institutions through the new act. This act also laid down the procedure to safeguards the children who are in the conflict of law. The act has reduced the child age from 18 to 16 years because the Juvenile crime rate has rapidly increased. Before going into relevant provisions, the authors are glad that this act has changed the word Juvenile to a child in conflict with the law.

Through this act, the legislature introduced the Juvenile Justice Board and Child welfare committees and it is mandatory it should have atleast one woman in each committee and it should hold every district. The act also mentioned in section 8, the powers, duties and responsibilities of the board as well the committees is mentioned in section 29 of the act. In that committee, there will be one chairperson and four members who are specialist in dealing with the children.

Section 15 of this act deals with children who commita heinous crime between the ages 16-18 years, and it gives the option to the Juvenile Justice Board to transfer the cases of Heinous crimes to the courts of session after done with the preliminary assessments to it.

This is act has taken a good initiativeregarding the maintenance of the Child welfare committee, according to section 36 of the act, the child welfare committee has to

submit the quarterly report which contains pending and disposal cases to the magistrate and the magistrate after examining the report if the pending cases are more the magistrate has to give directions to resolve the pending cases. If the magistrate thinks that, they should require the additional committees to resolve the pending case, he shall send the review reports to the stategovernment. If the same continues for the even after three months, the state government has the power to terminate the existing committee and shall constitutea new committee. The state governments should provide the safe place to stay people who are above 18 years or the age between 16-18, who commit heinous crimes. Section 54 of the act states that there should be Inspection committees to the state as well as district levels and it is compulsory for the committee to inspect the institutions once in the three months. Sections 55 of the act gives the power to both central and state to evaluate the work done by the committee and board which is introduced by this act and Police unit.

INTERNATIONAL CONCERNS FOR THE SYSTEM:

The International Juvenile Justice Observatory (IJJO)[5]is an organisation that provides information, communication, debates, analysis and proposals concerning juvenile justice as well as children or young people who have social difficulties, behavioural problems or are in conflict with the law. The mission of the International Juvenile Justice Observatory is to "contribute an international and inter-disciplinary vision of juvenile justice in order to create a future for minors and young people all over the world who are in situations of exclusion as a result of infringements of the law". The IJJO aims at promoting international development strategies to create necessary policies, legislations and intervention methods with regard to global juvenile justice that is universally applicable in the world. The IJJO promotes and works towards the provisions of major international conventions and laws regarding juvenile justice such as UNCRC and UN Rules for the Protection of Juveniles.

The IJJO has specific objectives:

- To develop an international forum for discussion of research, interventions, and legislation in order to address the problem of juvenile delinquency
- To promote international relations regarding different ways of addressing the problem: legal, psychological, criminological, social, educational, cultural, police, medical, etc.
- To promote analysis at all level, globally, nationally and locally, of issues concerning young people in conflict with law

- To create alternate and changing solutions to problems in the field of juvenile justice
- To contribute to the improvement of legislation, education, justice, police, health care and social issues
- To create a knowledge space which is universally applicable and hence reach other to professionals, institutes and organisations by means of databases, conferences, workshops and seminars
- To provide support and information to developing countries so that they may create a healthy juvenile justice system
- To promote the formation of a worldwide network of juvenile justice observers
- To create awareness about commitment to solving issues relating to young offenders
- To promote and organise international gatherings which seek to share and widening the base of knowledge regarding juvenile justice.

THE UNITED NATIONS AND JUVENILE JUSTICE -

The 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (United Nations, 1985) and the 1990 Guidelines for the Prevention of Juvenile Delinquency (also referred to as "The Riyadh Guidelines") (United Nations, 1990) established basic actions to prevent children and young people from engaging in criminal activities, as well as to protect the human rights of youth already found to have broken the law. In 1989, the focus on safeguarding the human rights of children and young people was strengthened by the Convention on the Rights of the Child (CRC) (United Nations, 1989), which entered into force in 1990.

THE OFFICE OF JUVELINE JUSTICE AND DELINQUENCY PREVENTION -

OJJDP provides national leadership, coordination, and resources to prevent and respond to juvenile delinquency and victimization. OJJDP supports the efforts of states, tribes, and communities to develop and implement effective and equitable juvenile justice systems that enhance public safety, ensure youth are held appropriately accountable to both crime victims and communities, and empower youth to live productive, law-abiding lives.

IMPROVEMENT TO JUVENILE JUSTICE SYSTEM[6] :
Focus on Positive Youth Development –

A growing perspective in juvenile justice is that of positive youth development, concentrating on a youth's "sense of competence, usefulness, belonging, and influence." Rather than the traditional deficit-based model of highlighting an offender's flaws and wrongdoings, positive youth development chooses to accentuate optimistic views, holding on to good characteristics and strengths to encourage a better way of living. The PYD method incorporates the following:

- Assisting youth in recognizing and taking responsibility for their actions.
- Offering chances to repair any harm that resulted from their actions.
- Encouraging interaction with good role models.
- Providing solutions for better decision-making in the future.

Recognition and Treatment of Mental Illness -

Recent findings highlight the number of juvenile offenders in residential facilities that are suffering from a mental illness. Two-thirds of these juveniles exuded symptoms of depression, anxiety, and aggression. The number of individuals serving time with severe mental illness is two to four times higher than the national rate among youth.45 percent of youth enters juvenile facilities without an initial mental health screening, greatly lessening the hopes for successful rehabilitation. Many organizations are recognizing the importance of mental health screening and treatment for youth offenders.Advocacy organizations, such as the Mental Health/Juvenile Justice Action Network, continue to push for greater efforts in mental health care provision in juvenile justice programs.

Educational Opportunities -

Only 45 per cent of juvenile offenders within the system have at least six hours a day of school, wasting valuable time that could be used in bettering the offender for a reformed life outside of incarceration. Academic development is critical for all youth, and within the past two decades, more than 25 separate lawsuits were filed against states, charging with a lack of adequate education provision to incarcerated youth. Education provides empowerment and a higher chance for success upon release from the system, and continued activism and support are proving its worth in juvenile justice.

A continued and growing focus on opportunities for reform and rehabilitation in the juvenile justice system has hopes for lessening the number of offenders. By paying attention to positive youth development, recognizing and providing treatment for mental illness and offering sufficient educational opportunities, the juvenile justice system can reach a greater level of effectiveness in the future.

JUVENILE JUSTICE SYSTEM PROS AND CONS :

PROS:

- The authors are glad that the Juvenile Justice act 2015 (hereinafter"act") objectives are to take care of and protect the children.
- The act has introduced the Juvenile Justice Board, committee and the act also manifestly stated their powers, responsibilities of Board and Committee and the Police Unit.
- The act has divided the offence for instance: Heinous Offence, PettyOffence.
- The act primarily aim is to curb the crimes which aregrossly involved by the Juveniles, so this act reduced the age from 18 to 16.
- The act has also imposeda penalty to the people who are influencing the child to use Tobacco, drug etc. under section 77 of the Juvenile Justice act 2015.
- To ministry of women and child development, Maneka Gandhi got a reward from various National and international communities of tobacco control community, and India is the first country to impose a penalty to influencer to immoral activities to child through this act.
- The authors are happy to convey that this act(Juvenile Justice act 2015) gives the care and protection to the child, and it also imposes the penalty who are influence the child to involve in an illegal act or immoral act and it also provides the steps to adoption etc.

CONS:

- The Juvenile Justice act 2015 is true that their objectives are to care and protection of child but it violates the child rights.
- The legislature is failed to comply with the constitution of India before passing the act.
- Indian Constitution clearly states the fundamental rights to the citizens and Non-citizens.
- Article 14 states that there is no right to state to deny the equality to the citizens in the aspects of equality before the law and equal protection of the law. The act which tells that the child aged under 16 who commitsa heinous crime shall be treated as the adult, then the liberty of the legislature to draw this comparisonis questioned.
- Article 21 of the Indian Constitution also states that the Right to life and liberty except according to the procedure established by the law. Article 21 considers Universal right and Natural Law, which is also equally applicable to

the citizens and non-citizensthrough the exception stated. If the act which is a violation of fundamental rights of the citizens of India can be struck down under Article 13 of Constitution. The authors like to mention how the Greeks thinkers consider Natural Law.

- Sophocles is one of the Greekthinkers says that: Natural Law is wise but written law is arbitrary.
- According to the Stoics of Natural Law: All human are equal and laws therefore applicable to all equally.
- Under Article 21 ambit, it covers the right for the security of the person. As stated, the Maneka Gandhi Vs union of India right to live under article 21 includes the right to live with human dignity. In Olga Tellis vs Bombay Municipal Corporation stated the right to life includes the right to livelihood.
- The authors again relying upon Article 15(3) of Constitution of India which is again failed by the legislature to comply to before passing the act. Article 15(3) states that the state shall not preventif there are making special provisions for the benefit of the children and women. The word the Benefit of the children and women this expression tells that there should benefit to the child, but the legislature stated in their objectives for the care and protection of the child but this act treatsthe child as in par with adults.
- The Juvenile Justice Board which is established by the act is providing the legal aid to the Juveniles those who are not afford to the case, the act in the section 8(3)c of the act says that ensuring the availability of the legal aid by the legal institutions, the legal institutions may or may not provide the assistance after a few hearing of the case instead of that the legislature would have madea provision the ensuring the availability of legal aid to the juveniles until the case is disposed off.

CONCLUSION:

The reformers' best strategy is to recognize the multiple aims of the system, rather than sweep them under the carpet. Once these aims are acknowledged, it becomes clear that they do not have to be expressed in the same way everywhere. The comparison between Bremen and Denver has shown that the need to communicate societal disapproval in a demonstrative way and to establish a bedrock of general deterrence are not constants across contemporary societies and that the pressures leading to more punitive juvenile justice systems are not everywhere the same. The most consequentialist and instrumental analysis of the effects of juvenile justice comes from the United States, where the systems are punitive compared with those in Western Europe. That suggests that progressives

should set evidence on the effectiveness of interventions with young people within a wider framework of analysis.

(End notes)

END NOTE

1 Criminal Justice © 2005 SAGE Publications London, Thousand Oaks and New Delhi.
www.sagepublications.com 1466 –8025; Vol: 5(2): 181 –195 DOI: 10.1177/1466802505053497

2 e.g.,Bright & Jonson-Reid, 2010 Carr, Hudson, Hanks, & Hunt, 2008 Cernkovich, Lanctôt, & Giordano, 2008 Gavazzi, Lim, Yarcheck, Bostic, & Scheer, (2008).

3 Iowa Commission on the Status of Women, 1999

4 https://www.ncbi.nlm.nih.gov/books/NBK253348/

5 https://www.oijj.org/en

6 https://online.sju.edu/graduate/masters-criminal-justice/resources/articles/improving-effectiveness-of-juvenile-justice-program

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2019(1) L.S. 167 (Hyd.)

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

Present:
The Hon'ble Mr.Justice
D.V.S.S. Somaayajulu

Damera Madhava Vidhyardhi ..Petitioner
Vs.
R. Siva Kumar ..Respondent

HINDU SUCCESSION ACT, Sec.29 – Entitlement to Relief – Whether plaintiff is sole legal heir of deceased and of his family members – Whether plaintiff is entitled to possession and ownership of plaint schedule properties.

Held – Lower Court rightly held that there is no devolution of property on Government – Plaintiff and second defendant are claiming schedule properties –This Court agrees that documents are valid and that they constitute dedication in favour of second defendant – No devolution of property by virtue of Sec.29 of Act – Lower Court correctly noticed that no evidence is placed to show that valuation is incorrect – Appeal stands dismissed.

Mr.V.L.N.G.K. Murthy, Advocate for the Petitioner.

Mr.M. Adinarayana Raju, P. Ganga Rami Reddy, P. Ramabhoopal Reddy, Advocates for the Respondent.

AS No. 1530/2001 Date:20-02-2018

J U D G M E N T

1. This appeal is filed against the judgment and decree in O.S.No.12 of 1994, dated 31.01.2001 on the file of the Senior Civil Judge, Srikalahasti, Chittoor District.

2. This appeal arises out of the said suit, which has a chequered history. After a long protracted trial, appeal, remand etc., the first appeal has come up for final hearing before this Court.

3. For the sake of convenience, as this is a first appeal, the parties are arrayed and described as plaintiff and defendants only.

4. A tragedy of great propositions is the genesis of the suit and the claim therein. One Sri D.V.S. Tirupati Rao, his wife and three daughters hailing from a well known family committed suicide by setting themselves on fire on 21.02.1994. This mass suicide committed by the members of Tirupati Rao family led to the present claim. Just before the death, the deceased daughters of D.V.S. Tirupati Rao wrote three documents (Exs.B.1 to B.3) by which they purported to give their properties to the deities mentioned therein. Soon after this mass death by suicide, the plaintiff in the suit claiming to be a close relative wanted to perform the necessary last rights of the five people, who died in the tragic circumstances in February, 1994. The first defendant objected to the same.

5. Thereafter began the claims and counter claims resulting in the suit. The suit was initially filed by Damera Madhava Vidhyardhi against the first defendant-R. Siva Kumar

for a declaration that he is the close and sole legal heir to the properties of late D.V.S. Tirupati Rao. Later, the plaint underwent changes and amendments were carried out. The Executive Officer, Tirumala Tirupati Devasthanam (hereinafter called TTD) was added as a second defendant. Defendants 3 to 26 who are the subsequent purchasers of the property after the initial decree dated 15.11.1996 were added as parties along with the State of Andhra Pradesh who was the custodian of the properties for some time. The plaint was also amended for a declaration that the plaintiff was the close and sole legal heir of the properties of late D.V.S. Tirupati Rao, his wife and three daughters.

6. The essential contest in this case is presently by the TTD, who is the second defendant and by the subsequent purchasers of the property.

7. The case of the plaintiff in brief is that he had close family connections with the members of the deceased family. The plaintiff is the son of D.V. Ranga Rayanim varu, the brother of late D.V.S. Tirupati Rao. The said Sri D.V.S. Tirupati Rao, Sri D. Rama Rayanim varu and D.V. Ranga Rayanim varu were the three sons of one Sri D. Kodanda Ramasway Nayanim varu. The three sons of D. Kodanda Rama Swamy Nayanim varu partitioned the properties in 1951 and D.V.S. Tirupati Rao had acquired the plaint schedule properties from and out of the said partition. Therefore, after the death of Tirupati Rao and his family, the plaintiff filed the suit stating that they had no other legal heir left and that as the brothers son, he is the sole legal heir to their properties.

8. The first defendant filed a written statement stating that the plaintiff is not at all related to D.V.S. Tirupati Rao. He did not claim the right of the properties and on the other hand, his intention is that the last wishes and desires of the deceased people should be carried out and the property should devolve on the parties named in the documents executed by the deceased just before the death.

9. The second defendant/TTD filed a written statement which is also subsequently amended. Initially Exs.B.1 to B.3 documents were described as Wills. Later, the title and description of the documents were changed to a dedication in favour of a deity. Based on these three documents, the second defendant claimed to be the owner. This is the gist of the written statement and amended statement filed.

10. After the suit was initially decreed on 15.11.1996 and before the appeal was filed by the contesting second defendant, the successful plaintiff took possession of the lands and building from the Mandal Revenue Officer, who was the custodian of the property. He demolished the existing building, converted the land into plots and sold them to the defendants 3 to 26. Hence, the subsequent purchasers were added as parties and their essential defence is that they are bona fide purchasers for value, without being aware of the litigation. Defendant No.27 also filed a separate written statement raising various defences including the prime defence that the court fee paid is incorrect.

11. The lower Court framed the following 9 issues for determination.

i) Whether the plaintiff is the sole legal heir of late D.V.S. Tirupati Rao?

ii) Whether the plaintiff is entitled to the possession and ownership of the plaint schedule properties?

iii) Whether the letters dt. 27.2.94 addressed by the daughters of late D.V.S. Tirupati Rao to the 2nd defendant Devasthanam constitute Will?

iv) Whether the 2nd defendant is entitled for the plaint schedule property by virtue of the letters dt. 21.2.94 addressed by the daughters of late D.V.S. Tirupati Rao?

v) Whether the plaint schedule properties devolved on the Government of A.P. under Section 29 of Hindu Succession Act, 1956?

vi) Whether the suit for declaration simplicitor without consequential relief of possession is maintainable?

vii) Whether the valuation is made and court fee paid are correct?

viii) Whether the letters dt. 21.2.1994 addressed by the daughters of late D.V.S. Tirupati Rao to 2nd defendant constitute dedications?

ix) Whether the defendants 3 to 26 are bona fide purchasers of suit schedule property from plaintiffs?

12. Based on the above issues, the parties went to trial. On behalf of the plaintiff, PWs.1 to 6 were examined and Ex.A.1 to A.9 were marked. For the defendants, DWs.1 to 3 were examined and Exs.B.1 to B.19 were marked. The main witnesses in this case are PW.1, PW.6.

13. This Court has heard Sri V.L.N.G.K. Murthy, learned senior counsel for the appellant/plaintiff. Sri M. Adinarayana Raju, learned counsel for the second respondent/ second defendant-TTD and Sri P. Ganga Rami Reddy and Sri P. Ramabhoopal Reddy, learned counsels for the subsequent purchasers of subject plots.

14. The learned counsels concentrated their attention on the main issue Nos.1, 2, 3 & 8. In addition, Sri M. Adinarayana Raju, learned counsel appearing for TTD laid heavy emphasis on the order of remand passed by the Honble Division Bench of this Court in A.S.No.258 of 1998, dated 23.12.1988. An appeal in A.S.No.258 of 1998 was filed before this High Court against the judgment and decree of the lower Court dated 15.11.1996 passed in the suit. The Division Bench remanded the matter to the lower Court, which again heard the matter and passed the impugned judgment and decree dated 31.01.2001. The present appeal arises from the subsequent judgment and decree dated 31.01.2001.

15. It is the submission of the learned counsel appearing for TTD that the findings of the Division Bench given while remanding the matter are binding on this Court. Noting this observation, this Court is now proceeding to decide the issues in the same order that they were decided by the lower

Court.

16. The first issue is whether the plaintiff is the sole legal heir of late D.V.S. Tirupati Rao and of his family members. The assertion of the plaintiff is that he is the sole legal heir and that there are no other legal heirs. In order to prove his case, the plaintiff produced documentary evidence Exs.A.1 to A.8. Ex.A.1 is an invitation card of the death ceremony for the deceased, dated 01.03.1994, which is subsequent to the death of late Tirupati Rao and others. Ex.A.2 are the death certificates (5 in number). Ex.A.3 is the partition deed amongst Tirupati Rao and his brothers of the year 1951. Exs.A.4 to 6 are receipts issued in favour of the plaintiff by third parties, which state that he cleared the loans/dues of late Tirupati Rao. Exs.A.7 to A.9 are tax receipts; all of February, 1997. All these documents, except Ex.A.3-partition deed are documents subsequent to the death of late Tirupati Rao and others. Exs.A.4 to A.6 documents are ante liten mortem or documents subsequent to the filing of the suit. Therefore, they have to be considered very carefully, since the element of preparation with the litigation in mind cannot be ruled out. The case law reported in Murugan @ Settu v. State of Tamil Nadu (2011) 6 SCC 111) and State of Bihar v. Radha Krishna Singh and others (1983) 3 SCC 118) is relevant for the said purpose. Exs.A.4 to A.6 are receipts issued by three different parties, who were examined as PW.3, PW.4 and PW.2. They merely state that some loans and dues of late D.V.S. Tirupati Rao were discharged by the plaintiffs. This does not support the case of plaintiff that he is the sole legal heir. Exs.A.7 to A.9 are tax receipts in the name of the deceased-Tirupati Rao. Ex.A.2 is collectively the death certificates of all five members of Tirupati Rao family. Ex.A.1 is a death ceremony card printed by PW.1. Therefore, this documentary evidence does not support the case of the plaintiff that he is the sole legal heir. Hence, the oral evidence is to be considered.

17. It is pointed out by the learned counsel appearing for TTD is that the plaintiffs while deposing in the chief examination on 30.08.1999 has deposed that his senior paternal uncle died issueless leaving behind his wife who is alive. This lady who is admittedly alive is not added as party to the proceedings. In addition, the plaintiff also examined one R.L.N.R.K. Ranga Rao as PW.6. This witness deposed on 27.09.1999 and in the cross-examination on that day, he clearly admitted that the plaintiff has a sister, who is now alive. The plaintiff as per the learned counsel suppressed these two facts and filed the suit without adding these two legal heirs. Both these persons are entitled to the share in the property. These two persons were not added as parties to the suit and they are necessary and proper parties, particularly as the present suit is a suit for declaration of status. As per the learned counsels, without adding the said two persons as parties to the suit, an effective decree cannot be passed. The learned counsel appearing for TTD also relied upon Profollo Chorone Requitte AIR (1979 SC 1682) in support of his submission that as necessary parties were not added, the suit is liable to be dismissed on this ground alone. The lower Court also held that these parties should

have been added. This Court concurs with the finding of the lower Court on this point and also observes that these legal heirs who are admittedly alive, particularly the sister of the plaintiff and an aunt should have been added as necessary parties to the suit before claiming the relief. Hence, the plaintiff is not entitled to the relief that he is the sole legal heir of late Tirupati Rao family in the absence of these parties. Therefore, this Court agrees with the finding of the lower Court on issue No.1.

18. Issue No.2 is a corollary and depends on the finding on issue No.1. This issue is as follows:

whether the plaintiff is entitled to the possession and ownership of the plaint schedule properties. As it is held that the plaintiff is not the sole legal heir of late Tirupati Rao, he is not entitled to a finding that he is entitled to the ownership and possession of the plaint schedule properties. In addition, the validity of Exs.B.1 to B.3 documents is also being decided and the subsequent discussion will have impact on this issue also.

19. Issue No.3 whether the document dated 27.02.1994 addressed by three daughters of late Tirupati Rao amount to a Will. Initially, the second defendant took a plea that these three documents which were received by them by post are the last Will and testament of the daughters of late Tirupati Rao, by name D. Geetha, D. Rekha Devi and D. Gayatri respectively. Admittedly on legal advice and realizing that these documents are not a Will, the second defendant amended their pleading and the Court agreed that the amendment and the word Will which was used to describe Exs.B.1 to B.3 were allowed to be deleted.

20. The lower Court also rightly noticed that as per Section 63 of the Indian Succession Act, a Will is a compulsory attestable document and these documents Exs.B.1 to B.3 do not possess or contain the essential characteristics of a Will. These three documents are not attested by a witness as required by law. They do not have the essential pre-requisites to be called a Will. Therefore, the lower Court rightly held in issue No.3 that the documents Exs.B.1 to B.3 are not the last Will and testament of the three daughters of late Tirupati Rao. This Court agrees with the finding of the lower Court on this issue.

21. Issue Nos.4 & 5 and additional issue Nos.3, 4, & 5 as mentioned in para-15 of the judgment are decided together since they involve the decision on the contents of Exs.B.1 to B.3. Exs.B.1 to B.3 are three documents executed by D. Geeta and D. Rekha Devi, which are the crux of the case. These documents were penned by two of the deceased just prior to their deaths. D. Gayatri, one of the sisters did not execute any document. In Ex.B.1, D. Geeta writes that they are merging themselves with Sri Venketeshwara Swamy. She also states that they are voluntarily given up their lives and are succumbing to death by self-immolation/by fire. She states that the property situated in Sri Ramnagar Colony should go to Sri Venkateshwara Swamy varu along with the cows and calves. She also states that in the house, pooja should be performed in the name of the Swamy.

It is clearly mentioned in the last line that the said letter is being written in hurry and if there are any minor mistakes, the same should be ignored. In the note at the very end, it is also clearly mentioned that except the five who are contemplating death, there are no other legal heirs. The last line clearly states that the property should go to Venkateswara Swamy.

22. Ex.B.2 is a letter written by D. Rekha Devi wherein she mentions that she and her family are becoming one with Sri Venkateshwara Swamy. It is also mentioned that out of their own will, they are self immolating themselves. Therefore, her property including two cows and calves should go to Swamy varu. She also mentions that every year in the house belonging to them, pooja should be performed in the name of all family members. The last line sounds a note of caution that as the note is being penned in a hurry, minor mistakes should be excused. She also states at the bottom left corner of Ex.B.2 that except the five of them, there are no other legal heirs. In this document, it is important to note that there is no discussion about any property except cattle. It is also important to note that both Exs.B.1 & B.2 are addressed to Sri Venkateshwara Swamy vari Devasthanam.

23. Ex.B.3 is the document that was the subject matter of long heated arguments on both sides. In this document, D. Rekha Devi mentions that her parents, siblings and herself have voluntarily desired that the property situated in Sri Ramnagar Colony is to be given to Sri Venkateshwara Swamy varu; that because of the difficulties they are facing they are unifying themselves with Sri Venkateshwara Swamy; that the immolation is also being carried out by Sri Venkateshwara Swamy. The other property situated in the Bazar Street is to be given to Eswara Parvathi Devi, as the father of D.V.S. Tirupati Rao lost his mental balance, all the family members who felt that they cannot lead the life without him, decided to become one with Sri Venkateshwara Swamy. They also pray that their last desire should be fulfilled by Sri Venkateshwara Swamy and Lord Eswara of Sri Kalahasti Temple Devasthanam. In the last para, it is clearly mentioned that three daughters are the only legal heirs to the parents and that in fact Lord Venkateshwara Swamy and Sri Kalahasti temple Eswara are the only legal heirs. This document as mentioned earlier is the subject matter of a lot of discussion.

24. A fact that is clear from the evidence is that there is no dispute that these three documents were executed by D. Geeta (Ex.B.1) and D. Rekha Devi (Exs.B.2 & 3) respectively. The deposition of PW.1 is very clear. The same was noted by the lower Court and by the Division Bench. The lower Court noted that there is no doubt about the authorship of three documents and that they are in the custody of the second defendant/TTD. The contents, however, are the subject matter of the dispute.

25. Sri V.L.N.G.K. Murthy, learned senior counsel for the appellant/plaintiff argues that D. Geeta was married prior to Exs.B.1 & B.2; and that she was not a coparcener and does not have any right in the property of her father. It is a fact that was pointed

out by Sri M. Adinarayana Raju, learned counsel for TTD that D. Geeta dealt with only her cattle but not any immovables while Exs.B.2 & B.3 talked about the immovable property in Sriram Nagar Colony. The Division Bench of this Court while remanding the matter in A.S.No.258 of 1998 clearly held that as there was no partition in the family of Tirupati Rao; by virtue of Section 29 of Hindu Succession Act, D. Geeta is a coparcener, who is entitled to the benefit of Section 29 (a) of Hindu Succession Act, as brought into force the A.P. Act 13 of 1996. The Division Bench held that all the three daughters including the divorced Geeta are unmarried and therefore, they are coparceners. This finding, according to the learned counsel for TTD, Sri M. Adinarayana Raju, is binding on this Court. This Court agrees that the said finding is binding on this Court as it a Division Bench of this Court that came to the said conclusion.

26. The next point that is vehemently urged by the learned counsel for the appellant is about the contents of Ex.B.3. As per the learned counsel for the appellant, D. Rekha Devi dedicated or gifted the right in the property, she did not possess. There was no succession by that time and that the succession did not open by that time. Therefore, D. Rekha Devi could not part with property which she did not have a right as per the learned counsel. She only had a right to succeed to the said property and therefore, the principle spes successionis applies and the right of succession cannot be transferred as per Section 6 (a) of the Transfer of Property Act. Therefore, it is argued that the document is not valid. On the other hand, the lower Court noticed that this is a peculiar case where the death of entire family occurred at once or simultaneously on the night of 21.02.1994. The lower Court rightly observed that as per Section 21 of Hindu Succession Act, 1956, in such a case, the younger is supposed to have survived the elder. Therefore, it is the submission of Sri M. Adinarayana Raju, learned counsel for TTD that D. Rekha Devi, the youngest sister survived all other joint family members and therefore, she is entitled to execute Exs.B.2 & B.3.

27. This is a peculiar case where the documents were executed in the light of a decision taken by all the family members to die collectively. All of them jointly entered into a pact and died on the night of 21.02.1994. Their intention is not in doubt. There were no eye witnesses or other evidence to show who died first or who survived the other at least for a few macro seconds. Therefore, the arguments advanced that Exs.B.1 to B.3 were executed when the rest of the family was alive or that the principle spes succession is applies cannot be really applied to a case like this with its own peculiar facts. The lower Court in the opinion of this Court correctly discussed the issues and came to a conclusion that Exs.B.1 and B.3 are validly executed documents. In addition, this Court holds that the essence of coparcenery is the unity of ownership that is vested in all the coparceners. The interest cannot be predicted and it may be in fluctuation depending on births and deaths but it is

vested (see Satrughan Isser v. Smt. Subujpari). In the present case, the Court notices the differences between vested interest; contingent interest and spes succession. In Sashi Kantha Acharjee v. Promode Cahndra Roy , the High Court of Calcutta observed in paras- 17 & 18 as follows:

"17. In dealing with this question the distinction between vested interest, contingent interest and spes succession is has to be carefully noted. An estate or interest is vested, as distinguished from contingent, either when enjoyment of its is presently conferred or when its enjoyment is postponed the time of enjoyment will certainly come to pass; in other words, an estate or interest is vested when there is an immediate right of present enjoyment or a present right of future enjoyment. An estate or interest is contingent if the right of enjoyment is made to depend upon some event or condition which may or may not happen or be performed, or if in the case of a gift to take effect in future, it cannot be ascertained in the meantime whether there will be anyone to take the gift; in other words, an estate or interest is contingent when the right of enjoyment is to accrue, on an event which is dubious or uncertain. And as regards certainty, the law does not regard as uncertain the event of a person attaining a given age or of the death of somebody beyond which his enjoyment is postponed, because if he lives long enough the event, is sure to happen.

18. A spes succession is merely an expectation or hope of succeeding to the property, a chance or possibility which may be defeated by an act of somebody else."

This Court therefore holds that the interest of the deceased in these documents is a vested interest that does not attract the principle of spes succession.

28. It was also argued that as no partition took place amongst family members of Tirupati Rao, a gift of joint family property by a coparcener is void. The learned counsel argued that a gift made without the consent of the other coparceners is void in law. In reply, the learned counsel for TTD, Sri M. Adinarayana Raju argued that the gift to an idol is not really gift and even otherwise, Exs.B.1 to B.3 do not have characteristics of the gift. They are a dedication only as can be seen from the clear language used. The further discussion on this will make this clear.

29. It is a fact that in Exs.B.1 to B.3, there is no mention of the Tirumala Tirupati Devasthanam (TTD). They are addressed to Sri Venkateswara Swami Vari Devasthanam. It is mentioned that the property should go to Sri Venkateshwara Swamy varu. Therefore, the learned counsel for the appellant argued that there was no desire of the deceased to give this property to the TTD specifically. It is his submission that there are hundreds of temples of Sri Venkateshwara Swamy through out the State of Andhra Pradesh and through out the country and therefore, the second defendant/TTD cannot claim to be the exclusive owner of the suit schedule properties. His argument is that these documents are void and uncertain and cannot be relied upon.

30. On the other hand, it is the contention of learned counsel for TTD that the plaintiff is questioning only a part of these documents. The documents consist a dedication to Sri Kalahasti Eswara temple also, along with the dedication to Sri Venkateshwara Swamy varu. Therefore, it is the contention of the learned counsel for TTD that the plaintiff cannot challenge only a part of documents by accepting the other part of the document as valid. He also argued that a liberal interpretation should be given to the last wishes of the family. It is his contention that out of all the temples in that area, the TTD temple is most popular and well known temple. He states that all the deceased were residents of Sri Kalahasti Town, which is very close to Tirupati. Most pilgrims who visit Tirupati immediately go to Sri Kalahasti to have Darshan of Lord Shiva. Therefore, the preponderance of probabilities is that the reference to Sri Venkateswara Swamy varu is to the Sri Venkateswara Swamy at Tirumala only.

31. In addition, it is a fact that these documents are addressed to Sri Venkateshwara Swamy varu and were sent to the TTD only. This is the reason why the TTD is in custody of the original documents. Therefore, the learned counsel argued that it was the intention of the dying members of late Tirupati Rao family that the property should go to Sri Venkateshwara Swamy varu, who is the famous deity at Tirupati. His forceful submission is that a liberal interpretation should be given to these documents and that they should be given due weight; and that a dedication is made to a God and a hyper technical view should not be taken. The mass death coupled with the fact that letters were sent by the deceased to the TTD and not to others reveals the intention that the property is given to the TTD only. This Court agrees with the contentions of the counsel for the second defendant/TTD and finds that there is force in the same. Exs.B.1 to B.3 are executed by the deceased and were sent to the second defendant/TTD only. This Court also agrees that the wishes of the executants are to be given effect to. These documents are addressed to the TTD only and hence they are not void for uncertainty.

32. The other question that was argued is that these documents do not transfer any property as they are neither a will nor a gift. The court below considered the entire evidence and contents of the documents. From a reading of the documents Exs.B.1 to B.3, it is clear that they were executed just before the family committed suicide. The family was conscious of the fact that the death was imminent. Both the sisters clearly mentioned in their documents that they are self-immolating themselves and unifying themselves with Lord Venkateshwara Swamy. They have also stated clearly that these documents are being written just before their death and if there are any mistakes, the same should be overlooked. It is also mentioned that there are no legal heirs and the property should go to the deities mentioned therein. Therefore, on a plain and liberal reading of these documents, this Court is of the opinion that the finding of the lower Court that these are dedications and not a gift in the legal sense or a will is correct. Even the ultimate survivor, as per the legal fiction of Section 21 of the Hindu Succession Act, is the last

sister D. Rekha Devi. By operation of this section, she should be treated as sole surviving coparcener and therefore, the contents of Ex.B.3 by which the entire property is dedicated to Sri Venkateshwara Swamy varu and to Sri Kalahasti Eswara is held to be a valid dedication. This Court agrees with the finding of the lower Court that the letters addressed by the daughters of late D.V.S. Tirupati Rao constitute a dedication to the Tirumala Tirupati Devasthanam/second defendant. The judgment relied upon by the counsel for the second defendant in Kapoor Chands case (AIR 1993 SC 1145) also clearly states that dedication of property need not be in writing and can be inferred from conduct also. A sequential reading of Exs.B.1 to B.3 makes the intention clear as per this Court.

33. The next issue that arises for consideration is whether the property has devolved on the Government of Andhra Pradesh by virtue of Section 29 of Hindu Succession Act. The lower Court rightly held that there is no devolution of the property on the Government. The plaintiff and the second defendant are claiming the suit schedule properties. This Court agrees that Exs.B.1 to B.3 are valid and that they constitute a dedication in favour of the second defendant. Therefore, in this case, there is no devolution of the property by virtue of Section 29 of Hindu Succession Act.

34. The other issue that arises for consideration is about the subsequent sales made by the plaintiff after the initial decree of the suit and before the earlier appeal. As mentioned earlier, the suit was decreed on 15.11.1996. The plaintiff who was given a decree approached the Mandal Revenue Officer (the custodian) and took possession of the property. The plaintiff during the period from December, 1996 to March, 1997 sold the property by laying out the same into house plots. Defendants 3 to 26 purchased the same from him. The plaintiff argued that as no appeal was filed, more so, within time, he proceeded to enjoy the benefit of decree in his favour. He also sold the property openly and publicly. The alienations were made to defendants 3 to 26 are genuine and valid transfers as per the plaintiff. On behalf of defendants 3 to 27, a plea was raised that the purchase made by them is valid and that their interest should be protected.

35. It is a fact that in between the original decree and subsequent filing of the appeal, there were sales. The registered sales were made to third parties who are now added as parties to the proceedings. The fact remains that there were some delay in preferring the appeal and obtaining subsequent orders. Therefore, the sales made to the defendants 3 to 27 cannot be held to be the sales with a view to defeat the decree. The lower Court also held that these buyers were bona fide purchasers. However, it appears that in the case of defendants 11, 14, 18, 20, 21, 25, 26, 16 and 24, the second defendant collected the market value and agreed for the ratification of the sales. In the case of the other defendants (other than defendants 3, 5, 13 and 16) whose sales were made a little later, a similar benefit was not extended by TTD. Therefore, it is the submission of Sri Gangirami Reddy, learned counsel for

the subsequent purchasers/defendants that a similar benefit is to be extended to these purchasers also. He seeks a direction to the second defendant/TTD. Sri M. Adinarayana Raju, learned counsel for TTD, however, disputed the submission. This Court does not wish to enter into this area and merely states that the sales are made bona fide. It is for the second respondent/TTD to consider the representation made by the defendants, if they are willing for regularization of the sale deeds as per the prevalent rules/guidelines/laws applicable to such cases.

36. A point that was urged is about the amendment to the written statement by which the plea of Will was changed to a dedication and the order passed in I.A.No.234 of 1999 on a plea by the second defendant to amend the written statement. The word Will was deleted and the word dedication was added to the plaint. A lot of argument was advanced on the issue including pleas about the amendment of written statement by which a fundamental change is made in the stand taken by defendants etc. This Court is of the opinion that the order passed by the Division Bench on 23.12.1998 in A.S.No.258 of 1998 precludes this Court from entertaining any further arguments on the amendment. The Division Bench clearly held in para-9 of the order that the amendment sought is valid and that the deletion of the word Will and substitution in its place dedication and donation to an endowment will not cause any prejudice to the plaintiff. This order has become final and is binding on this Court. It is an order of Division Bench of this Court and is binding on this Court also.

37. The matter was also remanded by the Division Bench with a specific direction for retrial on the main issues and also to decide two additional issues viz., a) whether the suit for declaration simplicitor is maintainable; and b) whether the court fee paid is correct or not.

38. During the course of submissions by the learned counsels, the matter was argued but no serious issue was pointed out against the finding of the lower Court on these two additional issues. The lower Court rightly held that the suit for a declaration is maintainable. The possession of the property was no longer with the plaintiff or with the second defendant. Therefore, the Court held that a decree for delivery of possession in favour of the plaintiff and against the defendant does not arise. Even otherwise, a suit for declaration simplicitor can be maintained. The case law cited Deokuer and another v. Sheoprasad Singh and others (AIR 1966 SC 359), which was considered by the lower Court is also relevant. Therefore, this Court concurs with the finding of the lower Court that in the circumstances of the case, a suit for declaration simplicitor is maintainable.

39. The last issue to be decided is about the valuation and the court fee paid. The lower Court framed this issue after the remand. The lower Court correctly noticed that no evidence is placed to show that valuation is incorrect. On the contrary, the court fee paid is according to the valuation certificate that is annexed to the plaint in IA No.234 of 1999. It is also important to note that the valuation portion was amended

and IA No.429 of 1999 in OS No.12 of 1994 was allowed. The court fee was paid accordingly. Therefore, this Court is of the opinion that there are no infirmities in the findings of the lower Court on this issue.

40. In view of the above, this Court is of the opinion that the impugned judgment of the lower Court is correct and valid and there are no merits made out to interfere with the same.

41. In the result, the appeal is dismissed. However, there shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

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2019(1) L.S. 178 (Hyd.) (D.B.)

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

Present:
The Hon'ble Mr.Justice
C.V. Nagarjuna Reddy &
The Hon'ble Mr.Justice
M. Ganga Rao

Tata Arjuna Rao ..Petitioner

Vs.

The State of A.P.
rep. by its PP. ..Respondent

INDIAN PENAL CODE, Sec.302 – INDIAN EVIDENCE ACT, Secs.26 & 27 – Sustainability of Conviction – Appellant challenged his conviction for offence under Section 302 of IPC.

Held – Under Section26 of Evidence Act, confession by accused while in custody of Police is not to be proved against him – From evidence of specified witness, it is clear that nothing was recovered by Police in his presence – On contrary, one motor bike, knife and some clothes allegedly belonging to Appellant were already in possession of Police and they were shown to specified – Thus, alleged confessional statement made by Appellant in Police custody, which has not led to discovery of any fact, is hit by Section 27 of Evidence Act and Court below has rightly declined to mark alleged Mediator Report – Prosecution failed to prove recovery of any incriminating material from Appellant so as to connect him to alleged offence – There is no hesitation to hold that case of prosecution is vitiated by various legal defects and deficiencies, and it has miserably failed to prove guilt of appellant beyond all reasonable doubt – Appeal stands allowed.

Mr.Masthan Naidu Cherukuru, Harinadh Nidamanuri,Advocates for the Appellant.
Public Prosecutor (A.P.), Advocates for the Respondent.

J U D G M E N T
(per the Hon'ble Mr.Justice C.V. Nagarjuna Reddy)

1. Accused No.1 in Sessions Case No.57 of 2009 on the file of the XI Additional District

C.R.P.No.640/2017 Date: 5-3-2018

and Sessions Judge, (FTC), Krishna, Gudiwada, filed this appeal against his conviction for the offence under Section 302 IPC and sentencing to undergo imprisonment for life and also to pay a fine of Rs.10,000/-.

2. The case of the prosecution briefly stated, is as under:

Accused Nos. 1 and 2 are close friends and associates. A-1 is a resident of Choragudi village and is having a cool drink shop in Krishnapuram centre and A-2 is the son-in-law of the deceased. LW-1, the Ex-Sarpanch of Pamulalanka village, Thotlavalluru mandal, is the complainant. A-1 and the deceased used to do business of brokerage of she-buffaloes and on some financial issues, disputes arose between them and A-1 who bore grudge against the deceased, was waiting for an opportunity to do away with the life of the deceased. That A-2 is the elder son-in-law of the deceased and as he used to ill-treat his daughter and grand daughters, the deceased chastised A-2 and held panchayats in the presence of caste elders i.e. LWs-20 to 22, but A-2 did not change his attitude and declared before LW-18 that he would do away with the life of his father-in-law before pongal festival. As A-1 and A-2 were having grudge over the deceased, they conspired to kill him and hatched a plan. That on 12.12.2007, when the deceased came to the shop of A-1 on his moped, A-1 told him that some buffaloes have to be purchased and the deceased parked his moped in A-1s shop and followed him on the TVS motorcycle of A-1 bearing No.AP16 AA 6330; that at about 12 noon, A-1 and the deceased went to LW-6 Moturu Venkateswara Rao, of Pillivani lanka and as he told there were no cattle for sale, they informed him that they were going to Potti Dibalanka to enquire about the cattle for sale and even while leaving, A-1 picked up quarrel with the deceased. However, both of them went to LW.7 Muppavarapu Veera Reddy and LW.8 Avutu Sivareddy, but even they stated that there were no cattle for sale. That while returning from Potti Dibalanka, they reached near cart track situated in the middle streamlet (Madhya paya) of the Krishna river at Thummala Pitchika village at about 1700 hours; that A-1 stopped the motor cycle and both of them got down and A-1 picked up quarrel and picked the ponakathi which he brought with him in the motor cycle box and hacked the deceased indiscriminately and chased him; that while the deceased was running away to save his life, A-1 hacked him to death instantaneously. That when the deceased fell down, two coolies LWs 2 and 3 who were attending to sugarcane cutting work noticed the same and came to the deceased, but due to fear, they could not go to him and remained as spectators. That A-1 went away from there on his motor cycle with the weapon; that LWs 2 and 3, on the next day

informed the same to Mandava Apparao and also to one Bommareddy Krishnareddy, LWs 4 and 5; that LW-4 went to the ex-Sarpach of Pamula Lanka (LW-1), who in turn, visited the place where the dead body was found lying and that on enquiry, he identified the deceased and gave a report to the Sub- Inspector, Thotlavalluru P.S. (LW-32) at 10.30 a.m. on 13.12.2007. LW-32 immediately registered the same as a case in Crime No.70 of 2007 u/s.302 I.P.C. at first instance at 10.30 hours and LW-33 took up the investigation.

That LW-33 received a copy of the express FIR, secured the presence of mediators LWs. 24 and 29, visited both the scene of offence where the dead body was lying and also the scene where the offence started and observed the first scene under cover of mediators report drafted by mediators from 11.45 hours to 12.30 hours on 13.12.2007 and seized blood stained sugar cane leaves, blood stained relligaddi, four chappals, blood stained sand, control sand and the towel under cover of the same mediators report and also got the scenes of offence photographed by a private photographer, LW-26, besides preparing rough sketches of the same. That LW-33 held inquest over the dead body of the deceased under the cover of inquest report drafted by the inquest panchayatdars LW-24, 27 and 28 from 14.30 hours to 16.30 hours on the same day, in the presence of blood relatives and other witnesses and recorded their statements. LW-33 sent the dead body to post-mortem examination, to know the definite cause of death of the deceased. That on 14.12.2007, LW-33 resumed the further investigation and examined the elder daughter and grand daughters of the deceased as LWs-16 to 18 who stated that A-2 used to harass them and the deceased chastised him and made efforts through village elders, because of which he grew wild and declared that he would kill him before pongal festival and that A-2 after murdering the deceased, informed them that he hatched up a plan and murdered the deceased in pursuance of their conspiracy. That based on the evidence of LWs- 15 to 19, LW-33 added the elder son-in-law of the deceased as A-2 and, accordingly, charge sheet was filed under Sections 312 and 120(B) I.P.C.

That on 19.12.2007 at about 10 a.m., while LW-33 was in the office, he received information on telephone from the Sub-Inspector of Police, Thotlavalluru that the V.A.O. (LW-24), produced A-1 along with the crime vehicle/motor cycle, saying that A-1 came to him and surrendered before him and he accordingly, drafted the extra-judicial confession; that LW-33 proceeded to Thotlavalluru P.S. at 11 a.m. and arrested the accused at 11 a.m. and recorded the confessional statement of A-1 under the cover of mediators report drafted by the mediators from 11 a.m. to 12.30 p.m. That LW-33 seized the motor cycle bearing No.AP 16 AA 6330, under the cover of same mediators report and affixed the labels containing the signatures of mediators. That, the accused confessed that he would show the crime weapons and clothes worn by him at the time of commission of the offence and that he also confessed that due to the

dispute over money of Rs.10,000/-, he conspired with A-2, for murdering the deceased. That in pursuance of the confession given by A-1, LW-33 along with mediators LWs 24 and 29 and LW-32, SI of Police, Thotlavalluru, proceeded to the Karakatta (river bund) of the Krishna river and A-1 brought out the crime weapon and the clothes worn by him at the time of commission of the offence, which contained blood stains; that the same were seized under cover of mediators report drafted from 13.00 hours to 14.30 hours and that A-1 was remanded to judicial custody. That on 03.01.2008, A-2 surrendered before the Court and he was remanded to judicial custody. That blood stained material objects were forwarded to RFSL, Vijayawada, through ACP, East Zone and CE report was received. That LW-30, the Medical Officer who conducted autopsy over the dead body, issued post-mortem report, opining that the deceased died due to multiple injuries.

3. Based on the charge sheet filed by the police, the court below has framed the following charges: Firstly: That you on the 12th day of December, 2007, at about 17.00 hours at Thummala Pitchika village did commit murder by intentionally causing the death of deceased (Kagita Sivaiah) and that you A1 picked up quarrel and picked the Ponakathi, in his motor cycle box and hacked the deceased and that you A1 committed an offence punishable U/s.302 of the Indian Penal Code, and within my cognizance.

Secondly: That you on 11.12.2007 evening and 12.12.2007 morning at 9.00 a.m. at the shop of A2 agreed to do an illegal act in pursuance of the said agreement to wit A1 committed murder causing the death of Kagita Sivaiah and thereby committed an offence punishable u/s.120(B) of the Indian Penal Code, and within my cognizance.

4. As the plea of the accused was one of denial, he was subjected to trial, during the course of which, the prosecution examined PWs-1 to 19 and got exhibits P-1 to P-17 marked. On behalf of defence, it has got exhibits D-1 to D-4 marked. On consideration of oral and documentary evidence, the Court below has acquitted A-2 and convicted and sentenced A-1 in the manner as noted herein before.

5. At the hearing, Mr.Masthan Naidu representing Mr.Harinadh Nadamanuru, learned counsel for the appellant, submitted that the whole fabric of the prosecution got destroyed, when the court below has disbelieved the conspiracy theory and acquitted A-2 of the charge. That the statement of PW-9, the daughter of A-2 was recorded by the police on 12.12.2007 itself, but the same was suppressed and the F.I.R. was registered on the report given by PW-1 on 13.12.2007, and that, therefore, the F.I.R. is hit by provisions of Section 162 Cr.P.C. He has further submitted that PWs-2 and 3, the alleged eye witnesses, were strangers to the appellant and that in the absence of proper and complete descriptive particulars of the assailant, the failure of the police to hold identification parade, vitiates the prosecution case. The learned counsel also submitted that the alleged extra-judicial confession referred to by PW-18, has no evidentiary value because,

he has deposed that the appellant has made his confession in the police station and that in the absence of any recovery following the alleged confession, the same cannot be made basis for convicting the appellant.

6. Mr.Posani Venkateswarlu, learned Public Prosecutor for the State of A.P., opposed the above submissions and sought to sustain the judgment of the lower Court.

7. We have considered the respective submissions of the learned counsel for both parties, with reference to the evidence on record.

8. As could be seen from the case of the prosecution, though the appellant had some petty quarrels with the deceased, he was instigated by A-2, who is none other than the son-in-law of the deceased. The court below while acquitting A-2, categorically found that there is no legal evidence on record to show that A-1 and A-2 came to an agreement to kill the deceased.

9. PW-8, wife of A-2 did not support the version of the prosecution and maintained that there were no disputes between herself and A-2. PW-8 further stated that PW-9, her daughter was brought up by the deceased and his wife, PW-6. The court below has eventually held as under:

Coming to the criminal conspiracy, there is no legal evidence on record to show that A.1 and A.2 came to an agreement to kill the deceased. PW-8, the wife of A-2 did not support the version of the prosecution in any way. She stated that there were no disputes at all between herself and A.2. She further stated that her daughter PW.9 was brought up by P.W.6 and the deceased. PW.9, the daughter of A.2 stated that on 12.12.2007, evening at about 6.30 p.m., A.2 asked her over phone as to what her grand father was doing, and informed that her grand father and Arjunarao quarreled and he murdered her grand father through Arjunarao and asked her not to reveal anybody. It is to be noted that whatever stated by PW.9 is not the case of the prosecution. It is not the case of the prosecution that A.2 telephoned to PW.9 and informed the fact that he got the deceased murdered through A.1. Whatever P.W.9 stated is an improvement and not the case of the prosecution. There are no good terms between P.W.9 and her father, because she married a person loving him against the will and wishes of her parents. It was stated by PW.9 herself. P.W.10 stated that deceased used to inform him that there was some quarrel between A.2 and P.W.8 and once when he approached A.2 about the marriage of his daughter with brothers son of deceased, A.2 grew wild. That will not lead to any inference that A.2 got such amount of grouse to kill his father-in-law. PW.11 stated that A.2 and his wife used to quarrel. That also has no consequence.

Considering the entire material on record, I hold point No.1 that the prosecution has failed to establish that the accused persons 1 and 2 conspired to kill the deceased Sivaiah.

10. As rightly argued by the learned counsel for the appellant, when once the conspiracy theory failed, the case of the prosecution gets weakened considerably, especially

when no witness was examined to prove the exclusive motive for the appellant to go to the extent of killing the deceased. However, motive being harbored in mind by a human being, and if the prosecution proves the offence on the strength of the evidence of the eye witness, the failure of prosecution to establish motive, pales into insignificance.

11. As regards the second submission of the learned counsel for the appellant, PW-9, the daughter of A-2 and grand-daughter of the deceased, admitted in her cross-examination that on the night of 12.12.2007 itself, the police examined her. This admission of the witness who supported the case of the prosecution, remained uncontraverted. This necessarily means that the police already had information about the murder, much before PW-1 has given Ex.P-1- report. Therefore, as rightly pointed out by Mr.Masthan Naidu, Ex.P- 1 cannot be treated as the first information and at the most, it could be treated as a statement under Section 161 Cr.P.C. Under Section 162 Cr.P.C., such a statement shall not be signed by the person making it and the same shall not be used for any purpose, except enabling the prosecution to use the same with the permission of the Court, against such witness in the manner provided in Section 145 of Indian Evidence Act, 1872 (for short the Act). Hence, in our opinion, the prosecution was set into motion, based on a document which was hit by Section 162 of Cr.P.C.

12. The effect of suppression of the earliest version, was considered by the Supreme Court in Abdul Razak and Others Vs. State of Karnataka rep. by Station House Officer, Hutti Police Station (2015) 6 Supreme Court Cases 282). In that case, the Sub-Inspector of Police, PW-19, has initially recorded the statement of PW-1, disclosing the death of the deceased in that case. However, the said report was destroyed by PW-19 after another statement in writing, was given by PW-1. Considering those facts, the Supreme Court held as under:

It is difficult to appreciate how PW-19 could have destroyed the original complaint given to him by Hanumantha, PW-1. This implies that the earliest version about the incident was destroyed by PW-19 and a new story stated in the fardbeyan was tailored to suit the prosecution version. This has the effect of completely demolishing the prosecution case and rendering its version wholly unacceptable.

The only inference which can, in the circumstances, be drawn is that Basavaraj was done to death and his dead body left at the spot from where it was picked up by the police after they arrived around 10.00 p.m. The complaint presented to the Sub-Inspector perhaps did not say what the police intended to present as its case. The same was, therefore, destroyed and a new version brought in, according to which Basavaraj was shown to be alive when the police reached the spot. The fact of the matter, however, appears to be that Basavaraj was dead when his brother, mother and father discovered the body, for otherwise there was no question of the parents of the deceased and his brother leaving him alone in the condition, which they are alleged to have done. The conclusion drawn by the

trial court that the prosecution had not proved the charges against the appellants beyond reasonable doubt, was, in our opinion, correct, no matter the judgment and order is not as happily worded as it ought to be, especially coming from a senior judicial officer of the level of Additional Sessions Judge. Inasmuch as the High Court has overlooked all these aspects, we are constrained to set aside the order passed by it and acquit the appellants of the charges framed against them.

13. In the light of the ratio laid down in Abdul Razak (1 supra) and the facts discussed above, the credibility of the whole case of prosecution was seriously affected and unless it was able to produce unimpeachable evidence, pointing to the guilt of the accused, it cannot secure their conviction.

14. As regards the evidence let in by the prosecution, PWs-2 and 3 are wife and husband and they were allegedly engaged by PW-4, a hostile witness, in his field. Both these witnesses have stated that they have witnessed the incident. Certain omissions, which on superficial reading, may appear to affect their testimony, were extracted by the defence. A perusal of Ex.D-2, Section 161 statement of PW-2, got marked by the defence, would however, dispel the suspicion if any, on the credibility of the testimony of the said witnesses. From a reading of Ex.D-1, it is clear that the required details of two persons coming on a motor cycle, their quarrelling with each other, one of them being in the process of attending nature calls and the other person who was diminutive in personality, hacking the other person with a knife, the injured running and the short person again chasing him and hacking him, were given. Even PW-4, though turned hostile, in the cross-examination by the prosecution, admitted that on the date of occurrence, PWs-2 and 3 alone attended the coolie work in his field. From this evidence, the presence of PWs-2 and 3 at the place of occurrence is established by the prosecution. The question however, is whether the prosecution succeeded in establishing the identity of the appellant.

15. Under Section-9 of the Act, identity of anything or person whose identity is relevant inter alia is a fact necessary to explain or introduce a fact in issue or relevant fact. Rule-34 of the Criminal Rules of Practice lays down the procedure for identification parades.

16. It is not in dispute that the appellant was a stranger to P.Ws.2 and 3. The only descriptive particular given by P.Ws.2 and 3 in their Section-161 Cr.P.C. statements is that the assailant was diminutive in stature. They gave evidence in the Court two years after the alleged incident. It is not possible for a human being to identify a stranger after lapse of a considerable time. In our opinion, two years is too long a time for a person to identify a stranger with certainty. The prosecution has not made any effort to conduct identification parade for P.Ws.2 and 3 to identify the appellant.

17. In Noorahammad and Others Vs. State of Karnataka (2016) 3 SCC 325), wherein identification parade of the accused who are strangers to the witnesses was not

conducted by the Police and the dock identification by the witnesses was made two years after the incident, the Supreme Court observed as under: In view of the fact that the FIR was registered against unknown persons and even description of the accused was not mentioned, a test identification parade (TIP) ought to have been conducted so as to inspire confidence about the identity of the assailants. However, the prosecution has not rendered any explanation as to why the said TIP was not conducted. In such circumstances, dock identification by the witnesses, after two years from the incident was rightly not relied upon by the trial Court.

18. In the afore-mentioned facts of the present case and in the absence of the prosecution conducting an identification parade, it is wholly unsafe to convict the appellant based on the testimony of P.Ws.2 and 3.

19. The only other evidence that may serve as a link to connect the appellant to the alleged offence is the alleged extra-judicial confessional statement made by the appellant to P.W-18. In his evidence, P.W-18 deposed that on 13.12.2007, at 11 am., he accompanied the Police to Krishna river leading to Lankapalli Village and at the scene of offence, they found blood stained sand, sugarcane leaves and slippers and the same were seized under Ex.P-8-Observation report. He also referred to their finding one towel, slippers and sugarcane leaves at some distance and the Police seizing the same under Ex.P-9. He further deposed that on the same day at 2 pm., inquest was conducted on the dead body of the deceased and Ex.P-10-Inquest report was prepared; that one week or ten days later, i.e., on 19.12.2007 at 11.30 am., he was summoned by the Police to the Police Station, where the Police produced one person before him, asked him to enquire the said person and prepare the mediator report incorporating the information disclosed by the said person; and that the said person has confessed the offence and a Mediator Report was stated to have been prepared. The Court below, however, declined to mark the said report (As the same was hit by Section-27 of the Act). P.W-18 further deposed that the Police have shown him one motor bike, knife and some clothes and informed him that they belong to the person who was shown to him and on the narration of the Police, he prepared the report.

20. Under Section-26 of the Act, confession by the accused while in custody of the Police is not to be proved against him. Section-27 of the Act, however, contains an exception to the extent that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of the Police, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

21. From the evidence of P.W-18, it is clear that nothing was recovered by the Police in his presence. On the contrary, one motor bike, knife and some clothes allegedly belonging to the appellant were already in possession of the Police and they were shown to P.W-18. Thus, the alleged confessional statement made by the

appellant in Police custody, which has not led to discovery of any fact, is hit by Section-27 of the Indian Evidence Act and the Court below has rightly declined to mark the alleged Mediator Report. The prosecution, therefore, failed to prove recovery of any incriminating material from the appellant so as to connect him to the alleged offence.

22. In the light of the above discussion, we have no hesitation to hold that the case of the prosecution is vitiated by various legal defects and deficiencies, as discussed above, and it has miserably failed to prove the guilt of the appellant beyond all reasonable doubt.

23. Accordingly, the Criminal Appeal is allowed and judgment, dated 04.5.2011, in Sessions Case No.57 of 2009 on the file of the learned XI Additional District and Sessions Judge, Krishna, Gudivada, is set aside. The appellant is acquitted of the charge under Section-302 IPC and his bail bonds shall stand cancelled. The appellant is directed to forthwith surrender before the Superintendent, Rajahmundry Central Jail, for completion of the required formalities for his release, if he is not otherwise required in any other case.

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2019(1) L.S. 186 (Hyd.)

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

Present:
The Hon'ble Mr.Justice
D.V.V.S. Somayajulu

Gandla Laxmi & Ors. ..Petitioners

Vs.

G. Ashavva & Ors., ..Respondents

CIVIL PROCEDURE CODE, Revision Petition filed questioning the Order, passed in I.A. by Principal Junior Civil Judge, rejecting the application filed seeking permission to file a rejoinder to written statements of the defendant Nos.1, 3 and 4.

Held - Plaintiffs are entitled to question the pleading which can non-suit their case totally - Filing of rejoinder is warranted - Order passed in I.A.by the Trial Court is not correct and deserves to be set aside - Civil Revision Petition is allowed.

Mr.K. Ravi Mahender, Advocate for the Petitioners .

J U D G M E N T

1. This revision petition is filed questioning the order, dated 25-07-2017, passed in I.A.No.312 of 2015 in O.S.No.5 of 2015 by the Principal Junior Civil Judge, Kamareddy, rejecting the application filed seeking

permission to file a rejoinder to the written statements of the defendant Nos.1, 3 and 4.

2. The lower court, after hearing both the learned counsel, came to a conclusion that there is no specific averment in the petition as to why a rejoinder is required to be filed. The court also held that there are no new grounds taken in the written statements warranting the filing of a rejoinder. Therefore, the court negatived the request for filing rejoinder. Questioning the same, the present revision petition is filed.

3. This court ordered notice to the respondents. The learned counsel for the petitioners took out personal notice to the respondents and filed a memo with USR No.95191 of 2018, dated 15-11-2018. The learned counsel also filed a letters received by the petitioners from the Postal department, which shows that all the respondents were served. There is no appearance by any of the respondents. Hence, this matter is taken up for hearing.

4. The learned counsel for the petitioners argued that the suit is filed for declaration of title and for delivery of vacant possession. A specific allegation is made that the father of the 2nd and 3rd defendants and the husband of the 1st defendant is the village Sarpanch who manipulated the Gram Panchayat records and encroached into the site. In reply to this, a written statement is filed adverting to the various allegations made and asserting that there was an exchange of property between the husband of the 1st plaintiff and the husband of the 1st defendant. Based on this exchange of property, the defendants are claiming their rights in the property.

5. As the issue of exchange of property is raised for the first time in the written statements, the learned counsel submits that they had to file a rejoinder and, therefore, they made an application, I.A.No.312 of 2015, seeking permission of the court to file a rejoinder to the written statements. This application was rejected by the court below on the ground that no grounds are made out.

6. The learned counsel for the petitioners drew the attention of this court to para.3 of the affidavit that is filed and pointed out that it is very clearly averred therein that the theory of exchange is created and is baseless. He also points out that in para.6, it is clearly mentioned that the written statement incorporates false and baseless allegations. The learned counsel also drew the attention of this court to the matters stated in the rejoinder that is proposed to be filed wherein it is very clearly averred that the alleged exchange of immovable property did not take place at all and that the entire theory of exchange is false. It is also specifically stated in the proposed rejoinder that there is no documentary evidence supporting the alleged theory of exchange and hence the same cannot be accepted. The learned counsel for the petitioners points out that both in the affidavit filed and in the proposed rejoinder, the need for making the additional pleading is clearly visible. Therefore, he questions the basis on which the order was passed. The learned counsel for the petitioners also relies upon a judgment of the Hon'ble Supreme Court in **Prathima Chowdhury vs. Kalpana Mukherjee and another** (2014) 4 SCC

196) and argues that pleadings will only be completed after the appellant/plaintiff could file a rejoinder. In addition, a learned single judge of this court in a decision reported in **T.Lakshman Kumar vs. G.Laxmikantha Reddy (**2004(5) ALD 561) has clearly held that while filing of a rejoinder is not a matter of right, still where the averments in the written statement filed have the effect of cutting at the root of the plaintiff's case or would non-suit the plaintiff, then the plaintiff would be entitled to file a rejoinder. Para.8 of the said judgment is reproduced hereunder:-

> "The necessity to allow subsequent pleadings emanates from the basic principle that no party to the proceeding can lead evidence, unless a foundation is laid for it, in the pleadings. In the ordinary course, a plaintiff would be permitted to lead evidence to substantiate the contents of the plaint; and the defendant, the contents of the written statement. Where, however, apart from denying the contents of a plaint, the defendant pleads certain additional facts, a necessity will arise for the plaintiff to deal with the same. If the additional facts pleaded by the defendant are such, as would belie the contention of the plaintiff, or result in denial of relief to him, the plaintiff has to be given the right to put forward his version, in relation to the same. Such a facility cannot be extended to the plaintiff by permitting him to amend the plaint, because of the fact that the circumstances, under which a pleading can be amended, are totally different. Since the corresponding version of the plaintiff in replication to the additional facts, pleaded by defendant, does not form part of the pleadings in the plaint, the plaintiff would be disabled from leading evidence on those aspects, and to that extent the adjudication would be incomplete".

This judgment, in the opinion of this court, is squarely applicable to the facts of this case. If the theory of exchange that is advanced by the defendants is found to be correct, the plaintiffs may loose their case. Therefore, this court is of the opinion that the plaintiffs are entitled to question this pleading which can non-suit their case totally. In that view of the matter, this court is of the opinion that in the facts and circumstances of this particular case, filing of rejoinder is warranted. Therefore, this court holds that the order passed in I.A.No.312 of 2015 in O.S.No.5 of 2015 by the Principal Junior Civil Judge, Kamareddy is not correct and deserves to be set aside. Accordingly, the Civil Revision Petition is allowed and the court below is directed to receive the rejoinder and proceed with the trial without in any way being influenced what is stated in this order. No costs. The interlocutory applications pending, if any, shall stand closed in consequence.

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2019(1) L.S. 189 (Hyd.)

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

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

Kothapalli Veeranarayana Prasad ..Petitioner

Vs.

A.P. S.F.C. & Ors., ..Respondents

ANDHRA PRADESH REVENUE RECOVERY ACT, Secs.25 & 29 - Writ Petitioner challenges notice, issued by Respondent/Senior Branch Manager, A.P.State Financial Corporation, u/ Sec.25 of the Andhra Pradesh Revenue Recovery Act demanding Petitioner to pay Rs. 881.19 lakhs within 15 days from date of receipt.

Held - Proceedings initiated under the Act are required to be quashed out rightly - Very initiation of proceedings under provisions of Act would fall to ground for the reason that having filed a suit for recovery of dues and having obtained a Judgment and decree, wherein debt was crystallized, without taking recourse to such proceedings, the respondent Corporation could not have proceeded further against petitioner, invoking the provisions of Section 29 of the Act, beyond period of limitation, for recovery of the amount in excess of the judgment and decree - Writ Petition is allowed by setting aside the impugned notice.

Mr.G. Pedda Babu,Advocates for the Petitioner.
Mr.Y.N. Lohitha, Advocate for the Respondents: R1 to R3.
G.P. for Revenue (AP). Advocate for the Respondents: R1 to R3,

J U D G M E N T

1. In this Writ Petition, petitioner challenges the notice, dated 04.11.2008 issued by the second respondent – Senior Branch Manager, Andhra Pradesh State Financial Corporation, Guntur, under Section 25 of the Andhra Pradesh Revenue Recovery Act, 1864 (for short 'the Act'), demanding him to pay Rs. 881.19 lakhs on account of M/s. Srinivasa Ice & Cold Storage, Koppuravuru Village, Pedakakani Mandal, Guntur District, within 15 days from the date of receipt thereof, else, the property, details of which are mentioned therein, would be attached.2. The averments mentioned in the writ affidavit are, in brief, as under:The petitioner along with five others formed into a partnership firm, by name, M/s. Srinivasa Ice & Cold Storages, at Guntur; that in 1971, they borrowed a sum of Rs. 4.72 lakhs from the first respondent – Andhra Pradesh State Financial Corporation (APSFC), Hyderabad, establishing a cold storage unit by

mortgaging the land admeasuring Ac.1.67 cents situated in D.No.58/3 of Koppuravuru Village, Tadikonda Mandal, Guntur District, along with plant and machinery thereon; that their firm incurred losses in the said business and thus, they defaulted in repayment of the said loan amount; that thereupon, the respondent Corporation filed O.S.No.202 of 1974 against the said firm, partners and guarantors, in the Court of IV Additional Judge, City Civil Court, Hyderabad, for recovery of sum of Rs. 5,66,997.84 ps.; that the respondent Corporation took possession of the land mortgaged including plant and machinery and sold the same by exercising their right under Section 29 of the State Financial Corporation Act, 1951 and realized a sum of Rs. 3,00,000/- and credited the same to their loan account; that thereafter, the respondents had not taken steps for recovering the balance amount; that the petitioner was not aware of the developments in the suit; that while the things stood thus, the third respondent – Special Deputy Tahsildar, APSFC, Guntur, issued him a notice, dated 01.02.2006, under Section 52-A of the Act, asserting that a sum of Rs. 5,41,56,115/- demanding the same to be paid within 15 days from the date of receipt thereof; that immediately, he got issued a legal notice on 17.02.2006 to the respondent Corporation specifically asserting that the respondent Corporation is not entitled to recover the same as the alleged debt is hopelessly time-barred; that the respondent Corporation sent a reply notice, dated 10.03.2006 asserting that the debt is not time-barred and the outstanding debt is as per the books of accounts regularly maintained by the respondent Corporation; that he addressed number of letters to the respondent Corporation requesting for settlement of account; that once again, the fifth respondent – Tahsildar, Eddanapudi Mandal, Prakasam District, sent him a notice, dated 30.06.2007 by stating that the Corporation requested the fourth respondent – Collector, Prakasam District at Ongole, to give permission to attach the lands, situated at Ananthavaram Village, said to have been given as security, in default of repayment of the loan amount, and asking him to show cause there for, within a period of one week, otherwise, the Corporation would take steps as mentioned above; that he submitted explanation thereto on 25.07.2007 asserting that the property that was mortgaged was already sold and the sale proceeds were appropriated to the loan amount and almost 30 years elapsed and if any amount is due, it would be a time-barred debt and they had not mortgaged any other property and thereby, requested to drop further proceedings and that the second respondent issued the impugned notice.3. A counter-affidavit is filed by respondents 1 to 3 denying the allegations of the petitioner and stating that the provisions of the Limitation Act, 1963, has no application to the recovery proceedings initiated under the Act.4. Heard learned counsel for the petitioner and learned Standing Counsel for APSFC appearing for respondents 1 to 3.5. Learned counsel for the petitioner contends that with respect to the recovery proceedings under the Andhra Pradesh Revenue Recovery Act, 1864, the provisions of the Limitation Act, 1963, would apply and in support of the same, he relied upon the judgments of the Apex Court as well as this Court in State

of Kerala and others v. V.R. kalliyanikutty and another (1) AIR 1999 SC 1305 and N.A. Radha and others v. State of Andhra Pradesh and others (2) 2000 (2) ALD 560; The A.P. State Financial Corporation rep. by deputy General Manager v. Duvvuru Rajasekhar Reddy (3) 2013 (5) ALT 660 (D.B.) = 2013 (6) ALD 175 and M. Mohammed Rafi v. The Andhra Pradesh State Financial Corporation (4) MANU/AP/2016/2014.6. This Court perused the aforecited judgments and considered the settled legal position, with respect to which, there is no dispute. In the circumstances, in the case on hand, the proceedings initiated under the Act are required to be quashed outrightly. Further, the very initiation of the proceedings under the provisions of the Act would fall to the ground for the reason that having filed a suit for recovery of the dues and having obtained a judgment and decree, wherein the debt was crystallized, without taking recourse to such proceedings, the respondent Corporation could not have proceeded further against the petitioner, that too, invoking the provisions of Section 29 of the Act, beyond the period of limitation, for recovery of the amount in excess of the judgment and decree. In other words, the amount that could be claimed in relation to a particular defaulter would be limited to the amount that was crystallized in the judgment and decree.7. Accordingly, this Writ Petition is allowed by setting aside the impugned notice.8. Miscellaneous Petitions, if any pending, shall stand disposed of. There shall be no order as to costs.

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2019(1) L.S. 191 (Hyd.)

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

Present:
The Hon'ble Mr.Justice
Kongara Vijaya Lakshmi

K. Vijayalakshmi ..Petitioner

Vs.

APSRTC ..Respondent

MOTOR VEHICLES ACT, Sec.166 – Appellants/ Claimants, dissatisfied with granting of compensation of Rs.4,00,000/- for death of their son by Chairman, Motor Accidents Claims Tribunal as against claim of Rs.6,00,000, under Section 166 of the Motor Vehicles Act, 1988 preferred instant appeal.

Held - Compensation amount awarded by Tribunal is enhanced from Rs.4,00,000/- to Rs.9,50,000/- with interest at 9% p.a., from the date of petition till realization- Filial consortium is the right of the parents to compensation in case of an accidental death of a child - Amount of compensation to be awarded as consortium will be governed by principles of awarding compensation under "Loss of Consortium' as laid down in National Insurance Co.Ltd., v. Pranay Sethi (2017 ACJ 2700) by Hon'ble Supreme Court – Petition stands allowed in part.

For the Petitioner: C. Mohan Prakash, Advocate. For the Respondent: N. Vasudeva Reddy, Advocate.

J U D G M E N T

1. The appellants – claimants, dissatisfied with the granting of compensation of Rs.4,00,000/- for the death of their son namely Avinash, in OP No.66 of 1999, on 04.08.2010, by the Chairman, Motor Accidents Claims Tribunal-cum-IX Additional Chief Judge (FTC), City Civil Court, Hyderabad, (for short "the Tribunal"), as against the claim of Rs.6,00,000/-, under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), preferred the present appeal.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the Original Petition.

3. The facts, in brief, are that the 1st petitioner is the mother and the 2nd petitioner is the father of the deceased Avinash; on 01.07.2006 at about 5.30 PM the deceased was proceeding on a Motor Cycle bearing registration No. AP 29 L 243, as a rider, along with a pillion rider from Yadagirigutta towards Hyderabad side and when he reached the outskirts of Rayagiri village, APSRTC bus bearing registration No. AP 10 Z 6233 of Yadagirigutta Depot came in opposite direction at high speed in a rash and negligent manner and dashed the motor cycle due to which the deceased sustained injuries on his head and body; he was immediately shifted to Government Area Hospital, Bhuvangiri, where he was declared dead; Bhuvangiri Police registered a case in Crime No.112 of 2006 under Section 304-A IPC against the driver of the APSRTC bus; at the time of accident the deceased was aged about 22 years and was working as Sales Executive in BHNL Financial Services, HDFC Bank, at Hyderabad and drawing monthly salary of Rs.6,000/-; due to sudden death of their only son at an young age, the petitioners lost dependency, hence they sought compensation from the respondents 1 and 2 - APSRTC.

4. The first respondent remained ex parte. The 2nd respondent filed counter denying the claim of the petitioners.

5. The Tribunal, basing on the said pleadings, framed three issues. On behalf of the petitioners, PWs.1 to 3 were examined and Exs.A1 to A6 were marked. On behalf of the respondents, none were examined and no documents were filed.

6. On appraisal of evidence on record, the Tribunal answered issue No.1 in favour of the petitioners holding that the deceased died in the accident that occurred due to rash and negligent driving of the driver of the APSRTC bus bearing No.AP 10 Z 6233. On Issue No.2, the Tribunal, based on Ex.A6 salary certificate issued by the HDFC Bank and the evidence of PW.3, who is the Administrative Manager of HBNL Services, HDFC Bank, held that the petitioners amply proved the job and income of the deceased prior to accident. Basing on Exs.A1 to A6, Tribunal granted lump sum amount of Rs.4,00,000/- towards compensation to the petitioners for the death of the deceased and directed the respondents 1 and 2 to pay the same with interest at 9% p.a. from

the date of petition till realization. Aggrieved by the same, the petitioners filed the present appeal seeking enhancement of the compensation.

7. The petitioners filed I.A.No.1 of 2018 in the present MACMA seeking to enhance the claim amount from Rs.6,00,000/- to Rs.10,00,000/-. The respondents did not file any counter opposing the said petition. Having regard to the reasons stated in the affidavit filed in support of the petition and relying on the decision of the Hon'ble Supreme Court reported in **Rajesh v. Rajbir Singh (**2013 ACJ 1403), wherein it was held that the Tribunal/Court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation, the IA is allowed today.

8. Heard Sri C.M. Prakash, learned counsel for the appellants and learned Standing Counsel for the respondents 1 and 2.

9. Learned counsel for the appellants submits that the Tribunal erred in not awarding the amounts under future prospects, loss of estate and funeral expenses and granted a lump sum amount of Rs.4,00,000/- and in support of his contention he relied on the decisions of the Hon'ble Supreme Court reported in in **Munnalal Jain v. Vipin Kumar Sharma** (2015) 6 SCC 347) and **National Insurance Co.Ltd., v. Pranay Sethi (**2017 ACJ 2700).

10. A perusal of the impugned award shows that the Tribunal, having held that the deceased was aged about 22 years as on the date of accident as per Exs.A1 to A6, and accepting the evidence of PW.3 and Ex.A6 - salary certificate, wherein the salary of the deceased was shown as Rs.6,000/- per month, granted a lump sum amount of Rs.4,00,000/- as compensation and the award does not disclose any particulars as to how and under what heads that amount was awarded. Though the petitioners originally claimed compensation of Rs.6,00,000/-, now they are claiming compensation of Rs.10,00,000/-. The deceased died at the very young age of 22 years while working as Sales Executive in a private Bank. The contention of the appellants is that the Tribunal has not awarded any amount towards future prospects, loss of estate and funeral expenses. The evidence of PW.3 is to the effect that the deceased was working as Sales Executive in their Bank from 2005 onwards and he used to get salary of Rs.6,000/- per month and they would increase the salary by Rs.1000/- for every six months. The respondents did not seriously dispute the avocation and income of the deceased under Ex.A6 certificate. Hence, the income of the deceased can safely be taken at Rs.5,000/- per month i.e., Rs.60,000/- per annum. Learned counsel for the appellants contends that as per **Munnalal Jain's case (supra) and Pranay Sethi's case (supra),** in case the deceased was self-employed or on a fixed salary an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. Taking the same into consideration, if 40% is added as future prospects of the deceased it would come to Rs.84,000/- (60,000/- + 24,000/-) and after deducting 1/3rd towards

personal expenses, it would come to Rs.56,000/-, and as per the decision of **Sarla Verma v. Delhi Transport Corporation** (2009) 6 SCC 121)**,** the age of his mother, who is aged 38 years, can be taken for applying the multiplier and, accordingly, the appropriate multiplier to be applied is '15'. If the same is applied, the compensation amount for the death of the deceased comes to Rs.8,40,000/- (Rs.56,000 x 15). In addition to that, as per the decision of **Pranay Sethi's case** (supra), an amount of Rs.15,000/- is awarded towards loss of estate and Rs.15,000/- is awarded towards funeral expenses.

11. In **Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram (Civil Appeal No.9581 of 2018 (arising out of SLP (Civil) No.3192 of 2018), dated 18.09.2018)**, the Hon'ble Supreme Court held as follows:

> "8.7 A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.
>
> In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.
>
> The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse (Rajesh v. Rajbir Singh (2013) 9 SCC 54).
>
> Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation (BLACK'S DICTIONARY (5th ed. 1979).
>
> Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".
>
> Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.
>
> Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.
>
> The Motor Vehicles Act is a beneficial

legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count (Rajasthan High Court in Jagmala Ram @ Jagmal Singh v. Sohi Ram (2017 (4) RLW 3368 (Raj). However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "Loss of Consortium' as laid down in Pranay Sethi (supra).

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000/- each for loss of Filial Consortium."

Following the said judgment, an amount of Rs.40,000/- each to the petitioners 1 and 2 is awarded towards loss of Filial Consortium. Thus, in all, total compensation of Rs.9,50,000/- is awarded.

12. Accordingly, the compensation amount awarded by the Tribunal is enhanced from Rs.4,00,000/- to Rs.9,50,000/- with interest at 9% p.a., from the date of petition till realization. The appellants are directed to pay the deficit court fee before drafting the decree.

12. Accordingly, the MACMA is allowed in part, as indicated above. There shall be no order as to costs.

13. As a sequel thereto, the Miscellaneous Applications, if any, pending in this appeal shall stand closed.

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2019(1) L.S. 195 (Hyd.) (D.B.)

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

Present:
The Hon'ble Mr.Justice
Sanjay Kumar &
The Hon'ble Mr.Justice
M.Ganga Rao

M/s. Golden Jubilee Hotels Limited & Anr., ...Petitioners

Vs.

M/s. EIH Ltd. & Anr., ..Respondents

CIVIL PROCEDURE CODE, Or.9 Rule 13 & Or.37 Rule 1 – Insolvency and Bankruptcy Code – Trial Court decreed Plaintiff's suit ex parte, instituted under Order 37 Rules 1 and 2 CPC for recovery of alleged sum against Defendants – Defendants filed IA – Trial Court dismissed I.A. filed by Defendant/ company and second Defendant as Defendants had not filed their written

CRP.Nos.4881 4884, 4885 & 4886/2018 Date: 27-9-2018

statements in terms of earlier orders.

Held – Trial Court grievously erred in dealing with suit proceedings in manner that it did even prior to passing of moratorium order by Tribunal – Trial Court further compounded its error by seeking to continue with suit proceedings despite said moratorium order and in dismissing applications filed in suit while insisting upon filing of written statements by Defendants – Orders passed by Trial Court in regard are set aside – Civil Revision Petitions stand allowed.

Mr.R. Raghunandan, Advocates for the Petitioners.
Mr.S. Niranjan Reddy, K.V. Rusheek Reddy, Advocates for the Respondents: R1,

C O M M O N O R D E R
(Per the Hon'ble Mr.Justice Sanjay Kumar)

M/s. EIH Limited, Kolkata, instituted C.O.S.No.67 of 2017 on the file of the learned Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad, against M/s. Golden Jubilee Hotels Private Limited, Hyderabad, and L.N.Sharma, its Director & Chief Executive Officer (CEO), for recovery of a sum of Rs.7,10,37,510/- along with pendente lite and future interest. This suit was filed under Order 37 Rules 1 and 2 CPC.

The trial Court set L.N.Sharma, the second defendant, ex parte on 14.11.2017. On 29.12.2017, M/s. Golden Jubilee Hotels Private Limited, Hyderabad, the first defendant, was also set ex parte. I.A.No.79 of 2018 was filed by L.N.Sharma, the second defendant, under Order 9 Rule 7 CPC to set aside the order dated 14.11.2017, whereby he was set ex parte. I.A.No.82 of 2018 was filed by the first defendant company under Order 9 Rule 7 CPC to set aside the order dated 29.12.2017, whereby it was set ex parte. In the first instance, these I.A.s were allowed by the trial Court on 05.03.2018 with the condition that both the defendants should file their written statements by 12.03.2018.

While so, the Bank of Baroda initiated a corporate insolvency resolution process against the first defendant company, vide CP(IB) No.248/7/HDB/2017 on the file of the National Company Law Tribunal, Hyderabad Bench, Hyderabad (hereinafter, 'the Tribunal'), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, 'the Code of 2016'). The Tribunal passed Order dated 27.02.2018 therein admitting the case and appointing Subodh Kumar Agrawal as the Interim Resolution Professional under Section 16 of the Code of 2016. The Tribunal further declared a moratorium by prohibiting various actions, including the institution of suits or continuation of pending suits or proceedings against the corporate-debtor, the first defendant company, in any Court of law, Tribunal, Arbitration Panel or other authority. Thereupon, the plaintiff company filed Memo dated 05.03.2018 informing the trial Court that the Tribunal had ordered commencement of corporate insolvency resolution process against the first defendant company and prayed that notice of the suit proceedings be served upon the Interim

Resolution Professional appointed by the Tribunal. The defendants, on the other hand, filed Memo dated 12.03.2018 adverting to the fact that the trial Court had allowed the set-aside petitions earlier with the condition that they should file written statements by that date and stating that the Tribunal had passed an order on 27.02.2018 declaring a moratorium while appointing an Interim Resolution Professional. They accordingly prayed for adjournment of the suit proceedings till the insolvency proceedings were completed.

By order dated 14.03.2018, the trial Court merely recorded the Memo filed by the defendants, holding that the filing of written statements would assist the Interim Resolution Professional to resolve the dispute and that the defendants were using delaying tactics. Their contention that in view of the order of the Tribunal, the trial Court ought not to insist upon their filing written statements was rejected. Further, as the defendants had not filed their written statements by 12.03.2018 in terms of the earlier orders dated 05.03.2018, I.A.Nos.82 of 2018 and 79 of 2018, filed by the first defendant company and the second defendant respectively, were also dismissed by the trial Court vide separate orders of the same date.

Aggrieved by these orders, the first defendant company and the second defendant are before this Court. C.R.P.No.4881 of 2018 was filed by the first defendant company aggrieved by the dismissal of I.A.No.82 of 2018 filed by it in the suit and C.R.P.No.4884 of 2018 was filed by it against the order passed by the trial Court upon the Memo filed by the defendants. C.R.P.No.4885 of 2018 was filed by the second defendant aggrieved by the order passed on the Memo filed by the defendants while C.R.P.No.4886 of 2018 filed by him relates to the dismissal of his I.A.No.79 of 2018.

Heard Sri R.Raghunandan, learned senior counsel representing Sri Vikram Poosarla, learned counsel for the petitioners-defendants, and Sri S.Niranjan Reddy, learned senior counsel representing Sri K.V.Rusheek Reddy, learned counsel for the respondent-plaintiff company.

At the outset, it may be noted that C.O.S.No.67 of 2017 is a summary suit filed under the provisions of Order 37 CPC. It is well settled that a summary suit under Order 37 CPC is distinct from an ordinary suit. The summary procedure prescribed under Order 37 CPC is aimed at preventing unreasonable obstruction by a defendant who has no real defence. Rule 1 of Order 37 CPC details the Courts and classes of suits to which the summary procedure prescribed in this Order would apply. Suits based on bills of exchange, hundies and promissory notes find mention in Order 37 Rule 1(2)(a) CPC. Suits in which the plaintiff seeks only to recover a debt or liquidated demand in money from the defendant on the strength of a written contract or an enactment, or where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, other than a penalty or on a guarantee, or where the claim is in respect of a debt or liquidated demand only, are set out in sub-rule (2)(b) of this Rule. Order 37 Rule 2 CPC speaks of the institution of summary suits and sub-rule

(1) details the requirements to be fulfilled by a plaint presented in a summary suit. The summons in a summary suit is to be issued in Form No.4 in Appendix B as per sub-rule (2) of this Rule. Order 37 Rule 2(3) CPC is of import and is extracted hereunder:

'(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.'

The aforestated sub-rule makes it clear that the defendant shall not defend the summary suit unless he enters appearance and the consequence of his failing to do so would be the deemed admission on his part leading to the entitlement of the plaintiff to a decree for the sum mentioned in the summons together with interest and costs. Order 37 Rule 3 CPC sets out the procedure for appearance of the defendant in a summary suit. In terms of sub-rule (1) therein, the plaintiff is required to serve along with the summons a copy of the plaint and the annexures thereto and the defendant may, at any time within ten days of such service, enter appearance either in person or through pleader and in either case, he shall file in the Court his address for service of notices. Sub-rule (4) of this Rule provides that in the event the defendant enters appearance, the plaintiff shall serve on him a summons for judgment in Form No.4-A in Appendix B which shall be returnable in not less than ten days from the date of service, supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit. Sub-rule (5) postulates that the defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise, disclose such facts as may be deemed sufficient to entitle him to defend and apply for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court to be just. The first proviso thereunder states to the effect that leave to defend should not be refused unless the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up is frivolous or vexatious. The second proviso thereunder states to the effect that where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit should not be granted unless the amount so admitted to be due is deposited in Court by the defendant. Sub-rule (6) provides that at the hearing of such summons for judgment, in the event the defendant has not applied for leave to defend or if such application has been made and is refused, the plaintiff would be entitled to judgment forthwith, or in the event the defendant is permitted to defend as to the whole or any part of the claim, the Court may direct him to give such security within such time as may be fixed and on failure to do so within the time specified, the plaintiff would be entitled to

judgment forthwith. Sub-rule (7) is also important for the purposes of this case and states to the effect that the Court may, for sufficient cause shown by the defendant, excuse the delay on his part in entering appearance or in applying for leave to defend the suit. Order 37 Rule 4 CPC empowers the Court to set aside the summary suit decree under special circumstances and, if necessary, stay or set aside the decree and also grant leave to the defendant to appear and to defend the suit, if it seems reasonable to the Court so to do, upon such terms as the Court thinks fit. Rules 5 and 6 are not relevant for the purpose of this case but Rule 7 is relevant and states to the effect that save as provided by Order 37, the procedure in summary suits shall be the same as the procedure in suits instituted in the ordinary manner.

It is therefore clear that the procedure under Order 37 CPC, being a summary one, cannot be put on par with the procedure followed in ordinary suits in all respects. This aspect was considered by the Supreme Court in **RAJNI KUMAR V/s. SURESH KUMAR MALHOTRA** (2003) 5 SCC 315), wherein the Supreme Court was dealing with an application to set aside an ex parte decree in a summary suit. In this context, the Supreme Court observed that while considering such an application, it is necessary to bear in mind the distinction between suits instituted in the ordinary manner and suits filed under Order 37 CPC. Reference was made to Order 37 Rule 7 CPC with regard to the procedure to be followed in such summary suits and Order 37 Rule 4 CPC, which permits setting aside of ex parte decrees in summary suits. The Supreme Court observed that in a suit filed in the ordinary manner, a defendant has the right to contest the suit as a matter of course but nonetheless, he may be declared ex parte if he does not appear in response to the summons or after entering appearance, before framing of issues or during or after trial. The Supreme Court pointed out that in a suit under Order 37, the procedure for appearance of the defendant is governed by the provisions of Rule 3 thereof and a defendant is not entitled to defend the suit unless he enters appearance within ten days of service of the summons, either in person or by a pleader, and files in Court the address for service of notices on him. The Supreme Court noted that in default of his entering appearance, the plaintiff becomes entitled to a decree for a sum not exceeding that mentioned in the summons together with interest at the rate specified along with costs. The Supreme Court also noted that in a case where the defendant enters appearance, the plaintiff is required to serve on him a summons for judgment in the prescribed form and within ten days from such service, the defendant may seek leave of the Court to defend the suit and the Court may grant him leave either unconditionally or on such terms as it may deem fit. Referring to Order 37 Rule 4 CPC, the Supreme Court observed that it makes it clear that even after passing of an ex parte decree, the trial Court is not precluded from setting aside the same and granting leave to the defendant to appear in response to the summons and defend the suit, if the Court considers it reasonable to do so. It is in this context that the Supreme Court noted that it would not be enough for the

defendant in a summary suit to merely show the special circumstances which prevented him from appearing or applying for leave to defend, but he also has to show, by affidavit or otherwise, the facts which would entitle him to leave to defend the suit. The Supreme Court concluded that in this respect, Order 37 Rule 4 is different from Order 9 Rule 13 CPC.

On the same analogy, it may be noted that in an ordinary suit, a defendant who is entitled as a matter of right to defend against the suit is liable to be set ex parte if he fails to appear in response to the summons or take necessary steps thereafter. It is in this situation that such a defendant would file an application under Order 9 Rule 7 CPC and assign good cause for his previous non-appearance or failure. Thereupon, the trial Court is empowered to set aside the order setting such defendant ex parte upon such terms as to costs as it directs or otherwise. However, Order 37 Rule 3 CPC does not contemplate such a situation at all in a summary suit. The failure on the part of the defendant to put in his appearance within ten days from the date of receipt of the summons in a summary suit would straightaway entitle the plaintiff therein to a decree for the sum of money mentioned in the summons along with interest and costs. Setting the defendant in a summary suit ex parte therefore does not arise. Unfortunately, the trial Court seems to have completely lost sight of the procedure prescribed under Order 37 CPC and proceeded as if the procedure applicable in an ordinary suit would govern the subject suit also.

It appears that the defendants, in perpetuation of this error on the part of the trial Court, filed applications under Order 9 Rule 7 CPC praying that the orders passed earlier, setting them ex parte, should be set aside. Compounding its earlier folly, the trial Court failed to take note of the fact that in such a situation it had to exercise power under Order 37 Rule 3(7) CPC, if it found sufficient cause shown by them for not entering appearance, and then follow the procedure set out in Order 37 Rule 3 CPC. It may be noted that it is only after the plaintiff serves upon the appearing defendant a summons for judgment that such defendant can apply for leave to defend, disclosing the requisite facts, within ten days from the service of summons for judgment. Without following this statutory procedure, the trial Court strangely called upon the defendants to file their written statements. Such a procedure is unknown to Order 37 CPC as the trial Court ought not to have permitted the defendants to put forth their defence as a matter of course without their first seeking leave to defend against the suit.

This comedy of errors then proceeded to the next stage, i.e., the intervention in the matter by the Tribunal, vide its order dated 27.02.2018 passed under the provisions of the Code of 2016. It is no doubt true that even after passing of this order, the defendants in the suit went before the trial Court and invited the orders dated 05.03.2018, whereby they were granted the benefit of the earlier orders setting them ex parte being set aside subject to the condition that they file their written statements by 12.03.2018. This, perhaps,

was their own further contribution to the progression of errors which seem to have abounded in the course of these suit proceedings. However, even if they did participate in the suit proceedings after the moratorium order dated 27.02.2018 was passed by the Tribunal, once the same was brought to the notice of the trial Court, be it by way of the Memo dated 05.03.2018 filed by the plaintiff company or the Memo dated 12.03.2018 filed by the defendants, the trial Court ought to have been mindful of the effects of such a moratorium order. This aspect was also brought to its notice by the defendants by filing a copy of the judgment of the Supreme Court in **INNOVENTIVE INDUSTRIES LIMITED V/ s. ICICI BANK** (2018) 1 SCC 407).

In **INNOVENTIVE INDUSTRIES LIMITED (supra)**, the Supreme Court dealt with various nuances of the Code of 2016. As regards the effects of a moratorium order, the Supreme Court observed that the moment initiation of corporate insolvency resolution process takes place, a moratorium is announced by the Adjudicating Authority, vide Sections 13 and 14 of the Code of 2016, by which institution of suits and continuation of pending suits etc. cannot be proceeded with and this situation would continue until the approval of a resolution plan under Section 31 of the Code of 2016.

It may be noted that Section 13 of the Code of 2016 mandates that the Adjudicating Authority, after admission of the application under Section 7 thereof, shall declare a moratorium for the purposes referred to in Section 14; cause a public announcement of the initiation of the corporate insolvency resolution process and call for submission of claims under Section 15; and appoint an interim resolution professional. Section 14 deals with the moratorium and sub-section (1) thereof states that upon the insolvency commencement date, the Adjudicating Authority shall, by order, declare a moratorium prohibiting the institution of suits or continuation of pending suits or proceedings against the corporate debtor, amongst other things. Sub-section (3) however provides that the moratorium would not apply to such transactions as may be notified by the Central Government in consultation with any financial regulator and to a surety in a contract of guarantee to a corporate debtor. Sub-section (4) makes it clear that the moratorium would have effect from the date of such order till the completion of the corporate insolvency resolution process. Section 15 deals with the procedure for making the public announcement of the corporate insolvency resolution process and Section 15(1)(c) requires such public announcement to mention the last date for submission of claims, as may be specified. The details of the interim resolution professional, who shall be vested with the management of the corporate debtor and who would be responsible for receiving claims, are required to be given in the public announcement as per Section 15(1)(d) of the Code of 2016. Section 18 of the Code of 2016 sets out the duties of the interim resolution professional and in so far as claims submitted by the creditors are concerned, Section 18(1)(b) requires him to receive and collate all such claims pursuant to the public announcement made under Sections 13 and 15 of the Code of 2016.

It is in this statutory context that the opinion expressed by the trial Court in the docket order dated 14.03.2018 has to be tested.

Despite being informed that the moratorium order was passed by the Tribunal on 27.02.2018 under Section 14 of the Code of 2016 and of the law laid down in **INNOVENTIVE INDUSTRIES LIMITED (supra)**, the trial Court strangely opined that mere filing of written statements would not violate the order of the Tribunal and observed that though the Civil Court could not pass any adverse order fastening any liability, the mere making of an appearance by the defendants and putting forth their case would not be violative of the moratorium. The trial Court further opined that it had discretion to receive the written statements and pass any procedural orders which would not be in conflict with the order of the Tribunal. A rather strange justification was then offered by the trial Court to the effect that the written statements of the defendants would assist the interim resolution professional to resolve the dispute for which the defendants were using delaying tactics. It is on the basis of this reasoning that the trial Court merely recorded the Memo filed by the defendants, thereby requiring them to comply with its earlier direction to file their written statements.

This Court is at a loss to understand as to how the trial Court could misconstrue the scope and import of Section 14(1)(a) of the Code of 2016, which categorically states that upon the order declaring moratorium being passed by the Adjudicating Authority, not only the institution of suits but even continuation of pending suits or proceedings against the corporate debtor are prohibited. Requiring the filing of a written statement would be a step in continuation of the suit proceedings and the understanding of the trial Court to the contrary belies comprehension. Further, the interim resolution professional is not required to play an adjudicatory role in terms of testing the claims of the creditors against the corporate debtor and the question of the written statements filed by the defendants assisting him in resolving the dispute does not arise. It is only at a later stage that the verification of claims would be undertaken by the liquidator under Sections 38, 39 and 40 of the Code of 2016. The trial Court was therefore in error in concluding that continuing with the suit proceedings for passing procedural orders would not be violative of the moratorium order passed under Section 14 of the Code of 2016. Continuation of the suit proceedings would encompass every step therein, which would include not only adjudicatory steps but also procedural ones. Upon the moratorium order being passed, the pending suit proceedings necessarily had to come to a complete halt. The docket order dated 14.03.2018 passed by the trial Court upon the Memo filed by the defendants is therefore unsustainable in law in so far as the first defendant company is concerned.

The second defendant in the suit is the Director & CEO of the first defendant company. The trial Court, in the docket order dated 14.03.2018, observed that as he is an individual, the Tribunal's moratorium order would not apply to him. However, the plaint averments clearly demonstrate that the suit claim was directed against the first

defendant company and it is only in the capacity of being its CEO that the second defendant was impleaded. The plaint also puts it beyond doubt that the cheques on the strength of which the summary suit was filed were issued by the first defendant company. Section 14 of the Code of 2016, as it presently reads after its amendment, vide the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, with retrospective effect from 06.06.2018, only excludes the surety in a contract of guarantee to a corporate debtor from the ambit of a moratorium order. There is no mention of individual Directors of the corporate debtor being immune from the moratorium order. It is the normal practice to implead in a suit or proceeding not only the corporate entity but also its Managing Director or Chief Executive Officer. That, however, would not mean that the cause of action against such Managing Director or Chief Executive Officer is independent of and separate from the claim against the corporate entity itself. The case on hand is an example. The claim of the plaintiff company is essentially directed against the first defendant company and the acts imputed to the second defendant, its Director & CEO, are inextricably linked therewith. The question of allowing the suit proceedings to go on independently against the second defendant, while giving effect to the moratorium order dated 27.02.2018 against the first defendant company alone, would not arise. The understanding of the trial Court to the contrary is therefore erroneous.

Before we conclude, one other aspect needs to be dealt with. Sri S.Niranjan Reddy, learned senior counsel, raised an objection in respect of C.R.P.Nos.4881 and 4884 of 2018 to the effect that these civil revision petitions are not maintainable as the corporate debtor, the petitioner therein, is represented by its Managing Director though an interim resolution professional was appointed by the Tribunal under the Code of 2016. Reliance in this regard is placed upon the observations of the Supreme Court in **INNOVENTIVE INDUSTRIES LIMITED (supra)** to the effect that once a resolution professional is appointed to manage the company, the erstwhile Directors, who are no longer in management, cannot maintain an appeal on behalf of the company.

Sri R.Raghunandan, learned senior counsel, would counter this argument by pointing out that though the cause title as set out in the suit necessarily had to be reproduced in C.R.P.Nos.4881 and 4884 of 2018, as they arose from the said suit proceedings, the cause titles in these revisions reflect that the petitioner-first defendant company is now represented by its authorised representative, C.V.Ramana, its Vice President. Learned senior counsel would point out that authority letter dated 12.06.2018 was issued by Subodh Kumar Agrawal, the interim resolution professional appointed by the Tribunal, and the same bears out that the said interim resolution professional authorised C.V.Ramana, Vice President-Administration of the first defendant company, to represent it before all Courts. He would therefore assert that the aforestated revision petitions, which have been filed on the strength of the vakalat executed by C.V.Ramana, Vice President-Administration of the first defendant

company, do not fall foul of the edict of the Supreme Court in **INNOVENTIVE INDUSTRIES LIMITED (supra)**.

In reply, Sri S.Niranjan Reddy, learned senior counsel, would state that as per Section 25(2)(d) of the Code of 2016, it is the resolution professional who has to undertake appointment of legal or other professionals and therefore, Subodh Kumar Agrawal, the interim resolution professional, could not have delegated this statutory function to an employee of the first defendant company.

This contention however does not hold water. It may be noted that Section 25 of the Code of 2016 deals with the resolution professional appointed under Section 22 of the Code of 2016 and not an interim resolution professional appointed under Section 16 thereof. Further, the various duties of an interim resolution professional enumerated under Section 18 of the Code of 2016 clearly manifest that one individual cannot, by himself, undertake all of them. He would necessarily have to take the assistance of others. In this regard, it may be noted that Section 19 of the Code of 2016 mandates that the personnel of the corporate debtor, its promoters or any other person associated with its management shall extend all assistance and co-operation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor. In the light of this provision, the argument that the interim resolution professional cannot delegate some of his duties and functions to such personnel has to be rejected. Institution of C.R.P.Nos.4881 and 4884 of 2018 is therefore not hit by the defect identified by the Supreme Court in **INNOVENTIVE INDUSTRIES LIMITED (supra)**.

On the above analysis, this Court finds that the trial Court grievously erred in dealing with the suit proceedings in the manner that it did even prior to the passing of the moratorium order by the Tribunal on 27.02.2018. The trial Court further compounded its error by seeking to continue with the suit proceedings despite the said moratorium order and in dismissing the applications filed in the suit while insisting upon filing of written statements by the defendants. The orders passed by the trial Court in this regard are accordingly set aside. The suit proceedings shall remain stayed until the conclusion of the corporate insolvency resolution process.

The civil revision petitions are allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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2019 (1) L.S. 129 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Abhay Manohar Sapre &
The Hon'ble Mr.Justice
Dinesh Maheshwari

Asharfi Devi (D)THR.Lrs ...Appellant
Vs.
State of U.P. & Ors ...Respondent

CIVIL PROCEDURE CODE, 1908, Order XLVII, Rule 1 - Review - Scope - Held, Every error factual or legal cannot be made subject matter of review. error/mistake must be apparent on the face of the record of case.

J U D G M E N T
(per the Hon'ble Mr.Justice
Abhay Manohar Sapre)

This appeal is directed against the final judgment and order dated 16.12.2008 passed by the High Court of Judicature at Allahabad in Civil Misc. Review Application No.81507 of 2008 in Civil Misc. Writ Petition No.10557 of 2002 whereby the High Court dismissed the Civil Misc. Review Application filed by the original appellant herein.

2. In order to appreciate the short controversy involved in this appeal, few facts need mention *infra*.

3. The appellants herein are the legal representatives of the original appellant, who was the writ petitioner and the review petitioner whereas the respondents herein were the respondents in the writ petition and the review application.

4. The original appellant was the owner of certain lands. These lands were subjected to ceiling proceedings under the Urban Land (Ceiling and Regulation) Act, 1976. The ceiling proceedings eventually resulted in declaring some lands in excess of ceiling limits as surplus. The State claims to have taken possession of the surplus land way back in the year 1982. The Ceiling Act was repealed for the State of UP on 22.03.1999.

5. In the year 2002, the original appellant filed a writ petition against the respondents-State of UP and its authorities in the Allahabad High Court claiming therein that since the original appellant continued to remain in possession of the surplus land even after the Repeal Act came into force, all the ceiling proceedings against her in relation to the lands in question stood lapsed in terms of Repeal Act.

6. This writ petition was dismissed by order dated 14.03.2008. The original appellant (writ petitioner) felt aggrieved by the dismissal of her writ petition and filed Review Application No.81507/2008 in the High Court. By impugned order dated 16.12.2008, the High Court dismissed the review application.

7. The original appellant felt aggrieved and filed the present appeal by way of special leave against the review order dated 16.12.2008 in this Court.

8. Heard Mr. Jayant Bhushan, learned senior counsel for the appellants and Dr. M.P. Raju, learned counsel for the respondents.

9. It is clear from the record that the original appellant (writ petitioner) never challenged the legality and correctness of the main order dated 14.03.2008 passed in the writ petition (10557/2002) but confined her challenge only to the order dated 16.12.2008 passed in the review application.

10. Though, learned counsel for the appellant contended that reading of the list of dates in this appeal shows that the original appellant has challenged the main order dated 14.03.2008 also along with the review order dated 16.12.2008, but we do not find it to be so.

11. In our opinion, the original appellant not having challenged the legality of the main order dated 14.03.2008 in a separate SLP or in this appeal, this Court is not called upon to examine the legality and correctness of the main order dated 14.03.2008 in the present appeal.

12. Mr. Jayant Bhushan, learned senior counsel for the appellants, however, argued that this Court should invoke the powers under Article 142 of the Constitution and permit the appellants to challenge the main order. We find no merit in this submission for three reasons.

13. First, the original appellant did not assign any reason as to what prevented her in the last almost 11 years in not filing the SLP against the main order;

14. Second, there was no legal impediment on the appellants' right to file the SLP in this Court as soon as the main order dated 14.03.2008 was passed and lastly, when the present SLP was filed in the year 2010 against the review order, the original appellant again did not challenge the main order dated 14.03.2008.

15. In the light of these three reasons, we find no good ground to invoke extraordinary powers under Article 142 of the Constitution and permit the appellants(legal representatives of original appellant) to question the legality of main order dated 14.03.2008 in this appeal.

16. Now coming to the merits of the case, we have to only examine the question as to whether the High Court was right in dismissing the review application filed by the original appellant holding that there was no error apparent on the face of the main order dated 14.03.2008 within the meaning of Order 47 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code").

17. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in this appeal.

18. While examining the legality of the review order, we cannot examine the legality of main order dated 14.03.2008 on its merits because, as mentioned above, this appeal does not arise out of the main order. Therefore, we have to confine our inquiry with a view to find out whether the review order is legally sustainable or not.

19. On perusal of the main order dated 14.03.2008, we find that the High Court dismissed the writ petition holding that the writ petitioner (original appellant herein) failed

to prove her possession over the land in question on the date of repeal. It was held that the State had taken possession of the land in the year 1982 as per the panchnama prepared by the State.

20. In review, the High Court held that while recording the aforementioned finding in the main order, no apparent error, whether on facts or law within the meaning of Order 47 Rule 1 of the Code, was committed attracting the rigor of Order 47 Rule 1 of the Code.

21 It is a settled law that every error whether factual or legal cannot be made subject matter of review under Order 47 Rule 1 of the Code though it can be made subject matter of appeal arising out of such order. In other words, in order to attract the provisions of Order 47 Rule 1 of the Code, the error/mistake must be apparent on the face of the record of the case.

22 Learned counsel for the appellants then argued the appeal as if this appeal arises out of the main order dated 14.03.2008. He extensively referred to the pleadings and several documents as if we are called upon to examine the legality of the main order itself.

23. We find no merit in any of his submissions for more than one reason. First, as mentioned above, this appeal does not arise out of the main order but arises out of review order only and, therefore, we cannot examine the legality and correctness of the main order in this appeal like an Appellate Court.

24. Second, we examined the matter only with a view to find out as to whether the High Court was right in dismissing the review application and thereby justified in upholding the main order dated 14.03.2008 holding that it did not contain any error/mistake apparent on the face of the record.

25. In other words, we examined the issue only with a view to find out as to whether the review order, which is subject matter of this appeal, was passed in conformity with the requirements of Order 47 Rule 1 of the Code or not.

26. Third, having examined, we are of the view that the review order was passed in conformity with the requirements of Order 47 Rule 1 of the Code and, therefore, the High Court rightly concluded that the main order impugned in the review application did not contain any factual or/and legal error(s) within the meaning of Order 47 of the Code so as to entitle the review Court to recall the same in its review jurisdiction.

27. And lastly, once the finding was recorded by the High Court in the writ petition that the writ petitioner (original appellant) failed to prove her actual possession on the land in question on the date of repeal, such finding could not have been examined *de novo* in review jurisdiction by the same Court like an Appellate Court on the facts and evidence.

28. In view of the foregoing discussion, we concur with the reasoning and the conclusion arrived at by the High Court (Review Court) in the impugned order and find no merit in this appeal.

29. The appeal thus fails and is accordingly dismissed.

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2019 (1) L.S. 132 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
A.K. Sikri
The Hon'ble Mr.Justice
S. Abdul Nazeer &
The Hon'ble Mr.Justice
M.R.Shah

The State of Madhya Pradesh ..Petitioner
Vs.
Laxmi Narayan & Ors., ..Respondents

CRIMINAL PROCEDURE CODE, Sec.482 – High Court in impugned judgment has allowed petition filed by Respondents /Accused under Section 482 of Code of Criminal Procedure and quashed the proceedings against the accused for offences punishable u/Secs.307 and 34 of IPC.

Held - Gravity of offence and conduct of accused is not at all considered by High Court and solely on basis of a settlement between accused and complainant, the High Court has mechanically quashed FIR, in exercise of power under Section 482 of the Code, which is not sustainable in the eyes of law - Appeal is also allowed, the impugned judgment and order passed by the High Court is hereby quashed and set aside.

Crl.A.Nos.349 & 350/2019 Date:5-3-2019

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

A two Judge bench of this Court vide its order dated 08.09.2017, in view of the apparent conflict between the two decisions of this Court in the cases of Narinder Singh vs. State of Punjab (2014) 6 SCC 466 and State of Rajasthan vs. Shambhu Kewat (2014) 4 SCC 149, has referred the matter to a Bench of three Judges, and that is how the matter is placed before a Bench of three Judges.

1.1 Vide order dated 19.11.2018, since the same question of law is involved, this Court tagged the connected appeal with the main appeal.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 7.10.2013 passed by the High Court of Madhya Pradesh, Bench at Gwalior in Miscellaneous Criminal Case No. 8000/ 2013, by which the High Court has allowed the said application, preferred by the respondents herein/original accused (hereinafter referred to as the 'Accused'), and in exercise of its powers under Section 482 of the Code of Criminal Procedure, has quashed the proceedings against the accused for the offences punishable under Sections 307 and 34 of the IPC, relying upon the decision of this Court in the case of Shiji @ Pappu & others vs. Radhika and another (2011) 10 SCC 705, the State of Madhya Pradesh has preferred the present

appeal.

2.1 Office report dated 18.08.2017 indicates that service of show cause notice on the respondents is complete, and respondent nos. 1 to 3 are represented by Ms. Mridula Ray Bhardwaj, Advocate, but during the course of hearing, nobody appeared for the respondents.

3. The facts leading to this appeal are, that an FIR was lodged against the respondents herein and two unknown persons at Police Station Raun, District Bhind, for the offences punishable under Sections 307 and 34 of the IPC, which was registered as Crime No. 36/13. It was alleged that on 03.03.2013 at about 9:30 p.m., the complainant - Charan Singh, who is an operator of LNT machine is extracting sand of Sindh River at Indukhi Sand Mine and at that time firing from other side of river started and the counter firing from this side also started then he heard that take away your machine from here. It is alleged that some people came there from which Sanjeev (respondent no.2 herein), Lature (respondent no.1 herein), Sant Singh (respondent no.3 herein) and two unknown persons came near to the complainant and his machine and told him to run away, then somebody told to Sanjeev (respondent no.2 herein) to fire and then Sanjeev fired on the complainant and then they ran away. The complainant fell from the machine. The bullet hit the complainant on elbow of right hand. Somehow the complainant managed to reach the village and a person called a car and admitted the complainant in District Hospital.

3.1 That on 04.03.2013, the duty doctor in the District Hospital informed the police and on the basis of the statement of the complainant, a Dehati Nalishi bearing No. 0/13 was registered under Sections 307 and 34 of the IPC.

3.2 That the medical examination of the injured complainant was conducted at District Hospital and five injuries were found on his body and injuries nos. 1 to 4 were opined to be caused by fire arm and injury no.5 was advised for x-ray.

3.3 That on 05.03.2013, the police reached on the spot and prepared spot map; statement of witnesses were recorded under Section 161 of the Cr.P.C. and the police seized simple soil, blood stained soil and other articles from the spot of the incident and prepared their seizure memos.

3.4 That the accused filed Miscellaneous Criminal Case No. 8000 of 2013 under Section 482 of Cr.P.C. before the High Court of Madhya Pradesh, Bench at Gwalior for quashing the criminal proceedings against the accused arising out of the FIR, on the sole ground of a compromise arrived at between the accused and the complainant.

4. That, by the impugned judgment and order, the High Court, in exercise of its powers under Section 482 of Cr.P.C, has quashed the criminal proceedings against the accused solely on the ground that the accused and the complainant have settled the disputes amicably. While quashing the

criminal proceedings against the accused, the High Court has considered and relied upon the decision of this Court in the case of Shiji (supra).

5. Feeling aggrieved and dissatisfied by the impugned judgment and order, quashing the criminal proceedings against the accused for the offences punishable under Sections 307 and 34 of the IPC, the State of Madhya Pradesh has preferred the present appeal.

6. Learned advocate appearing on behalf of the State of Madhya Pradesh has vehemently submitted that the High Court has committed a grave error in quashing the FIR which was for the offences under Sections 307 and 34 of the IPC.

6.1 It is vehemently submitted by the learned counsel appearing on behalf of the appellant-State that in the present cases the High Court has quashed the FIR mechanically and solely on the basis of the settlement/compromise between the complainant and the accused, without even considering the gravity and seriousness of the offences alleged against the accused persons.

6.2 It is further submitted by the learned counsel appearing on behalf of the appellant-State that while exercising the powers under Section 482 of the Cr.P.C. and quashing the FIR, the High Court hasnot at all considered the fact that the offences alleged were against the society at large and not restricted to the personal disputes between the two individuals.

6.3. It is further submitted by the learned counsel appearing on behalf of the appellant-State that the High Court has misread the decision of this Court in the case of Shiji (supra), while quashing the FIR. It is vehemently submitted by the learned counsel that the High Court ought to have appreciated that in all the cases where the complainant has compromised/entered into a settlement with the accused, that need not necessarily mean resulting into no chance of recording conviction and/or the entire exercise of a trial destined to be exercise of futility. It is vehemently submitted by the learned counsel appearing on behalf of the appellant-State that in a given case despite the complainant may not support in future and in the trial in view of the settlement and compromise with the accused, still the prosecution may prove the case against the accused persons by examining the other witnesses, if any, and/or on the basis of the medical evidence and/or other evidence/material. It is submitted that in the present cases the investigation was in progress and even the statement of the witnesses was recorded and the medical evidence was also collected. It is submitted that therefore in the facts and circumstances of the case, the High Court has clearly erred in considering and relying upon the decision of this Court in the case of Shiji (supra).

6.4 It is further submitted by the learned counsel appearing on behalf of the appellant-State that the accused were hard core criminals and many criminal cases were

registered against them and they are a serious threat to the society. It is submitted that all these aforesaid circumstances and the conduct on the part of the accused were required to be considered by the High Court while quashing the FIR in exercise of its inherent powers under Section 482 of the Cr.P.C, and more particularly when the offences alleged were against the society at large, namely, attempt to murder, which is a non-compoundable offence. In support of his submissions, learned counsel for the appellant-State has placed reliance on the decisions of this Court in the cases of Gian Singh vs. State of Punjab (2012) 10 SCC 303; State of Rajasthan vs. Shambhu Kewat, (2014) 4 SCC 149; State of Madhya Pradesh vs. Deepak (2014) 10 SCC 285; State of Madhya Pradesh vs. Manish (2015) 8 SCC 307; J. Ramesh Kamath vs. Mohana Kurup (2016) 12 SCC 179; State of Madhya Pradesh vs. Rajveer Singh (2016) 12 SCC 471; Parbatbhai A Ahir vs. State of Gujarat (2017) 9 SCC 641; and 2019 SCC Online SC 7, State of Madhya Pradesh vs. Kalyan Singh, decided on 4.1.2019 in Criminal Appeal No. 14/2019, State of Madhya Pradesh vs. Dhruv Gurjar, decided on 22.02.2019 in CriminalAppeal @SLP(Criminal) No.9859 of 2013.

6.5 Making the above submissions and relying upon the aforesaid decisions of this Court, learned counsel appearing on behalf of the appellant-State has prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court quashing and setting aside the FIR, in exercise of its inherent powers under Section 482 of the Cr.P.C.

7. As observed hereinabove, nobody appeared on behalf of the respondents - accused.

8. We have heard the learned counsel for the appellant at great length.

9. At the outset, it is required to be noted that in the present appeals, the High Court in exercise of its powers under Section 482 of the Cr.P.C. has quashed the FIR for the offences under Sections 307 and 34 of the IPC solely on the basis of a compromise between the complainant and the accused. That in view of the compromise and the stand taken by the complainant, considering the decision of this Court in the case of Shiji (supra), the High Court has observed that there is no chance of recording conviction against the accused persons and the entire exercise of a trial would be exercise in futility, the High Court has quashed the FIR.

9.1 However, the High Court has not at all considered the fact that the offences alleged were non-compoundable offences as per Section 320 of the Cr.P.C. From the impugned judgment and order, it appears that the High Court has not at all considered the relevant facts and circumstances of the case, more particularly the seriousness of the offences and its social impact. From the impugned judgment and order passed by the High Court, it appears that the High Court has mechanically quashed the FIR, in exercise of its powers under Section 482

Cr.P.C. The High Court has not at all considered the distinction between a personal or private wrong and a social wrong and the social impact. As observed by this Court in the case of State of Maharashtra vs. Vikram Anantrai Doshi, (2014) 15 SCC 29, the Court's principal duty, while exercising the powers under Section 482 Cr.P.C. to quash the criminal proceedings, should be to scan the entire facts to find out the thrust of the allegations and the crux of the settlement. As observed, it is the experience of the Judge that comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. In the case at hand, the High Court has not at all taken pains to scrutinise the entire conspectus of facts in proper perspective and has quashed the criminal proceedings mechanically. Even, the quashing of the FIR by the High Court in the present case for the offences under Sections 307 and 34 of the IPC, and that too in exercise of powers under Section 482 of the Cr.P.C. is just contrary to the law laid down by this Court in a catena of decisions.

9.2 In the case of Gian Singh (supra), in paragraph 61, this Court has observed and held as under:

"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties

have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

9.3 In the case of Narinder Singh vs. State of Punjab (2014) 6 SCC 466, after considering the decision in the case of Gian Singh (supra), in paragraph 29, this Court summed up as under:

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been

committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/ investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy

stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded bythe trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

9.4 In the case of Parbatbhai Aahir (supra), again this Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 Cr.P.C. Considering a catena of decisions of this Court on the point, this Court summarised the following propositions:

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

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

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

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

(5) the decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulate.

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

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

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

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

(10) There is yet an exception to the principle set out in Propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

9.5 In the case of Manish (supra), this Court has specifically observed and held that, when it comes to the question of compounding an offence under Sections 307, 294 and 34 IPC, by no stretch of imagination, can it be held to be an offence as between the private parties simpliciter. It is observed that such offences will have a serious impact on the society at large. It is further observed that where the accused are facing trial under Sections 307 read with Section 34 IPC, as the offences are definitely against the society, accused will have to necessarily face trial and come out unscathed by demonstrating their innocence.

9.6 In the case of Deepak (supra), this Court has specifically observed that as offence under Section 307 IPC is non-compoundable and as the offence under Section 307 is not a private dispute between the parties inter se, but is a crime against the society, quashing of the proceedings on the basis of a compromise is not

permissible. Similar is the view taken by this Court in a recent decision of this Court in the case of Kalyan Singh (supra) and Dhruv Gurjar (supra).

10. Now so far as the decision of this Court in the case of Narinder Singh (supra) is concerned, this Court in paragraph 29.6 admitted that the offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, this Court further observed that the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed. Its further corroboration with the medical evidence or other evidence is to be seen, which will be possible during the trial only. Hence, the decision of this case in the case of Narinder Singh (supra) shall be of no assistance to the accused in the present case.

11. Now so far as the reliance placed upon the decision of this Court in the case of Shiji (supra), while quashing the FIR by observing that as the complainant has compromised with the accused, there is no possibility of recording a conviction, and/ or the further trial would be an exercise in futility is concerned, we are of the opinion that the High Court has clearly erred in quashing the FIR on the aforesaid ground. It appears that the High Court has misread or misapplied the said decision to the facts of the cases on hand. The High Court ought to have appreciated that it is not in every case where the complainant has entered into a compromise with the accused, there may not be any conviction. Such observations are presumptive and many a time too early to opine. In a given case, it may happen that the prosecution still can prove the guilt by leading cogent evidence and examining the other witnesses and the relevant evidence/material, more particularly when the dispute is not a commercial transaction and/or of a civil nature and/or is not a private wrong. In the case of Shiji (supra), this Court found that the case had its origin in the civil dispute between the parties, which dispute was resolved by them and therefore this Court observed that, 'that being so, continuance of the prosecution where the complainant is not ready to support the allegations...will be a futile exercise that will serve no purpose'. In the aforesaid case, it was also further observed 'that even the alleged two eyewitnesses, however, closely related to the complainant, were not supporting the prosecution version', and to that this Court observed and held 'that the continuance of the proceedings is nothing but an empty formality and Section 482 Cr.P.C. can, in such circumstances, be justifiably invoked by the High Court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the courts below. Even in the said decision, in paragraph 18, it is observed as under:

"18. Having said so, we must hasten to add that the plenitude of the power under Section 482 CrPC by itself, makes it obligatory for the High Court to exercise

the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked."

11.1 Therefore, the said decision may be applicable in a case which has its origin in the civil dispute between the parties; the parties have resolved the dispute; that the offence is not against the society at large and/or the same may not have social impact; the dispute is a family/matrimonial dispute etc. The aforesaid decision may not be applicable in a case where the offences alleged are very serious and grave offences, having a social impact like offences under Section 307 IPC. Therefore, without proper application of mind to the relevant facts and circumstances, in our view, the High Court has materially erred in mechanically quashing the FIR, by observing that in view of the compromise, there are no chances of recording conviction and/or the further trial would be an exercise in futility. The High Court has mechanically considered the aforesaid decision of this Court in the case of Shiji (supra), without considering the relevant facts and circumstances of the case.

12. Now so far as the conflict between the decisions of this Court in the cases of Narinder Singh (supra) and Shambhu Kewat (supra) is concerned, in the case of Shambhu Kewat (supra), this Court has noted the difference between the power of compounding of offences conferred on a court under Section 320 Cr.P.C. and the powers conferred under Section 482 Cr.P.C. for quashing of criminal proceedings by the High Court. In the said decision, this Court further observed that in compounding the offences, the power of a criminal court is circumscribed by the provisions contained in Section 320 Cr.P.C. and the court is guided solely and squarely thereby, while, on the other hand, the formation of opinion by the High Court for quashing a criminal proceedings or criminal complaint under Section 482 Cr.P.C. is guided by the material on record as to whether ends of justice would justify such exercise of power, although ultimate consequence may be acquittal or dismissal of indictment. However, in the subsequent decision in the case of Narinder Singh (supra), the very Bench ultimately concluded in paragraph

29 as under:

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However,

the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/ investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded bythe trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in thatcapacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impart on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether

the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.

14. Insofar as the present case is concerned, the High Court has quashed the criminal proceedings for the offences under Sections 307 and 34 IPC mechanically and even when the investigation was under progress. Somehow, the accused managed to enter into a compromise with the complainant and sought quashing of the FIR on the basis of a settlement. The allegations are serious in nature. He used the fire arm also in commission of the offence. Therefore, the gravity of the offence and the conduct of the accused is not at all considered by the High Court and solely on the basis of a settlement between the accused and the complainant, the High Court has mechanically quashed the FIR, in exercise of power under Section 482 of the Code, which is not sustainable in the eyes of law. The High Court has also failed to note the antecedents of the accused.

15. In view of the above and for the reasons stated, the present appeal is allowed. The impugned judgment and order dated 07.10.2013 passed by the High Court in Miscellaneous Criminal Case No. 8000 of 2013 is hereby quashed and set aside, and the FIR/investigation/criminal proceedings be proceeded against the accused, and they shall be dealt with, in accordance with law.

Criminal Appeal No. 350 of 2019

16. So far as Criminal Appeal arising out of SLP 10324/2018 is concerned, by the impugned judgment and order, the High Court has quashed the criminal proceedings for the offences punishable under Sections 323, 294, 308 & 34 of the IPC, solely on the ground that the accused and the complainant have settled the matter and in view of the decision of this Court in the case of Shiji(supra), there may not be any possibility of recording a conviction against the accused. Offence under Section 308 IPC is a non-compoundable offence. While committing the offence, the accused has used the fire arm. They are also absconding, and in the meantime, they have managed to enter into a compromise with the complainant. Therefore, for the reasons stated above, this appeal is also allowed, the impugned judgment and order dated 28.05.2018 passed by the High Court in Miscellaneous Criminal Case No. 19309/ 2018 is hereby quashed and set aside, and the FIR/investigation/criminal proceedings be proceeded against the accused, and they shall be dealt with, in accordance with law.

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2019 (1) L.S. 147 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Dr.Justice
D.Y. Chandrachud &
The Hon'ble Mr.Justice
Hemant Gupta

Varun Pahwa ..Appellant

Vs.

Renu Chaudhary ..Respondent

CIVIL PROCEDURE CODE, Order 6 Rule 17 - Order passed by High Court is challenged in present appeal, whereby Petition against an order passed by learned trial court seeking permission to amend the plaint was dismissed.

Held - Inadvertent mistake in plaint which trial court should have allowed to be corrected so as to permit the Private Limited Company to sue as Plaintiff as the original Plaintiff has filed suit as Director of said Private Limited Company - Order declining to correct the memo of parties cannot be said to be justified in law – Appeal stands allowed.

J U D G M E N T

(per the Hon'ble Mr.Justice Hemant Gupta)

Leave granted.

CA.No.2131/19 Date: 1-3-2019

2. The Order dated 20.08.2018 passed by the High Court of Delhi is subject matter of challenge in the present appeal. By the aforesaid order, a petition against an order passed by the learned trial court on 23.01.2018 seeking permission to amend the plaint was dismissed.

3. The appellant as Director of Siddharth Garments Pvt. Ltd. filed a suit for recovery of Rs. 25,00,000/- along with pendente lite and future interest on or about 28.05.2016. The Plaintiff has claimed the said amount advanced as loan of Rs. 25,00,000/- remitted to the defendant through RTGS on 16.06.2013 on HDFC Bank, Delhi. It is also averred that Plaintiff has given Special Power of Attorney to Shri Navneet Gupta and that a copy of the Power of Attorney is enclosed.

4. The defendant raised one of the preliminary objections in the written statement that suit has not been filed by the Plaintiff and even the alleged authorised representative has not filed any document showing that he has been authorised by the above-named Plaintiff. The Special Power of Attorney is neither valid nor admissible.

5. It was on 29.11.2016, Navneet Gupta appeared in Court as power of attorney of the Plaintiff to examine himself as PW1. It was at that stage; an order was passed by the learned trial court to furnish address of the Plaintiff and why the Plaintiff should be examined through an attorney when the Plaintiff is a resident of Delhi. It is thereafter, the appellant filed an application for

amendment of the plaint on the ground that the counsel had inadvertently made the title of the suit wrongly as the loan was advanced through the Company, therefore, the suit was to be in the name of the Company. Therefore, the Plaintiff sought to substitute para 1 and para 2 of the plaint with the following paras which read as under:-

"1. That the Plaintiff is a Private Limited Company having its registered office at: I-VA (property bearing No. XII), Jawahar Nagar, Delhi

2. That the present plaint is filed through the authorised representative of the Plaintiff namely Sh. Navneet Gupta, R/o. 322, Kohat Enclave, Pitam Pura, Delhi who has been authorised vide board resolution dated 12.05.2016 to sign, verify and execute all documents, papers, complaints, applications, plaint, written statement, Counter claim, affidavits, replies revisions, etc. and to institute, pursue and depose in all legal proceedings and court cases on behalf of Siddharth Garments Pvt. Ltd against Mrs. Renu Chaudhary who was given the loan of Rs. 25 Lakhs."

6. The trial court declined the amendment on the ground that the application is an attempt to convert the suit filed by a private individual into a suit filed by a Private Limited Company which is not permissible as it completely changes the nature of the suit. It is the said order which was not interfered with by the High Court.

7. We have heard learned counsel for the appellant as none had appeared on behalf of the respondent.

8. The plaint is not properly drafted in as much as in the memo of parties, the Plaintiff is described as Varun Pahwa through Director of Siddharth Garments Pvt. Ltd. though it should have been Siddharth Garments Pvt. Ltd. through its Director Varun Pahwa. Thus, it is a case of mistake of the counsel, may be on account of lack of understanding as to how a Private Limited Company is to sue in a suit for recovery of the amount advanced.

9. The memo of parties is thus clearly inadvertent mistake on the part of the counsel who drafted the plaint. Such inadvertent mistake cannot be refused to be corrected when the mistake is apparent from the reading of the plaint. The Rules of Procedure are handmaid of justice and cannot defeat the substantive rights of the parties. It is well settled that amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the Rules of Procedure. The Court always gives leave to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations. In State of Maharashtra v. Hindustan Construction Company Limited, (2010) 4 SCC 518 this Court held as under:-

"17. Insofar as the Code of Civil Procedure, 1908 (for short "CPC") is concerned, Order

6 Rule 17 provides for amendment of pleadings. It says that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

18. The matters relating to amendment of pleadings have come up for consideration before the courts from time to time. As far back as in 1884 in Clarapede & Co. v. Commercial Union Assn., (1883) 32 WR 262 (CA) - an appeal that came up before the Court of Appeal, Brett M.R. stated:

"... The rule of conduct of the court in such a case is that, however negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs; but, if the amendment will put them into such a position that they must be injured, it ought not to be made...."

19. In Charan Das v. Amir Khan, (1919-20) 47 IA 255 the Privy Council exposited the legal position that although power of a Court to amend the plaint in a suit should not as a rule be exercised where the effect is to take away from the defendant a legal right which has accrued to him by lapse of time, yet there are cases in which that consideration is outweighed by the special circumstances of the case.

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22. In Jai Jai Ram Manohar Lal, (1969) 1 SCC 869 this Court was concerned with a matter wherein amendment in the plaint was refused on the ground that the amendment could not take effect retrospectively and on the date of the amendment the action was barred by the law of limitation. It was held: (SCC p.871, para 5)

"5. .... Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the Rules of procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side." This Court further stated (Jai Jai Ram Manohar Lal case, SCC p.873, para 7):

"7. ...The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such

narrow or technical limitations."

10. In Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Another, (2006) 1 SCC 75 this Court held that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use. The Court held as under:-

"17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:

(i) where the statute prescribing the procedure, also prescribes specifically the consequence of noncompliance;

(ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;

(iii) where the non-compliance or violation is proved to be deliberate or mischievous;

(iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;

(v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant."

11. Thus, we find that it was an inadvertent mistake in the plaint which trial court should have allowed to be corrected so as to permit the Private Limited Company to sue as Plaintiff as the original Plaintiff has filed suit as Director of the said Private Limited Company. Therefore, the order declining to correct the memo of parties cannot be said to be justified in law.

12. Consequently, the orders passed by the High Court dated 20.08.2018 and by the trial court on 23.01.2018 are set-aside and the application filed by the Plaintiff to amend the plaint is allowed with no order as to costs.

The appeal is allowed.

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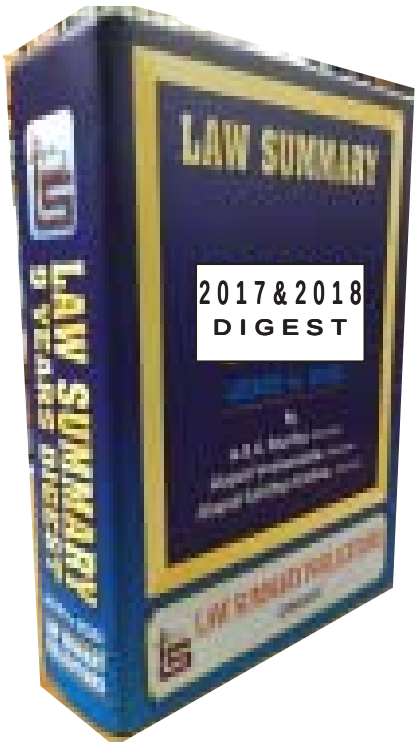

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